
By: Delegates Rosenberg and McIntosh

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Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **State Employees - Employee Privacy Protection Act**

3 FOR the purpose of prohibiting certain individuals from intruding on the personal space
4 of an employee, willfully intercepting an electronic or wire communication intended
5 to be received by an employee, or willfully accessing or attempting to access an
6 employee's computer, computer software, or computer database without the
7 employee's authorization; prohibiting a supervisor from requesting or directing an
8 employee or other individual to intrude on the personal space of an employee,
9 intercept an electronic or wire communication intended to be received by an
10 employee, or access or attempt to access an employee's computer, computer
11 software, or computer database without the employee's authorization; providing
12 certain remedies for a violation of this Act; providing for a waiver of the rights
13 provided under this Act; defining certain terms; providing for the application of this
14 Act; and generally relating to the protection of the privacy of State employees.

15 BY adding to

16 Article - State Personnel and Pensions
17 Section 5-401 through 5-405, inclusive, to be under the new subtitle "Subtitle 4.
18 Employee Privacy Protection Act"
19 Annotated Code of Maryland
20 (1994 Volume and 1996 Supplement)

21 Preamble

22 WHEREAS, Technology in the workplace has expanded dramatically, particularly
23 over the past 30 years; and

24 WHEREAS, The federal Constitution, as interpreted by the Supreme Court in
25 O'Connor v. Ortega, 480 U.S. 709 (1987), protects the privacy of public employees in the
26 workplace where there is a reasonable expectation of privacy; and

27 WHEREAS, Application of constitutional privacy protections varies on a case by
28 case and item by item basis in a public employee's office; and

29 WHEREAS, The introduction of new technologies into the public sector workplace
30 calls for clearer standards of privacy; and

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1 WHEREAS, Protecting the privacy expectations of public employees will lead to
2 greater use of new technologies, greater productivity, and higher morale; and

3 WHEREAS, The only protections available to employees at this time are general
4 invasion of privacy tort actions, wiretapping laws, and constitutional provisions protecting
5 privacy rights; and

6 WHEREAS, The State government is the largest employer in Maryland; now,
7 therefore,

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article - State Personnel and Pensions**

11 **SUBTITLE 4. EMPLOYEE PRIVACY PROTECTION ACT.**

12 5-401.

13 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
14 INDICATED.

15 (B) "ACCESS" MEANS TO INSTRUCT, COMMUNICATE WITH, STORE DATA IN,
16 RETRIEVE DATA FROM, OR OTHERWISE MAKE USE OF EQUIPMENT, INCLUDING
17 COMPUTERS AND OTHER DATA PROCESSING EQUIPMENT OR RESOURCES RELATED
18 TO COMPUTERS AND OTHER DATA PROCESSING EQUIPMENT.

19 (C) "ELECTRONIC COMMUNICATION" MEANS ANY MESSAGE SENT FROM A
20 PERSON TO THAT PERSON OR ANOTHER PERSON BY ELECTRONIC MEANS,
21 INCLUDING ELECTRONIC MAIL, COMMONLY KNOWN AS "E-MAIL".

22 (D) "EMPLOYEE" MEANS A TEMPORARY EMPLOYEE OR AN EMPLOYEE IN THE
23 SKILLED SERVICE, PROFESSIONAL SERVICE, MANAGEMENT SERVICE, OR
24 EXECUTIVE SERVICE.

25 (E) "INTERCEPT" MEANS THE ACQUISITION OF THE CONTENTS OF ANY WIRE
26 COMMUNICATION OR ELECTRONIC COMMUNICATION THROUGH THE USE OF ANY
27 ELECTRONIC OR OTHER DEVICE.

28 (F) "PERSONAL SPACE" INCLUDES AREAS SUCH AS DESKS, DRAWERS IN
29 DESKS, OFFICES, CUBICLES, LOCKERS, AND PRIVATE CLOSETS.

30 (G) "SUPERVISOR" MEANS ANY EMPLOYEE WHO HAS DIRECT OR INDIRECT
31 OVERSIGHT OF ONE OR MORE OTHER EMPLOYEES.

32 (H) "WIRE COMMUNICATION" MEANS ANY MESSAGE SENT FROM A PERSON
33 TO THAT PERSON OR ANOTHER PERSON BY MEANS THAT INVOLVE A WIRE
34 CONNECTION, INCLUDING TELEPHONE, FACSIMILE, OR MODEM.

35 5-402.

36 (A) THIS SUBTITLE DOES NOT APPLY IF AN INDIVIDUAL:

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1 (1) ACTS IN GOOD FAITH RELIANCE ON A COURT ORDER OR
2 STATUTORY AUTHORIZATION; OR

3 (2) BASED ON A FAIR AND REASONABLE BELIEF, ACTS TO PREVENT A
4 FRAUD AGAINST THE STATE OR A VIOLATION OF A PERSONNEL REGULATION OR
5 OTHER STATE LAW AND HAS PRIOR APPROVAL FROM APPROPRIATE PERSONNEL.

