

118TH CONGRESS  
2D SESSION

# H. R. 7690

To prohibit, or require disclosure of, the surveillance, monitoring, and collection of certain worker data by employers, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2024

Mr. DELUZIO (for himself and Ms. BONAMICI) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Oversight and Accountability, and House Administration, 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

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## A BILL

To prohibit, or require disclosure of, the surveillance, monitoring, and collection of certain worker data by 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 “Stop Spying Bosses  
5 Act”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act:

1           (1) ADMINISTRATOR.—The term “Adminis-  
2           trator” means the Administrator of the Privacy and  
3           Technology Division established under section 5.

4           (2) AGGREGATED DATA.—The term “aggre-  
5           gated data” means data with respect to covered indi-  
6           viduals of an employer that the employer has com-  
7           bined or collected together in a summary or other  
8           form that prevents the identification of any specific  
9           individual.

10          (3) APPLICANT.—The term “applicant”, with  
11          respect to an employer, means an individual who ap-  
12          plies, or applied, to be employed by, or otherwise  
13          perform work for remuneration for, the employer.

14          (4) AUTOMATED DECISION SYSTEM.—

15                (A) IN GENERAL.—The term “automated  
16                decision system” means a system, software, or  
17                process that—

18                   (i) uses computation, in whole or in  
19                   part, to determine outcomes, make or aid  
20                   decisions (including through evaluations,  
21                   metrics, or scoring), inform policy imple-  
22                   mentation, collect data or observations, or  
23                   otherwise interact with individuals or com-  
24                   munities, including such a system, soft-  
25                   ware, or process derived from machine

1 learning, statistics, or other data proc-  
2 essing or artificial intelligence techniques;  
3 and

4 (ii) is not passive computing infra-  
5 structure.

6 (B) PASSIVE COMPUTING INFRASTRUC-  
7 TURE.—For purposes of this paragraph, the  
8 term “passive computing infrastructure” means  
9 any intermediary technology that does not influ-  
10 ence or determine the outcome of a decision,  
11 make or aid in a decision (including through  
12 evaluations, metrics, or scoring), inform policy  
13 implementation, or collect data or observations,  
14 including web hosting, domain registration, net-  
15 working, caching, data storage, or cybersecu-  
16 rity.

17 (5) AUTOMATED DECISION SYSTEM OUTPUT.—  
18 The term “automated decision system output”  
19 means any information, assumptions, predictions,  
20 scoring, recommendations, decisions, evaluations,  
21 metrics, or conclusions generated by an automated  
22 decision system.

23 (6) BIOMETRIC INFORMATION.—

24 (A) IN GENERAL.—The term “biometric  
25 information” means any information generated

1 from the technological processing of an individ-  
2 ual’s unique biological, physical, or physiological  
3 characteristics that is linked or reasonably  
4 linkable to an individual, including—

5 (i) fingerprints;

6 (ii) voice prints;

7 (iii) iris or retina scans;

8 (iv) facial or hand mapping, geometry,  
9 or templates; or

10 (v) gait or personally identifying phys-  
11 ical movements.

12 (B) EXCLUSION.—The term “biometric in-  
13 formation” does not include—

14 (i) a digital or physical photograph;

15 (ii) an audio or video recording; or

16 (iii) information generated from a dig-  
17 ital or physical photograph, or an audio or  
18 video recording, that cannot be used to  
19 identify an individual.

20 (7) COVERED INDIVIDUAL.—The term “covered  
21 individual”, with respect to an employer, means an  
22 individual—

23 (A) who is employed by, or otherwise per-  
24 forming work for remuneration for, the em-  
25 ployer, including such an individual who is—

1 (i) any individual performing work for  
2 remuneration for an employer described in  
3 clauses (i)(I) and (ii) of paragraph  
4 (10)(A);

5 (ii) any individual performing work  
6 for remuneration for an entity described in  
7 paragraph (10)(A)(i)(II);

8 (iii) any individual performing work  
9 for remuneration for an employing office  
10 described in paragraph (10)(A)(i)(III);

11 (iv) any individual performing work  
12 for remuneration for an employing office  
13 described in paragraph (10)(A)(i)(IV); or

14 (v) any individual performing work for  
15 remuneration for an employing agency de-  
16 scribed in paragraph (10)(A)(i)(V); or

17 (B) who is an applicant to the employer.

18 (8) DATA.—The term “data”, with respect to a  
19 covered individual, means any information that iden-  
20 tifies, relates to, describes, is reasonably capable of  
21 being associated with, or could reasonably be linked,  
22 directly or indirectly, with the covered individual, re-  
23 gardless of how the information is collected, in-  
24 ferred, or obtained, including—

1 (A) personally identifiable information with  
2 respect to the covered individual, including any  
3 name, contact information, government-issued  
4 identification number, financial information,  
5 criminal background, location information, pho-  
6 tographs, biometric information, or employment  
7 history associated with the covered individual;

8 (B) any information related to the work-  
9 place activities with respect to the covered indi-  
10 vidual, including—

11 (i) human resources information, in-  
12 cluding the contents of a personnel file or  
13 performance evaluation;

14 (ii) work process information, such as  
15 productivity and efficiency information and  
16 information on breaks;

17 (iii) information that captures work-  
18 place communications and interactions, in-  
19 cluding emails, texts, internal message  
20 boards, and customer interaction and rat-  
21 ings;

22 (iv) device usage and information, in-  
23 cluding calls placed or precise geolocation  
24 information;

1 (v) audio-video information and other  
2 information collected from sensors, includ-  
3 ing movement tracking, images, videos,  
4 and thermal-sensor information;

5 (vi) biometric information;

6 (vii) information from a personality  
7 test taken by a covered individual, includ-  
8 ing such a test given electronically at the  
9 beginning of or during a work shift;

10 (viii) inputs for an automated decision  
11 system or any automated decision system  
12 output; and

13 (ix) information that is collected or  
14 generated to mitigate the spread of infec-  
15 tious diseases, including COVID–19, or to  
16 comply with any public health measure;  
17 and

18 (C) online information with respect to the  
19 covered individual that is collected while the  
20 covered individual is on- or off-duty, including  
21 any internet protocol address associated with  
22 the covered individual, the social media activity  
23 of the covered individual, any advertisement-re-  
24 lated tracking identifier associated with the cov-  
25 ered individual, the internet browsing history of

1 the covered individual, or other digital sources  
2 or unique identifiers associated with the covered  
3 individual.

4 (9) EMPLOY.—The term “employ” has the  
5 meaning given such term in section 3 of the Fair  
6 Labor Standards Act of 1938 (29 U.S.C. 203).

7 (10) EMPLOYER.—

8 (A) IN GENERAL.—The term “employer”  
9 means any person who is—

10 (i)(I) a covered employer who is not  
11 described in any other subclause of this  
12 clause;

13 (II) an entity employing a State em-  
14 ployee described in section 304(a) of the  
15 Government Employee Rights Act of 1991  
16 (42 U.S.C. 2000e–16c(a));

17 (III) an employing office, as defined  
18 in section 101 of the Congressional Ac-  
19 countability Act of 1995 (2 U.S.C. 1301);

20 (IV) an employing office, as defined in  
21 section 411(c) of title 3, United States  
22 Code; or

23 (V) an employing agency covered  
24 under subchapter V of chapter 63 of title  
25 5, United States Code; and



1           (ii) engaged in commerce (including  
2           government), or an industry or activity af-  
3           fecting commerce (including government).

