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I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. DINOWITZ, JAFFEE, CRESPO, LAVINE, COLTON, ARROYO, ZEBROWSKI, SCARBOROUGH, TITONE, HOOPER, ROSENTHAL, GALEF, KAVANAGH, WEPRIN, ABINANTI, THIELE, CLARK, OTIS -- Multi-Sponsored by -- M. of A. BRENNAN, COOK, GLICK, GOTTFRIED, HIKIND, JACOBS, McDONOUGH, MILLMAN, PEOPLES-STOKES, RAIA -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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:

Section 1. The labor law is amended by adding a new section 201-g to read as follows:

S 201-G. REQUEST FOR ACCESS TO PERSONAL ACCOUNTS OR SERVICES PROHIBITED. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "APPLICANT" MEANS AN APPLICANT FOR EMPLOYMENT.

(B) "ELECTRONIC COMMUNICATIONS DEVICE" MEANS ANY DEVICE THAT USES ELECTRONIC SIGNALS TO CREATE, TRANSMIT, AND RECEIVE INFORMATION, INCLUD-

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

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ING, BUT NOT LIMITED TO COMPUTERS, TELEPHONES, PERSONAL DIGITAL ASSISTANTS AND OTHER SIMILAR DEVICES.

(C) "EMPLOYER" MEANS (I) A PERSON OR ENTITY ENGAGED IN A BUSINESS, INDUSTRY, PROFESSION, TRADE OR OTHER ENTERPRISE IN THE STATE; OR (II) A UNIT OF STATE OR LOCAL GOVERNMENT; AND (III) SHALL INCLUDE AN AGENT, REPRESENTATIVE OR DESIGNEE OF THE EMPLOYER.

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

(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.

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

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) NOTHING IN THIS SECTION SHALL PROHIBIT AN EMPLOYER FROM:

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

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

(III) COMPLYING WITH A COURT ORDER IN OBTAINING OR PROVIDING INFORMATION FROM, OR ACCESS TO, AN EMPLOYEE'S ACCOUNTS OR SERVICES AS SUCH COURT ORDER MAY REQUIRE;

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

(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.

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

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

(A) "EDUCATIONAL INSTITUTION" MEANS A PUBLIC OR PRIVATE EDUCATIONAL INSTITUTION OR SEPARATE SCHOOL OR DEPARTMENT OF A PUBLIC OR PRIVATE EDUCATIONAL INSTITUTION, AND INCLUDES AN ACADEMY; ELEMENTARY OR SECONDARY SCHOOL; EXTENSION COURSE; KINDERGARTEN; NURSERY SCHOOL; SCHOOL SYSTEM; SCHOOL DISTRICT; INTERMEDIATE SCHOOL DISTRICT; BUSINESS, NURSING, PROFESSIONAL, SECRETARIAL, TECHNICAL, OR VOCATIONAL SCHOOL; PUBLIC OR PRIVATE EDUCATIONAL TESTING SERVICE OR ADMINISTRATOR; AND AN AGENT OF AN EDUCATIONAL INSTITUTION. EDUCATIONAL INSTITUTION SHALL BE CONSTRUED BROADLY TO INCLUDE PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION TO THE GREATEST EXTENT CONSISTENT WITH CONSTITUTIONAL LIMITATIONS.

(B) "ELECTRONIC COMMUNICATIONS DEVICE" MEANS ANY DEVICE THAT USES ELECTRONIC SIGNALS TO CREATE, TRANSMIT, AND RECEIVE INFORMATION, INCLUDING, BUT NOT LIMITED TO COMPUTERS, TELEPHONES, PERSONAL DIGITAL ASSISTANTS AND OTHER SIMILAR DEVICES.

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

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

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

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

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

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

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

4. THIS SECTION SHALL NOT PROHIBIT OR RESTRICT AN EDUCATIONAL INSTITUTION FROM VIEWING, ACCESSING, OR UTILIZING INFORMATION ABOUT A STUDENT OR APPLICANT THAT CAN BE OBTAINED WITHOUT ANY REQUIRED ACCESS INFORMATION OR THAT IS AVAILABLE IN THE PUBLIC DOMAIN.

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

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