

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1520

BY: STOTTLEMYRE of the HOUSE

and

LONG (Lewis) of the SENATE

AS INTRODUCED

AN ACT RELATING TO LABOR; CREATING THE PRIVACY FOR
CONSUMERS AND WORKERS' ACT; PROVIDING SHORT TITLE;
PROVIDING DEFINITIONS; REQUIRING WRITTEN NOTICE
REGARDING CERTAIN ELECTRONIC MONITORING; REQUIRING
EMPLOYEE ACCESS TO DATA OBTAINED THROUGH ELECTRONIC
MONITORING; REQUIRING WORK PERFORMANCE RELEVANCE TO
INFORMATION GATHERED; PROHIBITING CERTAIN
DISCLOSURE WITHOUT CONSENT; PROVIDING CERTAIN
EXCEPTIONS TO DISCLOSURE; PROHIBITING CERTAIN USES
OF DATA OBTAINED BY ELECTRONIC MONITORING;
PROVIDING FINES FOR VIOLATIONS OF ACT; PROVIDING
FOR HEARINGS AND PROCEDURES RELATED THERETO;
PROVIDING FOR APPEALS; PROVIDING FOR COLLECTION OF
ASSESSMENTS; PROVIDING FOR EQUITABLE ACTIONS;
PROVIDING FOR PRIVATE CIVIL ACTIONS; PROVIDING FOR
ATTORNEY FEES AND COSTS; PROHIBITING WAIVER OF
PROCEDURES PROVIDED FOR BY ACT AND EXCEPTION
THERETO; PROVIDING FOR COMMISSIONER TO PROMULGATE
APPROPRIATE RULES AND REGULATIONS; EXEMPTING LAW
ENFORCEMENT AGENCIES FROM ACT; PROVIDING FOR
CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.6a of Title 40, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Privacy for Consumers and Workers' Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.6b of Title 40, unless there is created a duplication in numbering, reads as follows:

As used in the Privacy for Consumers and Workers' Act:

1. "Electronic monitoring" means the collection, storage, analysis, and reporting of information concerning the activities of an employee by means of a computer, electronic observation and supervision, remote telephone surveillance, telephone call accounting, or other form of visual, auditory, or computer-based surveillance conducted by any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system;

2. "Employee" means any current or former employee of an employer;

3. "Employer" means any person who employs employees, and includes any individual, corporation, partnership, labor organization, unincorporated association, or any other legal business, the State of Oklahoma or any political subdivision thereof, and any other agent of the employer;

4. "Personal data" means any information concerning an employee which, because of name, identifying number, mark, or description,

can be readily associated with a particular individual, and such term includes information contained in printouts, forms or written analyses or evaluations;

5. "Prospective employee" means an individual who has applied for a position of employment with an employer; and

6. "Commissioner" means the Commissioner of Labor.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.6c of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Each employer who engages in electronic monitoring shall provide each affected employee with prior written notice describing the following regarding the electronic monitoring directly affecting the employee:

1. The forms of electronic monitoring to be used;

2. The personal data to be collected;

3. The frequency of each form of electronic monitoring which will occur;

4. The use of personal data collected;

5. Interpretation of printouts of statistics or other records of information collected through electronic monitoring;

6. Existing production standards and work performance expectations; and

7. Methods for determining production standards and work performance expectations based on electronic monitoring statistics.

B. 1. Each employer shall notify a prospective employee at any personal interview or meeting of existing forms of electronic monitoring which may directly affect the prospective employee if such employee is hired by the employer.

2. Each employer, upon request by a prospective employee, shall provide the prospective employee with the written notice described in subsection A of this section regarding existing forms of

electronic monitoring which may directly affect the prospective employee if such employee is hired by the employer.

3. Each employer who engages in electronic monitoring shall provide the affected employee with a signal light, beeping tone, verbal notification, or other form of visual or aural notice, at periodic intervals, that indicates that electronic monitoring is taking place. If the electronic monitoring is conducted on a continuous basis during each of the employee's shift, such notice need not be provided at periodic intervals.

4. An employer who engages in telephone service observation shall provide the affected customer with a signal light, beeping tone, verbal notification, or other form of visual or aural notice, at periodic intervals, indicating that the telephone service observation is taking place.