4           (B) COVERED EMPLOYER.—In subpara-  
5           graph (A), the term “covered employer”—

6           (i) means any person engaged in com-  
7           merce or in any industry or activity affect-  
8           ing commerce who employs, or otherwise  
9           engages for the performance of work for  
10          remuneration, 11 or more covered individ-  
11          uals;

12          (ii) includes—

13           (I) any person who acts, directly  
14           or indirectly, in the interest of a cov-  
15           ered employer in relation to any indi-  
16           vidual performing work for remunera-  
17           tion for such covered employer;

18           (II) any successor in interest of a  
19           covered employer;

20           (III) any public agency; and

21           (IV) the Government Account-  
22           ability Office and the Library of Con-  
23           gress; and

24           (iii) does not include any labor organi-  
25           zation (other than when acting as an em-

1           ployer) or anyone acting in the capacity of  
2           officer or agent of such labor organization.

3           (C) PUBLIC AGENCY.—For purposes of  
4           this paragraph, a public agency shall be consid-  
5           ered to be a person engaged in commerce or in  
6           an industry or activity affecting commerce.

7           (D) DEFINITIONS.—For purposes of this  
8           paragraph, the terms “commerce”, “person”,  
9           and “public agency” have the meanings given  
10          the terms in section 3 of the Fair Labor Stand-  
11          ards Act of 1938 (29 U.S.C. 203).

12          (11) EMPLOYMENT-RELATED DECISION.—The  
13          term “employment-related decision” includes a deci-  
14          sion by an employer with regard to—

15               (A) hiring a covered individual (including  
16               any decision with regard to interviewing or re-  
17               viewing an applicant);

18               (B) firing, taking a disciplinary action  
19               against, demoting, or reassigning duties of a  
20               covered individual; or

21               (C) any other term, condition, or privilege  
22               of employment or work of the covered indi-  
23               vidual, such as relating to pay, scheduling, or  
24               hours worked or promoting a covered indi-  
25               vidual.

1           (12) GOVERNMENT ENTITY.—The term “gov-  
2           ernment entity” means—

3                   (A) a Federal agency (as such term is de-  
4                   fined in section 3371 of title 5, United States  
5                   Code);

6                   (B) a State or political subdivision thereof;

7                   (C) any agency, authority, or instrumen-  
8                   tality of a State or political subdivision thereof;  
9                   or

10                  (D) a Tribal government or political sub-  
11                  division thereof.

12           (13) INDIAN TRIBE.—The term “Indian Tribe”  
13           means any Indian or Alaska Native tribe, band, na-  
14           tion, pueblo, village, community, component band, or  
15           component reservation individually identified (includ-  
16           ing parenthetically) in the list published most re-  
17           cently as of the date of enactment of this Act pursu-  
18           ant to section 104 of the Federally Recognized In-  
19           dian Tribe List Act of 1994 (25 U.S.C. 5131).

20           (14) LABOR ORGANIZATION.—The term “labor  
21           organization” has the meaning given the term in  
22           section 2(5) of the National Labor Relations Act (29  
23           U.S.C. 152(5)), except that such term shall also in-  
24           clude—

1 (A) any organization composed of labor or-  
2 ganizations, such as a labor union federation or  
3 a State or municipal labor body; and

4 (B) any organization which would be in-  
5 cluded in the definition for such term under  
6 such section 2(5) but for the fact that the orga-  
7 nization represents—

8 (i) individuals employed by the United  
9 States, any wholly owned Government cor-  
10 poration, any Federal Reserve Bank, or  
11 any State or political subdivision thereof;

12 (ii) individuals employed by persons  
13 subject to the Railway Labor Act (45  
14 U.S.C. 151 et seq.); or

15 (iii) individuals employed as agricul-  
16 tural laborers.

17 (15) PRECISE GEOLOCATION INFORMATION.—

18 (A) IN GENERAL.—The term “precise  
19 geolocation information” means information  
20 that is derived from a device or technology that  
21 reveals the past or present physical location of  
22 an individual or a device that identifies or is  
23 linked or reasonably linkable to 1 or more indi-  
24 viduals, with sufficient precision to identify  
25 street level location information of the indi-

1           vidual or device or the location of the individual  
2           or device within a range of 1,850 feet or less.

3           (B) EXCLUSION.—The term “precise  
4           geolocation information” does not include infor-  
5           mation described in subparagraph (A) identifi-  
6           able or derived solely from the visual content of  
7           a legally obtained image, including the location  
8           of the device that captured such image.

9           (16) PREDISPUTE ARBITRATION AGREEMENT.—  
10          The term “predispute arbitration agreement” means  
11          any agreement to arbitrate a dispute that has not  
12          yet arisen at the time of the making of the agree-  
13          ment.

14          (17) PREDISPUTE JOINT-ACTION WAIVER.—The  
15          term “predispute joint-action waiver” means an  
16          agreement, whether or not part of a predispute arbi-  
17          tration agreement, that would prohibit, or waive the  
18          right of, one of the parties to the agreement to par-  
19          ticipate in a joint, class, or collective action in a ju-  
20          dicial, arbitral, administrative, or other forum, con-  
21          cerning a dispute that has not yet arisen at the time  
22          of the making of the agreement.

23          (18) SECRETARY.—The term “Secretary”  
24          means the Secretary of Labor.

1           (19) SELL.—The term “sell”, with respect to  
2 data, means the transfer of such data for monetary  
3 consideration or for a thing of value by an employer  
4 to a third party for the purpose of processing, main-  
5 taining, or further transferring such data.

6           (20) SERVICE PROVIDER.—The term “service  
7 provider”, with respect to an employer, means a per-  
8 son that—

9                   (A) collects, processes, conveys, or main-  
10 tains data with respect to such employer only at  
11 the direction of, in accordance with the direc-  
12 tion of, and pursuant to a written contract with  
13 the employer (including any terms of service or  
14 service agreements);

15                   (B) does not earn revenue from such col-  
16 lection, processing, conveyance, or maintenance  
17 of such data, except from the employer by pro-  
18 viding contracted services to the employer with  
19 regard to such collection, processing, convey-  
20 ance, or maintenance of such data; and

21                   (C) does not combine or link data associ-  
22 ated with such employer with data associated  
23 with another employer.

1           (21) SOCIAL MEDIA ACTIVITY.—The term “so-  
2           cial media activity” means any activity on an indi-  
3           vidual platform-based account.

4           (22) STATE.—The term “State” means each of  
5           the several States of the United States, the District  
6           of Columbia, or any territory or possession of the  
7           United States.

8           (23) STATE ATTORNEY GENERAL.—The term  
9           “State attorney general” means—

10           (A) with respect to a State, the attorney  
11           general or chief law enforcement officer of the  
12           State, or another official or agency designated  
13           by the State to bring civil actions on behalf of  
14           the State or the residents of the State; and

15           (B) with respect to a Tribal government,  
16           the attorney general or chief law enforcement  
17           officer of the Tribal government, or another of-  
18           ficial or agency designated by the Tribal gov-  
19           ernment to bring civil actions on behalf of the  
20           Tribal government or the Indian Tribe of the  
21           Tribal government.

