

## HB0100S01 compared with HB0100

~~deleted text~~ shows text that was in HB0100 but was deleted in HB0100S01.

inserted text shows text that was not in HB0100 but was inserted into HB0100S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Stewart Barlow proposes the following substitute bill:

### INTERNET PRIVACY AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor:** Stewart Barlow

Senate Sponsor: \_\_\_\_\_

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#### 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:

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- 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:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

ENACTS:

**34-48-101**, Utah Code Annotated 1953  
**34-48-102**, Utah Code Annotated 1953  
**34-48-201**, Utah Code Annotated 1953  
**34-48-202**, Utah Code Annotated 1953  
**34-48-203**, Utah Code Annotated 1953  
**34-48-301**, Utah Code Annotated 1953  
**53B-24-101**, Utah Code Annotated 1953  
**53B-24-102**, Utah Code Annotated 1953  
**53B-24-201**, Utah Code Annotated 1953  
**53B-24-202**, Utah Code Annotated 1953  
**53B-24-203**, Utah Code Annotated 1953  
**53B-24-301**, Utah Code Annotated 1953

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*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**

#### **Part 1. General Provisions**

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

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

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

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### **34-48-102. Definitions.**

As used in this chapter:

(1) "~~{Access information}~~Adverse action" means ~~{a user name, password, login information, or other security information that protects access to a personal Internet account}~~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) (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~~{ by way of a bounded system established by an Internet-based service that requires a user to input or store access information by way of an electronic device to view, create, use, or edit the user's account information, profile, display, communications, or stored data}~~, 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 ~~{access}~~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 ~~{grant access to, allow observation of, or }~~disclose ~~{information}~~a username and password, or a password that allows access to~~{ or observation of}~~ the employee's or applicant's personal Internet account; or

(2) ~~{discharge, discipline}~~take adverse action, fail to hire, or otherwise penalize an employee or applicant for employment for failure to ~~{grant access to, allow observation of, or }~~disclose information ~~{that allows access to or observation of the employee's or applicant's personal Internet account}~~described in Subsection (1).

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

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

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

(a) requesting or requiring an employee to disclose ~~access information to the employer~~ a username or password to gain access to or operate any of 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, or 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 ~~with~~ 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 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, ~~for~~ accessing, or blocking electronic data stored on an electronic communications device ~~supplied or~~ paid for in whole or in part by the employer, or traveling through 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.~~

(~~2~~)3) This chapter does not prohibit or restrict an employer from complying with a

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duty to screen employees or applicants before hiring or to monitor or retain employee communications that is established under federal law or by a self-regulatory organization under the Securities and Exchange Act of 1934, 15 U.S.C. Sec. 78c(a)(26).

(~~3~~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 ~~any required access~~ 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**

### **Part 1. General Provisions**

#### **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:

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

As used in this chapter:

(1) "~~Access information~~" means a user name, password, login information, or other

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~~security information that protects access to a personal Internet account.~~

~~(2) "}~~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~~~~{ by way of a bounded system established by an Internet-based service that requires a user to input or store access information by way of an electronic device to view, create, use, or edit the user's account information, profile, display, communications, or stored data.~~

~~(3),~~ maintained, used, or accessed by a student or prospective student for education related communications or for a education 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 ~~{grant access to, allow observation of, or } disclose~~ {information}a username and password, or password that allows access to ~~{ or observation of }~~ 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 ~~{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}specified in Subsection (1).

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

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

(1) This chapter does not prohibit a postsecondary institution from requesting or requiring a student to disclose ~~{access information to the postsecondary institution}~~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

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(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 ~~†required access†~~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.

†

**Legislative Review Note**

~~as of 1-30-13 5:13 PM~~

~~Office of Legislative Research and General Counsel}~~