C. Notwithstanding subsection A of this section, an employer who is engaged in electronic monitoring on the effective date of this act shall have ninety (90) days after such date to provide each affected employee with the required written notice.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.6d of Title 40, unless there is created a duplication in numbering, reads as follows:

Each employer shall permit an employee or the authorized agent of an employee to have access to all personal data obtained by electronic monitoring of the work of an employee.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.6e of Title 40, unless there is created a duplication in numbering, reads as follows:

A. An employer shall not collect personal data on an employee through electronic monitoring which is not relevant to the work performance of an employee.

B. An employer shall not disclose personal data obtained by electronic monitoring, without prior written consent of the

employee, to any person or business entity except the individual employee to whom the data pertains, unless the disclosure would be:

1. to officers and employees of the employer who have a legitimate need for the information in the performance of their duties;

2. to a law enforcement agency in connection with a criminal investigation or prosecution; or

3. pursuant to the order of a court of competent jurisdiction.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.6f of Title 40, unless there is created a duplication in numbering, reads as follows:

A. An employer shall not use personal data obtained by electronic monitoring as the exclusive basis for individual employee performance evaluation or disciplinary action, unless the employee is provided with an opportunity to review the personal data within a reasonable time after such data is obtained.

B. An employer shall not use personal data or collective data obtained by electronic monitoring data as the sole basis for setting production quotas or work performance expectations.

C. An employer shall not maintain, collect, use, or disseminate personal data obtained by electronic monitoring which describes how an employee exercises rights guaranteed by the First Amendment unless such use is expressly authorized by statute or by the employee to whom the data relates or unless pertinent to and within the scope of, an authorized law enforcement activity.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.6g of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Any person who violates any provision of this act may be assessed a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00) by the Commissioner. In determining the amount of any penalty under this

section the Commissioner shall take into account the previous record of the employer in terms of compliance with this act and the gravity of the violation.

B. The Commissioner or his designee shall afford the employer an opportunity for a fair hearing in accordance with the provisions of this section and the Administrative Procedures Act. On the basis of the evidence produced at the hearing, the Commissioner shall make findings of fact and conclusions of law and enter an order thereon. The Commissioner shall give written notice of such order to the employer and to such other persons as shall have appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the Commissioner, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusions of law to the Commissioner which shall thereupon enter its order. The Commissioner may enter his order on the basis of such record, or, before issuing its order, require additional hearings or further evidence to be presented. The order of the Commissioner shall become final and binding on all parties unless appealed to the district court as provided for in the Administrative Procedures Act within thirty (30) days after notice has been sent to the parties. A final order from said hearing(s) may be appealed to the district court in the county in which the business of the employer is located pursuant to the provisions of the Administrative Procedures Act.

C. Upon an order of the Commissioner becoming final, the penalty assessed shall be regarded as any other money judgment and may be pursued for collection as prescribed by law for any other such remedy.

D. The Commissioner may bring an action under this section to restrain violations of this act. The Attorney General or the district attorney for the county in which the violation occurred shall appear for and represent the Commissioner in any action

brought under this section, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this act, including such legal and equitable relief incident thereto as may be appropriate, including employment, reinstatement, promotion, and the payment of lost wages and benefits.

E. 1. An employer who violates this act shall be liable to the employee or prospective employee affected by such violation. Such employer shall be liable for such legal or equitable relief as may be appropriate, including employment, reinstatement, promotion, and the payment of lost wages and benefits.

2. An action to recover the liability prescribed in paragraph 1 of this subsection may be maintained against the employer in district court by an employee or prospective employee for or on behalf of such employee, prospective employee, and for other employees or prospective employees similarly situated. No such action may be commenced more than three (3) years after the date of the alleged violation.

3. The court, in its discretion, may allow the prevailing party reasonable costs, including attorney's fees.

F. The rights and procedures provided by this act may not be waived by contract or otherwise, unless such waiver is part of a written settlement to and signed by the parties to the pending action or complaint under this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.6h of Title 40, unless there is created a duplication in numbering, reads as follows:

The Commissioner is authorized to promulgate rules and regulations to carry out the provisions of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 199.6i of Title 40, unless there is created a duplication in numbering, reads as follows:

This act shall not apply to electronic monitoring administered by law enforcement agencies as may be permitted in criminal investigations.

SECTION 10. This act shall become effective September 1, 1991.

43-1-5426

MMS