

2434--A

2013-2014 Regular Sessions

I N S E N A T E

January 17, 2013

Introduced by Sens. KLEIN, CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the education law, in relation to prohibiting an employer or educational institution from requesting or requiring that an employee, applicant or student disclose any user name, password, or other means for accessing a personal account or service through specified electronic communications devices

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The labor law is amended by adding a new section 201-g to
2 read as follows:
3 S 201-G. REQUEST FOR ACCESS TO PERSONAL ACCOUNTS OR SERVICES PROHIBIT-
4 ED. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE
5 FOLLOWING MEANINGS:
6 (A) "APPLICANT" MEANS AN APPLICANT FOR EMPLOYMENT.
7 (B) "ELECTRONIC COMMUNICATIONS DEVICE" MEANS ANY DEVICE THAT USES
8 ELECTRONIC SIGNALS TO CREATE, TRANSMIT, AND RECEIVE INFORMATION, INCLUD-
9 ING, BUT NOT LIMITED TO COMPUTERS, TELEPHONES, PERSONAL DIGITAL ASSIST-
10 ANTS AND OTHER SIMILAR DEVICES.
11 (C) "EMPLOYER" MEANS (I) A PERSON OR ENTITY ENGAGED IN A BUSINESS,
12 INDUSTRY, PROFESSION, TRADE OR OTHER ENTERPRISE IN THE STATE; OR (II) A
13 UNIT OF STATE OR LOCAL GOVERNMENT; AND (III) SHALL INCLUDE AN AGENT,
14 REPRESENTATIVE OR DESIGNEE OF THE EMPLOYER.
15 2. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, IT
16 SHALL BE UNLAWFUL FOR ANY EMPLOYER TO REQUEST OR REQUIRE ANY EMPLOYEE OR
17 APPLICANT FOR EMPLOYMENT TO DISCLOSE ANY USER NAME, PASSWORD OR OTHER
18 MEANS FOR ACCESSING A PERSONAL ACCOUNT OR SERVICE THROUGH AN ELECTRONIC
19 COMMUNICATIONS DEVICE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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(B) AN EMPLOYER MAY REQUIRE AN EMPLOYEE TO DISCLOSE ANY USER NAME, PASSWORD OR OTHER MEANS FOR ACCESSING NONPERSONAL ACCOUNTS OR SERVICES THAT PROVIDE ACCESS TO THE EMPLOYER'S INTERNAL COMPUTER OR INFORMATION SYSTEMS.

3. AN EMPLOYER MAY NOT:

(A) DISCHARGE, DISCIPLINE, OR OTHERWISE PENALIZE OR THREATEN TO DISCHARGE, DISCIPLINE, OR OTHERWISE PENALIZE AN EMPLOYEE FOR AN EMPLOYEE'S REFUSAL TO DISCLOSE ANY INFORMATION SPECIFIED IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION; OR

(B) FAIL OR REFUSE TO HIRE ANY APPLICANT AS A RESULT OF THE APPLICANT'S REFUSAL TO DISCLOSE ANY INFORMATION SPECIFIED IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION.

4. IT SHALL BE AN AFFIRMATIVE DEFENSE TO AN ACTION UNDER THIS SECTION THAT THE EMPLOYER ACTED TO COMPLY WITH REQUIREMENTS OF A FEDERAL LAW OR A LAW OF THIS STATE.

5. (A) THIS SECTION DOES NOT PROHIBIT AN EMPLOYER FROM DOING ANY OF THE FOLLOWING:

(I) REQUESTING OR REQUIRING AN EMPLOYEE TO DISCLOSE ACCESS INFORMATION TO THE EMPLOYER TO GAIN ACCESS TO OR OPERATE ANY OF THE FOLLOWING:

(1) AN ELECTRONIC COMMUNICATIONS DEVICE PAID FOR IN WHOLE OR IN PART BY THE EMPLOYER; OR

(2) AN ACCOUNT OR SERVICE PROVIDED BY THE EMPLOYER, OBTAINED BY VIRTUE OF THE EMPLOYEE'S EMPLOYMENT RELATIONSHIP WITH THE EMPLOYER, OR USED FOR THE EMPLOYER'S BUSINESS PURPOSES.

