

# HOUSE BILL No. 1420

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-5-7; IC 34-30-2-86.8; IC 35-51-22-1.

**Synopsis:** Access to personal Internet accounts. Provides that an employer may not request an employee or applicant for employment to grant access to, allow observation of, or disclose access information that allows access to or observation of the employee's or applicant's personal Internet account. Provides that an educational institution may not request a student or prospective student to grant access to, allow observation of, or disclose access information that allows access to or observation of the student's or prospective student's personal Internet account. Provides that an employer may not discharge, discipline, fail to hire, or otherwise penalize an employee or applicant for employment because of a failure to grant access to, allow observation of, or disclose information that allows access to or observation of the employee's or applicant's personal Internet account. Provides that an educational institution may not expel, discipline, fail to admit, or otherwise penalize a student or prospective student because of a 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. Provides exemptions for: (1) electronic communications devices, accounts, and services provided by or paid for by an employer or educational institution; (2) the unauthorized transfer of an employer's proprietary or confidential information or financial data; or (3) information that can be obtained without access information or is available from public sources. Makes violations a Class B misdemeanor. Allows a civil action for violations or threatened violations. Requires that a person, at least 60 days before bringing a civil action, make a written demand for damages that may not exceed  
(Continued next page)

**Effective:** July 1, 2014.

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## Austin, Ober, Hale

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January 16, 2014, read first time and referred to Committee on Employment, Labor and Pensions.

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Digest Continued

\$1,000. Provides for an affirmative defense if the employer or educational institution acted in compliance with federal or state law, regulations, or rules.



Introduced

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1420

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A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 22-5-7 IS ADDED TO THE INDIANA CODE AS  
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2014]:  
4 **Chapter 7. Access to Personal Internet Accounts**  
5 **Sec. 1. As used in this chapter, "access information" means user**  
6 **name, password, log in information, or other security information**  
7 **that protects access to a personal Internet account.**  
8 **Sec. 2. As used in this chapter, "educational institution" means**  
9 **any of the following:**  
10 (1) A public school (as defined by IC 20-18-2-15(2)).  
11 (2) A nonpublic school (as defined by IC 20-18-2-12).  
12 (3) A charter school (as defined by IC 20-18-2-2.5).  
13 (4) A school created by an interlocal agreement under  
14 IC 36-1-7.  
15 (5) A special education cooperative under IC 20-35-5.

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- 1           **(6) A joint career and technical education program created by**  
 2           **IC 20-37-1.**  
 3           **(7) A state educational institution (as defined by**  
 4           **IC 21-7-13-32).**  
 5           **(8) An approved postsecondary educational institution (as**  
 6           **defined by IC 21-7-13-6(a)).**  
 7           **(9) A kindergarten.**  
 8           **(10) A nursery, preschool, or Montessori school.**  
 9           **(11) A public or private educational testing service or**  
 10           **administrator.**  
 11           **(12) An agent of an entity listed in subdivisions (1) through**  
 12           **(11).**

13           **Sec. 3. As used in this chapter, "employer" means any of the**  
 14           **following:**

- 15           **(1) A private employer (as defined by IC 34-28-8-3).**  
 16           **(2) A public employer (as defined by IC 34-28-8-4).**  
 17           **(3) An agent, representative, or designee of an entity listed in**  
 18           **subdivisions (1) through (2).**

19           **Sec. 4. As used in this chapter, "Internet" has the meaning set**  
 20           **forth in IC 5-22-2-13.5.**

21           **Sec. 5. As used in this chapter, "personal Internet account"**  
 22           **means an account created by using a bounded system established**  
 23           **by an Internet based service that requires a user to input or store**  
 24           **access information using an electronic communications device to**  
 25           **view, create, use, or edit the user's account information, profile,**  
 26           **display, communications, or stored data.**

27           **Sec. 6. An employer doing business in Indiana may not:**

- 28           **(1) request an employee or applicant for employment to:**  
 29           **(A) grant access to;**  
 30           **(B) allow the observation of; or**  
 31           **(C) disclose access information that allows access to or**  
 32           **observation of;**  
 33           **the employee's or applicant's personal Internet account; or**  
 34           **(2) discharge, discipline, fail to hire, or otherwise penalize an**  
 35           **employee or applicant for employment because of a failure to:**  
 36           **(A) grant access to;**  
 37           **(B) allow the observation of; or**  
 38           **(C) disclose information that allows access to or**  
 39           **observation of;**  
 40           **the employee's or applicant's personal Internet account.**

