

108TH CONGRESS
2D SESSION

H. R. 5181

To protect employees from invasion of privacy by employers by prohibiting certain video monitoring and audio monitoring of employees by their employers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2004

Mr. PETRI (for himself and Mr. ANDREWS) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To protect employees from invasion of privacy by employers by prohibiting certain video monitoring and audio monitoring of employees by their employers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Employee Freedom
5 from Invasion of Privacy Act”.

1 **SEC. 2. PROHIBITION AGAINST VIDEO OR AUDIO MONI-**
2 **TORING OF EMPLOYEES IN CERTAIN EM-**
3 **PLOYMENT LOCATIONS.**

4 An employer may not engage in video monitoring or
5 audio monitoring of an employee of the employer when the
6 employee is in a restroom facility, dressing room, or any
7 other area in which it is reasonable to expect employees
8 of the employer to change clothing.

9 **SEC. 3. ENFORCEMENT ACTION BY SECRETARY.**

10 (a) IN GENERAL.—Any employer who violates section
11 2 shall be liable to the United States for a civil money
12 penalty in an amount not to exceed \$10,000 for each viola-
13 tion, except that, if the violation is knowing, the penalty
14 for the violation may be up to \$25,000.

15 (b) WRITTEN NOTICE AND OPPORTUNITY FOR
16 HEARING.—The Secretary of Labor shall assess a civil
17 penalty under subsection (a) by an order made on the
18 record after opportunity for a hearing provided in accord-
19 ance with section 554 of title 5, United States Code. In
20 connection with the hearing, the Secretary may issue sub-
21 poenas requiring the attendance and testimony of wit-
22 nesses and the production of evidence that relates to the
23 subject matter of the hearing.

24 (c) DETERMINATION OF AMOUNT OF CIVIL MONEY
25 PENALTY.—In determining the amount of a civil money

1 penalty under subsection (a), the Secretary shall take into
2 account—

3 (1) the nature, circumstances, extent, and grav-
4 ity of the violation or violations; and

5 (2) with respect to the violator, the ability to
6 pay, effect on ability to continue to do business, any
7 history of prior violations, the degree of culpability,
8 and such other matters as justice may require.

9 (d) MODIFICATION OF CIVIL MONEY PENALTY.—The
10 Secretary may compromise, modify, or remit, with or with-
11 out conditions, any civil money penalty assessed under
12 subsection (a). The amount of such penalty, when finally
13 determined, or the amount agreed upon in compromise,
14 may be deducted from any sums owing by the United
15 States to the employer.

16 (e) JUDICIAL REVIEW.—An employer who requested,
17 in accordance with section 554 of title 5, United States
18 Code, a hearing respecting the assessment of a civil pen-
19 alty under this subsection, and who is aggrieved by the
20 order assessing the penalty may file a petition for judicial
21 review of the order with the United States Court of Ap-
22 peals for the District of Columbia Circuit or for any other
23 circuit in which the employer resides or transacts business.
24 Such a petition may only be filed within the 60-day period
25 beginning on the date the order was issued.

1 (f) FAILURE TO PAY.—The Attorney General may re-
2 cover, in an action brought in any appropriate district
3 court of the United States, the amount of a civil penalty
4 assessed under this subsection against an employer who
5 fails to pay the penalty—

6 (1) after the order making the assessment be-
7 comes final, and if such employer does not file a pe-
8 tition for judicial review of the order in accordance
9 with subsection (e); or

10 (2) after a court in an action brought under
11 subsection (e) has entered a final judgment in favor
12 of the Secretary.

13 (g) NO REVIEW OF PENALTY.—In an action brought
14 under subsection (f), the validity, amount, and appro-
15 priateness of the civil penalty shall not be subject to re-
16 view.

17 (h) INJUNCTIVE RELIEF.—The Secretary may com-
18 mence, in any court of competent jurisdiction, a civil ac-
19 tion for the purpose of obtaining temporary or permanent
20 injunctive relief with respect to preventing a violation of
21 section 2.

