

COMMITTEE SUBSTITUTE

for

H. B. 2966

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MARCUM AND CAPUTO)

(Originating in the Committee on the Judiciary)

[March 27, 2013]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-5G-1, §21-5G-2, and §21-5G-3, all relating to employment and privacy protection; prohibiting an employer from requesting or requiring that an employee or applicant disclose any user name, password, or other means for accessing a personal account or service through certain electronic communications devices; prohibiting an employer from taking or threatening to take, certain disciplinary actions for an employee's refusal to disclose certain password and related

information; prohibiting an employer from failing or refusing to hire an applicant as a result of the applicant's refusal to disclose certain password and related information; prohibiting an employee from downloading certain unauthorized information or data to certain Web sites or Web-based accounts; and providing that an employer is not prevented from conducting certain investigations for certain purposes, including gathering information needed for compliance with mandatory state or federal regulations.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §21-5G-1, §21-5G-2 and §21-5G-3, all to read as follows:

ARTICLE 5G. INTERNET PRIVACY PROTECTION ACT.

§21-5G-1. Short Title.

- 1 This article shall be known and may be cited as the “Internet
- 2 Privacy Protection Act”.

§21-5G-2. Definitions.

- 1 As used in this article:
- 2 (a) “Applicant” means an applicant for employment.
- 3 (b) “Electronic Communications Device” means any device
- 4 that uses electronic signals to create, transmit and receive

5 information, and includes computers, telephones, personal digital
6 assistants, and other similar devices.

7 (c) “Employer” means a person engaged in a business,
8 industry, profession, trade or other enterprise in the state, or a
9 unit of state or local government. “Employer” includes an agent,
10 representative or designee of the employer.

§21-5G-3. Certain acts prohibited; not prohibited.

1 (a) An employer may not request or require that an employee
2 or applicant disclose any user name, password, or other means for
3 accessing a personal account or service through an electronic
4 communications device.

5 (b) (1) An employer may not discharge, discipline, or
6 otherwise penalize or threaten to discharge, discipline, or
7 otherwise penalize an employee for the employee’s refusal to
8 disclose any information specified in subsection (a) of this section.

9 (2) An employer may not fail or refuse to hire any applicant as
10 a result of the applicant’s refusal to disclose any information
11 specified in subsection (a) of this section.

12 (c) An employee may not download any information not
13 authorized by the employer, including but not limited to

14 proprietary information, trade secrets, or financial data to an
15 employee's personal Web site, an Internet Web site, a Web-based
16 account or a similar account, or to any other electronic or digital
17 storage device or medium.

18 (d) (1) This section does not prevent an employer, based on the
19 receipt of information about the use of a personal Web site,
20 Internet Web site, Web-based account, or similar account by an
21 employee for business purposes, from conducting an investigation
22 for the purpose of ensuring compliance with applicable securities
23 or financial law, or regulatory requirements.

24 (2) This section does not prevent an employer, based on the
25 receipt of information about unauthorized downloading of an
26 employer's proprietary information or financial data to a personal
27 Web site, Internet Web site, Web-based account or similar
28 account, or to any other electronic or digital storage device or
29 medium, by an employee, from investigating an employee's
30 actions under subsection (c) of this section.

31 (3) This section shall not impede an employer from gathering
32 information needed for compliance with mandatory state or federal
33 regulations.