22           (24) STATE PRIVACY REGULATOR.—The term  
23           “State privacy regulator” means—

24           (A) the chief consumer protection officer of  
25           a State; or

1 (B) a State consumer protection agency  
2 with expertise in data protection, including the  
3 California Privacy Protection Agency.

4 (25) TECHNOLOGIST.—The term “technologist”  
5 means an individual with experience in fields related  
6 to computational technology, or the technology in-  
7 dustry that produces computational technology, such  
8 as advertising technology, application development,  
9 artificial intelligence, computer science, cybersecu-  
10 rity, data science, digital forensics, human-centered  
11 design, product management, prototyping, service  
12 design, socio-technical systems, software engineering,  
13 user experience, or privacy rights, civil liberties, or  
14 civil rights related to technology.

15 (26) THIRD PARTY.—The term “third party”,  
16 with respect to an employer, means a person or enti-  
17 ty—

18 (A) to which such employer transfers or is  
19 able to transfer data, including any subsidiary  
20 or corporate affiliate of such employer; and

21 (B) that is not—

22 (i) such employer;

23 (ii) a service provider of such em-  
24 ployer with respect to the data being trans-  
25 ferred; or



1 (iii) a government entity.

2 (27) TRANSFER.—The term “transfer”, with  
3 respect to data, means releasing, sharing, leasing,  
4 disseminating, disclosing, making available, or other-  
5 wise causing to be communicated, such data—

6 (A) to a third party; or

7 (B) in the case of a third party that re-  
8 leases, shares, leases, disseminates, discloses,  
9 makes available, or otherwise causes to be com-  
10 municated, such data, to another person.

11 (28) TRIBAL GOVERNMENT.—The term “Tribal  
12 government” means the recognized governing body  
13 of an Indian Tribe.

14 (29) WORKPLACE SURVEILLANCE.—The term  
15 “workplace surveillance” means any employer sur-  
16 veillance (on- or off-duty) with respect to a covered  
17 individual, including the detection, monitoring, inter-  
18 ception, collection, exploitation, preservation, protec-  
19 tion, transmission, or retention of data concerning  
20 activities or communications with respect to the cov-  
21 ered individual, including through the use of a prod-  
22 uct or service marketed, or that can be used, for  
23 such purposes, such as a computer, telephone, wire,  
24 radio, camera, sensor, electromagnetic,

1 photoelectronic, handheld or wearable device, or  
2 photo-optical system.

3 **SEC. 3. DISCLOSURE OF CERTAIN WORKPLACE SURVEIL-**  
4 **LANCE.**

5 (a) IN GENERAL.—An employer shall disclose, in ac-  
6 cordance with subsections (b) and (c), to each covered in-  
7 dividual described in subsection (b)(1) and publish in a  
8 manner that is conspicuous, freely accessible, and readily  
9 available for viewing by any such covered individual of the  
10 employer (including on the internet in a manner that is  
11 freely accessible and machine readable (in a form pre-  
12 scribed by the Secretary))—

13 (1) any workplace surveillance on the covered  
14 individual by the employer, including—

15 (A) what data are being collected;

16 (B) how the data are being collected;

17 (C) where and when the data are being col-  
18 lected;

19 (D) the frequency of the collection;

20 (E) where the storage of the data is lo-  
21 cated;

22 (F) the business purposes for which the  
23 data are being used; and

24 (G) as applicable, the identity of any third  
25 party or service provider—

1 (i) used for such workplace surveil-  
2 lance;

3 (ii) to which data from such work-  
4 place surveillance is transferred; and

5 (iii) from which data of the covered  
6 individual is or may be purchased or ac-  
7 quired; and

8 (2) how such workplace surveillance affects em-  
9 ployment-related decisions by the employer, includ-  
10 ing with regard to the assessment of the perform-  
11 ance and productivity of the covered individual.

12 (b) TIMING OF DISCLOSURE.—

13 (1) INITIAL DISCLOSURE.—An employer shall  
14 provide the disclosure required under subsection

15 (a)—

16 (A) in the case of—

17 (i) a covered individual for whom an  
18 employment-related decision with regard to  
19 the hiring of the covered individual was  
20 made on or after the effective date of this  
21 section, to the covered individual not later  
22 than 30 days after the date on which the  
23 employer makes such employment-related  
24 decision; or

1           (ii) a covered individual who is em-  
2           ployed by, or otherwise performing work  
3           for remuneration for, the employer on such  
4           effective date or a covered individual for  
5           whom an employment-related decision with  
6           regard to the hiring of the covered indi-  
7           vidual was made on or after the date that  
8           is 5 years prior to the effective date of this  
9           section but before such effective date, to  
10          the covered individual not later than 60  
11          days after such effective date; and

12          (B) to each applicant of the employer prior  
13          to accepting an application by the applicant to  
14          be employed by, or otherwise perform work for  
15          remuneration for, the employer.

16          (2) SUBSEQUENT DISCLOSURES.—Not later  
17          than 7 days after any information provided by an  
18          employer to a covered individual through a disclo-  
19          sure required under subsection (a) changes or after  
20          any new information required to be provided in such  
21          a disclosure becomes available, the employer shall  
22          provide the covered individual with an updated dis-  
23          closure in accordance with such subsection.

1           (c) PROCEDURES FOR DISCLOSURE.—An employer  
2 shall provide the disclosure required under subsection (a)  
3 in a manner required by the Administrator that is—

4           (1) accessible;

5           (2) in plain language and in the primary lan-  
6 guage of the covered individual provided the disclo-  
7 sure;

8           (3) in writing and available electronically;

9           (4) accountable;

10          (5) tailored to the purpose of the disclosure;

11          (6) tailored to the covered individual; and

12          (7) tailored to the level of risk.

13          (d) COVERED INDIVIDUAL ACKNOWLEDGMENT.—An  
14 employer shall obtain written or electronic acknowledg-  
15 ment from each covered individual provided a disclosure  
16 under subsection (a) of the receipt of the disclosure by  
17 the covered individual.

18          (e) WORKER DATA REQUEST AND CORRECTION.—An  
19 employer shall enable a covered individual, upon request  
20 by the covered individual or as provided in section 4(c),  
21 to—

22           (1) not later than 7 days after such request, ob-  
23 tain any data collected by the employer on the cov-  
24 ered individual through workplace surveillance; and



1 formance of the job duties of the covered indi-  
2 vidual for the employer;

3 (D) except as otherwise provided in law,  
4 collect information on or identify the health sta-  
5 tus, any health condition, or disability status of  
6 a covered individual, that is unrelated to the  
7 performance of the job duties of the covered in-  
8 dividual for the employer;

9 (E) except as otherwise required by law as-  
10 certain the immigration status of a covered in-  
11 dividual; or

12 (F) monitor the activities of any covered  
13 individual concerning or related to reporting the  
14 employer or such a third party or service pro-  
15 vider for a violation of any other law, including  
16 monitoring for purposes of identifying a covered  
17 individual who has reported or intends to report  
18 the employer or such a third party or service  
19 provider;

20 (2) use an automated decision system to predict  
21 behavior of a covered individual that is unrelated to  
22 the work of the covered individual for the employer;

23 (3) use workplace surveillance to monitor a cov-  
24 ered individual while the covered individual is off-  
25 duty or in a sensitive area, such as a restroom or

1 locker room, location provided for the covered indi-  
2 vidual to express breast milk, or location provided  
3 for the covered individual to pray or participate in  
4 a religious activity;

5 (4) use workplace surveillance on a covered in-  
6 dividual in any manner that threatens the mental or  
7 physical health of the covered individual;

8 (5) use data collected through workplace sur-  
9 veillance on a covered individual for a purpose that  
10 is not disclosed in accordance with section  
11 3(a)(1)(F); or

12 (6) sell or license data collected on a covered in-  
13 dividual to any person (including a third party or  
14 service provider of the employer) or, except as other-  
15 wise provided in law, government entity.

