

ONE HUNDRED FOURTH LEGISLATURE - SECOND SESSION - 2016
COMMITTEE STATEMENT
LB821

Hearing Date: Monday February 08, 2016
Committee On: Business and Labor
Introducer: Larson
One Liner: Adopt the Workplace Privacy Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	5	Senators Bloomfield, Crawford, Ebke, Harr, Howard
Nay:		
Absent:	1	Senator Chambers
Present Not Voting:	1	Senator Johnson

Verbal Testimony:

Proponents:

Tyson Larson
Spike Eickholt

Representing:

Introducer
Nebraska ACLU

Opponents:

Brad Rice

Representing:

Nebraska State Patrol

Neutral:

Robert Hallstrom

Representing:

Nebraska Bankers Association

Summary of purpose and/or changes:

Sec. 1. creates the Workplace Privacy Act.

Sec. 2. definitional section. Defines applicant, electronic communication device, employee, employer, and social networking site for purposes of the act.

Sec. 3. prohibits employers from doing the following: (1) requiring or requesting an employee or applicant to disclose their user names or passwords to social networking accounts; (2) requiring or requesting an employee or applicant to log onto a social networking site in the presence of the employer; (3) indirectly accessing an employee's or applicant's social networking account; or (4) requiring or requesting an employee or applicant to add anyone, including the employer, to their social networking site or requiring or requesting an employee or applicant to change their social networking settings.

Sec. 4. prohibits employers from requiring waiver or limiting any rights afforded under the act. Any waiver agreement is considered void and unenforceable.

Sec. 5. prohibits retaliation against an employee or applicant for exercising rights afforded under the act.

Sec. 6. prohibits an employee from downloading an employer's proprietary or financial information to the internet without permission, unless such information is otherwise disclosed by the employer to the public.

Sec. 7. clarifies that the act does not limit an employer's right to the following: (1) promulgate rules governing internet use; (2) request access to operate an electronic device paid for in whole or in part by the employer or an account or service provided by the employer; (3) access information that is in the public domain or otherwise obtained in compliance with the act; or (4) conduct an investigation of acts violating section 6 of the act.

Sec. 8. provides that if an employer inadvertently learns the user name, password, or otherwise obtains access to an employee's or applicant's social networking account through the use of a virus scan or firewall program, the employer is not liable for obtaining the information, but the employer must not use the information to access the social networking account, must not share the information, and must delete the information as soon as possible.

Sec. 9. allows civil suit if instigated within one year of an alleged violation or the discovery of an alleged violation. The court may award temporary or permanent injunctive relief, general and special damages, reasonable attorney's fees, and costs to the complainant.

Explanation of amendments:

Sec. 1. creates the Workplace Privacy Act.

Sec. 2. definitional section. Defines adverse action, applicant, electronic communication device, employee, employer, and personal Internet account for purposes of the act.

Sec. 3. prohibits employers from doing the following: (1) requiring or requesting an employee or applicant to disclose their user names or passwords to personal Internet accounts; (2) requiring or requesting an employee or applicant to log into a personal Internet account in the presence of the employer; (3) requiring an employee or applicant to add anyone, including the employer, to their personal Internet account or requiring or coercing an employee or applicant to change their personal Internet account settings; or (4) taking adverse action against, failing to hire, or otherwise penalizing an employee or applicant for failure to disclose such information.

Sec. 4. prohibits employers from requiring waiver or limiting any rights afforded under the act. Any waiver agreement is considered void and unenforceable.

Sec. 5. prohibits retaliation against an employee or applicant because the employee or applicant files a complaint under the act or participates in an investigation concerning a violation of the act.

Sec. 6. prohibits an employee from downloading or transferring an employer's proprietary or financial information to a personal Internet account without permission, unless such information is otherwise disclosed by the employer to the public.

Sec. 7. clarifies that the act does not limit an employer's right to the following: (1) promulgate rules governing internet use; (2) request access to operate an electronic device paid for in whole or in part by the employer; (3) restrict an employee's access to certain websites while using a company electronic device; (4) monitor, review, access, or block electronic data stored on a company electronic device; (5) access information that is in the public domain or otherwise obtained in compliance with the act; (6) conduct an investigation, if the employer has specific information, related to wrongful activity or acts violating section 6 of the act; (7) take adverse action against an employee for downloading or transferring an employer's private proprietary information to a personal Internet account; (8) comply with requirements to screen employees or applicants before hiring or to monitor communications required by state or federal law; or (9) comply with a law enforcement investigation.

Sec. 8. provides that the act does not restrict a law enforcement agency's right to screen employees or applicants in connection with a law enforcement application or law enforcement officer conduct investigation.

Sec. 9. provides that the act does not create a duty for an employer to search or monitor the activity of a personal

Internet account and that an employer is not liable for failure to request or require an employee or applicant to grant access to a personal Internet account.

Sec. 10. provides that if an employer inadvertently learns the user name, password, or otherwise obtains access to an employee's or applicant's personal Internet account through the use of lawful technology that monitors the network for quality or security purposes, the employer is not liable for obtaining the information. The employer must not use such information to access the employee's or applicant's personal Internet account or share the information. The employer must delete the information as soon as practicable.

Sec. 11. allows civil suit if initiated within one year of an alleged violation or the discovery of an alleged violation. The court may award temporary or permanent injunctive relief, general and special damages, reasonable attorney's fees, and costs to the complainant.

Sec. 12. severability clause.

Burke Harr, Chairperson