

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1130 Session of 2013

INTRODUCED BY WHITE, SCHLOSSBERG, K. BOYLE, O'BRIEN, BROWNLEE, D. COSTA, FLECK, MILLARD, COHEN, KORTZ, READSHAW, CALTAGIRONE, O'NEILL, MOUL, MATZIE, P. DALEY, KINSEY, MOLCHANY, FREEMAN, GOODMAN, DAVIDSON, SABATINA AND QUINN, APRIL 8, 2013

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 16, 2013

AN ACT

1 ~~Providing for social media protection in employment and relating <--~~
2 ~~to certain educational institutions; establishing a cause of~~
3 ~~action; and prescribing penalties.~~

4 RELATING TO, IN LABOR AND EMPLOYMENT SETTINGS, THE PROTECTION OF <--
5 USER NAMES, PASSWORDS OR OTHER MEANS NECESSARY TO ACCESS A
6 PRIVATE OR PERSONAL SOCIAL MEDIA ACCOUNT, SERVICE OR INTERNET
7 WEBSITE.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 ~~Section 1. Short title. <--~~

11 ~~This act shall be known and may be cited as the Social Media~~
12 ~~Privacy Protection Act.~~

13 ~~Section 2. Definitions.~~

14 ~~The following words and phrases when used in this act shall~~
15 ~~have the meanings given to them in this section unless the~~
16 ~~context clearly indicates otherwise:~~

17 ~~"Educational institution." A public or private educational~~
18 ~~institution that offers students an organized course of study or~~

1 ~~training that is academic, technical, trade oriented or~~
2 ~~preparatory for gainful employment in a recognized occupation.~~

3 ~~"Employer." A person, including a State or local government~~
4 ~~entity, engaged in a business, an industry, a profession, a~~
5 ~~trade or other enterprise in this Commonwealth or a unit of~~
6 ~~State or local government. The term includes an agent, a~~
7 ~~representative or a designee of such person.~~

8 ~~"Personal electronic account." An account created through an~~
9 ~~electronic medium or a service that allows users to create,~~
10 ~~edit, store, share or view user-generated content, including~~
11 ~~videos or photographs, blogs, video blogs, podcasts, messages,~~
12 ~~electronic mail, profiles, locations or any other information or~~
13 ~~data.~~

14 ~~"Social media." The term includes, but is not limited to,~~
15 ~~social networking Internet websites and any other forms of media~~
16 ~~or services that involve any means of creating, sharing and~~
17 ~~viewing user-generated information through a personal electronic~~
18 ~~account or Internet website.~~

19 ~~Section 3. Social media privacy protection in employment.~~

20 ~~(a) General rule. An employer may not:~~

21 ~~(1) Request or require an employee or prospective~~
22 ~~employee to disclose any user name, password or other means~~
23 ~~for accessing private or personal social media.~~

24 ~~(2) Request or require an employee or prospective~~
25 ~~employee to access private or personal social media in the~~
26 ~~presence of the employer.~~

27 ~~(3) Request or require an employee or prospective~~
28 ~~employee to divulge information contained on private or~~
29 ~~personal social media, except as provided under subsection~~

30 ~~(b).~~

1 ~~(4) Discharge, discipline or otherwise penalize or~~
2 ~~threaten to discharge, discipline or otherwise penalize an~~
3 ~~employee for the employee's refusal to disclose any~~
4 ~~information specified under this subsection.~~

5 ~~(5) Fail or refuse to hire any prospective employee as a~~
6 ~~result of the individual's refusal to disclose any~~
7 ~~information specified under this subsection.~~

8 ~~(b) Exceptions. Nothing in subsection (a) shall be~~
9 ~~construed to prohibit an employer from:~~

10 ~~(1) Promulgating and maintaining workplace policies~~
11 ~~governing the use of the employer's electronic communication~~
12 ~~devices. This includes policies regarding an employee's use~~
13 ~~of the Internet, social media accounts, services or Internet~~
14 ~~websites and e mail use pertaining to the employer.~~

