

2013 DRAFTING REQUEST

Bill

Received: 2/8/2013	Received By: gmalaise
Wanted: As time permits	Same as LRB:
For: Melissa Sargent (608) 266-0960	By/Representing: Aaron Collins
May Contact:	Drafter: gmalaise
Subject: Employ Priv - miscellaneous Privacy	Addl. Drafters:
	Extra Copies:

Submit via email: **YES**
 Requester's email: **Rep.Sargent@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Employer and educational institution access to employee and student personal Internet accounts

Instructions:

See attached--draft up WI version of MI HB 5523

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 2/28/2013	evinz 3/5/2013	phenry 3/5/2013	_____			
/1	gmalaise 4/3/2013			_____	srose 3/5/2013		State S&L
/2	gmalaise 5/17/2013	evinz 4/4/2013	jmurphy 4/4/2013	_____	sbasford 4/4/2013	lparisi 4/15/2013	State S&L
/3		evinz	jmurphy	_____	sbasford	sbasford	State

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		5/21/2013	5/21/2013	_____	5/21/2013	5/21/2013	S&L

FE Sent For:

4/15/2013 12:00:00 AM,4/15/2013 12:00:00 AM

<END>

13 at intro

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1/3 lev 5/21/13
04-15-2013 (see attached) ("1/2")
Jm km 5/2
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1?	gmalaise	1 eev 3/5/13	3 7/5 ph	AK ph			

FE Sent For:

<END>

Malaise, Gordon

From: Gallagher, Michael
Sent: Thursday, February 07, 2013 11:47 AM
To: Malaise, Gordon
Subject: FW: Email from LRB Website

Gordon, this looks like a request for you.

From: Collins, Aaron
Sent: Thursday, February 07, 2013 11:43 AM
To: Gallagher, Michael
Subject: Email from LRB Website

Hi Michael,

Representative Sargent is interested in drafting a bill similar to Michigan's House Bill 5523: <http://www.legislature.mi.gov/documents/2011-2012/publicact/pdf/2012-PA-0478.pdf>

This bill prohibits an employer from requesting an employee or potential employee to give them their Facebook, Twitter, or other social media passwords. Would you be the right person to help in drafting this?

Aaron Collins

Office of Representative Melissa Sargent

48th Assembly District

8 West, State Capitol

608-266-0960

aaron.collins@legis.wi.gov

Sec. 4. An educational institution shall not do any of the following:

- (a) Request a student or prospective student 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.
- (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.

Sec. 5. (1) This act does not prohibit an employer from doing any of the following:

(a) Requesting or requiring an employee to disclose access information to the employer to gain access to or operate any of the following:

- (i) An electronic communications device paid for in whole or in part by the employer.
- (ii) An account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes.

(b) 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.

(c) Conducting an investigation or requiring an employee to cooperate in an investigation in any of the following circumstances:

(i) If there is specific information about activity on the employee's personal internet account, for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct.

(ii) If 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.

(d) Restricting or prohibiting an employee's access to certain websites while using an electronic communications device paid for in whole or in part by the employer or while using an employer's network or resources, in accordance with state and federal law.

(e) Monitoring, reviewing, or accessing electronic data stored on an electronic communications device paid for in whole or in part by the employer, or traveling through or stored on an employer's network, in accordance with state and federal law.

(2) This act 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).

(3) This act 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.

Sec. 6. (1) This act does not prohibit an educational institution from requesting or requiring a student to disclose access information to the educational institution to gain access to or operate any of the following:

- (a) An electronic communications device paid for in whole or in part by the educational institution.
- (b) An account or service provided by the educational institution that is either obtained by virtue of the student's admission to the educational institution or used by the student for educational purposes.

(2) This act does 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.

Sec. 7. (1) This act does not create a duty for an employer or educational institution to search or monitor the activity of a personal internet account.

(2) An employer or educational institution is not liable under this act for failure to request or require that an employee, a student, an applicant for employment, or a prospective student grant access to, allow observation of, or disclose information that allows access to or observation of the employee's, student's, applicant for employment's, or prospective student's personal internet account.

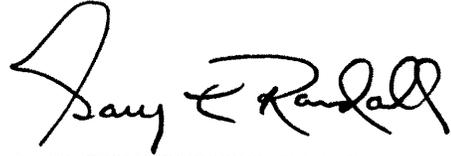
Sec. 8. (1) A person who violates section 3 or 4 is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.

(2) An individual who is the subject of a violation of this act may bring a civil action to enjoin a violation of section 3 or 4 and may recover not more than \$1,000.00 in damages plus reasonable attorney fees and court costs. Not later than 60 days before filing a civil action for damages or 60 days before adding a claim for damages to an action seeking

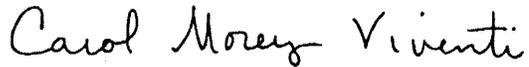
injunctive relief, the individual shall make a written demand of the alleged violator for not more than \$1,000.00. The written demand shall include reasonable documentation of the violation. The written demand and documentation shall either be served in the manner provided by law for service of process in civil actions or mailed by certified mail with sufficient postage affixed and addressed to the alleged violator at his or her residence, principal office, or place of business. An action under this subsection may be brought in the district court for the county where the alleged violation occurred or for the county where the person against whom the civil complaint is filed resides or has his or her principal place of business.

(3) It is an affirmative defense to an action under this act that the employer or educational institution acted to comply with requirements of a federal law or a law of this state.

This act is ordered to take immediate effect.



.....
Clerk of the House of Representatives



.....
Secretary of the Senate

Approved

.....
Governor



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-155177

GMM/.....

Leev

IN 2/28
S on

SA
KREF NA

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gen cat

1 AN ACT **relating to:** employer access to, and observation of, the personal
2 Internet accounts of employees and applicants for employment; educational
3 institution access to, and observation of, the personal Internet accounts of
4 students and prospective students; and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law does not regulate employer access to, or observation of, the personal Internet accounts of employees and applicants for employment or educational institution access to, or observation of, the personal Internet accounts of students and prospective students.

This bill prohibits an employer or educational institution from: 1) requesting an employee, applicant for employment, student, or prospective student to grant access to, allow observation of, or disclose information that allows access to or observation of the personal Internet account of the employee, applicant, student, or prospective student; and 2) discharging, expelling, suspending, disciplining, or otherwise penalizing or discriminating against any person for exercising the right to refuse such a request, opposing such a practice, filing a complaint or attempting to enforce that right, or testifying or assisting in any action or proceeding to enforce that right.

The bill, however, permits an employer or educational institution to do any of the following:

1. Request or require an employee or student to disclose access information to the employer or educational institution in order for the employer or educational institution to gain access to or operate an electronic communications device paid for in whole or in part by the employer or educational institution or to gain access to an

account or service that is provided by the employer or educational institution, that the employee or student obtained by virtue of the employment relationship or admission to the educational institution, or that is used for business or educational purposes.