16 (b) TRANSFER OF PERSONALLY IDENTIFIABLE  
17 DATA.—

18 (1) EMPLOYER.—An employer may not transfer  
19 data on a covered individual collected using work-  
20 place surveillance to a third party unless, for each  
21 instance of a transfer—

22 (A) the employer—

23 (i) discloses the transfer to the cov-  
24 ered individual; and



1 (ii) provides cybersecurity protections  
2 and encryption for the data; and

3 (B) the covered individual does not opt out  
4 of the instance of the transfer.

5 (2) THIRD PARTY.—A third party that an em-  
6 ployer uses for workplace surveillance may not  
7 transfer data on a covered individual, including any  
8 such data that was transferred to the third party by  
9 the employer in accordance with paragraph (1).

10 (c) EMPLOYMENT-RELATED DECISIONS.—An em-  
11 ployer that makes an employment-related decision with re-  
12 gard to a covered individual using data from workplace  
13 surveillance shall—

14 (1) not later than 7 days after making such an  
15 employment-related decision, disclose to the covered  
16 individual that such employment-related decision  
17 was made using data from workplace surveillance;  
18 and

19 (2) not later than 7 days after such disclosure,  
20 enable the covered individual to—

21 (A) review such data and related aggre-  
22 gated data for other similarly situated covered  
23 individuals of the employer; and

24 (B) in accordance with the procedures de-  
25 scribed in section 3(e)(2), have any data de-

1           scribed in paragraph (1) that is incomplete or  
2           erroneous updated or corrected.

3           (d) MINIMIZATION.—

4           (1) COLLECTION.—An employer may not collect  
5           data on a covered individual that is not reasonably  
6           related to operations of the employer.

7           (2) EMPLOYEE ACCESS.—An employer shall re-  
8           strict access to data on a covered individual by an-  
9           other covered individual of the employer based on  
10          the specific and reasonable business rationale of the  
11          employer that is proportionate to the need for such  
12          access.

13          (e) EMPLOYER CONTRACTS WITH ANY THIRD PARTY  
14          OR SERVICE PROVIDER THAT THE EMPLOYER USES FOR  
15          WORKPLACE SURVEILLANCE.—An employer that uses a  
16          third party or service provider for workplace surveillance  
17          shall include in any contract between the employer and  
18          such third party or service provider entered into after the  
19          effective date of this section an agreement to comply with  
20          the requirements of this section.

21          (f) EFFECTIVE DATE.—This section shall take effect  
22          on the date that is 60 days after the date of enactment  
23          of this Act.

1 **SEC. 5. ESTABLISHMENT OF PRIVACY AND TECHNOLOGY**  
2 **DIVISION.**

3 (a) IN GENERAL.—There is established in the De-  
4 partment of Labor the Privacy and Technology Division.

5 (b) ADMINISTRATOR OF THE PRIVACY AND TECH-  
6 NOLOGY DIVISION.—The President shall appoint an Ad-  
7 ministrator of the Privacy and Technology Division to  
8 head the Privacy and Technology Division.

9 (c) EMPLOYEES AND ADVISORY BOARDS OF THE DI-  
10 VISION.—

11 (1) IN GENERAL.—The Administrator—

12 (A) may select, appoint, and employ, with-  
13 out regard to the provisions of sections 3309  
14 through 3318 of title 5, United States Code, in-  
15 dividuals, including technologists, directly to po-  
16 sitions in the competitive service, as defined in  
17 section 2102 of such title, to carry out the du-  
18 ties of the Administrator under this Act; and

19 (B) may fix the compensation of the indi-  
20 viduals described in subparagraph (A) without  
21 regard to chapter 51 and subchapter III of  
22 chapter 53 of title 5, United States Code, relat-  
23 ing to classification of positions and General  
24 Schedule pay rates, except that the rate of pay  
25 for such individuals may not exceed the rate

1 payable for level V of the Executive Schedule  
2 under section 5316 of that title.

3 (2) ADVISORY BOARDS.—

4 (A) ESTABLISHMENT.—The Administrator  
5 shall establish the following advisory boards to  
6 advise and consult with in the exercise of the  
7 functions of the Administrator under this Act  
8 and to provide information on emerging prac-  
9 tices relating to the treatment of data by em-  
10 ployers:

11 (i) The User Advisory Board, which  
12 shall be composed of experts in consumer  
13 protection, privacy, civil rights, disability  
14 law, labor organizations, and ethics.

15 (ii) The Research Advisory Board,  
16 which shall be composed of individuals  
17 with academic and research expertise in  
18 privacy, cybersecurity, computer science,  
19 innovation, design, ethics, economics, law,  
20 disability law, labor organizations and pub-  
21 lic policy and representatives of labor orga-  
22 nizations.

23 (iii) The Product Advisory Board,  
24 which shall be composed of technologists,  
25 computer scientists, designers, product

1 managers, attorneys, representatives of  
2 labor organizations, workplace technology  
3 experts, and other representatives of em-  
4 ployers and employees.

5 (iv) The Labor Advisory Board, which  
6 shall be composed of representatives of  
7 labor organizations and representatives of  
8 workers.

9 (B) APPOINTMENTS.—The Administrator  
10 shall appoint members to the advisory boards  
11 established under subparagraph (A) without re-  
12 gard to party affiliation.

13 (C) MEETINGS.—Each advisory board es-  
14 tablished under subparagraph (A) shall meet—

15 (i) at the call of the Administrator;

16 and

17 (ii) not less than 2 times annually.

18 (D) COMPENSATION AND TRAVEL EX-  
19 PENSES.—A member of an advisory board es-  
20 tablished under subparagraph (A) who is not an  
21 officer or employee of the Federal Government  
22 shall—

23 (i) be entitled to receive compensation  
24 at a rate fixed by the Administrator while

1 attending meetings of the advisory board,  
2 including travel time; and

3 (ii) receive travel expenses, including  
4 per diem in lieu of subsistence, in accord-  
5 ance with applicable provisions under sub-  
6 chapter I of chapter 57 of title 5, United  
7 States Code.

8 (E) EXEMPTION FROM THE FEDERAL AD-  
9 VISORY COMMITTEE ACT.—Each advisory board  
10 established under subparagraph (A) shall be ex-  
11 empt from chapter 10 of title 5, United States  
12 Code (commonly known as the “Federal Advi-  
13 sory Committee Act”).

