



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB1047

by Rep. Jim Durkin

#### SYNOPSIS AS INTRODUCED:

820 ILCS 55/10

from Ch. 48, par. 2860

Amends provisions of the Right to Privacy in the Workplace Act prohibiting certain inquiries by an employer. Deletes language in those provisions regarding an employee's social networking website account information. Provides that: an employer may not request or require an employee or prospective employee to provide a user name, password, or other means to gain access to the employee's or prospective employee's personal online account; an employer may request or require an employee to disclose any user name, password, or other means for accessing an electronic communications device supplied or paid for in whole or in part by the employer or 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; an employer may not discharge, discipline, or otherwise penalize or threaten to discharge, discipline, or otherwise penalize an employee solely for an employee's refusal to disclose specified information, fail or refuse to hire any prospective employee as a result of the prospective employee's refusal to disclose specified information, or be held liable for failure to request or require that an employee or prospective employee disclose specified information; those provisions do not prevent an employer from conducting certain investigations; the provisions do not limit an employer's right to have specified workplace policies and monitor usage of the employer's electronic equipment and electronic mail under specified circumstances; and those provisions do not prohibit an employer from obtaining information about a prospective employee or an employee that is in the public domain or that is otherwise obtained in compliance with the provisions. Effective immediately.

LRB098 04224 JLS 34249 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Right to Privacy in the Workplace Act is  
5 amended by changing Section 10 as follows:

6 (820 ILCS 55/10) (from Ch. 48, par. 2860)

7 Sec. 10. Prohibited inquiries.

8 (a) It shall be unlawful for any employer to inquire, in a  
9 written application or in any other manner, of any prospective  
10 employee or of the prospective employee's previous employers,  
11 whether that prospective employee has ever filed a claim for  
12 benefits under the Workers' Compensation Act or Workers'  
13 Occupational Diseases Act or received benefits under these  
14 Acts.

15 (b) (1) It shall be unlawful for any employer to request or  
16 require any employee or prospective employee to provide any  
17 user name, password, or other means ~~related account information~~  
18 ~~in order~~ to gain access to the ~~employee's or prospective~~  
19 ~~employee's account or profile on a social networking website or~~  
20 ~~to demand access in any manner to an~~ employee's or prospective  
21 employee's personal online account ~~or profile on a social~~  
22 ~~networking website.~~

23 (2) An employer may request or require an employee to

1 disclose any user name, password, or other means for accessing:

2 (A) any electronic communications device supplied or  
3 paid for in whole or in part by the employer; or

4 (B) any accounts or services provided by the employer  
5 or by virtue of the employee's employment relationship with  
6 the employer or that the employee uses for business  
7 purposes.

8 (3) An employer may not:

9 (A) discharge, discipline, or otherwise penalize or  
10 threaten to discharge, discipline, or otherwise penalize  
11 an employee solely for an employee's refusal to disclose  
12 any information specified in paragraph (1) of this  
13 subsection (b);

14 (B) fail or refuse to hire any prospective employee as  
15 a result of the prospective employee's refusal to disclose  
16 any information specified in paragraph (1) of this  
17 subsection (b); or

18 (C) be held liable for failure to request or require  
19 that an employee or prospective employee disclose any  
20 information specified in paragraph (1) of this subsection  
21 (b).

22 (4) Nothing in this subsection shall prevent an employer  
23 from conducting an investigation:

24 (A) for the purpose of ensuring compliance with  
25 applicable laws, regulatory requirements, or prohibitions  
26 against work-related employee misconduct based on the

1 employer's receipt of specific information about activity  
2 on a personal online account by an employee or other  
3 source; or

4 (B) of an employee's actions based on the receipt of  
5 specific information about the unauthorized transfer of an  
6 employer's proprietary information, confidential  
7 information, or financial data to a personal online account  
8 by an employee or other source.

9 Conducting an investigation as specified in subparagraphs  
10 (A) and (B) of this paragraph (4) includes requiring the  
11 employee's cooperation to share the content that has been  
12 reported in order to make a factual determination.

13 (5) ~~(2)~~ Nothing in this subsection shall limit an  
14 employer's right to:

15 (A) promulgate and maintain lawful workplace policies  
16 governing the use of the employer's electronic equipment,  
17 including policies regarding Internet use, social  
18 networking site use, and electronic mail use; and

19 (B) monitor usage of the employer's electronic  
20 equipment and the employer's electronic mail without  
21 requesting or requiring any employee or prospective  
22 employee to provide any user name, password, or other means  
23 ~~related account information in order~~ to gain access to the  
24 employee's or prospective employee's personal online  
25 account or profile on a social networking website.

26 (6) ~~(3)~~ Nothing in this subsection shall prohibit an

1 employer from obtaining about a prospective employee or an  
2 employee information that is in the public domain or that is  
3 otherwise obtained in compliance with this amendatory Act of  
4 the 97th General Assembly.

5 (7) ~~(4)~~ For the purposes of this subsection: 7

6 (A) "Prospective employee" means an applicant for  
7 employment.

8 (B) "Electronic communications device" means any  
9 device that uses electronic signals to create, transmit,  
10 and receive information, including, without limitation, a  
11 computer, telephone, or personal digital assistant.

12 (C) "Employer" means a person engaged in a business,  
13 industry, profession, trade, or other enterprise in this  
14 State, or any unit of State or local government. "Employer"  
15 includes any agent, representative, or designee of the  
16 employer.

17 (D) "Personal online account" means an account created  
18 via bounded system established by an internet-based  
19 service that requires a user to input or store access  
20 information via an electronic device to view, create,  
21 utilize, or edit the user's account information, profile,  
22 display, communications, or stored data. ~~"social~~  
23 networking website" means an Internet based service that  
24 allows individuals to:

25 ~~(A) construct a public or semi-public profile within a~~  
26 ~~bounded system, created by the service;~~

1           ~~(B) create a list of other users with whom they share a~~  
2           ~~connection within the system; and~~

3           ~~(C) view and navigate their list of connections and~~  
4           ~~those made by others within the system.~~

5           ~~"Social networking website" shall not include electronic~~  
6           ~~mail.~~

7           (Source: P.A. 97-875, eff. 1-1-13.)

8           Section 99. Effective date. This Act takes effect upon  
9           becoming law.