

1 OMMITTEE SUBSTITUTE

2 for

3 **H. B. 2966**

4 (By Delegates Skinner, Lawrence, Barrett, Young, Sponaugle,  
5 Lynch, Tomblin, Eldridge, Poore, Marcum and Caputo)

6  
7 (Originating in the Committee on the Judiciary)

8 [January 24, 2014]

9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §21-5G-1, §21-5G-2,  
12 §21-5G-3 and §21-5G-4, all relating to employment and privacy  
13 protection; prohibiting an employer from requesting or  
14 requiring that an employee or applicant disclose any user  
15 name, password, or other means for accessing a personal  
16 account or service through certain electronic communications  
17 devices; prohibiting an employer from taking or threatening to  
18 take, certain disciplinary actions for an employee's refusal  
19 to disclose certain password and related information;  
20 prohibiting an employer from failing or refusing to hire an  
21 applicant as a result of the applicant's refusal to disclose  
22 certain password and related information; prohibiting an  
23 employee from downloading certain unauthorized information or  
24 data to certain Web sites or Web-based accounts; providing  
25 that an employer is not prevented from conducting certain  
26 investigations for certain purposes, including gathering  
27 information needed for compliance with mandatory state or

1 federal regulations; and duties not created under this  
2 article.

3 *Be it enacted by the Legislature of West Virginia:*

4 That the Code of West Virginia, 1931, as amended, be amended  
5 by adding thereto a new article, designated §21-5G-1, §21-5G-2,  
6 §21-5G-3 and §21-5G-3, all to read as follows:

7 **ARTICLE 5G. INTERNET PRIVACY PROTECTION ACT.**

8 **§21-5G-1. Short Title.**

9 This article shall be known and may be cited as the "Internet  
10 Privacy Protection Act".

11 **§21-5G-2. Definitions.**

12 As used in this article:

13 (a) "Applicant" means an applicant for employment.

14 (b) "Electronic Communications Device" means any device that  
15 uses electronic signals to create, transmit and receive  
16 information, and includes computers, telephones, personal digital  
17 assistants, and other similar devices.

18 (c) "Employer" means a person engaged in a business, industry,  
19 profession, trade or other enterprise in the state, or a unit of  
20 state or local government. "Employer" includes an agent,  
21 representative or designee of the employer.

22 **§21-5G-3. Certain acts prohibited; not prohibited.**

23 (a) An employer may not request or require that an employee or  
24 applicant disclose any user name, password, or other means for  
25 accessing a personal account or service through an electronic

1 communications device.

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

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

10 (c) An employee may not download any information not  
11 authorized by the employer, including but not limited to  
12 proprietary information, trade secrets, or financial data to an  
13 employee's personal Web site, an Internet Web site, a Web-based  
14 account or a similar account, or to any other electronic or digital  
15 storage device or medium.

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

22 (2) This section does not prohibit an employer from doing any  
23 of the following:

24 (a) requesting or requiring an employee to disclose a username  
25 or password to gain access to:

26 (i) an electronic communications device supplied by or

1 paid for, in whole or in part, by the employer; or  
2 (ii) an account or service provided by the employer,  
3 obtained by virtue of the employee's employment relationship with  
4 the employer, and used for the employer's business purposes  
5 (b) disciplining or discharging an employee for transferring  
6 the employer's proprietary or confidential information or financial  
7 data to an employee's personal internet account without the  
8 employer's authorization;  
9 (c) conducting an investigation or requiring an employee to  
10 cooperate in an investigation in any of the following:  
11 (i) if there is specific information about activity,  
12 relating to the employment of the individual or the business of the  
13 employer, on the employee's personal internet account, for the  
14 purpose of ensuring compliance with applicable laws, regulatory  
15 requirements or written employee codes of conduct found within  
16 previously known and agreed to written employee contracts; or  
17 (ii) if the employer has specific information about an  
18 unauthorized transfer of the employer's proprietary information,  
19 confidential information or financial data to an employee's  
20 personal internet account;  
21 (d) restricting or prohibiting an employee's access to certain  
22 websites while using an electronic communications device supplied  
23 by or paid for, in whole or in part, by the employer or while using  
24 an employer's network or resources, in accordance with state or  
25 federal law; or  
26 (e) monitoring, reviewing, accessing or blocking electronic

1 data stored on an electronic communications device supplied by or  
2 paid for, in whole or in part, by the employer or stored on an  
3 employer's network, in accordance with state and federal law.

4 (f) conducting an investigation or requiring an employee to  
5 cooperate in an investigation as specified in subsection (2)(c),  
6 including requiring the employee to share the content that has been  
7 reported in order to make a factual determination.

8 (3) This section does not prohibit or restrict an employer  
9 from complying with a duty to screen employees or applicants before  
10 hiring or to monitor or retain employee communications that is  
11 established under federal law, by a self-regulatory organization  
12 under the Securities and Exchange Act of 1934, 15 U.S.C. Sec.  
13 78c(a)(26), or in the course of a law enforcement employment  
14 application or law enforcement officer investigation performed by  
15 a law enforcement agency.

16 (4) This section does not prohibit or restrict an employer  
17 from viewing, accessing or using information about an employee or  
18 applicant that can be obtained without the information described in  
19 §21-5G-3(a) or information available in the public domain.

20 **§21-5G-4 Duties Not Created.**

21 (1) This article does not create a duty for an employer to  
22 search or monitor the activity of a personal internet account.

23 (2) An employer is not liable under this article for failure  
24 to request or require that an employee or applicant for employment  
25 grant access to, allow observation of or disclose information that  
26 allows access to or observation of the applicant or employee's

personal internet account.