2. View, access, or use information about an employee, applicant for employment, student, or prospective student that can be obtained without access information or that is available in the public domain.

The bill, in addition, permits an employer to do any of the following:

1. Discharge or discipline an employee for transferring the employer's proprietary or confidential information or financial data to the employee's personal Internet account without the employer's authorization.

2. Conduct an investigation or require an employee to cooperate in an investigation of any alleged unauthorized transfer of the employer's proprietary or confidential information or financial data to the employee's personal Internet account or of any other alleged employment-related misconduct or violation of the law.

3. Restrict or prohibit an employee's access to certain Internet sites while using an electronic communications device paid for in whole or in part by the employer or while using the employer's network or other resources.

4. Monitor, review, or access electronic data that is stored on an electronic communications device paid for in whole or in part by the employer or electronic data that is traveling through or stored on the employer's network.

5. Comply with a duty to screen employees or applicants for employment prior to hiring or to monitor or retain employee communications that is established under federal law or by a self-regulatory organization, as defined under the federal Securities and Exchange Act of 1934.

The bill provides that an employer or educational institution does not have a duty to search or monitor the activity of any personal Internet account and that an employer or educational institution is not liable for any failure to request or require access to or observation of a personal Internet account of an employee, applicant for employment, student, or prospective student.

For purposes of the bill: 1) "access information" means a user name, password, login information, or any other security information that protects access to a personal Internet account; 2) "educational institution" means an institution of higher education, a technical college, a proprietary school, a public school, a charter school, a private school, or a private educational testing service or administrator; 3) "employer" includes the state; and 4) "personal Internet account" means an account created within a bounded system established by an Internet-based service that requires a user to input or store access information via an electronic device in order to view, create, use, or edit the user's account information, profile, display, communications, or stored data.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 995.55 of the statutes is created to read:

2 **995.55 Internet privacy protection.** (1) DEFINITIONS. In this section:

3 (a) "Access information" means a user name, password, login information, or
4 any other security information that protects access to a personal Internet account.

5 (b) "Educational institution" means an institution of higher education, as
6 defined in s. 108.02 (18); a technical college established under s. 38.02; a school, as
7 defined in s. 38.50 (11) (a) 2.; a public school, as described in s. 115.01 (1); a charter
8 school, as defined in s. 115.001 (1); a private school, as defined in s. 115.001 (3r); or
9 a private educational testing service or administrator.

10 (c) "Employer" means any person engaging in any activity, enterprise, or
11 business employing at least one individual. "Employer" includes the state, its
12 political subdivisions, and any office, department, independent agency, authority,
13 institution, association, society, or other body in state or local government created or
14 authorized to be created by the constitution or any law, including the legislature and
15 the courts.

16 (d) "Personal Internet account" means an account created within a bounded
17 system established by an Internet-based service that requires a user to input or store
18 access information via an electronic device in order to view, create, use, or edit the
19 user's account information, profile, display, communications, or stored data.

20 (2) RESTRICTIONS ON EMPLOYER ACCESS TO PERSONAL INTERNET ACCOUNTS. (a)
21 Except as provided in par. (b), no employer may do any of the following:

1 1. Request an employee or applicant for employment to grant access to, allow
2 observation of, or disclose information that allows access to or observation of the
3 personal Internet account of the employee or applicant.

4 2. Discharge or otherwise discriminate against any person for exercising the
5 right to refuse a request under subd. 1., opposing a practice prohibited under subd.
6 1., filing a complaint or attempting to enforce any right under subd. 1., or testifying
7 or assisting in any action or proceeding to enforce any right under subd. 1.

8 (b) Paragraph (a) does not prohibit an employer from doing any of the following:

9 1. Requesting or requiring an employee to disclose access information to the
10 employer in order for the employer to gain access to or operate an electronic
11 communications device paid for in whole or in part by the employer or to gain access
12 to an account or service that is provided by the employer, that the employee obtained
13 by virtue of the employee's employment relationship with the employer, or that is
14 used for the employer's business purposes.

15 2. Discharging or disciplining an employee for transferring the employer's
16 proprietary or confidential information or financial data to the employee's personal
17 Internet account without the employer's authorization.

18 3. Conducting an investigation or requiring an employee to cooperate in an
19 investigation of any alleged unauthorized transfer of the employer's proprietary or
20 confidential information or financial data to the employee's personal Internet
21 account, if the employer has specific information about such a transfer, or of any
22 other alleged employment-related misconduct or violation of the law, if the employer
23 has specific information about activity on the employee's personal Internet account
24 that relates to that misconduct or violation of the law.

1 4. Restricting or prohibiting an employee's access to certain Internet sites while
2 using an electronic communications device paid for in whole or in part by the
3 employer or while using the employer's network or other resources.

4 5. Monitoring, reviewing, or accessing electronic data that is stored on an
5 electronic communications device paid for in whole or in part by the employer or
6 electronic data that is traveling through or stored on the employer's network.

7 6. Complying with a duty to screen employees or applicants for employment
8 prior to hiring or to monitor or retain employee communications that is established
9 under federal law or by a self-regulatory organization, as defined in 15 USC 78c (a)
10 (26).

11 7. Viewing, accessing, or using information about an employee or applicant for
12 employment that can be obtained without access information or that is available in
13 the public domain.

14 **(3) RESTRICTIONS ON EDUCATIONAL INSTITUTION ACCESS TO PERSONAL INTERNET**
15 **ACCOUNTS.** (a) Except as provided in par. (b), no educational institution may do any
16 of the following:

17 1. Request a student or prospective student to grant access to, allow
18 observation of, or disclose information that allows access to or observation of the
19 personal Internet account of the student or prospective student.

20 2. Expel, suspend, discipline, or otherwise penalize any student or prospective
21 student for exercising the right to refuse a request under subd. 1., opposing a practice
22 prohibited under subd. 1., filing a complaint or attempting to enforce any right under
23 subd. 1., or testifying or assisting in any action or proceeding to enforce any right
24 under subd. 1.

1 (b) Paragraph (a) does not prohibit an educational institution from doing any
2 of the following:

3 1. Requesting or requiring a student to disclose access information to the
4 educational institution in order for the institution to gain access to or operate an
5 electronic communications device paid for in whole or in part by the institution or to
6 gain access to an account or service that is provided by the institution, that the
7 student obtained by virtue of the student's admission to the educational institution,
8 or that is used by the student for educational purposes.

9 2. Viewing, accessing, or using information about a student or prospective
10 student that can be obtained without access information or that is available in the
11 public domain.

12 (4) NO DUTY TO MONITOR. (a) Nothing in ^{this} ~~the~~ section creates a duty for an
13 employer or educational institution to search or monitor the activity of any personal
14 Internet account.

