



2013 SENATE BILL 223

June 27, 2013 – Introduced by Senators GROTHMAN, LEHMAN, LASEE, ERPENBACH, HANSEN, HARRIS, C. LARSON, MILLER, RISSER and L. TAYLOR, cosponsored by Representatives BIES, SARGENT, BARCA, BARNES, BERCEAU, BERNARD SCHABER, BEWLEY, BILLINGS, CLARK, DANOU, DOYLE, GENRICH, GOYKE, HEBL, HESSELBEIN, HINTZ, HULSEY, JOHNSON, JORGENSEN, KAHL, KESSLER, KOLSTE, MASON, MILROY, OHNSTAD, A. OTT, PASCH, POPE, RICHARDS, RIEMER, RINGHAND, SINICKI, SMITH, C. TAYLOR, VRUWINK, WACHS, WRIGHT, YOUNG, ZAMARRIPA, ZEPNICK, BERNIER, JAGLER and SHANKLAND. Referred to Committee on Judiciary and Labor.

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

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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 applicants for employment prior to hiring that is established under state or federal law or by a self-regulatory organization, as defined under the federal Securities and Exchange Act of 1934 (self-regulatory organization).

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 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

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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 and 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 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.

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:

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1 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding
2 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,
3 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, ~~or 146.997~~, 995.55,
4 or ss. 101.58 to 101.599 or 103.64 to 103.82.

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

6 111.91 **(2)** (im) Employer access to the social networking Internet site of an
7 employee that provides fewer rights and remedies to employees than are provided
8 under s. 995.55.

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

10 **995.55 Internet privacy protection. (1) DEFINITIONS.** In this section:

11 (a) “Access information” means a user name and password, login information,
12 or any other security information that protects access to a personal Internet account.

13 (b) “Educational institution” means an institution of higher education, as
14 defined in s. 108.02 (18); a technical college established under s. 38.02; a school, as
15 defined in s. 38.50 (11) (a) 2.; a public school, as described in s. 115.01 (1); a charter
16 school, as defined in s. 115.001 (1); a private school, as defined in s. 115.001 (3r); or
17 a private educational testing service or administrator.

18 (c) “Employer” means any person engaging in any activity, enterprise, or
19 business employing at least one individual. “Employer” includes the state, its
20 political subdivisions, and any office, department, independent agency, authority,
21 institution, association, society, or other body in state or local government created or
22 authorized to be created by the constitution or any law, including the legislature and
23 the courts.

24 (d) “Personal Internet account” means an account created and used exclusively
25 for personal purposes within a bounded system established by an Internet-based

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1 service that requires a user to input or store access information via an electronic
2 device in order to view, create, use, or edit the user's account information, profile,
3 display, communications, or stored data.

4 **(2) RESTRICTIONS ON EMPLOYER ACCESS TO PERSONAL INTERNET ACCOUNTS.** (a)
5 Except as provided in pars. (b) and (c), no employer may do any of the following:

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

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

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

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

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

23 3. Conducting an investigation or requiring an employee to cooperate in an
24 investigation of any alleged unauthorized transfer of the employer's proprietary or
25 confidential information or financial data to the employee's personal Internet

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1 account, if the employer has reasonable cause to believe that such a transfer has
2 occurred, or of any other alleged employment-related misconduct or violation of the
3 law, if the employer has reasonable cause to believe that activity on the employee's
4 personal Internet account relating to that misconduct or violation of the law has
5 occurred.

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

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

12 6. Complying with a duty to screen applicants for employment prior to hiring
13 that is established under state or federal law or by a self-regulatory organization,
14 as defined in 15 USC 78c (a) (26).

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

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

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

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

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

7 2. Expel, suspend, discipline, or otherwise penalize any student or prospective
8 student for exercising the right to refuse a request under subd. 1., opposing a practice
9 prohibited under subd. 1., filing a complaint or attempting to enforce any right under
10 subd. 1., or testifying or assisting in any action or proceeding to enforce any right
11 under subd. 1.

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

14 1. Requesting or requiring a student to disclose access information to the
15 educational institution in order for the institution to gain access to or operate an
16 electronic communications device paid for in whole or in part by the institution or to
17 gain access to an account or service that is provided by the institution, that the
18 student obtained by virtue of the student's admission to the educational institution,
19 or that is used by the student for educational purposes.

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

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

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

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

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

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

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

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

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

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1 (3) (a) 2. may file a complaint with the department, and the department shall process
2 the complaint in the same manner as employment discrimination complaints are
3 processed under s. 111.39. If the department finds that a violation of sub. (2) (a) 2.
4 or (3) (a) 2. has been committed, the department may order the employer or
5 educational institution to take such action authorized under s. 111.39 as will remedy
6 the violation. Section 111.322 (2m) applies to a discharge or other discriminatory act
7 arising in connection with any proceeding under this paragraph.

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

SECTION 6. Initial applicability.

14
15 (1) COLLECTIVE BARGAINING AGREEMENT. This act first applies to an employee
16 who is affected by a collective bargaining agreement that contains provisions
17 inconsistent with this act on the day on which the collective bargaining agreement
18 expires or is extended, modified, or renewed, whichever occurs first.

19 (END)