

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 674

Introduced by Harr, 8.

Read first time January 19, 2011

Committee: Business and Labor

A BILL

- 1 FOR AN ACT relating to labor and employment; to prohibit or restrict
- 2 certain electronic monitoring by employers; and to
- 3 provide for fines.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) For purposes of this section:

2 (a) Commissioner means the Commissioner of Labor;

3 (b) Employer shall have the same meaning as section
4 48-603;

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

7 (d) Electronic monitoring means the collection of
8 information on an employer's premises or property owned by the
9 employer concerning employees' activities or communications by any
10 means other than direct observation, including the use of a computer,
11 telephone, wire, radio, camera, electromagnetic, photoelectronic, or
12 photooptical systems, but not including the collection of information
13 for (i) security purposes in common areas of the employer's premises
14 which are held out for use by the public or (ii) which is prohibited
15 under state or federal law.

16 (2)(a) Except as provided in subdivision (b) of this
17 subsection, each employer who engages in any type of electronic
18 monitoring shall give prior notice to all employees who may be
19 affected, informing them of the types of monitoring which may occur.
20 Each employer shall post, in a conspicuous place which is readily
21 available for viewing by its employees, a notice concerning the types
22 of electronic monitoring which the employer intends to engage in. The
23 notice shall contain language that the employee may contact the
24 Department of Labor if he or she believes the employer is improperly
25 monitoring. Such posting shall constitute written notice.

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

7 (3) For a violation of subdivision (2)(a) of this
8 section, in addition to any other fines or penalties provided by law,
9 if the commissioner finds, after notice and hearing, that an employer
10 has violated subdivision (2)(a) of this section, the employer shall
11 be assessed, by the commissioner, a one-hundred-dollar fine for the
12 first offense and a five-hundred-dollar fine for each second and
13 subsequent offense.

14 (4) This section does not apply to a criminal
15 investigation. Any information obtained in the course of a criminal
16 investigation through the use of electronic monitoring may be used in
17 a disciplinary proceeding against an employee. Information not
18 obtained in the course of a criminal investigation may only be used
19 in a disciplinary proceeding if done so within ten days after
20 acquiring the information. Information obtained through electronic
21 monitoring may be used for training and education purposes and for
22 implementation of employment practices.

23 (5) For a violation of subsection (4) of this section, in
24 addition to any other fines or penalties provided by law, if the
25 commissioner finds, after notice and hearing, that an employer has

1 violated subsection (4) of this section, the employer shall be
2 assessed, by the commissioner, a one-thousand-dollar fine for the
3 first offense and a five-thousand-dollar fine for each second and
4 subsequent offense.