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INTERNET PRIVACY AMENDMENTS
2013 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Stewart Barlow
Senate Sponsor: J. Stuart Adams

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 a 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 a private right of action.

Money Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:
Be it enacted by the Legislature of the state of Utah:

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

CHAPTER 48. INTERNET EMPLOYMENT PRIVACY ACT


34-48-101. Title.

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

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


As used in this chapter:

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

(2) "Employer" means a person, including the state or a political subdivision of the state, that has one or more workers or operators employed in the same business, or in or about
the same establishment, under any contract of hire, express or implied, oral or written.

(3) "Law enforcement agency" is as defined in Section 53-1-102.

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

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

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

Part 2. Prohibited and Permitted Activities

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

An employer may not do any of the following:

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

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

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


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

(a) requesting or requiring an employee to disclose a username or password required
only to gain access to the following:

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

(ii) an account or service provided by the employer, obtained by virtue of the
employee's employment relationship with the employer, and used for the employer's business
purposes:
(b) disciplining or discharging an employee for transferring the employer's proprietary or confidential information or financial data to an employee's personal Internet account without the employer's authorization;

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

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

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

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

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

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

(3) This chapter does not prohibit or restrict an employer from complying with a duty to screen employees or applicants before hiring or to monitor or retain employee communications that is established under federal law, by a self-regulatory organization under the Securities and Exchange Act of 1934, 15 U.S.C. Sec. 78c(a)(26), or in the course of a law enforcement employment application or law enforcement officer conduct investigation performed by a law enforcement agency.

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

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

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

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

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

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

Part 3. Remedy

34-48-301. Private right of action.

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

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

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

CHAPTER 24. INTERNET POSTSECONDARY INSTITUTION PRIVACY ACT


53B-24-101. Title.

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

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


As used in this chapter:

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

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

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

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

Part 2. Prohibited and Permitted Activities

53B-24-201. Prohibited activities.
A postsecondary institution may not do any of the following:

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

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

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

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

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

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

(2) This chapter does not prohibit or restrict a postsecondary institution from viewing,
accessing, or using information about a student or prospective student that can be obtained
without the information described in Subsection 53B-24-201(1) or that is available in the
public domain.
Section 11. Section 53B-24-203 is enacted to read:

53B-24-203. Duties not created.

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

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

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

Part 3. Remedy

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

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

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