

# HOUSE . . . . . No. 1819

By Mr. Marzilli of Arlington, petition of J. James Marzilli, Jr., and Steven J. D'Amico relative to electronic monitoring in the workplace. Labor and Workforce Development.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

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 read  
2 as follows:—

3 Section 19D. Electronic monitoring; notice; access to records; pri-  
4 vacy; 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 observation  
8 and supervision, remote telephone surveillance, telephone call  
9 accounting and other forms of auditory and computer-based surveil-  
10 lance conducted by any transfer of signs, signals, writing, images,  
11 sounds, data or intelligence of any nature transmitted in whole or in  
12 part by a wire, radio, electromagnetic, photoelectronic or photoop-  
13 tical 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 of  
17 twenty-five employees or more in the Commonwealth including an  
18 individual, corporation, partnership, labor organization, unincorpo-  
19 rated association or any other legal business, public or private, or  
20 commercial entity, the Commonwealth, counties, cities, towns and  
21 other political subdivisions therein, and any agents of the employer;

22 (d) “individual data” means any information concerning an  
23 employee which because of name, identifying number, mark or  
24 description can be readily associated with a particular individual and

25 includes information contained in printouts, forms, or written  
26 analyses or evaluations; and

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

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

35 (b) An employer shall inform a prospective employee at any per-  
36 sonal interview or meeting of existing forms of electronic moni-  
37 toring which may directly affect the prospective employee if he or  
38 she is hired by the employer.

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

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

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

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

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