



**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 223**

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

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

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

1 106.54 (10) (a) The division shall receive complaints under s. 995.55 (6) (b) and
2 shall process the complaints in the same manner as employment discrimination
3 complaints are processed under s. 111.39.

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

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

8 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
9 right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50,
10 104.12, ~~106.04~~, 109.03, 109.07, 109.075, ~~or 146.997~~, or 995.55, or ss. 101.58 to
11 101.599 or 103.64 to 103.82.

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

13 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
14 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,
15 103.34, 103.455, 103.50, 104.12, ~~106.04~~, 109.03, 109.07, 109.075, ~~or 146.997~~, or
16 995.55, or ss. 101.58 to 101.599 or 103.64 to 103.82.

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

18 111.91 (2) (im) Employer access to the social networking Internet site of an
19 employee that provides fewer rights and remedies to employees than are provided
20 under s. 995.55.

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

22 **995.55 Internet privacy protection. (1) DEFINITIONS.** In this section:

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

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

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

12 (d) “Personal Internet account” means an Internet-based account that is
13 created and used by an individual exclusively for purposes of personal
14 communications.

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

17 1. Request or require an employee or applicant for employment, as a condition
18 of employment, to disclose access information for the personal Internet account of the
19 employee or applicant or to otherwise grant access to or allow observation of that
20 account.

21 2. Discharge or otherwise discriminate against an employee for exercising the
22 right under subd. 1. to refuse to disclose access information for, grant access to, or
23 allow observation of the employee’s personal Internet account, opposing a practice
24 prohibited under subd. 1., filing a complaint or attempting to enforce any right under

1 subd. 1., or testifying or assisting in any action or proceeding to enforce any right
2 under subd. 1.

3 3. Refuse to hire an applicant for employment because the applicant refused
4 to disclose access information for, grant access to, or allow observation of the
5 applicant's personal Internet account.

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

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

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

16 3. Subject to this subdivision, conducting an investigation or requiring an
17 employee to cooperate in an investigation of any alleged unauthorized transfer of the
18 employer's proprietary or confidential information or financial data to the
19 employee's personal Internet account, if the employer has reasonable cause to
20 believe that such a transfer has occurred, or of any other alleged
21 employment-related misconduct, violation of the law, or violation of the employer's
22 work rules as specified in an employee handbook, if the employer has reasonable
23 cause to believe that activity on the employee's personal Internet account relating
24 to that misconduct or violation has occurred. In conducting an investigation or
25 requiring an employee to cooperate in an investigation under this subdivision, an

1 employer may require an employee to grant access to or allow observation of the
2 employee's personal Internet account, but may not require the employee to disclose
3 access information for that account.

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

7 5. Complying with a duty to screen applicants for employment prior to hiring
8 or a duty to monitor or retain employee communications that is established under
9 state or federal laws, rules, or regulations or the rules of a self-regulatory
10 organization, as defined in 15 USC 78c (a) (26).

11 6. 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 7. Requesting or requiring an employee to disclose the employee's personal
15 electronic mail address.

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

22 (d) An employer that inadvertently obtains access information for an
23 employee's personal Internet account through the use of an electronic device or
24 program that monitors the employer's network or through an electronic
25 communications device supplied or paid for in whole or in part by the employer is not

1 liable under par. (a) for possessing that access information so long as the employer
2 does not use that access information to access the employee's personal Internet
3 account.

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

7 1. Request or require a student or prospective student, as a condition of
8 admission or enrollment, to disclose access information for the personal Internet
9 account of the student or prospective student or to otherwise grant access to or allow
10 observation of that account.

11 2. Expel, suspend, discipline, or otherwise penalize any student for exercising
12 the right under subd. 1. to refuse to disclose access information for, grant access to,
13 or allow observation of the student's personal Internet account, opposing a practice
14 prohibited under subd. 1., filing a complaint or attempting to enforce any right under
15 subd. 1., or testifying or assisting in any action or proceeding to enforce any right
16 under subd. 1.

17 3. Refuse to admit a prospective student because the prospective student
18 refused to disclose access information for, grant access to, or allow observation of the
19 prospective student's personal Internet account.

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

22 1. Requesting or requiring a student to disclose access information to the
23 educational institution in order for the institution to gain access to or operate an
24 electronic communications device supplied or paid for in whole or in part by the
25 institution or in order for the educational institution to gain access to an account or

1 service provided by the institution, obtained by virtue of the student's admission to
2 the educational institution, or used for educational purposes.

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

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

8 1. Request or require a tenant or prospective tenant, as a condition of tenancy,
9 to disclose access information for the personal Internet account of the tenant or
10 prospective tenant or to otherwise grant access to or allow observation of that
11 account.

12 2. Discriminate in a manner described in s. 106.50 (2) against a tenant or
13 prospective tenant for exercising the right under subd. 1. to refuse to disclose access
14 information for, grant access to, or allow observation of the personal Internet account
15 of the tenant or prospective tenant, opposing a practice prohibited under subd. 1.,
16 filing a complaint or attempting to enforce any right under subd. 1., or testifying or
17 assisting in any action or proceeding to enforce any right under subd. 1.

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

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

24 (b) An employer, educational institution, or landlord is not liable under this
25 section for any failure to request or require that an employee, applicant for

1 employment, student, prospective student, tenant, or prospective tenant grant
2 access to, allow observation of, or disclose information that allows access to or
3 observation of a personal Internet account of the employee, applicant for
4 employment, student, prospective student, tenant, or prospective tenant.

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

7 (b) An employee who is discharged or otherwise discriminated against in
8 violation of sub. (2) (a) 2., an applicant for employment who is not hired in violation
9 of sub. (2) (a) 3., a student who is expelled, suspended, disciplined, or otherwise
10 penalized in violation of sub. (3) (a) 2., or a prospective student who is not admitted
11 in violation of sub. (3) (a) 3., may file a complaint with the department of workforce
12 development, and that department shall process the complaint in the same manner
13 as employment discrimination complaints are processed under s. 111.39. If the
14 department of workforce development finds that a violation of sub. (2) (a) 2. or 3. or
15 (3) (a) 2. or 3. has been committed, that department may order the employer or
16 educational institution to take such action authorized under s. 111.39 as will remedy
17 the violation. Section 111.322 (2m) applies to a discharge or other discriminatory act
18 arising in connection with any proceeding under this paragraph.

19 (c) A tenant or prospective tenant who is discriminated against in violation of
20 sub. (4) (a) 2. may file a complaint with the department of workforce development,
21 and that department shall process the complaint in the same manner as housing
22 discrimination complaints are processed under s. 106.50. If the department of
23 workforce development finds that a violation of sub. (4) (a) 2. has been committed,
24 that department may order the landlord to take such action authorized under s.
25 106.50 as will remedy the violation.

