

2434--D

2013-2014 Regular Sessions

I N S E N A T E

January 17, 2013

Introduced by Sens. KLEIN, CARLUCCI, ROBACH -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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.

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

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1 2. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, IT
2 SHALL BE UNLAWFUL FOR ANY EMPLOYER TO REQUEST OR REQUIRE ANY EMPLOYEE OR
3 APPLICANT FOR EMPLOYMENT TO DISCLOSE ANY USER NAME, PASSWORD OR OTHER
4 MEANS FOR ACCESSING A PERSONAL ACCOUNT OR SERVICE THROUGH AN ELECTRONIC
5 COMMUNICATIONS DEVICE.

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

10 (C) FOR THE PURPOSES OF THIS SECTION, "ACCESS" SHALL NOT INCLUDE AN
11 EMPLOYEE OR APPLICANT VOLUNTARILY ADDING AN EMPLOYER OR EMPLOYMENT AGEN-
12 CY TO THEIR LIST OF CONTACTS ASSOCIATED WITH A PERSONAL INTERNET
13 ACCOUNT.

14 3. AN EMPLOYER MAY NOT:

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

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

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

25 5. (A) NOTHING IN THIS SECTION SHALL PROHIBIT AN EMPLOYER FROM:

26 (I) REQUESTING OR REQUIRING AN EMPLOYEE TO DISCLOSE ACCESS INFORMATION
27 TO AN ACCOUNT, SERVICE, OR NETWORK PROVIDED BY THE EMPLOYER WHERE SUCH
28 ACCOUNT, SERVICE, OR NETWORK IS USED FOR BUSINESS PURPOSES AND THE
29 EMPLOYEE WAS PROVIDED PRIOR NOTICE OF THE EMPLOYER'S RIGHT TO REQUEST OR
30 REQUIRE SUCH ACCESS INFORMATION;

31 (II) ACCESSING AN ELECTRONIC COMMUNICATIONS DEVICE PAID FOR IN WHOLE
32 OR IN PART BY THE EMPLOYER WHERE THE PROVISION OF OR PAYMENT FOR SUCH
33 ELECTRONIC COMMUNICATIONS DEVICE WAS CONDITIONED ON THE EMPLOYER'S RIGHT
34 TO ACCESS SUCH DEVICE AND THE EMPLOYEE WAS PROVIDED PRIOR NOTICE OF AND
35 EXPLICITLY AGREED TO SUCH CONDITIONS. HOWEVER, NOTHING IN THIS SUBPARA-
36 GRAPH SHALL PERMIT AN EMPLOYER TO ACCESS ANY PERSONAL ACCOUNTS OR
37 SERVICES ON SUCH DEVICE;

38 (III) COMPLYING WITH A COURT ORDER IN OBTAINING OR PROVIDING INFORMA-
39 TION FROM, OR ACCESS TO, AN EMPLOYEE'S ACCOUNTS OR SERVICES AS SUCH
40 COURT ORDER MAY REQUIRE;

41 (IV) RESTRICTING OR PROHIBITING AN EMPLOYEE'S ACCESS TO CERTAIN
42 WEBSITES WHILE USING AN EMPLOYER'S NETWORK OR WHILE USING AN ELECTRONIC
43 COMMUNICATIONS DEVICE PAID FOR IN WHOLE OR PART BY THE EMPLOYER WHERE
44 THE PROVISION OF OR PAYMENT FOR SUCH ELECTRONIC COMMUNICATIONS DEVICE
45 WAS CONDITIONED ON THE EMPLOYER'S RIGHT TO RESTRICT SUCH ACCESS AND THE
46 EMPLOYEE WAS PROVIDED PRIOR NOTICE OF AND EXPLICITLY AGREED TO SUCH
47 CONDITIONS.

48 (B) THIS SECTION DOES NOT PROHIBIT OR RESTRICT AN EMPLOYER FROM
49 COMPLYING WITH A DUTY TO SCREEN EMPLOYEES OR APPLICANTS PRIOR TO HIRING
50 OR TO MONITOR OR RETAIN EMPLOYEE COMMUNICATIONS THAT IS ESTABLISHED
51 UNDER FEDERAL LAW OR BY A SELF REGULATORY ORGANIZATION, AS DEFINED IN
52 SECTION 3(A)(26) OF THE SECURITIES AND EXCHANGE ACT OF 1934, 15 USC
53 78C(A)(26).

54 (C) THIS SECTION DOES NOT PROHIBIT OR RESTRICT AN EMPLOYER FROM VIEW-
55 ING, ACCESSING, OR UTILIZING INFORMATION ABOUT AN EMPLOYEE OR APPLICANT

1 THAT CAN BE OBTAINED WITHOUT ANY REQUIRED ACCESS INFORMATION OR THAT IS
2 AVAILABLE IN THE PUBLIC DOMAIN.

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

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

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

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

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

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

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

30 (C) FOR THE PURPOSES OF THIS SECTION, "ACCESS" SHALL NOT INCLUDE AN
31 EMPLOYEE OR APPLICANT VOLUNTARILY ADDING AN EMPLOYER OR EMPLOYMENT AGEN-
32 CY TO THEIR LIST OF CONTACTS ASSOCIATED WITH A PERSONAL INTERNET
33 ACCOUNT.

34 3. NOTHING IN THIS SECTION PROHIBITS AN EDUCATIONAL INSTITUTION FROM:

35 (A) ACCESSING AN ELECTRONIC COMMUNICATIONS DEVICE PAID FOR IN WHOLE OR
36 IN PART BY THE EDUCATIONAL INSTITUTION WHERE THE PROVISION OF OR PAYMENT
37 FOR SUCH ELECTRONIC COMMUNICATIONS DEVICE WAS CONDITIONED ON THE EDUCA-
38 TIONAL INSTITUTION'S RIGHT TO ACCESS SUCH DEVICE AND THE STUDENT WAS
39 PROVIDED PRIOR NOTICE OF AND EXPLICITLY AGREED TO SUCH CONDITIONS.
40 HOWEVER, NOTHING IN THIS PARAGRAPH SHALL PERMIT AN EDUCATIONAL INSTITU-
41 TION TO ACCESS ANY PERSONAL ACCOUNTS OR SERVICES ON SUCH DEVICE; OR

42 (B) REQUESTING OR REQUIRING A STUDENT TO DISCLOSE ACCESS INFORMATION
43 TO AN ACCOUNT OR SERVICE PROVIDED BY THE EDUCATIONAL INSTITUTION WHERE
44 SUCH ACCOUNT OR SERVICE IS USED FOR EDUCATIONAL PURPOSES AND THE STUDENT
45 WAS PROVIDED PRIOR NOTICE OF THE EDUCATIONAL INSTITUTION'S RIGHT TO
46 REQUEST OR REQUIRE SUCH ACCESS INFORMATION.

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

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

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