

[Fourth Reprint]
ASSEMBLY, No. 2878

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED MAY 10, 2012

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
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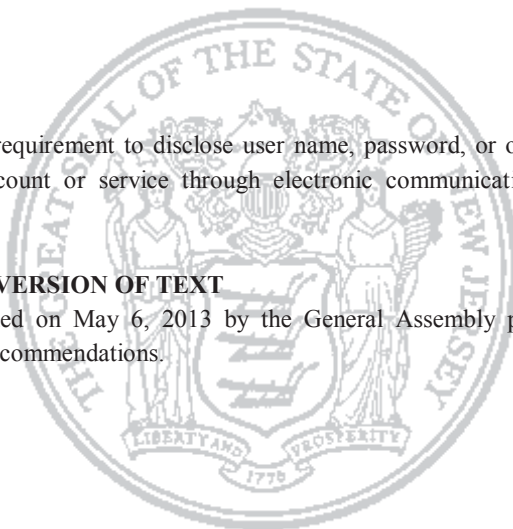
Assemblywomen Wagner, Sumter, Assemblymen Diegnan, Wimberly,
Senators Sweeney, Whelan, O'Toole, Allen, Gordon, Assemblywomen
Riley and Lampitt

SYNOPSIS

Prohibits requirement to disclose user name, password, or other means for accessing account or service through electronic communications device by employers.

CURRENT VERSION OF TEXT

As amended on May 6, 2013 by the General Assembly pursuant to the Governor's recommendations.



(Sponsorship Updated As Of: 3/22/2013)

1 AN ACT prohibiting the requirement to disclose personal
 2 information for certain electronic communications devices by
 3 employers.

4
 5 **BE IT ENACTED** by the Senate and General Assembly of the State
 6 of New Jersey:

7
 8 1. For purposes of this act ³[~~”~~]³

9 “Electronic communications device” means any device that uses
 10 electronic signals to create, transmit, and receive information,
 11 including a computer, telephone, personal digital assistant, or other
 12 similar device.

13 “Employer” means an employer or employer’s agent,
 14 representative, or designee. ³The term “employer” does not include
 15 the Department of Corrections, State Parole Board, county
 16 corrections departments, or any State or local law enforcement
 17 agency.³

18 ¹“Personal account” means an account, service or profile on a
 19 social networking website that is used by a current or prospective
 20 employee exclusively for personal communications unrelated to any
 21 business purposes of the employer. This definition shall not apply
 22 to any account, service or profile created, maintained, used or
 23 accessed by a current or prospective employee for business
 24 purposes of the employer or to engage in business related
 25 communications.¹

26 “Social networking website” means an Internet-based service
 27 that allows individuals to construct a public or semi-public profile
 28 within a bounded system created by the service, create a list of
 29 other users with whom they share a connection within the system,
 30 and view and navigate their list of connections and those made by
 31 others within the system.

32
 33 2. No employer shall⁴ [:

34 a. Require] require⁴ ²or request² a current or prospective
 35 employee to provide or disclose any user name or password, or in
 36 any way provide the employer access to, a personal account ¹[or
 37 service]¹ through an electronic ²[communication]
 38 communications² device⁴ [; or

39 b. In any way]⁴ ²[inquire as to whether] ⁴[require or request
 40 that² a current or prospective employee ²disclose whether the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted June 21, 2012.

²Senate SLA committee amendments adopted September 20, 2012.

³Senate floor amendments adopted October 4, 2012.

⁴Assembly amendments adopted in accordance with Governor's recommendations May 6, 2013.

1 employee² has]⁴ '[an] ⁴[a personal]¹ account]⁴ '[or profile on a
2 social networking website]¹.

3

4 3. No employer shall require an individual to waive or limit
5 any protection granted under this act as a condition of applying for
6 or receiving an offer of employment. An agreement to waive any
7 right or protection under this act is against the public policy of this
8 State and is void and unenforceable.

9

10 4. No employer shall retaliate or discriminate against an
11 individual because the individual has done or was about to do any
12 of the following:

13 a. Refuse to provide or disclose any user name or password, or
14 in any way provide access to, a personal account '[or service]¹
15 through an electronic communications device;

16 b. ⁴[File a]⁴ ²[complain] ⁴[complaint]² under] Report an
17 alleged violation of⁴ this act ⁴to the Commissioner of Labor and
18 Workforce Development⁴;

19 c. Testify, assist, or participate in any investigation,
20 proceeding, or action concerning a violation of this act; or

21 d. Otherwise oppose a violation of this act.

22

23 ⁴[5. Upon violation of any provision of this act, an aggrieved
24 person may, in addition to any other available remedy, institute a
25 civil action in a court of competent jurisdiction, within one year
26 from the date of the alleged violation. In response to the action, the
27 court may, as it deems appropriate, order or award any one or more
28 of the following:

29 a. With respect to a prospective employee:

30 (1) injunctive relief;

31 (2) compensatory and consequential damages incurred by the
32 prospective employee as a result of the violation, taking into
33 consideration any failure to hire in connection with the violation;
34 and

35 (3) reasonable attorneys' fees and court costs.

36 b. With respect to a current or former employee:

37 (1) injunctive relief as it deems appropriate, including
38 reinstatement of the employee to the same position held before the
39 violation or the position the employee would have held but for the
40 violation, as well as the reinstatement of full fringe benefits and
41 seniority rights;

42 (2) compensatory and consequential damages incurred by the
43 employee or former employee as a result of the violation, including
44 compensation for lost wages, benefits and other remuneration; and

45 (3) reasonable attorneys' fees and court costs.]⁴

1 ⁴[6.] 5.⁴ An employer who violates any provision of this act
2 shall be subject to a civil penalty in an amount not to exceed \$1,000
3 for the first violation and \$2,500 for each subsequent violation,
4 collectible by the Commissioner of Labor and Workforce
5 Development in a summary proceeding pursuant to the “Penalty
6 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).
7

8 ⁴[7.] 6.⁴ a. Nothing in this act shall be construed to prevent an
9 employer from complying with the requirements of State or federal
10 statutes, rules or regulations, case law or rules of self-regulatory
11 organizations.

12 b. Nothing in this act shall prevent an employer from
13 implementing and enforcing a policy pertaining to the use of an
14 employer issued electronic communications device ⁴or any accounts
15 or services provided by the employer or that the employee uses for
16 business purposes.

17 c. Nothing in this act shall prevent an employer from
18 conducting an investigation:

19 (1) for the purpose of ensuring compliance with applicable laws,
20 regulatory requirements or prohibitions against work-related
21 employee misconduct based on the receipt of specific information
22 about activity on a personal account by an employee; or

23 (2) of an employee’s actions based on the receipt of specific
24 information about the unauthorized transfer of an employer’s
25 proprietary information, confidential information or financial data
26 to a personal account by an employee.

27 d. Nothing in this act shall prevent an employer from viewing,
28 accessing, or utilizing information about a current or prospective
29 employee that can be obtained in the public domain^{4,1}.

30
31 ¹[7.] ⁴[8.] 7.⁴ This act shall take effect ¹[immediately] on the
32 first day of the fourth month following enactment¹.