14 (3) USE OF VOLUNTARY SERVICES.—The Ad-  
15 ministrator may, as may from time to time be need-  
16 ed, use any voluntary or uncompensated services.

17 (4) ATTORNEYS.—Attorneys appointed under  
18 this subsection may appear for and represent the  
19 Administrator in any litigation.

20 (d) OFFICES.—

21 (1) IN GENERAL.—The principal office of the  
22 Privacy and Technology Division shall be in the Dis-  
23 trict of Columbia.

24 (2) REGIONAL, LOCAL, AND OTHER OFFICES.—  
25 The Administrator may establish regional, local, or

1 other offices, including an office in the city of San  
2 Francisco, California, or the San Francisco Bay  
3 area in California.

4 (e) ORDERS AND GUIDANCE.—

5 (1) IN GENERAL.—The Secretary, acting  
6 through the Administrator and the Administrator of  
7 the Wage and Hour Division, may issue orders and  
8 guidance, as may be necessary or appropriate to en-  
9 able the Secretary to carry out the purposes and ob-  
10 jectives of this Act, and to prevent evasions thereof.

11 (2) CONSULTATION.—In issuing orders and  
12 guidance authorized under this subsection, the Sec-  
13 retary, acting through the Administrator and the  
14 Administrator of the Wage and Hour Division, may  
15 consult with Federal agencies that have jurisdiction  
16 over Federal privacy laws or expertise in privacy, in-  
17 cluding the Federal Trade Commission, and Federal  
18 agencies that have jurisdiction over labor and em-  
19 ployment issues, including the Equal Employment  
20 Opportunity Commission, the National Labor Rela-  
21 tions Board, the National Mediation Board, and the  
22 Merit Systems Protection Board.

23 **SEC. 6. REGULATIONS.**

24 (a) IN GENERAL.—

25 (1) AUTHORITY.—

1           (A) IN GENERAL.—Except as provided in  
2 paragraph (2), the Secretary, acting through  
3 the Administrator in consultation with the Ad-  
4 ministrator of the Wage and Hour Division,  
5 may prescribe such regulations as may be nec-  
6 essary to carry out this Act with respect to cov-  
7 ered individuals described in section 2(7)(A)  
8 (other than covered individuals described in  
9 clauses (iii) through (v) of such section) and  
10 other individuals affected by employers de-  
11 scribed in subclause (I) or (II) of section  
12 2(10)(A)(i), including individuals who are cov-  
13 ered individuals described in section 2(7)(B)  
14 with respect to such employers.

15           (B) CONSULTATION.—In prescribing any  
16 regulations authorized under this paragraph,  
17 the Secretary, acting through the Adminis-  
18 trator, may consult with Federal agencies that  
19 have jurisdiction over Federal privacy laws or  
20 expertise in privacy, including the Federal  
21 Trade Commission, and Federal agencies that  
22 have jurisdiction over labor and employment  
23 issues, including the Equal Employment Oppor-  
24 tunity Commission and the National Labor Re-  
25 lations Board.



1           (2) GOVERNMENT ACCOUNTABILITY OFFICE; LI-  
2       BRARY OF CONGRESS.—The Comptroller General of  
3       the United States and the Librarian of Congress  
4       shall prescribe any regulations described in para-  
5       graph (1)(A) with respect to covered individuals of  
6       the Government Accountability Office and the Li-  
7       brary of Congress, respectively, and other individuals  
8       affected by the Comptroller General of the United  
9       States and the Librarian of Congress, respectively.

10       (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-  
11    COUNTABILITY ACT OF 1995.—

12           (1) AUTHORITY.—Not later than 45 days after  
13       the Secretary prescribes any regulation under sub-  
14       section (a)(1)(A), the Board of Directors of the Of-  
15       fice of Compliance shall prescribe (in accordance  
16       with section 304 of the Congressional Accountability  
17       Act of 1995 (2 U.S.C. 1384)) such regulations as  
18       may be necessary to carry out this Act with respect  
19       to covered individuals described in section  
20       2(7)(A)(iii) and other individuals affected by em-  
21       ployers described in section 2(10)(A)(i)(III), includ-  
22       ing individuals who are covered individuals described  
23       in section 2(7)(B) with respect to such employers.

24           (2) AGENCY REGULATIONS.—The regulations  
25       prescribed under paragraph (1) shall be the same as

1 substantive regulations promulgated by the Sec-  
2 retary under subsection (a)(1)(A) except insofar as  
3 the Board may determine, for good cause shown and  
4 stated together with the regulations prescribed  
5 under paragraph (1), that a modification of such  
6 regulations would be more effective for the imple-  
7 mentation of the rights and protections involved  
8 under this section.

9 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE  
10 3, UNITED STATES CODE.—

11 (1) AUTHORITY.—Not later than 45 days after  
12 the Secretary prescribes any regulation under sub-  
13 section (a)(1)(A), the President (or the designee of  
14 the President) shall prescribe such regulations as  
15 may be necessary to carry out this Act with respect  
16 to covered individuals described in section  
17 2(7)(A)(iv) and other individuals affected by employ-  
18 ers described in section 2(10)(A)(i)(IV), including  
19 individuals who are covered individuals described in  
20 section 2(7)(B) with respect to such employers.

21 (2) AGENCY REGULATIONS.—The regulations  
22 prescribed under paragraph (1) shall be the same as  
23 substantive regulations promulgated by the Sec-  
24 retary under subsection (a)(1)(A) except insofar as  
25 the President (or designee) may determine, for good

1 cause shown and stated together with the regula-  
2 tions prescribed under paragraph (1), that a modi-  
3 fication of such regulations would be more effective  
4 for the implementation of the rights and protections  
5 involved under this section.

6 (d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE  
7 5, UNITED STATES CODE.—

8 (1) AUTHORITY.—Not later than 45 days after  
9 the Secretary prescribes any regulation under sub-  
10 section (a)(1)(A), the Director of the Office of Per-  
11 sonnel Management shall prescribe such regulations  
12 as may be necessary to carry out this Act with re-  
13 spect to covered individuals described in section  
14 2(7)(A)(v) and other individuals affected by employ-  
15 ers described in section 2(10)(A)(i)(V), including in-  
16 dividuals who are covered individuals described in  
17 section 2(7)(B) with respect to such employers.

18 (2) AGENCY REGULATIONS.—The regulations  
19 prescribed under paragraph (1) shall be the same as  
20 substantive regulations promulgated by the Sec-  
21 retary under subsection (a)(1)(A) except insofar as  
22 the Director may determine, for good cause shown  
23 and stated together with the regulations prescribed  
24 under paragraph (1), that a modification of such  
25 regulations would be more effective for the imple-

1       mentation of the rights and protections involved  
2       under this section.