41           **Sec. 7. An educational institution may not:**

- 42           **(1) request a student or prospective student to:**



- 1 (A) grant access to;  
 2 (B) allow observation of; or  
 3 (C) disclose information that allows access to or  
 4 observation of;  
 5 the student's or prospective student's personal Internet  
 6 account; or  
 7 (2) expel, discipline, fail to admit, or otherwise penalize a  
 8 student or prospective student for failure to:  
 9 (A) grant access to;  
 10 (B) allow observation of; or  
 11 (C) disclose information that allows access to or  
 12 observation of;  
 13 the student's or prospective student's personal Internet  
 14 account.
- 15 **Sec. 8. (a) This chapter does not prohibit an employer from**  
 16 **doing any of the following:**
- 17 (1) Requesting or requiring an employee to disclose access  
 18 information for the employer to gain access to or operate any  
 19 of the following:  
 20 (A) An electronic communications device paid for in whole  
 21 or in part by the employer.  
 22 (B) An account or service:  
 23 (i) provided by the employer;  
 24 (ii) obtained by virtue of the employee's employment  
 25 relationship with the employer; or  
 26 (iii) used for the employer's business purposes.
- 27 (2) Disciplining or discharging an employee for transferring  
 28 the employer's:  
 29 (A) proprietary information;  
 30 (B) confidential information; or  
 31 (C) financial data;  
 32 to the employee's personal Internet account without the  
 33 employer's authorization.
- 34 (3) Conducting an investigation or requiring an employee to  
 35 cooperate in an investigation in any of the following  
 36 circumstances:  
 37 (A) Whenever the employer obtains specific information  
 38 concerning activity involving an employee's personal  
 39 Internet account to ensure compliance with applicable  
 40 laws, regulatory requirements, or prohibitions against  
 41 work related employee misconduct.  
 42 (B) Whenever the employer obtains specific information



- 1 concerning an unauthorized transfer of the employer's  
 2 proprietary information, confidential information, or  
 3 financial data to an employee's personal Internet account.
- 4 (4) In accordance with state or federal law, restricting or  
 5 prohibiting an employee's access to certain Internet web sites  
 6 while the employee is using:
- 7 (A) an electronic communications device paid for in whole  
 8 or in part by the employer; or  
 9 (B) an employer's network or resources.
- 10 (5) In accordance with state or federal law, monitoring,  
 11 reviewing, or accessing electronic data:
- 12 (A) stored on an electronic communications device paid for  
 13 in whole or in part by the employer; or  
 14 (B) traveling through or stored on an employer's network.
- 15 (b) This chapter does not prohibit or restrict an employer from  
 16 complying with a duty established under federal law or by a  
 17 self-regulatory organization (as defined by Section 3(a)(26) of the  
 18 federal Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(26))  
 19 to:
- 20 (1) screen an employee or applicant for employment prior to  
 21 hiring; or  
 22 (2) monitor or retain employee communications.
- 23 (c) This chapter does not prohibit or restrict an employer from  
 24 viewing, accessing, or using information about an employee or  
 25 applicant for employment that:
- 26 (1) can be obtained without any required access information;  
 27 or  
 28 (2) is available from public sources.
- 29 Sec. 9. (a) This chapter does not prohibit an educational  
 30 institution from requesting or requiring a student to disclose access  
 31 information for the educational institution to gain access to or  
 32 operate any of the following:
- 33 (1) An electronic communications device paid for in whole or  
 34 in part by the educational institution.  
 35 (2) An account or service provided by the educational  
 36 institution that is:
- 37 (A) obtained by virtue of the student's admission to the  
 38 educational institution; or  
 39 (B) used by the student for educational purposes.
- 40 (b) This chapter does not prohibit or restrict an educational  
 41 institution from viewing, accessing, or using information about a  
 42 student or prospective student that:



- 1           (1) can be obtained without any required access information;  
 2           or  
 3           (2) is available from public sources.
- 4           **Sec. 10. (a) This chapter does not create a duty for an employer**  
 5 **or educational institution to search or monitor activity involving a**  
 6 **personal Internet account.**
- 7           **(b) An employer is not liable under this chapter for failure to:**  
 8           **(1) request or require that an employee or an applicant for**  
 9           **employment:**  
 10           **(A) grant access to;**  
 11           **(B) allow observation of; or**  
 12           **(2) disclose information that allows:**  
 13           **(A) access to; or**  
 14           **(B) observation of;**  
 15 **the employee's or applicant's personal Internet account.**
- 16           **(c) An educational institution is not liable under this chapter for**  
 17 **failure to:**  
 18           **(1) request or require that a student or prospective student:**  
 19           **(A) grant access to; or**  
 20           **(B) allow observation of; or**  
 21           **(2) disclose information that allows:**  
 22           **(A) access to; or**  
 23           **(B) observation of;**  
 24 **the student's or prospective student's personal Internet account.**
- 25           **Sec. 11. A person who knowingly violates section 6 or 7 of this**  
 26 **chapter commits a Class B misdemeanor.**
- 27           **Sec. 12. (a) A person who believes that a violation of this chapter**  
 28 **has occurred or is threatened to occur may bring a civil action for**  
 29 **relief, including any of the following:**  
 30           **(1) The greater of:**  
 31           **(A) actual and consequential damages resulting from the**  
 32           **violation or threatened violation; or**  
 33           **(B) liquidated damages not to exceed one thousand dollars**  
 34           **(\$1,000).**  
 35           **(2) Reasonable attorney's fees, litigation expenses, and costs.**  
 36           **(3) Declaratory or equitable relief, including injunctive relief.**  
 37           **(4) Other relief the court considers proper.**
- 38           **(b) An action under subsection (a) may be instituted in a circuit**  
 39 **or superior court in the county in which:**  
 40           **(1) the violation is alleged to have occurred or is threatened to**  
 41           **occur; or**  
 42           **(2) the alleged violator is found, resides, or transacts business.**



