

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 Freedom From Location Surveillance Act is
5 amended by changing Section 5 as follows:

6 (725 ILCS 168/5)

7 Sec. 5. Definitions. For the purpose of this Act:

8 "Basic subscriber information" means name, address, local
9 and long distance telephone connection records or records of
10 session time and durations; length of services, including start
11 dates, and types of services utilized; telephone or instrument
12 number or other subscriber number or identity, including any
13 temporarily assigned network address; and the means and source
14 of payment for the service, including the credit card or bank
15 account number.

16 "Electronic device" means any device that enables access
17 to, or use of:

18 (1) an electronic communication service that provides
19 the ability to send or receive wire or electronic
20 communications;

21 (2) a remote computing service that provides computer
22 storage or processing services by means of an electronic
23 communications system; or

1 (3) a location information service such as a global
2 positioning service or other mapping, locational, or
3 directional information service.

4 "Electronic device" does not mean devices used by a
5 governmental agency or by a company operating under a contract
6 with a governmental agency for toll collection, traffic
7 enforcement, or license plate reading.

8 "Law enforcement agency" means any agency of this State or
9 a political subdivision of this State which is vested by law
10 with the duty to maintain public order or enforce criminal
11 laws.

12 "Location information" means any information concerning
13 the location of an electronic device that, in whole or in part,
14 is generated by or derived from the operation of that device.

15 "Social networking website" has the same meaning ascribed
16 to the term in ~~paragraph (4) of~~ subsection (b) of Section 10 of
17 the Right to Privacy in the Workplace Act.

18 (Source: P.A. 98-1104, eff. 8-26-14.)

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

21 (820 ILCS 55/10) (from Ch. 48, par. 2860)

22 Sec. 10. Prohibited inquiries; online activities.

23 (a) It shall be unlawful for any employer to inquire, in a
24 written application or in any other manner, of any prospective

1 employee or of the prospective employee's previous employers,
2 whether that prospective employee has ever filed a claim for
3 benefits under the Workers' Compensation Act or Workers'
4 Occupational Diseases Act or received benefits under these
5 Acts.

6 (b) (1) Except as provided in this subsection, it shall be
7 unlawful for any employer or prospective employer to:

8 (A) request, ~~or~~ require, or coerce any employee or
9 prospective employee to provide a user name and password or
10 any password or other related account information in order
11 to gain access to the employee's or prospective employee's
12 personal online account ~~or profile on a social networking~~
13 ~~website~~ or to demand access in any manner to an employee's
14 or prospective employee's personal online account; ~~or~~
15 ~~profile on a social networking website.~~

16 (B) request, require, or coerce an employee or
17 applicant to authenticate or access a personal online
18 account in the presence of the employer;

19 (C) require or coerce an employee or applicant to
20 invite the employer to join a group affiliated with any
21 personal online account of the employee or applicant;

22 (D) require or coerce an employee or applicant to join
23 an online account established by the employer or add the
24 employer or an employment agency to the employee's or
25 applicant's list of contacts that enable the contacts to
26 access the employee or applicant's personal online

1 account;

2 (E) discharge, discipline, discriminate against,
3 retaliate against, or otherwise penalize an employee for
4 (i) refusing or declining to provide the employer with a
5 user name and password, password, or any other
6 authentication means for accessing his or her personal
7 online account, (ii) refusing or declining to authenticate
8 or access a personal online account in the presence of the
9 employer, (iii) refusing to invite the employer to join a
10 group affiliated with any personal online account of the
11 employee, (iv) refusing to join an online account
12 established by the employer, or (v) filing or causing to be
13 filed any complaint, whether orally or in writing, with a
14 public or private body or court concerning the employer's
15 violation of this subsection; or

16 (F) fail or refuse to hire an applicant as a result of
17 his or her refusal to (i) provide the employer with a user
18 name and password, password, or any other authentication
19 means for accessing a personal online account, (ii)
20 authenticate or access a personal online account in the
21 presence of the employer, or (iii) invite the employer to
22 join a group affiliated with a personal online account of
23 the applicant.

