

By Mr. Marzilli of Arlington, petition of J. James Marzilli, Jr., relative to electronic monitoring in the workplace. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year Two Thousand and One.

AN ACT TO PREVENT POTENTIAL ABUSES OF ELECTRONIC MONITORING IN THE WORKPLACE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 19D is added to Chapter 149 of the General Laws to
2 read as follows:—

3 Section 19D. Electronic monitoring; notice, access to records;
4 privacy, due process; regulations.

5 (1) Definitions. As used in this section: (a) “electronic moni-
6 toring” means the collection, storage, analysis and reporting of
7 employees’ activities by means of computer, electronic observa-
8 tion and supervision, remote telephone surveillance, telephone
9 call accounting and other forms of auditory and computer-based
10 surveillance conducted by any transfer of signs, signals, writing,
11 images, sounds, data or intelligence of any nature transmitted in
12 whole or in part by a wire, radio, electromagnetic, photoelectric or
13 photooptical system;

14 (b) “employee” means a person currently employed or formerly
15 employed by an employer;

16 (c) “employer” means each private and public sector employer
17 of twenty-five employees or more in the Commonwealth
18 including an individual, corporation, partnership, labor organiza-
19 tion, unincorporated association or any other legal business,
20 public or private, or commercial entity, the Commonwealth, coun-
21 ties, cities, towns and other political subdivisions therein, and any
22 agents of the employer;

23 (d) “individual data” means any information concerning an
24 employee which because of name, identifying number, mark or

25 description can be readily associated with a particular individual
26 and includes information contained in printouts, forms or written
27 analyses or evaluations; and

28 (e) "prospective employee" means an individual who has
29 applied for a position of employment with an employer.

30 (2) Notice. (a) An employer shall provide an employee with
31 prior written notice regarding electronic monitoring directly
32 affecting the employee. The notice shall inform the employee of
33 the types of monitoring the employer uses, what individual data is
34 to be collected, a full description of how monitored information is
35 used and the frequency of monitoring activity.

36 (b) An employer shall inform a prospective employee at any
37 personal interview or meeting of existing forms of electronic
38 monitoring which may directly affect the prospective employee if
39 he or she is hired by the employer.

40 (c) If an employer engages in telephone service observation, the
41 employer shall prominently place in each of its written advertise-
42 ments and in each of its customer bills a statement that the
43 employer is engaging in such observation.

44 (d) Notwithstanding the provisions of subparagraph (a) above, an
45 employer who is engaged in electronic monitoring on the effective
46 date of this section will have ninety days from said effective date to
47 provide each affected employee with the above requirements.

48 (3) Privacy. (a) It shall be unlawful for an employer to collect
49 individual data on an employee through electronic monitoring
50 which is not relevant to the employee's work performance.

51 (b) It shall be unlawful for an employer to maintain, collect, use
52 or disseminate individual data obtained by electronic monitoring
53 which describes how an employee exercises rights guaranteed by
54 the First Amendment unless expressly authorized by statute or by
55 the employee to whom the data relates or unless pertinent to and
56 within the scope of an authorized law enforcement activity.

57 (4) Access to Records. (a) It shall be unlawful for an employer
58 not to allow an employee, or the employee's authorized agent,
59 access to all individual data obtained by electronic monitoring of
60 his work, as outlined in Section 52C of this chapter.