15 (b) An employer or educational institution is not liable under this section for
16 any failure to request or require that an employee, applicant for employment,
17 student, or prospective student grant access to, allow observation of, or disclose
18 information that allows access to or observation of a personal Internet account of the
19 employee, applicant for employment, student, or prospective student.

20 (5) PENALTIES. (a) Any person who violates sub. (2) (a) or (3) (a) may be required
21 to forfeit not more than \$1,000.

22 (b) 1. Subject to subd. 2., any person aggrieved by a violation of sub. (2) (a) or
23 (3) (a) may bring a civil action for injunctive relief, for damages not to exceed \$1,000,
24 and, notwithstanding s. 814.04, for reasonable costs and attorneys' fees. An action
25 under this subdivision may be brought in the circuit court where the alleged violation

of the county

1 occurred, or the circuit court for the county where the alleged violator resides or has
2 a principal place of business, and shall be commenced within one year after the
3 alleged violation occurred.

4 2. At least 60 days before filing a complaint in circuit court for damages under
5 subd. 1. or 60 days before amending a complaint for injunctive relief under subd. 1.
6 to include a request for damages, the person filing the complaint shall make a written
7 demand of the alleged violator for not more than \$1,000. The written demand shall
8 provide notice of the particulars of the alleged violation and shall include reasonable
9 documentation of that violation. The demand shall be sent by certified or registered
10 mail, return receipt requested, to the alleged violator at the place of employment or
11 educational institution where the alleged violation occurred or the alleged violator's
12 residence or principal place of business.

13 (c) It is an affirmative defense to a prosecution under par. (a) or a civil action
14 under par. (b) that the employer or educational institution engaged in the conduct
15 that is the subject of the prosecution or civil action to comply with the requirements
16 of a federal law or a law of this state.

17 **SECTION 2. Initial applicability.**

18 (1) COLLECTIVE BARGAINING AGREEMENT.. This act first applies to an employee
19 who is affected by a collective bargaining agreement that contains provisions
20 inconsistent with this act on the day on which the collective bargaining agreement
21 expires or is extended, modified, or renewed, whichever occurs first.

22 (END)

4/2/13

Aaron Collins / Rep Sargent

- take out civil action & replace w/ enforcement

provisions of 13-0652

- expand to cover landlords & tenants as well



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1551/I
GMM:eev:ph

IN 413
~~Sen~~ By 4/5
2013 BILL

Stays
RMR

landlord access to, and observation of, the personal Internet accounts of tenants and prospective tenants;

1 AN ACT to create 995.55 of the statutes; relating to: employer access to, and
2 observation of, the personal Internet accounts of employees and applicants for
3 employment; educational institution access to, and observation of, the personal
4 Internet accounts of students and prospective students, and providing a
5 penalty.

, or landlord access to, or observation of, the personal Internet accounts of tenants and prospective tenants

Analysis by the Legislative Reference Bureau

Current law does not regulate employer access to, or observation of, the personal Internet accounts of employees and applicants for employment ~~or~~ educational institution access to, or observation of, the personal Internet accounts of students and prospective students.

This bill prohibits an employer ~~or~~ educational institution from: 1) requesting ~~or~~ an employee, applicant for employment, student, ~~or~~ prospective student, to grant access to, allow observation of, or disclose information that allows access to or observation of the personal Internet account of the employee, applicant, student, ~~or~~ prospective student; and 2) discharging, expelling, suspending, disciplining, or otherwise penalizing or discriminating against any person for exercising the right to refuse such a request, opposing such a practice, filing a complaint or attempting to enforce that right, or testifying or assisting in any action or proceeding to enforce that right.

The bill, however, permits an employer ~~or~~ educational institution to do any of the following:

view, access, or use information about an employee, applicant for employment, student, prospective student, tenant, or prospective tenant that can be obtained without access information or that is available from the public domain.

, tenant, or prospective tenant

, or landlord tenant, or prospective tenant

, or landlord

BILL

The bill also permits an employer or educational institution to request

1. ~~Request~~ or require an employee or student to disclose access information to the employer or educational institution in order for the employer or educational institution to gain access to or operate an electronic communications device paid for in whole or in part by the employer or educational institution or to gain access to an account or service that is provided by the employer or educational institution, that the employee or student obtained by virtue of the employment relationship or admission to the educational institution, or that is used for business or educational purposes.

2. ~~View, access, or use information about an employee, applicant for employment, student, or prospective student that can be obtained without access information or that is available in the public domain.~~

The bill, in addition, permits an employer to do any of the following:

1. Discharge or discipline an employee for transferring the employer's proprietary or confidential information or financial data to the employee's personal Internet account without the employer's authorization.

2. Conduct an investigation or require an employee to cooperate in an investigation of any alleged unauthorized transfer of the employer's proprietary or confidential information or financial data to the employee's personal Internet account or of any other alleged employment-related misconduct or violation of the law.

3. Restrict or prohibit an employee's access to certain Internet sites while using an electronic communications device paid for in whole or in part by the employer or while using the employer's network or other resources.

4. Monitor, review, or access electronic data that is stored on an electronic communications device paid for in whole or in part by the employer or electronic data that is traveling through or stored on the employer's network.

5. Comply with a duty to screen employees or applicants for employment prior to hiring or to monitor or retain employee communications that is established under federal law or by a self-regulatory organization, as defined under the federal Securities and Exchange Act of 1934.

The bill provides that an employer ~~or~~ educational institution ^{or landlord} does not have a duty to search or monitor the activity of any personal Internet account and that an employer ~~or~~ educational institution ^{is} not liable for any failure to request or require access to or observation of a personal Internet account of an employee, applicant for employment, student, ~~or~~ prospective student. ^{tenant, or prospective tenant}

For purposes of the bill: 1) "access information" means a user name, password, login information, or any other security information that protects access to a personal Internet account; 2) "educational institution" means an institution of higher education, a technical college, a proprietary school, a public school, a charter school, a private school, or a private educational testing service or administrator; 3) "employer" includes the state; and 4) "personal Internet account" means an account created within a bounded system established by an Internet-based service that requires a user to input or store access information via an electronic device in order to view, create, use, or edit the user's account information, profile, display, communications, or stored data.

BILL

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

^ (Ins 3-1)

1 **SECTION 1.** 995.55 of the statutes is created to read:

2 **995.55 Internet privacy protection.** (1) **DEFINITIONS.** In this section:

3 (a) "Access information" means a user name, password, login information, or
4 any other security information that protects access to a personal Internet account.

5 (b) "Educational institution" means an institution of higher education, as
6 defined in s. 108.02 (18); a technical college established under s. 38.02; a school, as
7 defined in s. 38.50 (11) (a) 2.; a public school, as described in s. 115.01 (1); a charter
8 school, as defined in s. 115.001 (1); a private school, as defined in s. 115.001 (3r); or
9 a private educational testing service or administrator.

