

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 821

FINAL READING

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; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 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) Adverse action means the discharge of an employee, a threat
5 against an employee, or any other act against an employee that negatively
6 affects the employee's employment;

7 (2) Applicant means a prospective employee applying for employment;

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

12 (4) Employee means an individual employed by an employer;

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

17 (6)(a) Personal Internet account means an individual's online
18 account that requires login information in order to access or control the
19 account.

20 (b) Personal Internet account does not include:

21 (i) An online account that an employer or educational institution
22 supplies or pays for, except when the employer or educational institution
23 pays only for additional features or enhancements to the online account;
24 or

25 (ii) An online account that is used exclusively for a business
26 purpose of the employer.

27 Sec. 3. No employer shall:

28 (1) Require or request that an employee or applicant provide or
29 disclose any user name or password or any other related account
30 information in order to gain access to the employee's or applicant's
31 personal Internet account by way of an electronic communication device;

1 (2) Require or request that an employee or applicant log into a
2 personal Internet account by way of an electronic communication device in
3 the presence of the employer in a manner that enables the employer to
4 observe the contents of the employee's or applicant's personal Internet
5 account or provides the employer access to the employee's or applicant's
6 personal Internet account;

7 (3) Require an employee or applicant to add anyone, including the
8 employer, to the list of contacts associated with the employee's or
9 applicant's personal Internet account or require or otherwise coerce an
10 employee or applicant to change the settings on the employee's or
11 applicant's personal Internet account which affects the ability of others
12 to view the content of such account; or

13 (4) Take adverse action against, fail to hire, or otherwise penalize
14 an employee or applicant for failure to provide or disclose any of the
15 information or to take any of the actions specified in subdivisions (1)
16 through (3) of this section.

17 Sec. 4. An employer shall not require an employee or applicant to
18 waive or limit any protection granted under the Workplace Privacy Act as
19 a condition of continued employment or of applying for or receiving an
20 offer of employment. Any agreement to waive any right or protection under
21 the act is against the public policy of this state and is void and
22 unenforceable.

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

25 (1) Files a complaint under the Workplace Privacy Act; or

26 (2) Testifies, assists, or participates in an investigation,
27 proceeding, or action concerning a violation of the act.

28 Sec. 6. An employee shall not download or transfer an employer's
29 private proprietary information or private financial data to a personal
30 Internet account without authorization from the employer. This section
31 shall not apply if the proprietary information or the financial data is

1 otherwise disclosed by the employer to the public pursuant to other
2 provisions of law or practice.

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

5 (1) Promulgate and maintain lawful workplace policies governing the
6 use of the employer's electronic equipment, including policies regarding
7 Internet use and personal Internet account use;

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

10 (a) An electronic communication device supplied by or paid for in
11 whole or in part by the employer; or

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

15 (3) Restrict or prohibit an employee's access to certain web sites
16 while using an electronic communication device supplied by or paid for in
17 whole or in part by the employer or while using an employer's network or
18 resources, to the extent permissible under applicable laws;

19 (4) Monitor, review, access, or block electronic data stored on an
20 electronic communication device supplied by or paid for in whole or in
21 part by the employer or stored on an employer's network, to the extent
22 permissible under applicable laws;

23 (5) Access information about an employee or applicant that is in the
24 public domain or is otherwise obtained in compliance with the Workplace
25 Privacy Act;

26 (6) Conduct an investigation or require an employee to cooperate in
27 an investigation under any of the following circumstances:

28 (a) If the employer has specific information about potentially
29 wrongful activity taking place on the employee's personal Internet
30 account, for the purpose of ensuring compliance with applicable laws,
31 regulatory requirements, or prohibitions against work-related employee

1 misconduct; or

2 (b) If the employer has specific information about an unauthorized
3 download or transfer of the employer's private proprietary information,
4 private financial data, or other confidential information to an
5 employee's personal Internet account;

6 (7) Take adverse action against an employee for downloading or
7 transferring an employer's private proprietary information or private
8 financial data to a personal Internet account without the employer's
9 authorization;

10 (8) Comply with requirements to screen employees or applicants
11 before hiring or to monitor or retain employee communications that are
12 established by state or federal law or by a self-regulatory organization
13 as defined in 15 U.S.C. 78c(a)(26), as such section existed on January 1,
14 2016; or

15 (9) Comply with a law enforcement investigation conducted by a law
16 enforcement agency.

17 Sec. 8. Nothing in the Workplace Privacy Act limits a law
18 enforcement agency's right to screen employees or applicants in
19 connection with a law enforcement employment application or a law
20 enforcement officer conduct investigation.

21 Sec. 9. (1) The Workplace Privacy Act does not create a duty for an
22 employer to search or monitor the activity of a personal Internet
23 account.

24 (2) An employer is not liable under the act for failure to request
25 or require that an employee or applicant grant access to, allow
26 observation of, or disclose information that allows access to or
27 observation of the employee's or applicant's personal Internet account.

28 Sec. 10. If an employer inadvertently learns the user name,
29 password, or other means of access to an employee's or applicant's
30 personal Internet account through the use of otherwise lawful technology
31 that monitors the employer's computer network or employer-provided

1 electronic communication devices for service quality or security
2 purposes, the employer is not liable for obtaining the information, but
3 the employer shall not use the information to access the employee's or
4 applicant's personal Internet account or share the information with
5 anyone. The employer shall delete such information as soon as
6 practicable.

7 Sec. 11. Upon violation of the Workplace Privacy Act, an aggrieved
8 employee or applicant may, in addition to any other available remedy,
9 institute a civil action within one year after the date of the alleged
10 violation or the discovery of the alleged violation, whichever is later.
11 The employee or applicant shall file an action directly in the district
12 court of the county where such alleged violation occurred. The district
13 court shall docket and try such case as any other civil action, and any
14 successful complainant shall be entitled to appropriate relief, including
15 temporary or permanent injunctive relief, general and special damages,
16 reasonable attorney's fees, and costs.

17 Sec. 12. If any section in this act or any part of any section is
18 declared invalid or unconstitutional, the declaration shall not affect
19 the validity or constitutionality of the remaining portions.