15 ~~(2) Monitoring the usage of the employer's electronic~~
16 ~~communication devices and nonpersonal accounts or services~~
17 ~~that provide access to the employer's internal computer or~~
18 ~~information systems so long as the employer is in compliance~~
19 ~~with subsection (a).~~

20 ~~(3) Obtaining or viewing any information concerning an~~
21 ~~employee or prospective employee that exists within the~~
22 ~~public domain.~~

23 ~~Section 4. Social media privacy protection in educational~~
24 ~~institutions.~~

25 ~~(a) General rule. An educational institution may not:~~

26 ~~(1) Request or require a student or prospective student~~
27 ~~to disclose any user name, account name, password or other~~
28 ~~means for accessing private or personal social media.~~

29 ~~(2) Request or require a student or prospective student~~
30 ~~to access private or personal social media in the presence of~~

1 ~~an employee or agent of the educational institution.~~

2 ~~(3) Request or require a student or prospective student~~
3 ~~to divulge information contained in private or personal~~
4 ~~social media, except as provided under subsection (b).~~

5 ~~(4) Expel, discipline, fail to admit or otherwise~~
6 ~~penalize a student or prospective student for failure to~~
7 ~~grant access to, allow observation of or disclose information~~
8 ~~that allows access to or observation of the student's or~~
9 ~~prospective student's private and personal social media.~~

10 ~~(b) Exceptions. Nothing in subsection (a) shall be~~
11 ~~construed to prohibit an educational institution from:~~

12 ~~(1) Requesting or requiring a student to disclose any~~
13 ~~user name, password or other means for accessing an~~
14 ~~electronic communications device provided and owned by the~~
15 ~~educational institution.~~

16 ~~(2) Monitoring an account or service provided and owned~~
17 ~~by the educational institution.~~

18 ~~(3) Viewing, accessing or utilizing information about a~~
19 ~~student or prospective student that can be obtained without~~
20 ~~any required access information or that is available in the~~
21 ~~public domain.~~

22 ~~Section 5. Cause of action.~~

23 ~~An individual who is the subject of a violation of this act~~
24 ~~may bring a civil action in a court of competent jurisdiction~~
25 ~~against an employer or educational institution within three~~
26 ~~years from the date upon which the violation occurs.~~

27 ~~Section 6. Penalties.~~

28 ~~An employer or educational institution found by a court of~~
29 ~~competent jurisdiction to have violated a provision of this act~~
30 ~~commits a misdemeanor and shall, upon conviction, be sentenced~~

1 ~~to pay a fine of not more than \$5,000 per violation, reasonable~~
2 ~~attorney fees and court costs. The court may order an employer~~
3 ~~or educational institution to pay damages to the aggrieved~~
4 ~~individual in an amount not to exceed \$1,000 per violation as~~
5 ~~well as to take reasonable corrective actions.~~

6 ~~Section 7. Protection of employees.~~

7 ~~(a) General rule. It shall be unlawful for an employer to~~
8 ~~discharge, threaten or otherwise discriminate or retaliate~~
9 ~~against an employee regarding the employee's compensation,~~
10 ~~terms, conditions, location or privileges of employment because:~~

11 ~~(1) The employee or any person acting on behalf of the~~
12 ~~employee makes a good faith report, verbally or in writing,~~
13 ~~of an alleged violation of this act.~~

14 ~~(2) The employee is requested to participate in a legal~~
15 ~~action, investigation, hearing or inquiry relating to an~~
16 ~~alleged violation of this act.~~

17 ~~(b) Scope of protection. Any person who in good faith~~
18 ~~alleges noncompliance with this act shall be afforded the rights~~
19 ~~provided by this act, notwithstanding the person's failure to~~
20 ~~prevail on the merits.~~

21 ~~(c) Rebuttable presumption. Taking adverse action against~~
22 ~~an employee within 180 days of the person's exercise of rights~~
23 ~~protected under this act shall raise a rebuttable presumption of~~
24 ~~having done so in retaliation for the exercise of those rights.~~

25 ~~Section 8. Effective date.~~

26 ~~This act shall take effect in 60 days.~~

27 SECTION 1. SHORT TITLE.

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28 THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE SOCIAL MEDIA
29 PRIVACY PROTECTION ACT.

