

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 58

Introduced by Larson, 40.

Read first time January 10, 2013

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor and employment; to adopt the Workplace

2 Privacy Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 8 of this act shall be known and
2 may be cited as the Workplace Privacy Act.

3 Sec. 2. For purposes of the Workplace Privacy Act:

4 (1) Applicant means a prospective employee applying for
5 employment;

6 (2) Electronic communication device means a cellular
7 telephone, personal digital assistant, electronic device with mobile
8 data access, laptop computer, pager, broadband personal communication
9 device, two-way messaging device, electronic game, or portable
10 computing device;

11 (3) Employer means a public or nonpublic entity or an
12 individual engaged in a business, an industry, a profession, a trade,
13 or other enterprise in the state, including any agent,
14 representative, or designee of such an employer; and

15 (4) Social networking site means an Internet-based,
16 personalized, privacy-protected web site or application whether free
17 or commercial that allows users to construct a private or semi-
18 private profile site within a bounded system, create a list of other
19 system users who are granted reciprocal access to the individual's
20 profile site, send and receive electronic mail, and share personal
21 content, communications, and contacts. Social networking site does
22 not include electronic mail.

23 Sec. 3. No employer shall:

24 (1) Require or request that an employee or applicant
25 provide or disclose any user name or password or any other related

1 account information in order to gain access to the employee's or
2 applicant's social networking site profile or account by way of an
3 electronic communication device;

4 (2) Require or request that an employee or applicant log
5 onto a social networking site by way of an electronic communication
6 device in the presence of the employer or an agent of the employer so
7 as to provide the employer access to the employee's or applicant's
8 social networking profile or account; or

9 (3) Access an employee's or applicant's social networking
10 site profile or account indirectly through any other person who is a
11 social networking contact of the employee or applicant.

12 Sec. 4. An employer or an agent of the employer shall not
13 require an employee or applicant to waive or limit any protection
14 granted under the Workplace Privacy Act as a condition of continued
15 employment or of applying for or receiving an offer of employment.
16 Any agreement to waive any right or protection under the act is
17 against the public policy of this state and is void and
18 unenforceable.

19 Sec. 5. An employer or an agent of the employer shall not
20 retaliate or discriminate against an employee or applicant because
21 the employee or applicant:

22 (1) Refuses to provide or disclose any user name or
23 password or in any other way provide access to a social networking
24 site through an electronic communications device;

25 (2) Files a complaint under the Workplace Privacy Act; or

1 (3) Testifies, assists, or participates in an
2 investigation, proceeding, or action concerning a violation of the
3 act.

4 Sec. 6. An employee shall not download an employer's
5 proprietary information or financial data to a personal web site or
6 to a social networking site without authorization from the employer.

7 Sec. 7. Nothing in the Workplace Privacy Act limits an
8 employer's right to:

9 (1) Promulgate and maintain lawful workplace policies
10 governing the use of the employer's electronic equipment, including
11 policies regarding Internet use, social networking site use, and
12 electronic mail use;

13 (2) Request or require an employee or applicant to
14 disclose access information to the employer to gain access to or
15 operate:

16 (a) An electronic communications device paid for in whole
17 or in part by the employer; or

18 (b) An account or service provided by the employer,
19 obtained by virtue of the employee's employment relationship with the
20 employer, or used for the employer's business purposes;

21 (3) Access information about an employee or applicant
22 that is in the public domain or is otherwise obtained in compliance
23 with the Workplace Privacy Act; or

24 (4) Conduct an investigation based upon the receipt of
25 information about employee wrongdoing or unauthorized downloading of

1 an employer's proprietary information or financial data to a personal
2 web site or a social networking site.

3 Sec. 8. Upon violation of the Workplace Privacy Act, an
4 aggrieved person may, in addition to any other available remedy,
5 institute a civil action in a court of competent jurisdiction within
6 one year after the date of the alleged violation. In response to the
7 action, a court may award reasonable attorney's fees and costs to a
8 prevailing employee or applicant in addition to any award of actual
9 damages.