10 (c) "Employer" means any person engaging in any activity, enterprise, or
11 business employing at least one individual. "Employer" includes the state, its
12 political subdivisions, and any office, department, independent agency, authority,
13 institution, association, society, or other body in state or local government created or
14 authorized to be created by the constitution or any law, including the legislature and
15 the courts.

16 (d) "Personal Internet account" means an account created within a bounded
17 system established by an Internet-based service that requires a user to input or store
18 access information via an electronic device in order to view, create, use, or edit the
19 user's account information, profile, display, communications, or stored data.

20 **(2) RESTRICTIONS ON EMPLOYER ACCESS TO PERSONAL INTERNET ACCOUNTS.** (a)
21 Except as provided in par. (b), no employer may do any of the following:

BILL**SECTION 1**

1 1. Request an employee or applicant for employment to grant access to, allow
2 observation of, or disclose information that allows access to or observation of the
3 personal Internet account of the employee or applicant.

4 2. Discharge or otherwise discriminate against any person for exercising the
5 right to refuse a request under subd. 1., opposing a practice prohibited under subd.
6 1., filing a complaint or attempting to enforce any right under subd. 1., or testifying
7 or assisting in any action or proceeding to enforce any right under subd. 1.

8 (b) Paragraph (a) does not prohibit an employer from doing any of the following:

9 1. Requesting or requiring an employee to disclose access information to the
10 employer in order for the employer to gain access to or operate an electronic
11 communications device paid for in whole or in part by the employer or to gain access
12 to an account or service that is provided by the employer, that the employee obtained
13 by virtue of the employee's employment relationship with the employer, or that is
14 used for the employer's business purposes.

15 2. Discharging or disciplining an employee for transferring the employer's
16 proprietary or confidential information or financial data to the employee's personal
17 Internet account without the employer's authorization.

18 3. Conducting an investigation or requiring an employee to cooperate in an
19 investigation of any alleged unauthorized transfer of the employer's proprietary or
20 confidential information or financial data to the employee's personal Internet
21 account, if the employer has specific information about such a transfer, or of any
22 other alleged employment-related misconduct or violation of the law, if the employer
23 has specific information about activity on the employee's personal Internet account
24 that relates to that misconduct or violation of the law.

BILL

1 4. Restricting or prohibiting an employee's access to certain Internet sites while
2 using an electronic communications device paid for in whole or in part by the
3 employer or while using the employer's network or other resources.

4 5. Monitoring, reviewing, or accessing electronic data that is stored on an
5 electronic communications device paid for in whole or in part by the employer or
6 electronic data that is traveling through or stored on the employer's network.

7 6. Complying with a duty to screen employees or applicants for employment
8 prior to hiring or to monitor or retain employee communications that is established
9 under federal law or by a self-regulatory organization, as defined in 15 USC 78c (a)
10 (26).

11 7. Viewing, accessing, or using information about an employee or applicant for
12 employment that can be obtained without access information or that is available in
13 the public domain.

14 **(3) RESTRICTIONS ON EDUCATIONAL INSTITUTION ACCESS TO PERSONAL INTERNET**
15 **ACCOUNTS.** (a) Except as provided in par. (b), no educational institution may do any
16 of the following:

17 1. Request a student or prospective student to grant access to, allow
18 observation of, or disclose information that allows access to or observation of the
19 personal Internet account of the student or prospective student.

20 2. Expel, suspend, discipline, or otherwise penalize any student or prospective
21 student for exercising the right to refuse a request under subd. 1., opposing a practice
22 prohibited under subd. 1., filing a complaint or attempting to enforce any right under
23 subd. 1., or testifying or assisting in any action or proceeding to enforce any right
24 under subd. 1.

BILL

1 (b) Paragraph (a) does not prohibit an educational institution from doing any
2 of the following:

3 1. Requesting or requiring a student to disclose access information to the
4 educational institution in order for the institution to gain access to or operate an
5 electronic communications device paid for in whole or in part by the institution or to
6 gain access to an account or service that is provided by the institution, that the
7 student obtained by virtue of the student's admission to the educational institution,
8 or that is used by the student for educational purposes.

9 2. Viewing, accessing, or using information about a student or prospective
10 student that can be obtained without access information or that is available in the
11 public domain.

12 (5) (4) NO DUTY TO MONITOR. (a) Nothing in this section creates a duty for an
13 employer, or educational institution, or landlord to search or monitor the activity of any personal
14 Internet account. or landlord

15 (b) An employer or educational institution is not liable under this section for
16 any failure to request or require that an employee, applicant for employment,
17 student, or prospective student grant access to, allow observation of, or disclose
18 information that allows access to or observation of a personal Internet account of the
19 employee, applicant for employment, student, or prospective student. or (4) (a)

20 (6) (5) ENFORCEMENT. (a) Any person who violates sub. (2) (a) or (3) (a) may be required
21 to forfeit not more than \$1,000.

22 (b) 1. Subject to subd. 2., any person aggrieved by a violation of sub. (2) (a) or
23 (3) (a) may bring a civil action for injunctive relief, for damages not to exceed \$1,000,
24 and, notwithstanding s. 814.04, for reasonable costs and attorney fees. An action
25 under this subdivision may be brought in the circuit court of the county where the

10
Insert
11
6-11

BILL

1 alleged violation occurred, or the circuit court for the county where the alleged
2 violator resides or has a principal place of business, and shall be commenced within
3 one year after the alleged violation occurred.

4 2. At least 60 days before filing a complaint in circuit court for damages under
5 subd. 1. or 60 days before amending a complaint for injunctive relief under subd. 1.
6 to include a request for damages, the person filing the complaint shall make a written
7 demand of the alleged violator for not more than \$1,000. The written demand shall
8 provide notice of the particulars of the alleged violation and shall include reasonable
9 documentation of that violation. The demand shall be sent by certified or registered
10 mail, return receipt requested, to the alleged violator at the place of employment or
11 educational institution where the alleged violation occurred or the alleged violator's
12 residence or principal place of business.

13 (c) It is an affirmative defense to a prosecution under par. (a) or a civil action
14 under par. (b) that the employer or educational institution engaged in the conduct
15 that is the subject of the prosecution or civil action to comply with the requirements
16 of a federal law or a law of this state.

Insert
7-16

SECTION 2. Initial applicability.

18 (1) COLLECTIVE BARGAINING AGREEMENT. This act first applies to an employee
19 who is affected by a collective bargaining agreement that contains provisions
20 inconsistent with this act on the day on which the collective bargaining agreement
21 expires or is extended, modified, or renewed, whichever occurs first.

(END)

22

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1551/2ins
GMM.....

