

2013 DRAFTING REQUEST

Bill

Received: 4/15/2013 Received By: gmalaise
Wanted: 4/16/2013 4:00:00 PM Same as LRB:
For: John Lehman (608) 266-1832 By/Representing: Geoff Gaston
May Contact: Drafter: gmalaise
Subject: Employ Priv - miscellaneous Addl. Drafters:
Privacy Extra Copies:

Submit via email: YES
Requester's email: Sen.Lehman@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Employer, landlord, and educational access to employee, tenant, and student personal Internet accounts

Instructions:

Draft companion to -1551/2

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 4/15/2013	evinz 4/15/2013	jfrantze 4/15/2013	_____			
/1	gmalaise 5/17/2013			_____	srose 4/15/2013	sbasford 4/16/2013	State S&L
/2		evinz 5/21/2013	jmurphy 5/21/2013	_____	sbasford 5/21/2013	sbasford 5/21/2013	State S&L

FE Sent For:

@ intro.

<END>

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12 eeV
5/21/13

gm
5/21

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/1				_____	srose 4/15/2013		State S&L

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/?	gmalaise	1 ee 4/15/13					

FE Sent For:

<END>



State of Wisconsin
2013 - 2014 LEGISLATURE

IN 4115
Tomorrow 4116 -
Companion No change



LRB-1551/2
GMM:eev:jm

21731

stays

2013 BILL

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.

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)

BILL

“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:

BILL

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.

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

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

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.

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 par. (b), no employer may do any of the following:

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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.

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.

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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 (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 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.

BILL

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)

Rose, Stefanie

From: Gaston, Geoff
Sent: Monday, April 15, 2013 4:55 PM
To: LRB.Legal
Subject: Draft Review: LRB -2173/1 Topic: Employer, landlord, and educational access to employee, tenant, and student personal Internet accounts

Please Jacket LRB -2173/1 for the SENATE.

Malaise, Gordon

From: Stafford, Beau
Sent: Thursday, May 16, 2013 3:31 PM
To: Malaise, Gordon
Cc: Collins, Aaron; Bruce, Cory
Subject: New jacket for Social Media Bill

Gordon –

I talked to Cory and Aaron today and they said you are redrafting the Social Media Bill and resending them the jacket. Can we get the same changes incorporated into our LRB-2173 and get a new jacket too?

Thanks Gordon!

Beau Stafford

Chief of Staff
Office of Senator John Lehman
21st Senate District
319 South
608-266-1832
[Beu.stafford@legis.wisconsin.gov](mailto:Beau.stafford@legis.wisconsin.gov)

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.

STATE OF WISCONSIN – LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

S/17

Aaron Collins

p 6, 89 insert "state"



State of Wisconsin
2013 - 2014 LEGISLATURE

IN 517



LRB-2173/1
GMM:eev:jf

RWR

stays

2013 BILL

Wanted Tues 5/21

comp to -1551/3

regen

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4 for employment; educational institution access to, and observation of, the
5 personal Internet accounts of students and prospective students; landlord
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Analysis by the Legislative Reference Bureau

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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 a request, opposing such a 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.

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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 ^{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)

BILL

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:

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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:

BILL

SECTION 4

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.

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

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

6 (a) "Access information" means a user name, ^{and} 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 ^{and} 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 ^{parts} (b) ^{and (c)}, no employer may do any of the following:

BILL

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

has occurred

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 ^{state or} 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.

Insert
12
6-13
13

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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.

BILL**SECTION 5**

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 ^{authorized} action ~~under s. 111.39 as will effectuate the~~
20 ~~purpose of this section.~~ ^{remedy the violation,} 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.

BILL

remedy the violation

authorized

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)

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

LRB-2173/2ins
GMM.....

(INSERT 6-13)

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)

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)

Barman, Mike

From: Stafford, Beau
Sent: Tuesday, May 21, 2013 3:06 PM
To: LRB.Legal
Subject: Draft Review: LRB -2173/2 Topic: Employer, landlord, and educational access to employee, tenant, and student personal Internet accounts

Please Jacket LRB -2173/2 for the SENATE.