

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 821

Introduced by Larson, 40.

Read first time January 08, 2016

Committee: Business and Labor

1 A BILL FOR AN ACT relating to employment; to adopt the Workplace Privacy

2 Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and may be
2 cited as the Workplace Privacy Act.

3 Sec. 2. For purposes of the Workplace Privacy Act:

4 (1) Applicant means a prospective employee applying for employment;

5 (2) Electronic communication device means a cellular telephone,
6 personal digital assistant, electronic device with mobile data access,
7 laptop computer, pager, broadband personal communication device, two-way
8 messaging device, electronic game, or portable computing device;

9 (3) Employee means an individual employed by an employer;

10 (4) Employer means a public or nonpublic entity or an individual
11 engaged in a business, an industry, a profession, a trade, or other
12 enterprise in the state, including any agent, representative, or designee
13 acting directly or indirectly in the interest of such an employer; and

14 (5) Social networking site means an Internet-based, personalized,
15 privacy-protected web site or application whether free or commercial that
16 allows users to construct a private or semi-private profile site within a
17 bounded system, create a list of other system users who are granted
18 reciprocal access to the individual's profile site, send and receive
19 electronic mail, and share personal content, communications, and
20 contacts. Social networking site does not include electronic mail.

21 Sec. 3. No employer shall:

22 (1) Require or request that an employee or applicant provide or
23 disclose any user name or password or any other related account
24 information in order to gain access to the employee's or applicant's
25 social networking site profile or account by way of an electronic
26 communication device;

27 (2) Require or request that an employee or applicant log onto a
28 social networking site by way of an electronic communication device in
29 the presence of the employer so as to provide the employer access to the
30 employee's or applicant's social networking site profile or account;

31 (3) Access an employee's or applicant's social networking site

1 profile or account indirectly through any other person who is a social
2 networking contact of the employee or applicant; or

3 (4) Require or request that an employee or applicant add anyone,
4 including the employer, to the list of contacts associated with the
5 employee's or applicant's social networking site account or require,
6 request, or otherwise coerce an employee or applicant to change the
7 settings on the employee's or applicant's social networking site account
8 which affects the ability of others to view the content of such account.

9 Sec. 4. An employer shall not require an employee or applicant to
10 wave or limit any protection granted under the Workplace Privacy Act as
11 a condition of continued employment or of applying for or receiving an
12 offer of employment. Any agreement to waive any right or protection under
13 the act is against the public policy of this state and is void and
14 unenforceable.

15 Sec. 5. An employer shall not retaliate or discriminate against an
16 employee or applicant because the employee or applicant:

17 (1) Refuses to provide or disclose any user name or password or in
18 any other way provide access to the employee's or applicant's social
19 networking site profile or account through an electronic communication
20 device;

21 (2) Files a complaint under the Workplace Privacy Act; or

22 (3) Testifies, assists, or participates in an investigation,
23 proceeding, or action concerning a violation of the act.

24 Sec. 6. An employee shall not download an employer's private
25 proprietary information or private financial data to a personal web site
26 or to a social networking site without authorization from the employer.
27 This section shall not apply if the proprietary or financial information
28 is otherwise disclosed by the employer to the public pursuant to other
29 provisions of law or practice.

30 Sec. 7. Nothing in the Workplace Privacy Act limits an employer's
31 right to:

1 (1) Promulgate and maintain lawful workplace policies governing the
2 use of the employer's electronic equipment, including policies regarding
3 Internet use, social networking site use, and electronic mail use;

4 (2) Request or require an employee or applicant to disclose access
5 information to the employer to gain access to or operate:

6 (a) An electronic communications device paid for in whole or in part
7 by the employer; or

8 (b) An account or service provided by the employer, obtained by
9 virtue of the employee's employment relationship with the employer, or
10 used for the employer's business purposes;

11 (3) Access information about an employee or applicant that is in the
12 public domain or is otherwise obtained in compliance with the Workplace
13 Privacy Act; or

14 (4) Conduct an investigation based upon the receipt of information
15 about employee wrongdoing or unauthorized downloading of an employer's
16 private proprietary information or private financial data to a personal
17 web site or a social networking site.

18 Sec. 8. If an employer inadvertently learns the user name,
19 password, or other means of access to an employee's or applicant's social
20 networking site account through the use of an otherwise lawful virus scan
21 or firewall program that monitors the employer's computer network or
22 employer-provided electronic communication devices, the employer is not
23 liable for obtaining the information, but the employer (1) shall not use
24 the information to access the employee's or applicant's social networking
25 site account, (2) shall not share the information with anyone, and (3)
26 shall delete such information as soon as practicable.

27 Sec. 9. Upon violation of the Workplace Privacy Act, an aggrieved
28 employee or applicant may, in addition to any other available remedy,
29 institute a civil action within one year after the date of the alleged
30 violation or the discovery of the alleged violation, whichever is later.
31 The employee or applicant shall file an action directly in the district

1 court of the county where such alleged violation occurred. The district
2 court shall docket and try such case as any other civil action, and any
3 successful complainant shall be entitled to appropriate relief, including
4 temporary or permanent injunctive relief, general and special damages,
5 reasonable attorney's fees, and costs.