

[Third Reprint]

ASSEMBLY, No. 2878

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED MAY 10, 2012

Sponsored by:

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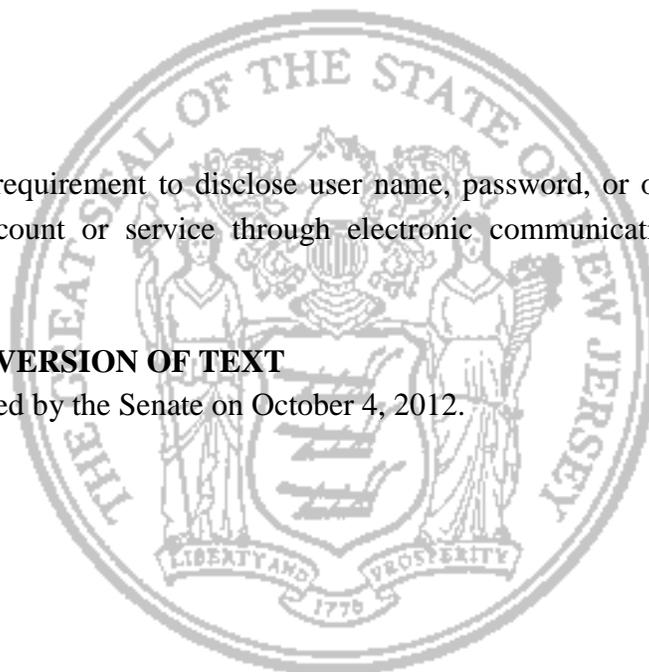
Assemblywomen Wagner, Sumter, Assemblymen Diegnan, Wimberly,
Senators Sweeney, Whelan, O'Toole, Allen, Gordon, Assemblywomen
Riley and Lampitt

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 by the Senate on October 4, 2012.



(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 shall:

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

39 b. In any way ²**[inquire as to whether]** require or request that²
40 a current or prospective employee ²disclose whether the employee²
41 has ¹**[an]** a personal¹ account ¹**[or profile on a social networking**
42 **website]**¹.

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.

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

6
7 4. No employer shall retaliate or discriminate against an
8 individual because the individual has done or was about to do any
9 of the following:

10 a. Refuse to provide or disclose any user name or password, or
11 in any way provide access to, a personal account ¹【or service】¹
12 through an electronic communications device;

13 b. File a ²【complain】 complaint² under this act;

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

16 d. Otherwise oppose a violation of this act.

17
18 5. Upon violation of any provision of this act, an aggrieved
19 person may, in addition to any other available remedy, institute a
20 civil action in a court of competent jurisdiction, within one year
21 from the date of the alleged violation. In response to the action, the
22 court may, as it deems appropriate, order or award any one or more
23 of the following:

24 a. With respect to a prospective employee:

25 (1) injunctive relief;

26 (2) compensatory and consequential damages incurred by the
27 prospective employee as a result of the violation, taking into
28 consideration any failure to hire in connection with the violation;
29 and

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

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

32 (1) injunctive relief as it deems appropriate, including
33 reinstatement of the employee to the same position held before the
34 violation or the position the employee would have held but for the
35 violation, as well as the reinstatement of full fringe benefits and
36 seniority rights;

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

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

41
42 6. An employer who violates any provision of this act shall be
43 subject to a civil penalty in an amount not to exceed \$1,000 for the
44 first violation and \$2,500 for each subsequent violation, collectible
45 by the Commissioner of Labor and Workforce Development in a
46 summary proceeding pursuant to the "Penalty Enforcement Law of
47 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

1 ¹7. a. Nothing in this act shall be construed to prevent an
2 employer from complying with the requirements of State or federal
3 statutes, rules or regulations, case law or rules of self-regulatory
4 organizations.

5 b. Nothing in this act shall prevent an employer from
6 implementing and enforcing a policy pertaining to the use of an
7 employer issued electronic communications device.¹

8
9 ¹[7.] 8.¹ This act shall take effect ¹[immediately] on the first
10 day of the fourth month following enactment¹.