

Representative Stewart Barlow proposes the following substitute bill:

INTERNET PRIVACY AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stewart Barlow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions addressing labor in general and higher education to enact protections for personal Internet accounts.

Highlighted Provisions:

This bill:

- ▶ enacts the Internet Employment Privacy Act, including:
 - defining terms;
 - prohibiting certain actions by an employer;
 - permitting certain actions by an employer;
 - providing that the chapter does not create certain duties; and
 - providing private right of action; and
- ▶ enacts the Internet Postsecondary Education Privacy Act, including:
 - defining terms;
 - prohibiting certain actions by a postsecondary institution;
 - permitting certain actions by a postsecondary institution;
 - providing that the chapter does not create certain duties; and
 - providing for private right of action.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 ENACTS:

31 **34-48-101**, Utah Code Annotated 1953

32 **34-48-102**, Utah Code Annotated 1953

33 **34-48-201**, Utah Code Annotated 1953

34 **34-48-202**, Utah Code Annotated 1953

35 **34-48-203**, Utah Code Annotated 1953

36 **34-48-301**, Utah Code Annotated 1953

37 **53B-24-101**, Utah Code Annotated 1953

38 **53B-24-102**, Utah Code Annotated 1953

39 **53B-24-201**, Utah Code Annotated 1953

40 **53B-24-202**, Utah Code Annotated 1953

41 **53B-24-203**, Utah Code Annotated 1953

42 **53B-24-301**, Utah Code Annotated 1953



44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **34-48-101** is enacted to read:

CHAPTER 48. INTERNET EMPLOYMENT PRIVACY ACT

Part 1. General Provisions

48 **34-48-101. Title.**

49 This chapter is known as the "Internet Employment Privacy Act."

50 Section 2. Section **34-48-102** is enacted to read:

51 **34-48-102. Definitions.**

52 As used in this chapter:

53 (1) "Adverse action" means to discharge, threaten, or otherwise discriminate against an
54 employee in any manner that affects the employee's employment, including compensation,
55 terms, conditions, location, rights, immunities, promotions, or privileges.

56 (2) "Employer" means a person, including the state or a political subdivision of the

57 state, that has one or more workers or operators employed in the same business, or in or about
58 the same establishment, under any contract of hire, express or implied, oral or written.

59 (3) (a) "Personal Internet account" means an online account that is used by an
60 employee or applicant exclusively for personal communications unrelated to any business
61 purpose of the employer.

62 (b) "Personal Internet account" does not include an account created, maintained, used,
63 or accessed by an employee or applicant for business related communications or for a business
64 purpose of the employer.

65 Section 3. Section **34-48-201** is enacted to read:

66 **Part 2. Prohibited and Permitted Activities**

67 **34-48-201. Employer may not request disclosure of information related to**
68 **personal Internet account.**

69 An employer may not do any of the following:

70 (1) request an employee or an applicant for employment to disclose a username and
71 password, or a password that allows access to the employee's or applicant's personal Internet
72 account; or

73 (2) take adverse action, fail to hire, or otherwise penalize an employee or applicant for
74 employment for failure to disclose information described in Subsection (1).

75 Section 4. Section **34-48-202** is enacted to read:

76 **34-48-202. Permitted actions by an employer.**

77 (1) This chapter does not prohibit an employer from doing any of the following:

78 (a) requesting or requiring an employee to disclose a username or password to gain
79 access to or operate any of the following:

80 (i) an electronic communications device supplied by or paid for in whole or in part by
81 the employer; or

82 (ii) an account or service provided by the employer, obtained by virtue of the
83 employee's employment relationship with the employer, or used for the employer's business
84 purposes;

85 (b) disciplining or discharging an employee for transferring the employer's proprietary
86 or confidential information or financial data to an employee's personal Internet account without
87 the employer's authorization;

88 (c) conducting an investigation or requiring an employee to cooperate in an
89 investigation in any of the following:

90 (i) if there is specific information about activity on the employee's personal Internet
91 account, for the purpose of ensuring compliance with applicable laws, regulatory requirements,
92 or prohibitions against work-related employee misconduct; or

93 (ii) if the employer has specific information about an unauthorized transfer of the
94 employer's proprietary information, confidential information, or financial data to an employee's
95 personal Internet account;

96 (d) restricting or prohibiting an employee's access to certain websites while using an
97 electronic communications device paid for in whole or in part by the employer or while using
98 an employer's network or resources, in accordance with state and federal law; or

99 (e) monitoring, reviewing, accessing, or blocking electronic data stored on an
100 electronic communications device supplied or paid for in whole or in part by the employer, or
101 traveling through or stored on an employer's network, in accordance with state and federal law.