3 **SEC. 7. WHISTLEBLOWER PROTECTIONS.**

4       No employer shall discriminate or retaliate (including  
5 through intimidation, threats, coercion, or harassment)  
6 against any covered individual of the employer—

7           (1) for exercising, or attempting to exercise,  
8       any right provided under this Act; or

9           (2) because the covered individual (or another  
10       individual acting at the request of the covered indi-  
11       vidual) has—

12           (A) filed a written or oral complaint to the  
13       employer or a Federal, State, or local govern-  
14       ment entity of a violation of section 3 or 4;

15           (B) sought assistance or intervention with  
16       respect to a worker privacy-related concern  
17       from the employer, a Federal, State, or local  
18       government, or a worker representative;

19           (C) instituted, caused to be instituted, or  
20       otherwise participated in any inquiry or pro-  
21       ceeding under or related to this Act;

22           (D) given, or is about to give, any informa-  
23       tion in connection with any inquiry or pro-  
24       ceeding relating to any right provided under  
25       this Act; or

1 (E) testified, or is about to testify, in any  
2 inquiry or proceeding relating to any right pro-  
3 vided under this Act.

4 **SEC. 8. ENFORCEMENT.**

5 (a) IN GENERAL.—

6 (1) DEFINITION.—For purposes of this sub-  
7 section:

8 (A) COVERED INDIVIDUAL.—The term  
9 “covered individual” means a covered indi-  
10 vidual—

11 (i) described in section 2(7)(A) (other  
12 than covered individuals described in  
13 clauses (iii) through (v) of such section); or

14 (ii) described in section 2(7)(B) with  
15 respect to an employer.

16 (B) EMPLOYER.—The term “employer”  
17 means an employer described in subclause (I)  
18 or (II) of section 2(10)(A)(i).

19 (2) ENFORCEMENT BY THE PRIVACY AND  
20 TECHNOLOGY DIVISION.—

21 (A) INVESTIGATION.—

22 (i) IN GENERAL.—To ensure compli-  
23 ance with the provisions of this Act, or any  
24 regulation or order issued under this Act,

1 the Secretary, acting through the Adminis-  
2 trator—

3 (I) shall have the investigative  
4 authority provided under section 11(a)  
5 of the Fair Labor Standards Act of  
6 1938 (29 U.S.C. 211(a)), with respect  
7 to employers, covered individuals, and  
8 third parties and service providers  
9 with respect to employers; and

10 (II) may require, by general or  
11 special orders, an employer or third  
12 party or service provider with respect  
13 to the employer, to file with the Sec-  
14 retary, in such form as the Secretary  
15 may prescribe, annual or special re-  
16 ports or answers in writing to specific  
17 questions, furnishing to the Secretary  
18 such information or records as the  
19 Secretary may require as to the orga-  
20 nization, business, conduct, practices,  
21 management, and relation to other  
22 corporations, partnerships, and indi-  
23 viduals, of the employer.

24 (ii) REPORTS AND ANSWERS.—An em-  
25 ployer or third party or service provider

1 with respect to the employer shall file the  
2 reports and answers (including information  
3 and records) required under clause (i)(II)  
4 in such manner, including under oath or  
5 otherwise, and within such reasonable time  
6 period as the Secretary may require.

7 (iii) JOINT INVESTIGATIONS.—The  
8 Secretary, acting through the Adminis-  
9 trator, may conduct investigations and  
10 make requests for information, as author-  
11 ized under this Act, on a joint basis with  
12 another Federal agency, a State attorney  
13 general, or a State agency.

14 (iv) OBLIGATION TO KEEP, PRESERVE,  
15 AND MAKE AVAILABLE RECORDS.—An em-  
16 ployer or third party or service provider  
17 with respect to the employer shall make,  
18 keep, preserve, and make available to the  
19 Secretary records pertaining to compliance  
20 with this Act in accordance with section  
21 11(c) of the Fair Labor Standards Act of  
22 1938 (29 U.S.C. 211(c)) and in accord-  
23 ance with any regulation or order issued by  
24 the Secretary.

1           (B) ENFORCEMENT.—With respect to em-  
2           employers, covered individuals, and third parties  
3           and service providers with respect to employers,  
4           the Secretary, acting through the Adminis-  
5           trator, shall receive, investigate, and attempt to  
6           resolve complaints of violations of section 3, 4,  
7           or 7 in the same manner that the Secretary re-  
8           ceives, investigates, and attempts to resolve  
9           complaints of violations of sections 6 and 7 of  
10          the Fair Labor Standards Act of 1938 (29  
11          U.S.C. 206 and 207).

12          (C) PRIORITY.—For purposes of subpara-  
13          graphs (A) and (B), the Secretary shall  
14          prioritize industries with high rates of work-  
15          place surveillance and at high risk of workplace-  
16          surveillance-related health impacts.

17          (D) REFERRAL FOR CRIMINAL PRO-  
18          CEEDINGS.—If the Secretary, in the course of  
19          the performance of any act or duty under this  
20          Act, obtains evidence that any employer has en-  
21          gaged in conduct that may constitute a viola-  
22          tion of Federal criminal law, the Secretary shall  
23          refer the matter to the Attorney General for  
24          prosecution under any applicable law. Nothing



1 in this paragraph shall affect any other author-  
2 ity of the Secretary to disclose information.

3 (E) LITIGATION.—The Solicitor of Labor  
4 may appear for and represent the Secretary on  
5 any litigation brought under this subsection.

6 (3) PRIVATE RIGHT OF ACTION.—

7 (A) IN GENERAL.—

8 (i) COVERED INDIVIDUAL.—Notwith-  
9 standing any action by the Secretary under  
10 paragraph (2)(B), any covered individual  
11 adversely affected by an alleged violation of  
12 section 3, 4, or 7, may commence a civil  
13 action against any person that violates  
14 such section in any Federal court of com-  
15 petent jurisdiction.

16 (ii) LABOR ORGANIZATION.—Notwith-  
17 standing any action by the Secretary under  
18 paragraph (2)(B), any labor organization  
19 adversely affected by an alleged violation of  
20 4 or 7 may commence a civil action against  
21 any person that violates such section in  
22 any Federal court of competent jurisdic-  
23 tion.

24 (B) RELIEF.—

1 (i) IN GENERAL.—In a civil action  
2 brought under subparagraph (A) in which  
3 the covered individual or labor organization  
4 prevails, the court may award the covered  
5 individual or labor organization—

6 (I) damages of—

7 (aa) an amount equal to the  
8 sum of any actual damages sus-  
9 tained by the covered individual;  
10 or

11 (bb) not more than treble  
12 damages;

13 (II) statutory damages described  
14 in clause (iv);

15 (III) injunctive relief; and

16 (IV) equitable relief.

17 (ii) ATTORNEY'S FEES.—In a civil ac-  
18 tion brought under subparagraph (A) in  
19 which the covered individual or labor orga-  
20 nization prevails, the court shall award the  
21 covered individual or labor organization  
22 reasonable attorney's fees and litigation  
23 costs.

24 (iii) TEMPORARY RELIEF FOR WHIS-  
25 TLEBLOWERS.—In a civil action brought

1 under subparagraph (A) regarding a viola-  
2 tion of section 7, the court may award the  
3 covered individual or labor organization  
4 temporary relief while the case is pending,  
5 including reinstatement.