22 **SEC. 4. CIVIL CAUSE OF ACTION BY AGGRIEVED EM-**
23 **PLOYEE.**

24 (a) IN GENERAL.—An employee who is aggrieved as
25 a result of a violation of section 2 by the employer of such

1 employee may commence, in any court of competent juris-
2 diction, a civil action against the employer to obtain ap-
3 propriate relief, including—

4 (1) an injunction to enjoin the employer from
5 further engaging in the violation or from committing
6 any further violation, as appropriate;

7 (2) damages not to exceed \$25,000 if the viola-
8 tion is knowing; or

9 (3) both such remedies.

10 (b) COMMENCEMENT OF PROCEEDINGS.—An em-
11 ployee referred to in subsection (a) may not commence
12 proceedings under such subsection against an employer of
13 the employee after the expiration of the 7-year period be-
14 ginning on the later of the following:

15 (1) The date on which the employer allegedly
16 engaged in a violation of section 2.

17 (2) The date on which the employee should
18 have been aware of an alleged violation of section 2
19 by the employer.

20 (c) ATTORNEY'S FEES AND COSTS.—In any civil ac-
21 tion referred to in subsection (a), the prevailing party may
22 obtain appropriate relief, including reasonable costs, and
23 attorney's and expert witness fees.

1 **SEC. 5. EFFECT ON STATE LAWS AND COLLECTIVE BAR-**
2 **GAINING AGREEMENTS.**

3 (a) STATE LAWS.—This Act does not annul, alter,
4 or affect in any manner the meaning, scope, or applica-
5 bility of the laws of any State or political subdivision of
6 any State, except to the extent such laws are inconsistent
7 with this Act, and then only to the extent of the inconsist-
8 ency. A law is not inconsistent with this Act if the law
9 affords greater protection to an employee than the protec-
10 tion provided under this Act.

11 (b) COLLECTIVE BARGAINING AGREEMENTS.—This
12 Act does not annul, alter, or affect in any manner the
13 meaning, scope, or applicability of any collective bar-
14 gaining agreements, except to the extent that such agree-
15 ments are inconsistent with this Act, and then only to the
16 extent of the inconsistency. An agreement is not incon-
17 sistent with this Act if the agreement affords greater pro-
18 tection to an employee than the protection provided under
19 this Act.

20 **SEC. 6. DEFINITIONS.**

21 In this Act:

22 (1) AUDIO MONITORING.—The term “audio
23 monitoring” means the listening to, collecting, or re-
24 cording of sounds of an employee by means of audio
25 equipment or other method.

1 (2) EMPLOYEE.—The term “employee” means
2 any person who is employed by an employer or who
3 was employed by an employer at the time of a viola-
4 tion that was allegedly committed by that employer.
5 Such term includes leased or temporary employees
6 and an employee who is under contract to perform
7 work for an employer.

8 (3) EMPLOYER.—The term “employer” means
9 any person or entity engaged in commerce or in an
10 industry or activity affecting commerce. Such term
11 includes a public agency.

12 (4) PUBLIC AGENCY.—The term “public agen-
13 cy” means—

14 (A) the Government of the United States;

15 (B) the government of a State or political
16 subdivision thereof;

17 (C) any agency of the United States (in-
18 cluding the United States Postal Service and
19 Postal Rate Commission);

20 (D) any agency of a State, or a political
21 subdivision of a State; or

22 (E) any interstate governmental agency.

23 (5) VIDEO MONITORING.—The term “video
24 monitoring” means the videotaping, photographing,

1 filming, or recording by any electronic means of an
2 employee.

3 (6) SECRETARY.—The term “Secretary” means
4 the Secretary of Labor.

5 (7) STATE.—The term “State” means a State
6 of the United States, the District of Columbia, the
7 Commonwealth of Puerto Rico, or a territory or pos-
8 session of the United States.

9 **SEC. 7. EFFECTIVE DATE.**

10 This Act takes effect 60 days after the date of the
11 enactment of this Act.

○