(II) DISCIPLINING OR DISCHARGING AN EMPLOYEE FOR TRANSFERRING THE EMPLOYER'S PROPRIETARY OR CONFIDENTIAL INFORMATION OR FINANCIAL DATA TO AN EMPLOYEE'S PERSONAL INTERNET ACCOUNT WITHOUT THE EMPLOYER'S AUTHORIZATION.

(III) CONDUCTING AN INVESTIGATION OR REQUIRING AN EMPLOYEE TO COOPERATE IN AN INVESTIGATION IN ANY OF THE FOLLOWING CIRCUMSTANCES:

(1) IF THERE IS SPECIFIC INFORMATION ABOUT ACTIVITY ON THE EMPLOYEE'S PERSONAL INTERNET ACCOUNT, FOR THE PURPOSE OF ENSURING COMPLIANCE WITH APPLICABLE LAWS, REGULATORY REQUIREMENTS, OR PROHIBITIONS AGAINST WORK-RELATED EMPLOYEE MISCONDUCT; OR

(2) IF THE EMPLOYER HAS SPECIFIC INFORMATION ABOUT AN UNAUTHORIZED TRANSFER OF THE EMPLOYER'S PROPRIETARY INFORMATION, CONFIDENTIAL INFORMATION, OR FINANCIAL DATA TO AN EMPLOYEE'S PERSONAL INTERNET ACCOUNT.

(IV) RESTRICTING OR PROHIBITING AN EMPLOYEE'S ACCESS TO CERTAIN WEBSITES WHILE USING AN ELECTRONIC COMMUNICATIONS DEVICE PAID FOR IN WHOLE OR IN PART BY THE EMPLOYER OR WHILE USING AN EMPLOYER'S NETWORK OR RESOURCES, IN ACCORDANCE WITH STATE AND FEDERAL LAW.

(V) MONITORING, REVIEWING, OR ACCESSING ELECTRONIC DATA STORED ON AN ELECTRONIC COMMUNICATIONS DEVICE PAID FOR IN WHOLE OR IN PART BY THE EMPLOYER, OR TRAVELING THROUGH OR STORED ON AN EMPLOYER'S NETWORK, IN ACCORDANCE WITH STATE AND FEDERAL LAW.

(B) THIS SECTION DOES NOT PROHIBIT OR RESTRICT AN EMPLOYER FROM COMPLYING WITH A DUTY TO SCREEN EMPLOYEES OR APPLICANTS PRIOR TO HIRING OR TO MONITOR OR RETAIN EMPLOYEE COMMUNICATIONS THAT IS ESTABLISHED UNDER FEDERAL LAW OR BY A SELF REGULATORY ORGANIZATION, AS DEFINED IN SECTION 3(A)(26) OF THE SECURITIES AND EXCHANGE ACT OF 1934, 15 USC 78C(A)(26).

(C) THIS SECTION DOES NOT PROHIBIT OR RESTRICT AN EMPLOYER FROM VIEWING, ACCESSING, OR UTILIZING INFORMATION ABOUT AN EMPLOYEE OR APPLICANT THAT CAN BE OBTAINED WITHOUT ANY REQUIRED ACCESS INFORMATION OR THAT IS AVAILABLE IN THE PUBLIC DOMAIN.

1 S 2. The education law is amended by adding a new section 115 to read
2 as follows:

3 S 115. REQUEST FOR ACCESS TO PERSONAL ACCOUNTS OR SERVICES PROHIBITED.
4 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE
5 FOLLOWING MEANINGS:

