



Senate

General Assembly

File No. 323

February Session, 2014

Substitute Senate Bill No. 317

Senate, April 3, 2014

The Committee on Labor and Public Employees reported through SEN. HOLDER-WINFIELD of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING EMPLOYEE PRIVACY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2014*) (a) For purposes of this
2 section:

3 (1) "Applicant" means any person actively seeking employment
4 from an employer;

5 (2) "Employee" means any person engaged in service to an employer
6 in the business of his or her employer;

7 (3) "Employer" means any person engaged in business who has
8 employees, including the state and any political subdivision thereof,
9 except "employer" shall not include any state or municipal law
10 enforcement agency conducting a preemployment investigation or
11 review of law enforcement personnel;

12 (4) "Electronic communications device" means any electronic device

13 that is capable of transmitting, accepting or processing data, including,
14 but not limited to, a computer, computer network and computer
15 system, as those terms are defined in section 53a-250 of the general
16 statutes, and a cellular or wireless telephone;

17 (5) "Personal online account" means an online account that is used
18 by an employee or applicant exclusively for personal purposes and
19 unrelated to any business purpose of such employee's or applicant's
20 employer or prospective employer, including, but not limited to,
21 electronic mail, social media and retail-based Internet web sites.
22 "Personal online account" does not include any account created,
23 maintained, used or accessed by an employee or applicant for a
24 business purpose of such employee's or applicant's employer or
25 prospective employer.

26 (b) Except as provided in subsection (c) of this section, no employer
27 shall:

28 (1) Request or require that an employee or applicant provide such
29 employer with a user name and password, password or any other
30 authentication means for accessing a personal online account;

31 (2) Request or require that an employee or applicant authenticate or
32 access a personal online account in the presence of such employer;

33 (3) Discharge, discipline, discriminate against, retaliate against or
34 otherwise penalize any employee (A) who refuses or declines to
35 provide such employer with a user name and password, password or
36 any other authentication means for accessing his or her personal online
37 account, (B) who refuses or declines to authenticate or access a
38 personal online account in the presence of such employer, or (C) who
39 files, or causes to be filed, any complaint, whether verbally or in
40 writing, with a public or private body or court concerning such
41 employer's violation of subdivisions (1) to (3), inclusive, of this
42 subsection; or

43 (4) Fail or refuse to hire any applicant as a result of his or her refusal

44 to (A) provide such employer with a user name and password,
45 password or any other authentication means for accessing a personal
46 online account, or (B) authenticate or access a personal online account
47 in the presence of such employer.

48 (c) (1) An employer may request or require that an employee or
49 applicant provide such employer with a user name and password,
50 password or any other authentication means for accessing (A) any
51 account or service provided by such employer or by virtue of the
52 employee's employment relationship with such employer or that the
53 employee uses for such employer's business purposes, or (B) any
54 electronic communications device supplied or paid for, in whole or in
55 part, by such employer.

56 (2) No employer shall be prohibited from discharging, disciplining
57 or otherwise penalizing an employee or applicant that has transferred,
58 without such employer's permission, such employer's proprietary
59 information, confidential information or financial data to or from such
60 employee or applicant's personal online account.

61 (d) Nothing in this section shall prevent an employer from:

62 (1) (A) Conducting an investigation for the purpose of ensuring
63 compliance with applicable state or federal laws, regulatory
64 requirements or prohibitions against work-related employee
65 misconduct based on the receipt of specific information about activity
66 on an employee or applicant's personal online account, or (B)
67 conducting an investigation based on the receipt of specific
68 information about an employee or applicant's unauthorized transfer of
69 such employer's proprietary information, confidential information or
70 financial data to or from a personal online account operated by an
71 employee, applicant or other source. Any employer conducting an
72 investigation pursuant to this subdivision may require an employee or
73 applicant to allow such employer to access his or her personal online
74 account for the purpose of conducting such investigation, provided
75 such employer shall not require such employee or applicant to disclose
76 the user name and password, password or other authentication means

77 for accessing such personal online account; or

78 (2) Monitoring, reviewing, accessing or blocking electronic data
79 stored on an electronic communications device paid for, in whole or in
80 part, by an employer, or traveling through or stored on an employer's
81 network, in compliance with state and federal law.