6 (iv) STATUTORY DAMAGES.—The  
7 court may, in accordance with clause (v),  
8 award statutory damages under clause  
9 (i)(II) against a person in the following  
10 amounts:

11 (I) FAILURE TO COMPLY WITH  
12 DISCLOSURE REQUIREMENTS.—For a  
13 violation of section 3, the court may  
14 award—

15 (aa) for the first such viola-  
16 tion, damages of an amount not  
17 more than \$500 for each covered  
18 individual impacted; and

19 (bb) for any subsequent vio-  
20 lation, damages for each covered  
21 individual impacted in an amount  
22 of not more than \$500 more than  
23 the amount of the damages  
24 awarded per covered individual

1 for the violation immediately pre-  
2 ceding such subsequent violation.

3 (II) USING SURVEILLANCE DATA  
4 FOR PROHIBITED ACTIVITIES.—For  
5 each violation of section 4, the court  
6 may award—

7 (aa) damages of an amount  
8 not less than \$5,000 and not  
9 more than \$20,000; or

10 (bb) for any willful or re-  
11 peated violation, damages of an  
12 amount not less than \$10,000  
13 and not more than \$40,000.

14 (III) RETALIATION ON WHISTLE-  
15 BLOWERS.—For each violation of sec-  
16 tion 7, the court may award—

17 (aa) damages of an amount  
18 not less than \$5,000 and not  
19 more than \$50,000; or

20 (bb) for any willful or re-  
21 peated violation, damages of an  
22 amount not less than \$10,000  
23 and not more than \$100,000.

24 (v) CONSIDERATIONS FOR STATUTORY  
25 DAMAGES.—In determining the amount of

1 statutory damages assessed under clause  
2 (iv), the court shall consider any relevant  
3 circumstances presented by the parties to  
4 the action, including—

5 (I) the nature and seriousness of  
6 the violation;

7 (II) the number of violations;

8 (III) the persistence of the mis-  
9 conduct;

10 (IV) the length of time over  
11 which the misconduct occurred;

12 (V) the willfulness of the mis-  
13 conduct of person; and

14 (VI) the assets, liabilities, and  
15 net worth of the person.

16 (C) RIGHTS OF THE SECRETARY AND A  
17 STATE ATTORNEY GENERAL.—Prior to an cov-  
18 ered individual or labor organization bringing a  
19 civil action under subparagraph (A), such cov-  
20 ered individual or labor organization shall, in  
21 writing, notify the Secretary and any relevant  
22 State attorney general of the intent to com-  
23 mence such civil action. Upon receiving such  
24 notice, the Secretary and State attorney general

1 shall each, not later than 60 days after receiv-  
2 ing such notice—

3 (i) determine whether to intervene in  
4 such action and, upon intervening—

5 (I) be heard on all matters aris-  
6 ing in such action; and

7 (II) file petitions for appeal of a  
8 decision in such action; and

9 (ii) notify such covered individual or  
10 labor organization.

11 (D) REMEDIES FOR STATE EMPLOYEES.—

12 (i) WAIVER OF SOVEREIGN IMMUN-  
13 NITY.—A State's receipt or use of Federal  
14 financial assistance for any program or ac-  
15 tivity of a State shall constitute a waiver  
16 of sovereign immunity, under the 11th  
17 Amendment to the Constitution of the  
18 United States or otherwise, to a suit  
19 brought by a covered individual of that  
20 program or activity, or a labor organiza-  
21 tion representing such a covered individual,  
22 under this paragraph for equitable, legal,  
23 or other relief authorized under this para-  
24 graph.

1 (ii) OFFICIAL CAPACITY.—An official  
2 of a State may be sued in the official ca-  
3 pacity of the official by any covered indi-  
4 vidual or such a labor organization who  
5 has complied with the procedures under  
6 this paragraph, for injunctive relief that is  
7 authorized under this paragraph. In such a  
8 suit the court may award to the prevailing  
9 party those costs authorized by section 722  
10 of the Revised Statutes (42 U.S.C. 1988).

11 (iii) APPLICABILITY.—With respect to  
12 a particular program or activity, clause (i)  
13 applies to conduct that occurs—

14 (I) after the date of enactment of  
15 this Act; and

16 (II) on or after the day on which  
17 a State first receives or uses Federal  
18 financial assistance for that program  
19 or activity.

20 (iv) DEFINITION OF PROGRAM OR AC-  
21 TIVITY.—In this subparagraph, the term  
22 “program or activity” has the meaning  
23 given the term in section 606 of the Civil  
24 Rights Act of 1964 (42 U.S.C. 2000d–4a).

1 (E) REMEDIES FOR TRIBAL GOVERNMENT  
2 EMPLOYEES.—

3 (i) WAIVER OF SOVEREIGN IMMUN-  
4 NITY.—A Tribal government's receipt or  
5 use of Federal financial assistance for any  
6 program or activity of the Tribal govern-  
7 ment shall constitute a waiver of sovereign  
8 immunity to a suit brought by a covered  
9 individual of that program or activity, or a  
10 labor organization representing such a cov-  
11 ered individual, under this paragraph for  
12 equitable, legal, or other relief authorized  
13 under this paragraph.

14 (ii) OFFICIAL CAPACITY.—An official  
15 of a Tribal government may be sued in the  
16 official capacity of the official by any cov-  
17 ered individual or such a labor organiza-  
18 tion who has complied with the procedures  
19 under this paragraph for injunctive relief  
20 that is authorized under this paragraph. In  
21 such a suit the court may award to the  
22 prevailing party those costs authorized by  
23 section 722 of the Revised Statutes (42  
24 U.S.C. 1988).



1 (iii) APPLICABILITY.—With respect to  
2 a particular program or activity, clause (i)  
3 applies to conduct that occurs—

4 (I) after the date of enactment of  
5 this Act; and

6 (II) on or after the day on which  
7 a Tribal government first receives or  
8 uses Federal financial assistance for  
9 that program or activity.

10 (iv) DEFINITION OF PROGRAM OR AC-  
11 TIVITY.—In this subparagraph, the term  
12 “program or activity” has the meaning  
13 given the term in section 606 of the Civil  
14 Rights Act of 1964 (42 U.S.C. 2000d–4a).

15 (4) ENFORCEMENT BY THE GOVERNMENT AC-  
16 COUNTABILITY OFFICE AND LIBRARY OF CON-  
17 GRESS.—Notwithstanding any other provision of this  
18 subsection, in the case of the Government Account-  
19 ability Office and the Library of Congress, the au-  
20 thority of the Secretary under this subsection shall  
21 be exercised respectively by the Comptroller General  
22 of the United States and the Librarian of Congress,  
23 respectively.

24 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-  
25 COUNTABILITY ACT OF 1995.—The powers, remedies, and

1 procedures provided in the Congressional Accountability  
2 Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as de-  
3 fined in section 101 of that Act (2 U.S.C. 1301)), or any  
4 person, alleging a violation of section 202(a)(1) of that  
5 Act (2 U.S.C. 1312(a)(1)) shall be the powers, remedies,  
6 and procedures this Act provides to that Board, or any  
7 person, with regard to an allegation of a violation of sec-  
8 tion 3, 4, or 7 against a covered individual described in  
9 section 2(7)(A)(iii) or described in section 2(7)(B) with  
10 respect to an employer described in section  
11 2(10)(A)(i)(III).