6 (B) PRIOR APPROVAL FROM APPROPRIATE PERSONNEL UNDER SUBSECTION
7 (A)(2) OF THIS SECTION IS SUFFICIENT IF IT IS:

8 (1) IN WRITING;

9 (2) SIGNED BY A SUPERVISOR IN THE UNIT IN WHICH THE EMPLOYEE
10 SUBJECT TO THE INVASION IS EMPLOYED; AND

11 (3) SIGNED BY THE HEAD OF THE UNIT IN WHICH THE EMPLOYEE
12 SUBJECT TO THE INVASION IS EMPLOYED.

13 5-403.

14 (A) UNLESS THE EMPLOYEE OR OTHER INDIVIDUAL ACTS AT THE REQUEST
15 OR DIRECTION OF A SUPERVISOR, AN EMPLOYEE OR OTHER INDIVIDUAL MAY NOT:

16 (1) INTRUDE ON THE PERSONAL SPACE OF ANOTHER EMPLOYEE;

17 (2) WILLFULLY INTERCEPT AN ELECTRONIC COMMUNICATION OR
18 WIRE COMMUNICATION INTENDED TO BE RECEIVED BY ANOTHER EMPLOYEE; OR

19 (3) WILLFULLY ACCESS OR ATTEMPT TO ACCESS ANOTHER
20 EMPLOYEE'S COMPUTER, COMPUTER SOFTWARE, OR COMPUTER DATABASE
21 WITHOUT THE EMPLOYEE'S AUTHORIZATION.

22 (B) A SUPERVISOR MAY NOT REQUEST OR DIRECT AN EMPLOYEE OR OTHER
23 INDIVIDUAL TO:

24 (1) INTRUDE ON THE PERSONAL SPACE OF ANOTHER EMPLOYEE;

25 (2) INTERCEPT AN ELECTRONIC COMMUNICATION OR WIRE
26 COMMUNICATION INTENDED TO BE RECEIVED BY ANOTHER EMPLOYEE; OR

27 (3) ACCESS OR ATTEMPT TO ACCESS ANOTHER EMPLOYEE'S
28 COMPUTER, COMPUTER SOFTWARE, OR COMPUTER DATABASE WITHOUT THE
29 EMPLOYEE'S AUTHORIZATION.

30 (C) A SUPERVISOR MAY NOT:

31 (1) INTRUDE ON THE PERSONAL SPACE OF ANOTHER EMPLOYEE;

32 (2) WILLFULLY INTERCEPT AN ELECTRONIC COMMUNICATION OR
33 WIRE COMMUNICATION INTENDED TO BE RECEIVED BY ANOTHER EMPLOYEE; OR

34 (3) WILLFULLY ACCESS OR ATTEMPT TO ACCESS ANOTHER
35 EMPLOYEE'S COMPUTER, COMPUTER SOFTWARE, OR COMPUTER DATABASE
36 WITHOUT THE EMPLOYEE'S AUTHORIZATION.

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1 5-404.

2 AN EMPLOYEE WHOSE RIGHTS UNDER § 5-403 OF THIS SUBTITLE HAVE BEEN
3 VIOLATED:

4 (1) HAS A CAUSE OF ACTION AGAINST THE INDIVIDUAL WHO COMMITS
5 THE VIOLATION; AND

6 (2) IS ENTITLED TO RECOVER FROM THE INDIVIDUAL:

7 (I) ACTUAL DAMAGES, BUT NOT LESS THAN \$100 FOR EACH
8 VIOLATION;

9 (II) PUNITIVE DAMAGES; AND

10 (III) REASONABLE ATTORNEY'S FEES AND OTHER REASONABLE
11 COSTS OF LITIGATION.

12 5-405.

13 (A) AN EMPLOYEE MAY WAIVE THE RIGHTS PROVIDED UNDER THIS
14 SUBTITLE PRIOR TO AN INVASION OF PERSONAL SPACE, AN INTERCEPTION OF AN
15 ELECTRONIC COMMUNICATION OR A WIRE COMMUNICATION, OR THE ACCESSING
16 OF A COMPUTER, COMPUTER SOFTWARE, OR COMPUTER DATABASE.

17 (B) TO BE VALID, A WAIVER MUST BE IN WRITING AND SIGNED AND DATED
18 BY THE EMPLOYEE.

19 (C) A WAIVER MAY BE VALID FOR NO MORE THAN 6 MONTHS, BUT MAY BE
20 RENEWED IN PERPETUITY.

21 (D) WAIVER OF THE RIGHTS PROVIDED UNDER THIS SUBTITLE MAY NOT BE A
22 PRECONDITION TO EMPLOYMENT.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 1997.