82 (e) Nothing in this section shall be construed to prevent an
83 employer from complying with the requirements of state or federal
84 statutes, rules or regulations, case law or rules of self-regulatory
85 organizations.

86 (f) Any employee or applicant may file a complaint with the Labor
87 Commissioner alleging violations of subsection (b) of this
88 section. Upon receipt of the complaint, the commissioner shall
89 investigate such complaint and may hold a hearing. After the hearing,
90 the commissioner shall send each party a written copy of his or her
91 decision. Any employee or applicant who prevails in such hearing
92 shall be awarded reasonable attorney's fees and costs.

93 (g) If the commissioner finds an employee has been aggrieved by an
94 employer's violation of subdivision (1), (2) or (3) of subsection (b) of
95 this section, the commissioner may (1) levy against the employer a civil
96 penalty of up to five hundred dollars for the first violation and one
97 thousand dollars for each subsequent violation, and (2) award such
98 employee all appropriate relief including rehiring or reinstatement to
99 his or her previous job, payment of back wages, reestablishment of
100 employee benefits or any other remedies that the commissioner may
101 deem appropriate.

102 (h) If the commissioner finds an applicant has been aggrieved by an
103 employer's violation of subdivision (1), (2) or (4) of subsection (b) of
104 this section, the commissioner may levy against the employer a civil
105 penalty of up to twenty-five dollars for the first violation and five
106 hundred dollars for each subsequent violation.

107 (i) Any party aggrieved by the decision of the commissioner may

108 appeal the decision to the Superior Court in accordance with the
109 provisions of chapter 54 of the general statutes.

110 (j) The commissioner may request the Attorney General to bring an
111 action in the Superior Court to recover the penalties levied pursuant to
112 subsections (f) and (h) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	New section

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Labor Dept.	GF - Potential Revenue Gain	Up to 3,750	Up to 10,000
Attorney General	GF - Potential Cost	Zero to 10,000	Zero to 10,000

Municipal Impact: None

Explanation

The bill prohibits certain actions regarding employers requiring access to personal on-line accounts, and establishes civil penalties of up to \$500 for initial violations and up to \$1,000 for subsequent violations. This results in a potential revenue gain of up to \$3,750 in FY 15 and up to \$10,000 annually thereafter, and a potential cost to the Office of the Attorney General (OAG) of zero to \$10,000 annually beginning in FY 15.

The bill allows an employee to file a complaint with the Labor Commissioner, and requires the Department of Labor (DOL) to investigate any complaint. It allows DOL to levy a penalty of \$25 (job applicant) or \$500 (employee) for initial violations and \$500 (job applicant) or \$1,000 (employee) for subsequent violations. It is anticipated that there will be fewer than 10 violations annually, resulting in a revenue gain of up to \$3,750 in FY 15 and up to \$10,000 annually thereafter.

The Labor Commissioner may request OAG to bring an action in Superior Court to recover any penalties established under the bill. The potential fiscal impact to OAG is a cost of zero to \$10,000 annually

beginning in FY 15 for potential litigation costs related to the recovery of any such penalties.

There is no impact to the Judicial Department from allowing any aggrieved party to appeal to the Superior Court. The number of appeals is not anticipated to be great enough to need additional resources. The court system disposes of over 400,000 cases annually.

The Out Years

The annualized ongoing cost impact identified above would continue into the future subject to inflation. The annualized ongoing revenue impact identified above would remain constant into the future as penalty amounts are set by statute and are not subject to inflation.

OLR Bill Analysis**sSB 317*****AN ACT CONCERNING EMPLOYEE PRIVACY.*****SUMMARY:**

This bill prohibits employers from requesting or requiring an employee or job applicant to (1) provide the employer with a user name, password, or other way to access the employee's or applicant's personal online account or (2) access such an account in front of the employer. It also bars employers from (1) firing, disciplining, or otherwise retaliating against an employee who refuses to provide this access or (2) refusing to hire an applicant because the applicant would not provide access to his or her personal online account.

The bill makes exceptions for accounts and devices the employer provides and for certain types of investigations. It does not apply to any state or local law enforcement agency conducting a preemployment investigation or review of law enforcement personnel.

It allows employees and applicants to file a complaint with the labor commissioner, who can impose civil penalties of up to \$25 for initial violations against job applicants and \$500 for initial violations against employees. Penalties for subsequent violations can be up to \$500 for violations against applicants and up to \$1,000 for violations against employees.

