

SENATE BILL 1808

By Niceley

AN ACT to amend Tennessee Code Annotated, Title 5;
Title 6; Title 7; Title 8; Title 18; Title 49 and Title
50, relative to employee online privacy.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding Sections 2 through 5 of this act as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the "Employee Online Privacy Act of 2014".

SECTION 3. As used in this part:

(1) "Adverse action" means to discharge, threaten, or otherwise discriminate against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges;

(2) "Applicant" means an individual who has applied for employment with an employer;

(3) "Employer" means a person or entity that employs one (1) or more employees and includes the state and its political subdivisions and an agent, representative, or designee of the employer;

(4) "Law enforcement agency" has the same meaning as defined in § 39-17-314;

(5) "Personal Internet account":

(A) Means an online account that is used by an employee or applicant exclusively for personal communications unrelated to any business purpose of the employer; and includes any electronic medium or service where users may create, share or view content, including, emails, messages, instant messages,

text messages, blogs, podcasts, photographs, videos or user-created profiles;

and

(B) Does not include an account created, maintained, used, or accessed by an employee or applicant for business-related communications or for a business purpose of the employer.

SECTION 4.

(a) An employer shall not:

(1) Request or require an employee or an applicant to disclose a password that allows access to the employee's or applicant's personal Internet account;

(2) Compel an employee or an applicant to add the employer or an employment agency to the employee's or applicant's list of contacts associated with a personal Internet account;

(3) Compel an employee or an applicant to access a personal Internet account in the presence of the employer in a manner that enables the employer to observe the contents of the employee's or applicant's personal Internet account; or

(4) Take adverse action, fail to hire, or otherwise penalize an employee or applicant because of a failure to disclose information or take an action specified in Section 4(a)(1)-(3).

(b) Unless otherwise provided by law, an employer is not prohibited from:

(1) Requesting or requiring an employee to disclose a username or password required only to gain access to:

(A) An electronic communications device supplied by or paid for wholly or in part by the employer; or

(B) An account or service provided by the employer that is obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes;

(2) Disciplining or discharging an employee for transferring the employer's proprietary or confidential information or financial data to an employee's personal Internet account without the employer's authorization;

(3) Conducting an investigation or requiring an employee to cooperate in an investigation if:

(A) There is specific information on the employee's personal Internet account regarding compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct;
or

(B) The employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information, or financial data to an employee's personal Internet account;

(4) Restricting or prohibiting an employee's access to certain web sites while using an electronic communications device supplied by or paid for wholly or in part by the employer or while using an employer's network or resources, in accordance with state and federal law;

(5) Monitoring, reviewing, accessing, or blocking electronic data stored on an electronic communications device supplied by or paid for wholly or in part by the employer, or stored on an employer's network, in accordance with state and federal law;

(6) Complying with a duty to screen employees or applicants before hiring or to monitor or retain employee communications:

(A) That is established under federal law or by a "self-regulatory organization", as defined in the Securities and Exchange Act of 1934, 15 U.S.C. § 78c(a);

(B) For purposes of law enforcement employment; or

(C) For purposes of an investigation into law enforcement officer conduct performed by a law enforcement agency; or

(7) Viewing, accessing, or using information about an employee or applicant that can be obtained without violating subsection (a) or information that is available in the public domain.

(c) Conducting an investigation or requiring an employee to cooperate in an investigation as specified in Section 4(b)(3) includes requiring the employee to share the reported content or information in order to make a factual determination.

(d)

(1) This part does not create a duty for an employer to search or monitor the activity of a personal Internet account.

(2) An employer is not liable under this part for a failure to request or require that an employee or applicant 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.

SECTION 5.

(a) The attorney general and reporter may bring a civil action against an employer in a court of competent jurisdiction on behalf of a resident aggrieved by a violation of this part. If the court finds a violation of this part, the court shall award the state not more than one thousand dollars (\$1,000) for each violation of Section 4(a)(1)—(4) found.

(b) An individual who is the subject of a violation of this part may bring a civil action against an employer in a court of competent jurisdiction to enjoin any acts in violation of this part and may recover not more than one thousand dollars (\$1,000) in

damages for each violation of Section 4(a)(1)—(4) against the individual found plus reasonable attorney fees and court costs.

SECTION 6. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 7. This act shall take effect January 1, 2015, the public welfare requiring it, and shall not apply to a contract entered into prior to that date that permits an employer action prohibited by this act unless or until the contract is renewed on or after that date.