6 (A) "EDUCATIONAL INSTITUTION" MEANS A PUBLIC OR PRIVATE EDUCATIONAL
7 INSTITUTION OR SEPARATE SCHOOL OR DEPARTMENT OF A PUBLIC OR PRIVATE
8 EDUCATIONAL INSTITUTION, AND INCLUDES AN ACADEMY; ELEMENTARY OR SECOND-
9 ARY SCHOOL; EXTENSION COURSE; KINDERGARTEN; NURSERY SCHOOL; SCHOOL
10 SYSTEM; SCHOOL DISTRICT; INTERMEDIATE SCHOOL DISTRICT; BUSINESS, NURS-
11 ING, PROFESSIONAL, SECRETARIAL, TECHNICAL, OR VOCATIONAL SCHOOL; PUBLIC
12 OR PRIVATE EDUCATIONAL TESTING SERVICE OR ADMINISTRATOR; AND AN AGENT OF
13 AN EDUCATIONAL INSTITUTION. EDUCATIONAL INSTITUTION SHALL BE CONSTRUED
14 BROADLY TO INCLUDE PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION
15 TO THE GREATEST EXTENT CONSISTENT WITH CONSTITUTIONAL LIMITATIONS.

16 (B) "ELECTRONIC COMMUNICATIONS DEVICE" MEANS ANY DEVICE THAT USES
17 ELECTRONIC SIGNALS TO CREATE, TRANSMIT, AND RECEIVE INFORMATION, INCLUD-
18 ING, BUT NOT LIMITED TO COMPUTERS, TELEPHONES, PERSONAL DIGITAL ASSIST-
19 ANTS AND OTHER SIMILAR DEVICES.

20 2. IT SHALL BE UNLAWFUL FOR ANY EDUCATIONAL INSTITUTION TO:

21 (A) REQUEST OR REQUIRE ANY STUDENT OR PROSPECTIVE STUDENT TO DISCLOSE
22 ANY USER NAME, PASSWORD OR OTHER MEANS FOR ACCESSING A PERSONAL ACCOUNT
23 OR SERVICE THROUGH AN ELECTRONIC COMMUNICATIONS DEVICE; OR

24 (B) EXPEL, DISCIPLINE, FAIL TO ADMIT, OR OTHERWISE PENALIZE A STUDENT
25 OR PROSPECTIVE STUDENT FOR FAILURE TO GRANT ACCESS TO, ALLOW OBSERVATION
26 OF, OR DISCLOSE INFORMATION THAT ALLOWS ACCESS TO OR OBSERVATION OF THE
27 STUDENT'S OR PROSPECTIVE STUDENT'S PERSONAL INTERNET ACCOUNT.

28 3. THIS SECTION SHALL NOT PROHIBIT AN EDUCATIONAL INSTITUTION FROM
29 REQUESTING OR REQUIRING A STUDENT TO DISCLOSE ACCESS INFORMATION TO THE
30 EDUCATIONAL INSTITUTION TO GAIN ACCESS TO OR OPERATE ANY OF THE FOLLOW-
31 ING:

32 (A) AN ELECTRONIC COMMUNICATIONS DEVICE PAID FOR IN WHOLE OR IN PART
33 BY THE EDUCATIONAL INSTITUTION; OR

34 (B) AN ACCOUNT OR SERVICE PROVIDED BY THE EDUCATIONAL INSTITUTION THAT
35 IS EITHER OBTAINED BY VIRTUE OF THE STUDENT'S ADMISSION TO THE EDUCA-
36 TIONAL INSTITUTION OR USED BY THE STUDENT FOR EDUCATIONAL PURPOSES.

37 4. THIS SECTION SHALL NOT PROHIBIT OR RESTRICT AN EDUCATIONAL INSTITU-
38 TION FROM VIEWING, ACCESSING, OR UTILIZING INFORMATION ABOUT A STUDENT
39 OR APPLICANT THAT CAN BE OBTAINED WITHOUT ANY REQUIRED ACCESS INFORMA-
40 TION OR THAT IS AVAILABLE IN THE PUBLIC DOMAIN.

41 5. IT IS AN AFFIRMATIVE DEFENSE TO AN ACTION UNDER THIS SECTION THAT
42 THE EDUCATIONAL INSTITUTION ACTED TO COMPLY WITH REQUIREMENTS OF A
43 FEDERAL LAW OR A LAW OF THIS STATE.

44 S 3. This act shall take effect on the one hundred eightieth day after
45 it shall have become a law.