

118TH CONGRESS
1ST SESSION

S. 262

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2023

Mr. CASEY (for himself, Mr. BOOKER, Mr. SCHATZ, Mr. FETTERMAN, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 pro-
2 cessing 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 (2) in accordance with procedures established
 2 by the Administrator, have any such data that is in-
 3 complete or erroneous updated or corrected at any
 4 time.

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

8 **SEC. 4. PROHIBITION OF CERTAIN WORKPLACE SURVEIL-**
 9 **LANCE.**

10 (a) IN GENERAL.—An employer or, as applicable, a
 11 third party or service provider that the employer uses for
 12 workplace surveillance may not—

13 (1) use workplace surveillance to—

14 (A) identify any covered individual who
 15 forms, joins, assists, or seeks to form, join, or
 16 assist, a labor organization;

17 (B) monitor the activities of any covered
 18 individual concerning or related to a labor orga-
 19 nization or with respect to engaging in pro-
 20 tected concerted activity;

21 (C) except as otherwise provided in law,
 22 ascertain any political opinion or activity, reli-
 23 gious view, or other identity marker of the cov-
 24 ered individual, that is unrelated to the per-

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 ployers, 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. REPORT TO CONGRESS ON WORKPLACE SURVEIL-**
12 **LANCE.**

13 The Secretary, acting through the Administrator,
14 shall—

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

20 (2) not later than 1 year after the date of en-
21 actment of this Act, and annually thereafter, submit
22 to Congress, and make publicly available, a report
23 on the findings of the study under paragraph (1),
24 including any recommendations for the President

1 and Congress targeted at reducing harms related to
2 workplace surveillance on covered individuals.

3 **SEC. 10. COORDINATION.**

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

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

9 Except as explicitly provided otherwise, nothing in
10 this Act shall be construed to preempt, modify, limit, or
11 supersede—

12 (1) any provision of Federal or State law; or

13 (2) the authority of the Federal Trade Commis-
14 sion, Equal Employment Opportunity Commission,
15 National Labor Relations Board, or any other Fed-
16 eral agency.

17 **SEC. 12. SEVERABILITY.**

18 If any provision of this Act or the application of such
19 provision to any person or circumstance is held to be un-
20 constitutional, the remainder of this Act and the applica-
21 tion of the provisions of such to all other persons or cir-
22 cumstances shall not be affected thereby.

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