30 SECTION 2. DEFINITIONS.

1 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
2 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
3 CONTEXT CLEARLY INDICATES OTHERWISE:

4 "EMPLOYER." A PERSON ENGAGED IN A BUSINESS, AN INDUSTRY, A
5 PROFESSION, A TRADE OR OTHER ENTERPRISE IN THIS COMMONWEALTH OR
6 A UNIT OF STATE OR LOCAL GOVERNMENT. THE TERM INCLUDES AN AGENT,
7 A REPRESENTATIVE OR A DESIGNEE OF THE EMPLOYER.

8 "SOCIAL MEDIA." INCLUDES, BUT IS NOT LIMITED TO, SOCIAL
9 NETWORKING INTERNET WEBSITES AND ANY OTHER FORMS OF MEDIA THAT
10 INVOLVE ANY MEANS OF CREATING, SHARING AND VIEWING USER-
11 GENERATED INFORMATION THROUGH AN ACCOUNT, SERVICE OR INTERNET
12 WEBSITE.

13 SECTION 3. PRIVACY PROTECTION.

14 (A) GENERAL RULE.--AN EMPLOYER MAY NOT REQUEST OR REQUIRE
15 THAT AN EMPLOYEE OR PROSPECTIVE EMPLOYEE DISCLOSE ANY USER NAME,
16 PASSWORD OR OTHER MEANS FOR ACCESSING A PRIVATE OR PERSONAL
17 SOCIAL MEDIA ACCOUNT, SERVICE OR INTERNET WEBSITE.

18 (B) REFUSAL.--AN EMPLOYER MAY NOT DO ANY OF THE FOLLOWING:

19 (1) DISCHARGE, DISCIPLINE OR OTHERWISE PENALIZE OR
20 THREATEN TO DISCHARGE, DISCIPLINE OR OTHERWISE PENALIZE AN
21 EMPLOYEE FOR AN EMPLOYEE'S REFUSAL TO DISCLOSE ANY
22 INFORMATION SPECIFIED UNDER SUBSECTION (A).

23 (2) FAIL OR REFUSE TO HIRE ANY PROSPECTIVE EMPLOYEE AS A
24 RESULT OF THE PROSPECTIVE EMPLOYEE'S REFUSAL TO DISCLOSE ANY
25 INFORMATION SPECIFIED UNDER SUBSECTION (A).

26 (C) EMPLOYER'S PRIVACY PROTECTION.--AN EMPLOYER SHALL NOT BE
27 RESTRICTED OR LIMITED FROM ANY OF THE FOLLOWING:

28 (1) THE EMPLOYER'S RIGHT TO PROMULGATE AND MAINTAIN
29 WORKPLACE POLICIES GOVERNING THE USE OF AN EMPLOYER'S
30 ELECTRONIC COMMUNICATION DEVICES. THIS INCLUDES POLICIES

1 REGARDING THE EMPLOYEE'S USE OF THE INTERNET, SOCIAL MEDIA
2 ACCOUNTS, SERVICES OR INTERNET WEBSITES AND E-MAIL USE
3 PERTAINING TO THE EMPLOYER.

4 (2) THE EMPLOYER'S RIGHT TO MONITOR THE USAGE OF THE
5 EMPLOYER'S ELECTRONIC COMMUNICATION DEVICES SO LONG AS THE
6 EMPLOYER IS IN COMPLIANCE WITH SUBSECTIONS (A) AND (B).

7 (3) THE EMPLOYER'S RIGHT TO OBTAIN OR VIEW ANY
8 INFORMATION CONCERNING AN EMPLOYEE OR PROSPECTIVE EMPLOYEE
9 THAT EXISTS WITHIN THE PUBLIC DOMAIN.

10 (D) PENALTY.--ANY EMPLOYER WHO VIOLATES SUBSECTION (A) OR
11 (B) SHALL BE SUBJECT TO A CIVIL PENALTY OF UP TO \$5,000 IN
12 ADDITION TO REIMBURSEMENT FOR REASONABLE ATTORNEY FEES.

13 SECTION 4. EFFECTIVE DATE.

14 THIS ACT SHALL TAKE EFFECT IN 60 DAYS.