

Testimony of Eric W. Gjede
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Before the Committee on Labor and Public Employees
Hartford, CT
February 19, 2013

Testifying in opposition (as currently drafted) to PSB 159 An Act Concerning Employee Privacy

Good Afternoon Senator Osten, Representative Tercyak, and members of the Labor and Public Employees Committee. My name is Eric Gjede and I am assistant counsel at the Connecticut Business and Industry Association (CBIA) which represents more than 10,000 large and small companies throughout the state of Connecticut.

PSB-159 raises some legitimate privacy concerns shared by both employers and employees. While we have not heard of any employers asking for a prospective employee's social media account passwords, we agree with the committee that the potential of it occurring should be addressed in a reasonable way.

In addition to the privacy concerns of employees, we ask the committee to provide some flexibility to employers that need to address the very real threat of employee transfer of proprietary, confidential or financial data, as well as ensure their compliance with various legal and regulatory requirements.

We have attached substitute language that would address privacy concerns of prospective employees and prevent them from having to provide their social media account information to employers. This substitute language also restricts the circumstances where a current employee would have to provide this information. This model language was developed by the State Privacy and Security Coalition and has been used to address these same concerns in other states.

We encourage the committee to adopt the provided substitute language in lieu of the broader proposal described in PSB-159.

Article – Labor and Employment

(A) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(1) "APPLICANT" MEANS AN APPLICANT FOR EMPLOYMENT.

(2) (I) "ELECTRONIC COMMUNICATIONS DEVICE" MEANS ANY DEVICE THAT USES ELECTRONIC SIGNALS TO CREATE, TRANSMIT, AND RECEIVE INFORMATION.

(II) "ELECTRONIC COMMUNICATIONS DEVICE" INCLUDES COMPUTERS, TELEPHONES, PERSONAL DIGITAL ASSISTANTS, AND OTHER SIMILAR DEVICES.

(3) "EMPLOYER" MEANS A PERSON, INCLUDING A UNIT OF STATE OR LOCAL GOVERNMENT, ENGAGED IN A BUSINESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN THIS STATE, AND INCLUDES AN AGENT, REPRESENTATIVE, AND DESIGNEE OF THE EMPLOYER.

(4) "PERSONAL ONLINE ACCOUNT" MEANS AN ONLINE ACCOUNT THAT IS USED BY AN EMPLOYEE OR APPLICANT EXCLUSIVELY FOR PERSONAL COMMUNICATIONS UNRELATED TO ANY BUSINESS PURPOSES OF THE EMPLOYER. THIS DEFINITION SHALL NOT INCLUDE ANY ACCOUNT CREATED, MAINTAINED, USED OR ACCESSED BY AN EMPLOYEE OR APPLICANT FOR BUSINESS RELATED COMMUNICATIONS OR FOR A BUSINESS PURPOSE OF THE EMPLOYER.

(B) (1) AN EMPLOYER MAY NOT REQUEST OR REQUIRE THAT AN APPLICANT DISCLOSE ANY USER NAME AND PASSWORD OR PASSWORD OR OTHER AUTHENTICATION MEANS FOR ACCESSING A PERSONAL ONLINE ACCOUNT OR PERSONAL ONLINE SERVICE.

(2) AN EMPLOYER MAY REQUEST OR REQUIRE AN EMPLOYEE TO DISCLOSE ANY USER NAME OR PASSWORD, OR OTHER AUTHENTICATION MEANS FOR ACCESSING:

(I) ANY ELECTRONIC COMMUNICATIONS DEVICE SUPPLIED OR PAID FOR IN WHOLE OR IN PART BY THE EMPLOYER, OR

(II) ANY ACCOUNTS OR SERVICES PROVIDED BY THE EMPLOYER OR BY VIRTUE OF THE EMPLOYEE'S EMPLOYMENT RELATIONSHIP WITH THE EMPLOYER OR THAT THE EMPLOYEE USES FOR BUSINESS PURPOSES.

