

6871

I N   S E N A T E

March 2, 2016

---

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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 AND PASSWORD OR OTHER  
18    MEANS FOR ACCESSING A PERSONAL ACCOUNT OR SERVICE THROUGH AN ELECTRONIC  
19    COMMUNICATIONS DEVICE.  
20         (B) AN EMPLOYER MAY REQUIRE AN EMPLOYEE TO DISCLOSE ANY USER NAME,  
21    PASSWORD OR OTHER MEANS FOR ACCESSING NONPERSONAL ACCOUNTS OR SERVICES  
22    THAT PROVIDE ACCESS TO THE EMPLOYER'S INTERNAL COMPUTER OR INFORMATION  
23    SYSTEMS.  
24         (C) FOR THE PURPOSES OF THIS SECTION, "ACCESS" SHALL NOT INCLUDE AN  
25    EMPLOYEE OR APPLICANT VOLUNTARILY ADDING AN EMPLOYER OR EMPLOYMENT AGEN-

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

LBD01077-02-5

1 CY TO THEIR LIST OF CONTACTS ASSOCIATED WITH A PERSONAL INTERNET  
2 ACCOUNT.

3 3. AN EMPLOYER MAY NOT:

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

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

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

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

15 (I) REQUESTING OR REQUIRING AN EMPLOYEE TO DISCLOSE ACCESS INFORMATION  
16 TO AN ACCOUNT, SERVICE, OR NETWORK PROVIDED BY THE EMPLOYER WHERE SUCH  
17 ACCOUNT, SERVICE, OR NETWORK IS USED FOR BUSINESS PURPOSES AND THE  
18 EMPLOYEE WAS PROVIDED PRIOR NOTICE OF THE EMPLOYER'S RIGHT TO REQUEST OR  
19 REQUIRE SUCH ACCESS INFORMATION;

20 (II) ACCESSING AN ELECTRONIC COMMUNICATIONS DEVICE PAID FOR IN WHOLE  
21 OR IN PART BY THE EMPLOYER WHERE THE PROVISION OF OR PAYMENT FOR SUCH  
22 ELECTRONIC COMMUNICATIONS DEVICE WAS CONDITIONED ON THE EMPLOYER'S RIGHT  
23 TO ACCESS SUCH DEVICE AND THE EMPLOYEE WAS PROVIDED PRIOR NOTICE OF AND  
24 EXPLICITLY AGREED TO SUCH CONDITIONS. HOWEVER, NOTHING IN THIS SUBPARA-  
25 GRAPH SHALL PERMIT AN EMPLOYER TO ACCESS ANY PERSONAL ACCOUNTS OR  
26 SERVICES ON SUCH DEVICE;

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

30 (IV) RESTRICTING OR PROHIBITING AN EMPLOYEE'S ACCESS TO CERTAIN  
31 WEBSITES WHILE USING AN EMPLOYER'S NETWORK OR WHILE USING AN ELECTRONIC  
32 COMMUNICATIONS DEVICE PAID FOR IN WHOLE OR PART BY THE EMPLOYER WHERE  
33 THE PROVISION OF OR PAYMENT FOR SUCH ELECTRONIC COMMUNICATIONS DEVICE  
34 WAS CONDITIONED ON THE EMPLOYER'S RIGHT TO RESTRICT SUCH ACCESS AND THE  
35 EMPLOYEE WAS PROVIDED PRIOR NOTICE OF AND EXPLICITLY AGREED TO SUCH  
36 CONDITIONS.

37 (B) THIS SECTION DOES NOT PROHIBIT OR RESTRICT AN EMPLOYER FROM  
38 COMPLYING WITH A DUTY TO SCREEN EMPLOYEES OR APPLICANTS PRIOR TO HIRING  
39 OR TO MONITOR OR RETAIN EMPLOYEE COMMUNICATIONS THAT IS ESTABLISHED  
40 UNDER FEDERAL LAW OR BY A SELF REGULATORY ORGANIZATION, AS DEFINED IN  
41 SECTION 3(A)(26) OF THE SECURITIES AND EXCHANGE ACT OF 1934, 15 USC  
42 78C(A)(26).

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

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

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

52 (A) "EDUCATIONAL INSTITUTION" MEANS A PUBLIC OR PRIVATE EDUCATIONAL  
53 INSTITUTION OR SEPARATE SCHOOL OR DEPARTMENT OF A PUBLIC OR PRIVATE  
54 EDUCATIONAL INSTITUTION, AND INCLUDES AN ACADEMY; ELEMENTARY OR SECOND-  
55 ARY SCHOOL; EXTENSION COURSE; KINDERGARTEN; NURSERY SCHOOL; SCHOOL  
56 SYSTEM; SCHOOL DISTRICT; INTERMEDIATE SCHOOL DISTRICT; BUSINESS, NURS-

1 ING, PROFESSIONAL, SECRETARIAL, TECHNICAL, OR VOCATIONAL SCHOOL; PUBLIC  
2 OR PRIVATE EDUCATIONAL TESTING SERVICE OR ADMINISTRATOR; AND AN AGENT OF  
3 AN EDUCATIONAL INSTITUTION. EDUCATIONAL INSTITUTION SHALL BE CONSTRUED  
4 BROADLY TO INCLUDE PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION  
5 TO THE GREATEST EXTENT CONSISTENT WITH CONSTITUTIONAL LIMITATIONS.

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

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

11 (A) REQUEST OR REQUIRE ANY STUDENT OR PROSPECTIVE STUDENT TO DISCLOSE  
12 ANY USER NAME AND PASSWORD OR OTHER MEANS FOR ACCESSING A PERSONAL  
13 ACCOUNT OR SERVICE THROUGH AN ELECTRONIC COMMUNICATIONS DEVICE; OR

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

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

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

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

30 (B) REQUESTING OR REQUIRING A STUDENT TO DISCLOSE ACCESS INFORMATION  
31 TO AN ACCOUNT OR SERVICE PROVIDED BY THE EDUCATIONAL INSTITUTION WHERE  
32 SUCH ACCOUNT OR SERVICE IS USED FOR EDUCATIONAL PURPOSES AND THE STUDENT  
33 WAS PROVIDED PRIOR NOTICE OF THE EDUCATIONAL INSTITUTION'S RIGHT TO  
34 REQUEST OR REQUIRE SUCH ACCESS INFORMATION.

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

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

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