12 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE  
13 3, UNITED STATES CODE.—The powers, remedies, and  
14 procedures provided in chapter 5 of title 3, United States  
15 Code, to the President, the Merit Systems Protection  
16 Board, or any person, alleging a violation of section  
17 412(a)(1) of that title, shall be the powers, remedies, and  
18 procedures this Act provides to the President, that Board,  
19 or any person, respectively, with regard to an allegation  
20 of a violation of section 3, 4, or 7 against a covered indi-  
21 vidual described in section 2(7)(A)(iv) or described in sec-  
22 tion 2(7)(B) with respect to an employer described in sec-  
23 tion 2(10)(A)(i)(IV).

24 (d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE  
25 5, UNITED STATES CODE.—The powers, remedies, and

1 procedures provided in title 5, United States Code, to an  
2 employing agency, provided in chapter 12 of that title to  
3 the Merit Systems Protection Board, or provided in that  
4 title to any person, alleging a violation of chapter 63 of  
5 that title, shall be the powers, remedies, and procedures  
6 this Act provides to that agency, that Board, or any per-  
7 son, respectively, with regard to an allegation of a viola-  
8 tion of section 3, 4, or 7 against a covered individual de-  
9 scribed in section 2(7)(A)(v) or described in section  
10 2(7)(B) with respect to an employer described in section  
11 2(10)(A)(i)(V).

12 (e) ENFORCEMENT BY STATES.—

13 (1) IN GENERAL.—In any case in which a State  
14 attorney general or a State privacy regulator has  
15 reason to believe that an interest of the residents of  
16 a State has been or is adversely affected by any per-  
17 son who violates any provision of section 3, 4, or 7,  
18 including a regulation or order prescribed under this  
19 Act, the State attorney general or State privacy reg-  
20 ulator, as *parens patriae*, may bring a civil action on  
21 behalf of the residents of the State in an appropriate  
22 State court or an appropriate district court of the  
23 United States to—

24 (A) enjoin further violation of such provi-  
25 sion by the person;

1 (B) compel compliance with such provision;

2 (C) obtain damages, civil penalties, restitu-  
3 tion, or other compensation on behalf of the  
4 residents of the State; or

5 (D) obtain reasonable attorney's fees and  
6 other litigation costs reasonably incurred.

7 (2) RIGHTS OF AGENCY.—Before initiating a  
8 civil action under paragraph (1), the State attorney  
9 general or State privacy regulator, as the case may  
10 be, shall notify the Secretary in writing of such civil  
11 action. Upon receiving such notice, the Secretary  
12 may—

13 (A) intervene in such action; and

14 (B) upon intervening—

15 (i) be heard on all matters arising in  
16 such civil action; and

17 (ii) file petitions for appeal of a deci-  
18 sion in such action.

19 (3) PREEMPTIVE ACTION BY AGENCY.—In any  
20 case in which a civil action is instituted by or on be-  
21 half of the Secretary for violation of this Act or a  
22 regulation promulgated under this Act, a State at-  
23 torney general or State privacy regulator may not,  
24 during the pendency of such action, institute a civil  
25 action against any defendant named in the com-

1       plaint in the action instituted by or on behalf of the  
2       Secretary for a violation that is alleged in such com-  
3       plaint. In a case brought by the Secretary that af-  
4       fects the interests of a State, the State attorney gen-  
5       eral or State privacy regulator may intervene as of  
6       right pursuant to the Federal Rules of Civil Proce-  
7       dure.

8               (4) PRESERVATION OF STATE POWERS.—Ex-  
9       cept as provided in paragraph (3), no provision of  
10      this subsection shall be construed as altering, lim-  
11      iting, or affecting the authority of a State attorney  
12      general or State privacy regulator to—

13                   (A) bring an action or other regulatory  
14                   proceeding arising solely under the laws in ef-  
15                   fect in that State; or

16                   (B) exercise the powers conferred on the  
17                   State attorney general or State privacy regu-  
18                   lator by the laws of the State, including the  
19                   ability to conduct investigations, administer  
20                   oaths or affirmations, or compel the attendance  
21                   of witnesses or the production of documentary  
22                   or other evidence.

23               (f) LIABILITY OF AN EMPLOYER FOR A VIOLATION  
24      BY A THIRD PARTY OR SERVICE PROVIDER THAT THE  
25      EMPLOYER USES FOR WORKPLACE SURVEILLANCE.—A

1 violation of section 4 by a third party or service provider  
2 that the employer uses for workplace surveillance shall be  
3 considered a violation of such section by the employer if  
4 the employer knew or should have known about such viola-  
5 tion.

6 (g) ARBITRATION AND CLASS ACTION.—Notwith-  
7 standing any other provision of law, no predispute arbitra-  
8 tion agreement or predispute joint-action waiver shall be  
9 valid or enforceable with respect to any alleged violation  
10 of section 3, 4, or 7.

11 **SEC. 9. REPORTS TO CONGRESS.**

12 (a) REPORT ON WORKPLACE SURVEILLANCE.— Not  
13 later than 1 year after the date of enactment of this Act,  
14 and biennially thereafter, the Secretary, acting through  
15 the Administrator, shall—

16 (1) using technologists and subject matter ex-  
17 perts, conduct a study on workplace surveillance on  
18 covered individuals by employers, including such  
19 workplace surveillance through technological means;  
20 and

21 (2) submit to Congress, and make publicly  
22 available, a report on the findings of the study under  
23 paragraph (1), including any recommendations for  
24 the President and Congress targeted at reducing

1 harms related to workplace surveillance on covered  
2 individuals.

3 (b) REPORT ON ENFORCEMENT.—Not later than 1  
4 year after the date of enactment of this Act, and annually  
5 thereafter, the Secretary, acting through the Adminis-  
6 trator, shall submit to Congress, and make publicly avail-  
7 able, a report on enforcement of this Act by the Privacy  
8 and Technology Division, including information on the fol-  
9 lowing:

10 (1) Violations of sections 3, 4, and 7, including  
11 the results of enforcement activities.

12 (2) Enforcement strategies.

13 (3) The strategy for educating employers on  
14 rights and responsibilities under this Act.

15 (4) Recommendations for improving the effec-  
16 tiveness of the Privacy and Technology Division.

17 **SEC. 10. COORDINATION.**

18 In carrying out this Act, the Secretary, acting  
19 through the Administrator, shall coordinate with any ap-  
20 propriate Federal agency or State regulator to promote  
21 consistent regulatory treatment of workplace surveillance.

22 **SEC. 11. RELATION TO OTHER LAWS.**

23 Except as explicitly provided otherwise, nothing in  
24 this Act shall be construed to preempt, modify, limit, or  
25 supersede—

- 1           (1) any provision of Federal or State law; or  
2           (2) the authority of the Federal Trade Commis-  
3           sion, Equal Employment Opportunity Commission,  
4           National Labor Relations Board, or any other Fed-  
5           eral agency.

6 **SEC. 12. SEVERABILITY.**

7           If any provision of this Act or the application of such  
8           provision to any person or circumstance is held to be un-  
9           constitutional, the remainder of this Act and the applica-  
10          tion of the provisions of such to all other persons or cir-  
11          cumstances shall not be affected thereby.

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