- 1           **(c) The remedies and penalties set forth in subsection (a) are:**  
 2           **(1) cumulative; and**  
 3           **(2) in addition to any other remedies and penalties imposed**  
 4           **for a violation of this chapter.**

5           **Sec. 13. (a) At least sixty (60) days before:**

- 6           **(1) bringing a civil action under section 12 of this chapter; or**  
 7           **(2) adding a claim for damages to a civil action seeking**  
 8           **injunctive relief under section 12 of this chapter;**  
 9           **the person bringing the civil action shall make a written demand**  
 10           **for damages that may not exceed one thousand dollars (\$1,000).**

11           **(b) The demand described in subsection (a) must:**

- 12           **(1) include reasonable documentation of the alleged or**  
 13           **threatened violation; and**  
 14           **(2) be:**  
 15           **(A) served in the manner provided by law for service of**  
 16           **process in civil actions; or**  
 17           **(B) mailed by certified mail with sufficient postage**  
 18           **attached, and addressed to the alleged violator at the**  
 19           **alleged violator's residence, principal office, or place of**  
 20           **business.**

21           **Sec. 14. It is an affirmative defense to an action for the violation**  
 22           **of this chapter that the employer or educational institution acted**  
 23           **in compliance with the requirements of federal or state law,**  
 24           **regulations, or rules.**

25           SECTION 2. IC 34-30-2-86.8 IS ADDED TO THE INDIANA  
 26           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 27           [EFFECTIVE JULY 1, 2014]: **Sec. 86.8. IC 22-5-7-10 (Concerning**  
 28           **an employer's or educational institution's access to an employee's**  
 29           **or student's personal Internet account).**

30           SECTION 3. IC 35-51-22-1, AS AMENDED BY P.L.107-2012,  
 31           SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32           JULY 1, 2014]: Sec. 1. The following statutes define crimes in IC 22:

- 33           IC 22-1-1-22 (Concerning the department of labor).  
 34           IC 22-2-2-11 (Concerning wages, hours, and benefits).  
 35           IC 22-2-7-7 (Concerning wages, hours, and benefits).  
 36           IC 22-3-1-5 (Concerning worker's compensation system).  
 37           IC 22-4-11.5-10 (Concerning unemployment compensation  
 38           system).  
 39           IC 22-4-19-6 (Concerning unemployment compensation system).  
 40           IC 22-4-29-14 (Concerning unemployment compensation system).  
 41           IC 22-4-34-3 (Concerning unemployment compensation system).  
 42           IC 22-4-34-4 (Concerning unemployment compensation system).





- 1 IC 22-4-34-5 (Concerning unemployment compensation system).  
2 IC 22-4.1-4-4 (Concerning department of workforce  
3 development).  
4 IC 22-4.1-21-38 (Concerning postsecondary proprietary  
5 educational institution accreditation).  
6 IC 22-5-1-1 (Concerning unlawful labor practices).  
7 **IC 22-5-7-11 (Concerning unlawful labor practices).**  
8 IC 22-6-2-13 (Concerning labor relations).  
9 IC 22-7-1-3 (Concerning labor organizations).  
10 IC 22-8-1.1-24.2 (Concerning occupational health and safety).  
11 IC 22-8-1.1-49 (Concerning occupational health and safety).  
12 IC 22-9.5-10-1 (Concerning Indiana fair housing).  
13 IC 22-11-14-3 (Concerning building and safety regulations).  
14 IC 22-11-14-6 (Concerning building and safety regulations).  
15 IC 22-11-14.5-9 (Concerning building and safety regulations).  
16 IC 22-11-14.5-10 (Concerning building and safety regulations).  
17 IC 22-11-14.5-11 (Concerning building and safety regulations).  
18 IC 22-11-14.5-12 (Concerning building and safety regulations).  
19 IC 22-11-15-6 (Concerning building and safety regulations).  
20 IC 22-11-17-3 (Concerning building and safety regulations).  
21 IC 22-11-17-4 (Concerning building and safety regulations).  
22 IC 22-11-18-5 (Concerning building and safety regulations).  
23 IC 22-11-20-6 (Concerning building and safety regulations).  
24 IC 22-15-4-7 (Concerning building and equipment laws).  
25 IC 22-15-7-9 (Concerning building and equipment laws).