INSERT 6-11

(4) RESTRICTIONS ON LANDLORD ACCESS TO PERSONAL INTERNET ACCOUNTS. (a)
Except as provided in par. (b), no landlord may do any of the following:

1. Request a tenant or prospective tenant to grant access to, allow observation of, or disclose information that allows access to or observation of the personal Internet account of the tenant or prospective tenant.

2. Discriminate in a manner described in s. 106.50 (2) against a tenant or prospective tenant for exercising the right to refuse a request under subd. 1., opposing a practice prohibited under subd. 1., filing a complaint or attempting to enforce any right under subd. 1., or testifying or assisting in any action or proceeding to enforce any right under subd. 1.

(b) Paragraph (a) does not prohibit a landlord from viewing, accessing, or using information about a tenant or prospective tenant that can be obtained without access information or that is available in the public domain.

(END OF INSERT)

(INSERT 7-16)

(b) An employee or applicant for employment who is discharged or otherwise discriminated against in violation of sub. (2) (a) 2. or a student or prospective student who is expelled, suspended, disciplined, or otherwise penalized in violation of sub. (3) (a) 2. may file a complaint with the department, and the department shall process the complaint in the same manner as employment discrimination complaints are processed under s. 111.39. If the department finds that a violation of sub. (2) (a) 2. or (3) (a) 2. has been committed, the department may order the employer or educational institution to take such action under s. 111.39 as will effectuate the

purpose of this section. Section 111.322 (2m) applies to a discharge or other discriminatory act arising in connection with any proceeding under this paragraph.

(c) A tenant or prospective tenant who is discriminated against in violation of sub. (4) (a) 2. may file a complaint with the department, and the department shall process the complaint in the same manner as housing discrimination complaints are processed under s. 106.50. If the department finds that a violation of sub. (4) (a) 2. has been committed, the department may order the landlord to take such action under s. 106.50 as will effectuate the purpose of this section.

(SECTION 1. 106.54 (10) of the statutes is created to read:

106.54 (10) (a) The division shall receive complaints under s. ~~103.155 (b)~~ and shall process the complaints in the same manner as employment discrimination complaints are processed under s. 111.39.

b (a) The division shall receive complaints under s. ~~103.155 (b)~~ (c) and shall process the complaints in the same manner as housing discrimination complaints are processed under s. 106.50.

SECTION 2. 111.322 (2m) (a) of the statutes is amended to read:

111.322 (2m) (a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.13, 103.155, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, ~~or~~ 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 3. 111.322 (2m) (b) of the statutes is amended to read:

111.322 (2m) (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.155, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, ~~or~~ 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

Start of
INS 3-1

End INS 2-16

995.55(6)

995.55

995.55

SECTION 4. 111.91 (2) (im) of the statutes is created to read:

111.91 (2) (im) Employer access to the social networking Internet site of an employee that provides fewer rights and remedies to employees than are provided under s. ~~103.155~~.

995.55 (END OF INSERT) 3-1

Parisi, Lori

From: Collins, Aaron
Sent: Monday, April 15, 2013 9:28 AM
To: LRB.Legal
Subject: Draft Review: LRB -1551/2 Topic: Employer and educational institution access to employee and student personal Internet accounts

Please Jacket LRB -1551/2 for the ASSEMBLY.

Barman, Mike

From: Collins, Aaron
Sent: Monday, April 15, 2013 1:13 PM
To: Barman, Mike
Subject: RE: request for FE for LRB -1551

Yes please. Thanks Mike.

From: Barman, Mike
Sent: Monday, April 15, 2013 1:01 PM
To: Collins, Aaron
Subject: FW: request for FE for LRB -1551

Your office if the "requestor" ... do you want me to proceed?

Mike Barman (Lead Program Assistant)
State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

From: Bruce, Cory
Sent: Monday, April 15, 2013 12:52 PM
To: Barman, Mike
Cc: Collins, Aaron
Subject: request for FE for LRB -1551

Mike,
Our office introduced LRB 1551/ 2 with Rep. Sargent (her staff is copied on this). We'd like to put in an early request for a FE on the proposal.

Thanks,
Cory Bruce
Bies Office

Malaise, Gordon

From: Collins, Aaron
Sent: Wednesday, May 15, 2013 10:12 AM
To: Malaise, Gordon
Subject: Changes to LRB 1552.2 / social media bill
Attachments: potential changes to LRB 1552.2.pdf

Hi Gordon,

Please make the changes in the attached document with the one change being change 'reason to believe' to 'reasonable cause'.

Also the following changes below:

- ✓ 1. Add the 'and' for usernames and passwords
- ✓ 2. Clarify that an employer can ask for just an email address.
- ✓ 3. Have amendment drafted that would give FINRA some oversight to protect against illegal trading.
 - a. Suggested language: *"This act shall not apply to the personal social media accounts or devices of a financial services employee who uses such accounts or devices to carry out the business of the employer that is subject to the content, supervision, and retention requirements imposed by federal securities laws and regulations or a self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, as amended."* SIFMA requested the veto because this specific language was rejected by the Bill's sponsor.

Thanks so much.

Aaron Collins

Office of Representative Melissa Sargent

48th Assembly District

8 West, State Capitol

608-266-0960

aaron.collins@legis.wi.gov

995.55(1)(d):

✓ (d) "Personal Internet account" means an account created and used exclusively for personal purposes within a bounded system established by an Internet-based service that requires a user to input or store access information via an electronic device in order to view, create, use, or edit the user's account information, profile, display, communications, or stored data.

995.55(2)(b)(3):

✓ (3) Conducting an investigation or requiring an employee to cooperate in an investigation of any alleged unauthorized transfer of the employer's proprietary or confidential information or financial data to the employee's personal Internet account, if the employer has reason to believe that specific information about such a transfer has occurred, or of any other alleged employment-related misconduct or violation of the law, if the employer has reason to believe that specific information about activity on the employee's personal Internet account ~~that~~ relates to that misconduct or violation of the law.

995.55(6)(b):

✓ (b) An employee or applicant for employment who is discharged or otherwise discriminated against in violation of sub. (2)(a)2. or a student or prospective student who is expelled, suspended, disciplined, or otherwise penalized in violation of sub. (3)(a)2. may file a complaint with the department, and the department shall process the complaint in the same manner as employment discrimination complaints are processed under s. 111.39. If the department finds that a violation of sub. (2)(a)2. or (3)(a)2. has been committed, the department may order ~~the employer or educational institution to take such action under~~ such remedies as provided in s. 111.39, ~~as will effectuate the purpose of this section.~~ Section 111.322 (2m) applies to a discharge or other discriminatory act arising in connection with any proceeding under this paragraph.

5/17

Aaron Collins

✓ b 6, 8 9 insert "state"

Memo

To: Representative **Sargent**

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2013 session draft.

