

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 570

Introduced by Harr, 8.

Read first time January 23, 2013

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor and employment; to adopt the Employers

2 Certainty in Records Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 5 of this act shall be known and
2 may be cited as the Employers Certainty in Records Act.

3 Sec. 2. (1) For purposes of the Employers Certainty in
4 Records Act:

5 (a) Commissioner means the Commissioner of Labor;

6 (b) Employer shall have the same meaning as in section
7 48-603;

8 (c) Employee means a person performing service deemed to
9 be employment as defined in subdivision (5) of section 48-604; and

10 (d) Electronic monitoring means the collection of
11 information on an employer's premises or property owned by the
12 employer concerning employees' activities or communications by any
13 means other than direct observation, including but not limited to,
14 the use of a computer, telephone, wire, radio, camera,
15 electromagnetic, photoelectronic, or photooptical systems, but not
16 including the collection of information which is prohibited under
17 state or federal law.

18 Sec. 3. (1) Except as provided in subsection (2) of this
19 subsection, each employer who engages in any type of electronic
20 monitoring shall give prior written notice to all employees who may
21 be affected, informing them of the types of monitoring which may
22 occur. Each employer shall post, in a conspicuous place which is
23 readily available for viewing by its employees, a notice concerning
24 the types of electronic monitoring which the employer intends to
25 engage in. The notice shall contain language that the employee may

1 contact the Department of Labor if he or she believes the employer is
2 improperly monitoring. Such posting shall constitute written notice.

3 (2) When an employer has reasonable grounds to believe
4 that an employee is engaged in conduct which (a) violates the law,
5 (b) violates the legal rights of the employer or another employee, or
6 (c) creates a hostile workplace environment, and electronic
7 monitoring may produce evidence of this misconduct, the employer may
8 conduct monitoring without giving prior written notice.

9 (3) For a violation of this section, in addition to any
10 other fines or penalties provided by law, if the commissioner finds,
11 after notice and hearing, that an employer has violated this section,
12 the commissioner shall assess the employer a one-hundred-dollar civil
13 penalty for the first violation and a five-hundred-dollar civil
14 penalty for each second and subsequent violation.

15 Sec. 4. (1) The Employers Certainty in Records Act does
16 not apply to a criminal investigation. Any information obtained in
17 the course of a criminal investigation through the use of electronic
18 monitoring may be used in a disciplinary proceeding against an
19 employee. Information not obtained in the course of a criminal
20 investigation may only be used by the employer or employee in a
21 disciplinary proceeding if done so within one hundred eighty days
22 after acquiring the information. Information obtained through
23 electronic monitoring may be used for training and education purposes
24 and for implementation of employment practices.

25 (2) If the commissioner finds, after notice and hearing,

1 that an employer has violated subsection (1) of this section, the
2 commissioner shall assess the employer a civil penalty of one-
3 thousand-dollars for the first violation and five-thousand-dollars
4 for each second and subsequent violation.

5 Sec. 5. The commissioner shall remit all penalties
6 collected under the Employers Certainty in Records Act to the State
7 Treasurer for distribution in accordance with Article VII, section 5,
8 of the Constitution of Nebraska.