

AMENDED IN SENATE APRIL 15, 1999

**SENATE BILL**

**No. 1016**

**Introduced by Senator Bowen**

February 26, 1999

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An act to ~~add Section 6254.22 to the Government Code, and to add Section 1198.6 to the Labor Code, relating to employee records.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1016, as amended, Bowen. Employee *computer records.*

(1) ~~Under the California Public Records Act, public records are open to inspection at all times during the office hours of state and local agencies, except certain records that may be withheld from disclosure, including personnel files.~~

~~This bill would also exempt from disclosure under the act any personal, nonbusiness related electronic mail or other private computer records of a state or local agency employee.~~

(2) Existing law requires employers, generally, to grant employees the right to inspect personnel files.

This bill would prohibit an employer from ~~inspecting, reviewing, or retaining any personal, nonbusiness related electronic mail or other private computer records of an employee without the consent of the employee~~ *secretly monitoring the electronic mail or other personal computer records generated by an employee. The bill would provide that an employer who intends to inspect, review, or retain any personal electronic mail or any other personal computer records generated by an employee shall prepare and*

*distribute to all employees the employer’s workplace privacy and electronic monitoring policies and practices.* Because violation of this prohibition would be a misdemeanor, the bill would impose a state-mandated local program by creating a new crime.

~~(3)–~~

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1.—Section 6254.22 is added to the~~  
2     *SECTION 1. Section 1198.6 is added to the Labor*  
3     *Code, to read:*  
4     *1198.6. (a) An employer may not secretly monitor*  
5     *the electronic mail or other personal computer records*  
6     *generated by an employee. For purposes of this*  
7     *subdivision, “secretly monitor” means to inspect, review,*  
8     *or retain electronic mail or other computer records in a*  
9     *manner that does not comply with the policies and*  
10    *practices that are disclosed to the employee pursuant to*  
11    *this section.*  
12    *(b) An employer who intends to inspect, review, or*  
13    *retain any personal electronic mail or any other personal*  
14    *computer records generated by an employee shall*  
15    *prepare and distribute to all employees, by hardcopy or*  
16    *electronic notice, upon the commencement of*  
17    *employment for new employees, or by March 1, 2000, for*  
18    *existing employees, the employer’s workplace privacy*  
19    *and electronic monitoring policies and practices. Upon*  
20    *distributing these policies and practices, the employer*  
21    *shall require every affected employee to sign or*  
22    *electronically verify that he or she has read, understood,*  
23    *and agrees to the policies and practices.*



1 (c) *The workplace privacy and electronic monitoring*  
2 *policies and practices shall include an employee's right to*  
3 *access any data collected by employer monitoring and*  
4 *the right to dispute and have inaccurate data corrected*  
5 *or deleted.*

6 ~~Government Code, to read:~~

7 ~~6254.22. Nothing in this chapter shall be construed to~~  
8 ~~require the disclosure of any personal, nonbusiness~~  
9 ~~related electronic mail or other private computer records~~  
10 ~~of a state or local agency employee, including information~~  
11 ~~inserted into a user's drive when the user accesses a~~  
12 ~~website, commonly referred to as a 'cookie.'~~

13 ~~SEC. 2. Section 1198.6 is added to the Labor Code, to~~  
14 ~~read:~~

15 ~~1198.6. An employer may not inspect, review, or~~  
16 ~~retain any personal, nonbusiness related electronic mail~~  
17 ~~or other private computer records of an employee,~~  
18 ~~including information inserted into a user's drive when~~  
19 ~~the user accesses a website, commonly referred to as a~~  
20 ~~"cookie," without the consent of the employee.~~

21 ~~SEC. 3.—~~

22 *SEC. 2. No reimbursement is required by this act*  
23 *pursuant to Section 6 of Article XIII B of the California*  
24 *Constitution because the only costs that may be incurred*  
25 *by a local agency or school district will be incurred*  
26 *because this act creates a new crime or infraction,*  
27 *eliminates a crime or infraction, or changes the penalty*  
28 *for a crime or infraction, within the meaning of Section*  
29 *17556 of the Government Code, or changes the definition*  
30 *of a crime within the meaning of Section 6 of Article*  
31 *XIII B of the California Constitution.*