LRB Number: LRB-1551

Version: “/2”

Fiscal Estimate Prepared By: (agency abbr.) DWD

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 04 / 24 / 2013

*** * * * ***

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

- > If re-drafted ...** please insert this cover sheet and attached early fiscal estimate into the drafting file “guts” ... after the draft's old version (the version that this fiscal estimate was based on), and just before re-draft of the updated version.
- > If introduced ...** please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013 _____

Barman, Mike

From: Barman, Mike
Sent: Wednesday, April 24, 2013 8:43 AM
To: Rep.Sargent
Cc: Collins, Aaron
Subject: LRB-1551/2 (un-introduced) (FE by DWD & OSER - attached - for your review)



FE-1551_DWD.P...



FE-1551_OSER.P...

Drafter: GMM
**Subject: Employ Priv. – miscellaneous
Privacy**

Mike Barman (Lead Program Assistant)
State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

Fiscal Estimate Narratives

DWD 4/23/2013

LRB Number	13-1551/2	Introduction Number	Estimate Type	Original
Description Employer access to, and observation of, the personal Internet accounts of employees and applicants for employment; educational institution access to, and observation of, the personal Internet accounts of students and prospective students; landlord access to, and observation of, the personal Internet accounts of tenants and prospective tenants; and providing a penalty				

Assumptions Used in Arriving at Fiscal Estimate

This bill would prohibit an employer, educational institution, or landlord from requesting that an employee, applicant, student, prospective student, tenant, or prospective tenant grant access to, allow observation of, or disclose information that allows access to or observation of the personal Internet account of the employee, applicant, student, prospective student, tenant, or prospective tenant. It also prohibits retaliation against any person for exercising the right to refuse such a request, for opposing an unlawful practice under the bill, for filing a complaint or attempting to enforce that right, or for testifying or assisting in proceedings to enforce that right. The bill provides that any complaints about potential violations of the provisions of this bill be processed using the same system currently used by the Equal Rights Division for complaints under the fair employment Law (s. 111.39).

The department anticipates passage of this bill would result in roughly 200 additional complaints filed with the Equal Rights Division each year alleging violations of this bill. An Equal Rights Officer - Senior can investigate 144 complaints per year and therefore the department anticipates it would need at least 1.50 additional Equal Rights Officers - Senior to investigate and make determinations on these complaints at an annual cost of \$128,536 in salary, fringe benefits, supplies and service costs.

The Department anticipates that approximately 50 of these complaints will make it to the hearing stage, requiring the services of an Administrative Law Judge. An Administrative Law Judge can resolve approximately 144 cases per year and therefore the department anticipates it would need an additional \$66,678 per year to cover salary, fringe benefits, supplies and services costs.

In addition to these annual costs, there would be one-time costs. The one-time cost for the Division to print rules, statues, and other publications related to these materials is approximately \$2,000. The Division also anticipates that adding these new "bases" to our enforcement provisions would require one-time expenditures for re-programming of database software to track these cases of approximately \$50,000.

The department does not anticipate that the bill would increase costs to local units of government.

Long-Range Fiscal Implications

The increase in case load for the department is likely to continue for the foreseeable future.

Fiscal Estimate Worksheet - 2013 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

LRB Number 13-1551/2		Introduction Number	
Description Employer access to, and observation of, the personal Internet accounts of employees and applicants for employment; educational institution access to, and observation of, the personal Internet accounts of students and prospective students; landlord access to, and observation of, the personal Internet accounts of tenants and prospective tenants; and providing a penalty			
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect): The department will incur a one-time cost of approximately \$2,000 for the printing of informational materials and \$50,000 for software programming changes for a total one-time cost of \$52,000.			
II. Annualized Costs:		Annualized Fiscal Impact on funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
	State Operations - Salaries and Fringes	\$195,214	\$
	(FTE Position Changes)	(2.0 FTE)	
	State Operations - Other Costs	52,000	
	Local Assistance		
	Aids to Individuals or Organizations		
	TOTAL State Costs by Category	\$247,214	\$
B. State Costs by Source of Funds			
	GPR	247,214	
	FED		
	PRO/PRS		
	SEG/SEG-S		
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
		Increased Rev	Decreased Rev
	GPR Taxes	\$	\$
	GPR Earned		
	FED		
	PRO/PRS		
	SEG/SEG-S		
	TOTAL State Revenues	\$	\$
NET ANNUALIZED FISCAL IMPACT			
		<u>State</u>	<u>Local</u>
	NET CHANGE IN COSTS	\$247,214	\$
	NET CHANGE IN REVENUE	\$	\$
Agency/Prepared By		Authorized Signature	Date
DWD/ Jim Chiolino (608) 266-3345		Jonathan Barry (608) 267-3200	4/23/2013

Memo

To: Representative **Sargent**

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2013 session draft.

LRB Number: LRB-1551

Version: “1/2”

Fiscal Estimate Prepared By: (agency abbr.) OSER

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 04 / 24 / 2013

*** * * * ***

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

> **If re-drafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file “guts” ... after the draft's old version (the version that this fiscal estimate was based on), and just before re-draft of the updated version.

> **If introduced** ... please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013 _____

Barman, Mike

From: Barman, Mike
Sent: Wednesday, April 24, 2013 8:43 AM
To: Rep.Sargent
Cc: Collins, Aaron
Subject: LRB-1551/2 (un-introduced) (FE by DWD & OSER - attached - for your review)



FE-1551_DWD.P...



FE-1551_OSER.P...

Drafter: CMM

**Subject: Employ Priv. – miscellaneous
Privacy**

Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

Fiscal Estimate Narratives

OSER 4/23/2013

LRB Number 13-1551/2	Introduction Number	Estimate Type	Original
Description Employer access to, and observation of, the personal Internet accounts of employees and applicants for employment; educational institution access to, and observation of, the personal Internet accounts of students and prospective students; landlord access to, and observation of, the personal Internet accounts of tenants and prospective tenants; and providing a penalty			

Assumptions Used in Arriving at Fiscal Estimate

This bill prohibits an employer, educational institution, or landlord from 1) requesting that employees, students, or tenants, or prospective employees, students, or tenants to grant access to, allow observation of, or disclose information allowing access to or observation of personal Internet accounts, and; 2) penalizing or discriminating against anyone for exercising the right to refuse any such request.

The bill makes no restrictions on employers, educational institutions, or landlord's access to or observation of available information in the public domain.

The bill does not disallow employers or educational institutions from requesting/requiring access information when the electronic communication device or account of interest is provided in whole or in part by the employer or educational institution for business use or education.

The bill permits an employer to investigate or take employment action against the unauthorized transfer of proprietary or confidential information or financial information to employee's private accounts, restrict access to certain Internet sites, or to monitor, review, or access electronic data stored or traveling through employer devices or networks, or to comply with screening procedures established under other law.