24 (2) Nothing in this subsection shall limit an employer's
25 right to:

26 (A) promulgate and maintain lawful workplace policies

1 governing the use of the employer's electronic equipment,
2 including policies regarding Internet use, social
3 networking site use, and electronic mail use; or ~~and~~

4 (B) monitor usage of the employer's electronic
5 equipment and the employer's electronic mail without
6 requesting or using ~~requiring~~ any employee or prospective
7 employee to provide any password or other related account
8 information in order to gain access to the employee's or
9 prospective employee's personal online account ~~or profile~~
10 ~~on a social networking website.~~

11 (3) Nothing in this subsection shall prohibit an employer
12 from:

13 (A) obtaining about a prospective employee or an
14 employee information that is in the public domain or that
15 is otherwise obtained in compliance with this amendatory
16 Act of the 97th General Assembly;

17 (B) complying with State and federal laws, rules, and
18 regulations and the rules of self-regulatory organizations
19 created pursuant to federal or State law when applicable;

20 (C) requesting or requiring an employee or applicant to
21 share specific content that has been reported to the
22 employer, without requesting or requiring an employee or
23 applicant to provide a user name and password, password, or
24 other means of authentication that provides access to an
25 employee's or applicant's personal online account, for the
26 purpose of:

1 (i) ensuring compliance with applicable laws or
2 regulatory requirements;

3 (ii) investigating an allegation, based on receipt
4 of specific information, of the unauthorized transfer
5 of an employer's proprietary or confidential
6 information or financial data to an employee or
7 applicant's personal account;

8 (iii) investigating an allegation, based on
9 receipt of specific information, of a violation of
10 applicable laws, regulatory requirements, or
11 prohibitions against work-related employee misconduct;

12 (iv) prohibiting an employee from using a personal
13 online account for business purposes; or

14 (v) prohibiting an employee or applicant from
15 accessing or operating a personal online account
16 during business hours, while on business property,
17 while using an electronic communication device
18 supplied by, or paid for by, the employer, or while
19 using the employer's network or resources, to the
20 extent permissible under applicable laws.

21 (4) If an employer inadvertently receives the username,
22 password, or any other information that would enable the
23 employer to gain access to the employee's or potential
24 employee's personal online account through the use of an
25 otherwise lawful technology that monitors the employer's
26 network or employer-provided devices for network security or

1 data confidentiality purposes, then the employer is not liable
2 for having that information, unless the employer:

3 (A) uses that information, or enables a third party to
4 use that information, to access the employee or potential
5 employee's personal online account; or

6 (B) after the employer becomes aware that such
7 information was received, does not delete the information
8 as soon as is reasonably practicable, unless that
9 information is being retained by the employer in connection
10 with an ongoing investigation of an actual or suspected
11 breach of computer, network, or data security. Where an
12 employer knows or, through reasonable efforts, should be
13 aware that its network monitoring technology is likely to
14 inadvertently to receive such information, the employer
15 shall make reasonable efforts to secure that information.

16 (5) Nothing in this subsection shall prohibit or restrict
17 an employer from complying with a duty to screen employees or
18 applicants prior to hiring or to monitor or retain employee
19 communications as required under Illinois insurance laws or
20 federal law or by a self-regulatory organization as defined in
21 Section 3(A)(26) of the Securities Exchange Act of 1934, 15
22 U.S.C. 78(A)(26) provided ~~(3.5) Provided~~ that the password,
23 account information, or access sought by the employer only
24 relates to an online account that:

25 (A) an employer supplies or pays; or

26 (B) an employee creates or maintains on behalf of or

1 under direction of an employer in connection with that
2 employee's employment. ~~a professional account, and not a~~
3 ~~personal account, nothing in this subsection shall~~
4 ~~prohibit or restrict an employer from complying with a duty~~
5 ~~to screen employees or applicants prior to hiring or to~~
6 ~~monitor or retain employee communications as required~~
7 ~~under Illinois insurance laws or federal law or by a~~
8 ~~self-regulatory organization as defined in Section~~
9 ~~3(A)(26) of the Securities Exchange Act of 1934, 15 U.S.C.~~
10 ~~78(A)(26).~~

11 (6) ~~(4)~~ For the purposes of this subsection:7

12 (A) "Social ~~social~~ networking website" means an
13 Internet-based service that allows individuals to:

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

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

18 (iii) ~~(C)~~ view and navigate their list of
19 connections and those made by others within the system.

20 "Social networking website" does ~~shall~~ not include
21 electronic mail.

22 (B) "Personal online account" means an online account,
23 that is used by a person primarily for personal purposes.

24 "Personal online account" does not include an account
25 created, maintained, used, or accessed by a person for a
26 business purpose of the person's employer or prospective

1 employer.

2 ~~For the purposes of paragraph (3.5) of this subsection,~~
3 ~~"professional account" means an account, service, or profile~~
4 ~~created, maintained, used, or accessed by a current or~~
5 ~~prospective employee for business purposes of the employer.~~

6 ~~For the purposes of paragraph (3.5) of this subsection,~~
7 ~~"personal account" means an account, service, or profile on a~~
8 ~~social networking website that is used by a current or~~
9 ~~prospective employee exclusively for personal communications~~
10 ~~unrelated to any business purposes of the employer.~~

11 (Source: P.A. 97-875, eff. 1-1-13; 98-501, eff. 1-1-14.)