EFFECTIVE DATE: October 1, 2014

BAN ON REQUESTING ACCOUNT ACCESS

The bill bans an employer from requesting or requiring an employee or job applicant to (1) provide the employer with a user name, password, or any other authentication needed to access a personal online account or (2) authenticate or access the account in the

employer's presence. Employers covered by the bill include the state and its political subdivisions, but not state or municipal law enforcement agencies conducting preemployment investigations or reviews of law enforcement personnel.

Under the bill, a "personal online account" is an online account the employee or applicant uses exclusively for personal purposes unrelated to any of the employer's business purposes, including e-mail, social media, and retail-based Internet web sites. It does not include any account created, maintained, used, or accessed by an employee or applicant for the employer's business purposes.

BANS ON RETALIATION

The bill bans employers from discharging, disciplining, discriminating against, retaliating against, or otherwise penalizing an employee who:

1. refuses to provide the employer with a user name, password, or any other authentication for accessing his or her personal online account;
2. refuses to authenticate or access an account in front of the employer; or
3. files, or causes to be filed, any verbal or written complaint with a public or private body or court about the employer's request for access to a personal account or retaliation for refusing such access.

It also prohibits employers from failing or refusing to hire an applicant because he or she would not (1) provide a user name, password, or any other authentication for accessing his or her personal online account or (2) authenticate or access an account in the employer's presence.

EXCEPTIONS

The bill provides a number of circumstances under which an

employer can request or require an employee or applicant to provide a user name, password, or other authentication means for a personal online account.

Employer's Accounts and Devices

It allows an employer to request or require that an employee or applicant provide access to:

1. any account or service (a) provided by the employer or by virtue of the employee's work relationship with the employer or (b) that the employee uses for business purposes or
2. any electronic communications device the employer supplied or paid for, in whole or in part.

It defines "electronic communications device" as any electronic device capable of transmitting, accepting, or processing data, including a computer, computer network and computer system, as defined in state law, and a cellular or wireless telephone.

Investigations

The bill allows exceptions for certain investigations, with limitations. Employers can conduct an investigation:

1. to ensure compliance with (a) applicable state or federal laws, (b) regulatory requirements, or (c) prohibitions against work-related employee misconduct based on receiving specific information about activity on an employee or applicant's personal online account or
2. based on receiving specific information about an employee or applicant's unauthorized transfer of the employer's proprietary information, confidential information, or financial data to or from a personal online account operated by an employee, applicant, or other source.

An employer conducting these investigations can require an employee to provide access to a personal online account, but cannot

require disclosure of the user name, password, or other means of accessing the personal online account.

The bill permits an employer to discharge, discipline, or otherwise penalize an employee or applicant who transferred, without the employer's permission, the employer's proprietary information, confidential information, or financial data to or from the employee or applicant's personal online account.

Monitoring and Blocking Data

The bill allows an employer to monitor, review, access, or block 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.

State and Federal Laws

The bill specifies that it does not prevent an employer from complying with state or federal laws, regulations, or rules for self-regulatory organizations (e.g., businesses regulated by the Securities Exchange Commission's rules).

ENFORCEMENT

The bill allows any employee or applicant to file a complaint with the labor commissioner alleging an employer requested or required access to a personal online account or retaliated for a refusal to provide access. The commissioner must investigate a complaint and may hold a hearing, after which she must send each party a written decision. Any employee or applicant who prevails in a hearing must be awarded reasonable attorney's fee and costs.

If the commissioner finds an employer violated the bill's ban on requesting access to an employee's account, or retaliated against an employee for refusing to provide access, she can (1) levy a civil penalty against the employer of up to \$500 for an initial violation and \$1,000 for each subsequent violation and (2) award the employee all appropriate relief, including rehiring or reinstatement, back pay, reestablishment of wages, or any other relief the commissioner deems

appropriate.

If she finds an employer violated the bill's ban on requesting access to an applicant's account, or refused to hire an applicant for refusing to provide access, she can (1) levy a civil penalty against the employer for up to \$25 for an initial violation and \$500 for each subsequent violation.

The commissioner may ask the attorney general to bring a civil suit to recover any of the above civil penalties. Any party aggrieved by the commissioner's decision may appeal to the Superior Court.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 8 Nay 2 (03/18/2014)