STATE OF NEW YORK

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IN ASSEMBLY

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Introduced by M. of A. DINOWITZ, L. ROSENTHAL, GALEF, ABINANTI, FAHY, COLTON, WEPRIN, LAVINE, REYES, CRUZ, LUNSFORD, DICKENS, JACOBSON -- Multi-Sponsored by -- M. of A. COOK, GOTTFRIED, HYNDMAN -- read once and referred to the Committee on Labor -- committee discharged, bill amended, 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, in relation to prohibiting an employer from requesting or requiring that an employee or applicant disclose any user name, password, or other means for accessing a personal account 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-h to read as follows:

§ 201-h. Request for access to personal accounts 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, including, 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; (ii) the state of New York; (iii) a county, city, town, village or any other political subdivision or civil division of the state; (iv) a school

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

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district or any government entity operating a public school, college, or university; (v) a public improvement or special district; (vi) a public authority, commission or public benefit corporation; or (vii) any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of the state; and (viii) shall include an agent, representative or designee of the employer.

(d) "Personal account" means an account or profile on an electronic medium where users may create, share, and view user-generated content, including uploading or downloading videos or still photographs, blogs, video blogs, podcasts, instant messages, or Internet Web site profiles or locations that is used by an employee or an applicant exclusively for personal purposes.

2. (a) Except as provided in paragraph (b) of this subdivision, it shall be unlawful for any employer to request, require or coerce any employee or applicant for employment to:

(i) disclose any user name and password, password, or other authentication information for accessing a personal account through an electronic communications device;

(ii) access the employee's or applicant's personal account in the presence of the employer; or

(iii) reproduce in any manner photographs, video, or other information contained within a personal account obtained by the means prohibited in this paragraph.

(b) An employer may require an employee to disclose any user name, password or other means for accessing nonpersonal accounts 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, agent of the 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, state or local law.

5. (a) Nothing in this section shall prohibit an employer from:

(i) requesting or requiring an employee to disclose access information to an account provided by the employer where such account 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) requesting or requiring an employee to disclose access information to an account known to an employer to be used for business purposes;

(iii) 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 on such device;

(iv) complying with a court order in obtaining or providing information from, or access to, an employee's accounts as such court order may require;

(v) 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, that is available in the public domain, or for the purposes of obtaining reports of misconduct or investigating misconduct, photographs, video, messages, or other information that is voluntarily shared by an employee, client, or other third party that the employee subject to such report or investigation has voluntarily given access to contained within such employee's personal account.

6. The provisions of this section shall not apply to any law enforcement agency, a fire department or a department of corrections and community supervision.

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