The bill imposes no new requirements, duties, or obligations on employers to actively monitor Internet accounts.

The number of employers, educational institutions, and/or landlords covered by the bill's provisions is indeterminate.

The number of individual incidents prohibited under the bill which might occur or become subjects of legal proceedings in the future is indeterminate.

Regarding the State as employer, if this bill is signed into law it will only formalize the advice already given to operating agencies regarding the use of Internet and/or social media sites, by the Office of State Employment Relations.

Costs associated with this bill are therefore indeterminate. It is assumed that any costs that do arise out of this bill's provisions would likely be absorbed within any employers', educational institutions' or landlords' normal courses of business.

Long-Range Fiscal Implications



State of Wisconsin
2013-2014 LEGISLATURE

IN 5/17



LRB-1551/2
GMM:eev:jm

(3)
RMR
stays

2013 BILL

Wanted Tues 5/21

regen

1 AN ACT *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 106.54
2 (10), 111.91 (2) (im) and 995.55 of the statutes; **relating to:** employer access to,
3 and observation of, the personal Internet accounts of employees and applicants
4 for employment; educational institution access to, and observation of, the
5 personal Internet accounts of students and prospective students; landlord
6 access to, and observation of, the personal Internet accounts of tenants and
7 prospective tenants; and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law does not regulate employer access to, or observation of, the personal Internet accounts of employees and applicants for employment, or educational institution access to, or observation of, the personal Internet accounts of students and prospective students, or landlord access to, or observation of, the personal Internet accounts of tenants and prospective tenants.

This bill prohibits an employer, educational institution, or landlord from: 1) requesting an employee, applicant for employment, student, prospective student, tenant, or prospective tenant to grant access to, allow observation of, or disclose information that allows access to or observation of the personal Internet account of the employee, applicant, student, prospective student, tenant, or prospective tenant; and 2) discharging, expelling, suspending, disciplining, or otherwise penalizing or

BILL

discriminating against any person for exercising the right to refuse such a request, opposing such a practice, filing a complaint or attempting to enforce that right, or testifying or assisting in any action or proceeding to enforce that right.

The bill, however, permits an employer, educational institution, or landlord to view, access, or use information about an employee, applicant for employment, student, prospective student, tenant, or prospective tenant that can be obtained without access information or that is available from the public domain.

The bill also permits an employer or educational institution to request or require an employee or student to disclose access information to the employer or educational institution in order for the employer or educational institution to gain access to or operate an electronic communications device paid for in whole or in part by the employer or educational institution or to gain access to an account or service that is provided by the employer or educational institution, that the employee or student obtained by virtue of the employment relationship or admission to the educational institution, or that is used for business or educational purposes.

The bill, in addition, permits an employer to do any of the following:

1. Discharge or discipline an employee for transferring the employer's proprietary or confidential information or financial data to the employee's personal Internet account without the employer's authorization.

2. Conduct an investigation or require an employee to cooperate in an investigation of any alleged unauthorized transfer of the employer's proprietary or confidential information or financial data to the employee's personal Internet account or of any other alleged employment-related misconduct or violation of the law.

3. Restrict or prohibit an employee's access to certain Internet sites while using an electronic communications device paid for in whole or in part by the employer or while using the employer's network or other resources.

4. Monitor, review, or access electronic data that is stored on an electronic communications device paid for in whole or in part by the employer or electronic data that is traveling through or stored on the employer's network.

5. Comply with a duty to screen employees or applicants for employment prior to hiring or to monitor or retain employee communications that is established under federal law or by a self-regulatory organization, as defined under the federal Securities and Exchange Act of 1934. (self-regulatory organization)

The bill provides that an employer, educational institution, or landlord does not have a duty to search or monitor the activity of any personal Internet account and that an employer, educational institution, or landlord is not liable for any failure to request or require access to or observation of a personal Internet account of an employee, applicant for employment, student, prospective student, tenant, or prospective tenant.

For purposes of the bill: 1) "access information" means a user name, password, login information, or any other security information that protects access to a personal Internet account; 2) "educational institution" means an institution of higher education, a technical college, a proprietary school, a public school, a charter school, a private school, or a private educational testing service or administrator; 3)

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and used exclusively for personal purposes

“employer” includes the state; and 4) “personal Internet account” means an account created within a bounded system established by an Internet-based service that requires a user to input or store access information via an electronic device in order to view, create, use, or edit the user’s account information, profile, display, communications, or stored data.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 106.54 (10) of the statutes is created to read:

2 106.54 (10) (a) The division shall receive complaints under s. 995.55 (6) (b) and
3 shall process the complaints in the same manner as employment discrimination
4 complaints are processed under s. 111.39.

5 (b) The division shall receive complaints under s. 995.55 (6) (c) and shall
6 process the complaints in the same manner as housing discrimination complaints
7 are processed under s. 106.50.

8 **SECTION 2.** 111.322 (2m) (a) of the statutes is amended to read:

9 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
10 right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50,
11 104.12, ~~106.04~~, 109.03, 109.07, 109.075, ~~or 146.997, 995.55~~, or ss. 101.58 to 101.599
12 or 103.64 to 103.82.

13 **SECTION 3.** 111.322 (2m) (b) of the statutes is amended to read:

14 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
15 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,
16 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, ~~or 146.997, 995.55~~,
17 or ss. 101.58 to 101.599 or 103.64 to 103.82.

18 **SECTION 4.** 111.91 (2) (im) of the statutes is created to read:

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1 111.91 (2) (im) Employer access to the social networking Internet site of an
2 employee that provides fewer rights and remedies to employees than are provided
3 under s. 995.55.

and

4 **SECTION 5.** 995.55 of the statutes is created to read:

5 **995.55 Internet privacy protection.** (1) **DEFINITIONS.** In this section:

6 (6) (a) "Access information" means a user name, password, login information, or
7 any other security information that protects access to a personal Internet account.

8 (b) "Educational institution" means an institution of higher education, as
9 defined in s. 108.02 (18); a technical college established under s. 38.02; a school, as
10 defined in s. 38.50 (11) (a) 2.; a public school, as described in s. 115.01 (1); a charter
11 school, as defined in s. 115.001 (1); a private school, as defined in s. 115.001 (3r); or
12 a private educational testing service or administrator.

13 (c) "Employer" means any person engaging in any activity, enterprise, or
14 business employing at least one individual. "Employer" includes the state, its
15 political subdivisions, and any office, department, independent agency, authority,
16 institution, association, society, or other body in state or local government created or
17 authorized to be created by the constitution or any law, including the legislature and
18 the courts.

and used exclusively for personal purposes

19 (d) "Personal Internet account" means an account created within a bounded
20 system established by an Internet-based service that requires a user to input or store
21 access information via an electronic device in order to view, create, use, or edit the
22 user's account information, profile, display, communications, or stored data.