102 (2) Conducting an investigation or requiring an employee to cooperate in an
103 investigation as specified in Subsection (1)(c) includes requiring the employee to share the
104 content that has been reported in order to make a factual determination.

105 (3) This chapter does not prohibit or restrict an employer from complying with a duty
106 to screen employees or applicants before hiring or to monitor or retain employee
107 communications that is established under federal law or by a self-regulatory organization under
108 the Securities and Exchange Act of 1934, 15 U.S.C. Sec. 78c(a)(26).

109 (4) This chapter does not prohibit or restrict an employer from viewing, accessing, or
110 using information about an employee or applicant that can be obtained without the information
111 described in Subsection 34A-48-201(1) or that is available in the public domain.

112 Section 5. Section **34-48-203** is enacted to read:

113 **34-48-203. Chapter does not create duties.**

114 (1) This chapter does not create a duty for an employer to search or monitor the activity
115 of a personal Internet account.

116 (2) An employer is not liable under this chapter for failure to request or require that an
117 employee or applicant for employment grant access to, allow observation of, or disclose
118 information that allows access to or observation of the employee's or applicant for

119 employment's personal Internet account.

120 Section 6. Section **34-48-301** is enacted to read:

121 **Part 3. Remedy**

122 **34-48-301. Private right of action.**

123 (1) A person aggrieved by a violation of this chapter may bring a civil cause of action
124 against an employer in a court of competent jurisdiction.

125 (2) In an action brought under Subsection (1), if the court finds a violation of this
126 chapter, the court shall award the aggrieved person not more than \$500.

127 Section 7. Section **53B-24-101** is enacted to read:

128 **CHAPTER 24. INTERNET POSTSECONDARY INSTITUTION PRIVACY ACT**

129 **Part 1. General Provisions**

130 **53B-24-101. Title.**

131 This chapter is known as the "Internet Postsecondary Institution Privacy Act."

132 Section 8. Section **53B-24-102** is enacted to read:

133 **53B-24-102. Definitions.**

134 As used in this chapter:

135 (1) "Personal Internet account" means an online account that is used by a student or
136 prospective student exclusively for personal communications unrelated to any purpose of the
137 postsecondary institution.

138 (b) "Personal Internet account" does not include an account created, maintained, used,
139 or accessed by a student or prospective student for education related communications or for a
140 education purpose of the postsecondary institution.

141 (2) "Postsecondary institution" means an institution that provides educational services
142 offered primarily to persons who have completed or terminated their secondary or high school
143 education or who are beyond the age of compulsory school attendance.

144 Section 9. Section **53B-24-201** is enacted to read:

145 **Part 2. Prohibited and Permitted Activities**

146 **53B-24-201. Prohibited activities.**

147 A postsecondary institution may not do any of the following:

148 (1) request a student or prospective student to disclose a username and password, or
149 password that allows access to the student's or prospective student's personal Internet account;

150 or

151 (2) expel, discipline, fail to admit, or otherwise penalize a student or prospective
152 student for failure to disclose information specified in Subsection (1).

153 Section 10. Section **53B-24-202** is enacted to read:

154 **53B-24-202. Permitted activities.**

155 (1) This chapter does not prohibit a postsecondary institution from requesting or
156 requiring a student to disclose a username or password to gain access to or operate the
157 following:

158 (a) an electronic communications device supplied by or paid for in whole or in part by
159 the postsecondary institution; or

160 (b) an account or service provided by the postsecondary institution that is either
161 obtained by virtue of the student's admission to the postsecondary institution or used by the
162 student for educational purposes.

163 (2) This chapter does not prohibit or restrict a postsecondary institution from viewing,
164 accessing, or using information about a student or prospective student that can be obtained
165 without the information described in Subsection 53B-24-201(1) or that is available in the
166 public domain.

167 Section 11. Section **53B-24-203** is enacted to read:

168 **53B-24-203. Duties not created.**

169 (1) This chapter does not create a duty for a postsecondary institution to search or
170 monitor the activity of a personal Internet account.

171 (2) A postsecondary institution is not liable under this chapter for failure to request or
172 require that a student or prospective student grant access to, allow observation of, or disclose
173 information that allows access to or observation of the student's or prospective student's
174 personal Internet account.

175 Section 12. Section **53B-24-301** is enacted to read:

176 **Part 3. Remedy**

177 **53B-24-301. Private right of action.**

178 (1) A person aggrieved by a violation of this chapter may bring a civil cause of action
179 against a postsecondary institution in a court of competent jurisdiction.

180 (2) In an action brought under Subsection (1), if the court finds a violation of this

181 chapter, the court shall award the aggrieved person not more than \$500.