(C) AN EMPLOYER MAY NOT:

(1) DISCHARGE, DISCIPLINE, OR OTHERWISE PENALIZE OR THREATEN TO DISCHARGE, DISCIPLINE, OR OTHERWISE PENALIZE AN EMPLOYEE SOLELY FOR AN EMPLOYEE'S REFUSAL TO DISCLOSE ANY INFORMATION SPECIFIED IN SUBSECTION (B)(1) OF THIS SECTION; OR

(2) FAIL OR REFUSE TO HIRE ANY APPLICANT AS A RESULT OF THE APPLICANT'S REFUSAL TO DISCLOSE ANY INFORMATION SPECIFIED IN SUBSECTION (B)(1) OF THIS SECTION.

(3) BE HELD LIABLE FOR FAILURE TO REQUEST OR REQUIRE THAT AN APPLICANT OR EMPLOYEE DISCLOSE ANY INFORMATION SPECIFIED IN SUBSECTION (B)(1) OF THIS SECTION.

(D) AN EMPLOYEE MAY NOT TRANSFER EMPLOYER PROPRIETARY OR CONFIDENTIAL INFORMATION OR FINANCIAL DATA TO AN EMPLOYEE'S PERSONAL ONLINE ACCOUNT OR PERSONAL ONLINE SERVICE WITHOUT THE EMPLOYER'S AUTHORIZATION.

(E) THIS SECTION DOES NOT PREVENT AN EMPLOYER FROM:

(1) CONDUCTING AN INVESTIGATION:

(I) FOR THE PURPOSE OF ENSURING COMPLIANCE WITH APPLICABLE LAWS, REGULATORY REQUIREMENTS OR PROHIBITIONS AGAINST WORK-RELATED EMPLOYEE MISCONDUCT BASED ON THE RECEIPT OF SPECIFIC INFORMATION ABOUT ACTIVITY ON A PERSONAL ONLINE ACCOUNT OR PERSONAL ONLINE SERVICE BY AN EMPLOYEE OR OTHER SOURCE;

(II) OF AN EMPLOYEE'S ACTIONS BASED ON THE RECEIPT OF SPECIFIC INFORMATION ABOUT THE UNAUTHORIZED TRANSFER OF AN EMPLOYER'S PROPRIETARY INFORMATION, CONFIDENTIAL INFORMATION OR FINANCIAL DATA TO A PERSONAL ONLINE ACCOUNT OR PERSONAL ONLINE SERVICE BY AN EMPLOYEE OR OTHER SOURCE; OR

(III) CONDUCTING AN INVESTIGATION AS SPECIFIED IN PARAGRAPHS (I) AND (II) INCLUDES REQUIRING THE EMPLOYEE'S COOPERATION TO SHARE THE CONTENT THAT HAS BEEN REPORTED IN ORDER TO MAKE A FACTUAL DETERMINATION.

(2) 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.

(3) 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 COMPLIANCE WITH STATE AND FEDERAL LAW.

(4) MONITORING, REVIEWING, ACCESSING, OR BLOCKING ELECTRONIC DATA STORED ON AN ELECTRONIC COMMUNICATIONS DEVICE PAID FOR IN WHOLE OR IN PART BY THE EMPLOYER, OR TRAVELING THROUGH OR STORED ON AN EMPLOYER'S NETWORK, IN COMPLIANCE WITH STATE AND FEDERAL LAW.

(F) THIS ACT DOES NOT PROHIBIT OR RESTRICT AN EMPLOYER FROM VIEWING, ACCESSING, OR UTILIZING INFORMATION ABOUT AN EMPLOYEE OR APPLICANT THAT CAN BE OBTAINED WITHOUT THE INFORMATION SPECIFIED IN SUBSECTION (B)(1) OF THIS SECTION OR THAT IS AVAILABLE IN THE PUBLIC DOMAIN.

(G) NOTHING IN THIS ACT SHALL BE CONSTRUED TO PREVENT AN EMPLOYER FROM COMPLYING WITH THE REQUIREMENTS OF STATE OR FEDERAL STATUTES, RULES OR REGULATIONS, CASE LAW OR RULES OF SELF-REGULATORY ORGANIZATIONS.