23 (2) **RESTRICTIONS ON EMPLOYER ACCESS TO PERSONAL INTERNET ACCOUNTS.** (a)

24 Except as provided in ~~part~~ (b), no employer may do any of the following:

pers. and (c)
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1 1. Request an employee or applicant for employment to grant access to, allow
2 observation of, or disclose information that allows access to or observation of the
3 personal Internet account of the employee or applicant.

4 2. Discharge or otherwise discriminate against any person for exercising the
5 right to refuse a request under subd. 1., opposing a practice prohibited under subd.
6 1., filing a complaint or attempting to enforce any right under subd. 1., or testifying
7 or assisting in any action or proceeding to enforce any right under subd. 1.

8 (b) Paragraph (a) does not prohibit an employer from doing any of the following:

9 1. Requesting or requiring an employee to disclose access information to the
10 employer in order for the employer to gain access to or operate an electronic
11 communications device paid for in whole or in part by the employer or to gain access
12 to an account or service that is provided by the employer, that the employee obtained
13 by virtue of the employee's employment relationship with the employer, or that is
14 used for the employer's business purposes.

15 2. Discharging or disciplining an employee for transferring the employer's
16 proprietary or confidential information or financial data to the employee's personal
17 Internet account without the employer's authorization.

reasonable cause to believe that

18 3. Conducting an investigation or requiring an employee to cooperate in an
19 investigation of any alleged unauthorized transfer of the employer's proprietary or
20 confidential information or financial data to the employee's personal Internet
21 account, if the employer has ~~specific information about~~ such a transfer ~~or of any~~

has occurred

22 other alleged employment-related misconduct or violation of the law, if the employer
23 has ~~specific information about~~ activity on the employee's personal Internet account
24 ~~that relates~~ to that misconduct or violation of the law.

reasonable cause to believe that

relating to that

has occurred

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1 (b) Paragraph (a) does not prohibit an educational institution from doing any
2 of the following:

3 1. Requesting or requiring a student to disclose access information to the
4 educational institution in order for the institution to gain access to or operate an
5 electronic communications device paid for in whole or in part by the institution or to
6 gain access to an account or service that is provided by the institution, that the
7 student obtained by virtue of the student's admission to the educational institution,
8 or that is used by the student for educational purposes.

9 2. Viewing, accessing, or using information about a student or prospective
10 student that can be obtained without access information or that is available in the
11 public domain.

12 (4) RESTRICTIONS ON LANDLORD ACCESS TO PERSONAL INTERNET ACCOUNTS. (a)
13 Except as provided in par. (b), no landlord may do any of the following:

14 1. Request a tenant or prospective tenant to grant access to, allow observation
15 of, or disclose information that allows access to or observation of the personal
16 Internet account of the tenant or prospective tenant.

17 2. Discriminate in a manner described in s. 106.50 (2) against a tenant or
18 prospective tenant for exercising the right to refuse a request under subd. 1.,
19 opposing a practice prohibited under subd. 1., filing a complaint or attempting to
20 enforce any right under subd. 1., or testifying or assisting in any action or proceeding
21 to enforce any right under subd. 1.

22 (b) Paragraph (a) does not prohibit a landlord from viewing, accessing, or using
23 information about a tenant or prospective tenant that can be obtained without access
24 information or that is available in the public domain.

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1 (5) NO DUTY TO MONITOR. (a) Nothing in this section creates a duty for an
2 employer, educational institution, or landlord to search or monitor the activity of any
3 personal Internet account.

4 (b) An employer, educational institution, or landlord is not liable under this
5 section for any failure to request or require that an employee, applicant for
6 employment, student, prospective student, tenant, or prospective tenant grant
7 access to, allow observation of, or disclose information that allows access to or
8 observation of a personal Internet account of the employee, applicant for
9 employment, student, prospective student, tenant, or prospective tenant.

10 (6) ENFORCEMENT. (a) Any person who violates sub. (2) (a), (3) (a), or (4) (a) may
11 be required to forfeit not more than \$1,000.

12 (b) An employee or applicant for employment who is discharged or otherwise
13 discriminated against in violation of sub. (2) (a) 2. or a student or prospective student
14 who is expelled, suspended, disciplined, or otherwise penalized in violation of sub.

15 (3) (a) 2. may file a complaint with the department, and the department shall process
16 the complaint in the same manner as employment discrimination complaints are
17 processed under s. 111.39. If the department finds that a violation of sub. (2) (a) 2.

18 or (3) (a) 2. has been committed, the department may order the employer or
19 educational institution to take ^{such} ~~such~~ ^{authorized} ~~action~~ under s. 111.39 ~~as will effectuate the~~
20 ~~purpose of this section.~~ Section 111.322 (2m) applies to a discharge or other

21 discriminatory act arising in connection with any proceeding under this paragraph.
22 (c) A tenant or prospective tenant who is discriminated against in violation of
23 sub. (4) (a) 2. may file a complaint with the department, and the department shall
24 process the complaint in the same manner as housing discrimination complaints are
25 processed under s. 106.50. If the department finds that a violation of sub. (4) (a) 2.

attorney fees to the complainant

as will ~~remedy~~ ^{remedy} the violation including reinstating the employee or student, providing compensation in lieu of reinstatement, providing back pay accrued not more than 3 years before the complaint was filed, and paying reasonable actual costs and

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remedy the violation

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1 has been committed, the department may order the landlord to take ~~such~~ action
2 under s. 106.50 ~~as will effectuate the purpose of this section.~~

3 **SECTION 6. Initial applicability.**

4 (1) COLLECTIVE BARGAINING AGREEMENT. This act first applies to an employee
5 who is affected by a collective bargaining agreement that contains provisions
6 inconsistent with this act on the day on which the collective bargaining agreement
7 expires or is extended, modified, or renewed, whichever occurs first.

8 (END)

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1 8. Requesting or requiring an employee to disclose the employee's personal
2 electronic mail address.

3 (c) Paragraph (a) does not apply to a personal Internet account or an electronic
4 communications device of an employee engaged in providing financial services who
5 uses the account or device to conduct the business of an employer that is subject to
6 the content, supervision, and retention requirements imposed by federal securities
7 laws and regulations or by a self-regulatory organization, as defined in 15 USC 78c
8 (a) (26).

(END OF INSERT)

(INSERT A)

9 6. Requesting or requiring an employee to disclose the employee's personal
electronic mail address.

In addition, with respect to an employer, the bill provides that the prohibition created under the bill does not apply to a personal Internet account or an electronic communications device of an employee engaged in providing financial services who uses the account or device to conduct the business of an employer that is subject to the content, supervision, and retention requirements imposed by federal securities laws and regulations or by a self-regulatory organization.

Finally, the

(END OF INSERT)