

H. B. 2712

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[Introduced February 12, 2015; referred to the
Committee on the Judiciary.]

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, §21-5G-3 and §21-5G-4, 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; 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; and duties not created under this article.

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, §21-5G-3 and §21-5G-4, 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 (1) “Applicant” means an applicant for employment.

3 (2) “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 (3) “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
3 for 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
9 section.

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

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

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

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

27 (A) Requesting or requiring an employee to disclose a
28 username or password to gain access to:

29 (i) An electronic communications device supplied by or paid
30 for, in whole or in part, by the employer; or

31 (ii) An account or service provided by the employer,
32 obtained by virtue of the employee's employment relationship

33 with the employer, and used for the employer's business
34 purposes;

35 (B) Disciplining or discharging an employee for transferring
36 the employer's proprietary or confidential information or
37 financial data to an employee's personal Internet account
38 without the employer's authorization;

39 (C) Conducting an investigation or requiring an employee to
40 cooperate in an investigation in any of the following:

41 (i) If there is specific information about activity, relating to
42 the employment of the individual or the business of the
43 employer, on the employee's personal Internet account, for the
44 purpose of ensuring compliance with applicable laws, regulatory
45 requirements or written employee codes of conduct found within
46 previously known and agreed to written employee contracts; or

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

51 (D) Restricting or prohibiting an employee's access to
52 certain websites while using an electronic communications

53 device supplied by or paid for, in whole or in part, by the
54 employer or while using an employer's network or resources, in
55 accordance with state or federal law;

56 (E) Monitoring, reviewing, accessing or blocking electronic
57 data stored on an electronic communications device supplied by
58 or paid for, in whole or in part, by the employer or stored on an
59 employer's network, in accordance with state and federal law; or

60 (F) Conducting an investigation or requiring an employee to
61 cooperate in an investigation as specified in subsection (2)(c),
62 including requiring the employee to share the content that has
63 been reported in order to make a factual determination.

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

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

§21-5G-4. Duties Not Created.

- 1 (a) This article does not create a duty for an employer to
2 search or monitor the activity of a personal Internet account.
- 3 (b) An employer is not liable under this article for failure to
4 request or require that an employee or applicant for employment
5 grant access to, allow observation of or disclose information that
6 allows access to or observation of the applicant or employee's
7 personal Internet account.

NOTE: The purpose of this bill is to protect the privacy of personal electronic data for employees and applicants for employment, and to authorize employers to investigate to ensure compliance with applicable protections of certain business information.

This article is new; therefore it is completely underscored.

