

**34:6B-5 to 34:6B-10**  
**LEGISLATIVE HISTORY CHECKLIST**  
Compiled by the NJ State Law Library

**LAWS OF:** 2013                    **CHAPTER:** 155

**NJSA:** 34:6B-5 to 34:6B-10 (Prohibits requirement to disclose user name, password, or other means for accessing account or service through electronic communications device by employers)

**BILL NO:** A2878                    (Substituted for S1915)

**SPONSOR(S)** Burzichelli and others

**DATE INTRODUCED:** May 10, 2012

**COMMITTEE:**                    **ASSEMBLY:** Consumer Affairs

**SENATE:** Labor

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**                    **ASSEMBLY:** May 20, 2013

**SENATE:** August 19, 2013

**DATE OF APPROVAL:** August 28, 2013

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Fourth reprint enacted) Yes

**A2878**

**SPONSOR'S STATEMENT** (Begins on page 3 of introduced bill): Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** Yes

**SENATE:** Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** Yes

**LEGISLATIVE FISCAL ESTIMATE:** No

**S1915/1898**

**SPONSOR'S STATEMENT S1915:** (Begins on page 3 introduced bill): Yes

**SPONSOR'S STATEMENT S1898:** (Begins on page 3 introduced bill): Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** No

**SENATE:** Yes

(continued)

**FLOOR AMENDMENT STATEMENT:** Yes

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** Yes

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

"Hand off logins, passwords," The Record, 8-30-13

"Social media protections signed into law," Daily Record, 8-30-13

LAW/KR

P.L.2013, CHAPTER 155, *approved August 28, 2013*  
Assembly, No. 2878 (*Fourth Reprint*)

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 <sup>3</sup>**[ ]**:<sup>3</sup>

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. <sup>3</sup>The 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.<sup>3</sup>

18 <sup>1</sup>“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.<sup>1</sup>

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<sup>4</sup>**[ ]**:

**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:

<sup>1</sup>Assembly floor amendments adopted June 21, 2012.

<sup>2</sup>Senate SLA committee amendments adopted September 20, 2012.

<sup>3</sup>Senate floor amendments adopted October 4, 2012.

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

- 1 a. Require] require<sup>4</sup> <sup>2</sup>or request<sup>2</sup> a current or prospective  
2 employee to provide or disclose any user name or password, or in  
3 any way provide the employer access to, a personal account <sup>1</sup>[or  
4 service]<sup>1</sup> through an electronic <sup>2</sup>[communication]  
5 communications<sup>2</sup> device<sup>4</sup>]; or  
6 b. In any way]<sup>4</sup> <sup>2</sup>[inquire as to whether] <sup>4</sup>[require or request  
7 that<sup>2</sup> a current or prospective employee <sup>2</sup>disclose whether the  
8 employee<sup>2</sup> has]<sup>4</sup> <sup>1</sup>[an] <sup>4</sup>[a personal<sup>1</sup> account]<sup>4</sup> <sup>1</sup>[or profile on a  
9 social networking website]<sup>1</sup>.

10  
11 3. No employer shall require an individual to waive or limit  
12 any protection granted under this act as a condition of applying for  
13 or receiving an offer of employment. An agreement to waive any  
14 right or protection under this act is against the public policy of this  
15 State and is void and unenforceable.

16  
17 4. No employer shall retaliate or discriminate against an  
18 individual because the individual has done or was about to do any  
19 of the following:

- 20 a. Refuse to provide or disclose any user name or password, or  
21 in any way provide access to, a personal account <sup>1</sup>[or service]<sup>1</sup>  
22 through an electronic communications device;  
23 b. <sup>4</sup>[File a]<sup>4</sup> <sup>2</sup>[complain] <sup>4</sup>[complaint<sup>2</sup> under] Report an  
24 alleged violation of<sup>4</sup> this act <sup>4</sup>to the Commissioner of Labor and  
25 Workforce Development<sup>4</sup>;  
26 c. Testify, assist, or participate in any investigation,  
27 proceeding, or action concerning a violation of this act; or  
28 d. Otherwise oppose a violation of this act.

29  
30 <sup>4</sup>[5. Upon violation of any provision of this act, an aggrieved  
31 person may, in addition to any other available remedy, institute a  
32 civil action in a court of competent jurisdiction, within one year  
33 from the date of the alleged violation. In response to the action, the  
34 court may, as it deems appropriate, order or award any one or more  
35 of the following:

- 36 a. With respect to a prospective employee:  
37 (1) injunctive relief;  
38 (2) compensatory and consequential damages incurred by the  
39 prospective employee as a result of the violation, taking into  
40 consideration any failure to hire in connection with the violation;  
41 and  
42 (3) reasonable attorneys' fees and court costs.  
43 b. With respect to a current or former employee:  
44 (1) injunctive relief as it deems appropriate, including  
45 reinstatement of the employee to the same position held before the  
46 violation or the position the employee would have held but for the

1 violation, as well as the reinstatement of full fringe benefits and  
2 seniority rights;

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

6 (3) reasonable attorneys' fees and court costs.]<sup>4</sup>  
7

8 <sup>4</sup>[6.] 5.<sup>4</sup> An employer who violates any provision of this act  
9 shall be subject to a civil penalty in an amount not to exceed \$1,000  
10 for the first violation and \$2,500 for each subsequent violation,  
11 collectible by the Commissioner of Labor and Workforce  
12 Development in a summary proceeding pursuant to the "Penalty  
13 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
14

15 <sup>4</sup>[17.] 6.<sup>4</sup> a. Nothing in this act shall be construed to prevent an  
16 employer from complying with the requirements of State or federal  
17 statutes, rules or regulations, case law or rules of self-regulatory  
18 organizations.

19 b. Nothing in this act shall prevent an employer from  
20 implementing and enforcing a policy pertaining to the use of an  
21 employer issued electronic communications device <sup>4</sup>or any accounts  
22 or services provided by the employer or that the employee uses for  
23 business purposes.

24 c. Nothing in this act shall prevent an employer from  
25 conducting an investigation:

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

30 (2) of an employee's actions based on the receipt of specific  
31 information about the unauthorized transfer of an employer's  
32 proprietary information, confidential information or financial data  
33 to a personal account by an employee.

34 d. Nothing in this act shall prevent an employer from viewing,  
35 accessing, or utilizing information about a current or prospective  
36 employee that can be obtained in the public domain<sup>4</sup>.<sup>1</sup>  
37

38 <sup>1</sup>[7.] <sup>4</sup>[8.] 7.<sup>4</sup> This act shall take effect <sup>1</sup>[immediately] on the  
39 first day of the fourth month following enactment<sup>1</sup>.  
40  
41

42  
43  
44 Prohibits requirement to disclose user name, password, or other  
45 means for accessing account or service through electronic  
46 communications device by employers.

# ASSEMBLY, No. 2878

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED MAY 10, 2012

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**  
**District 3 (Cumberland, Gloucester and Salem)**  
**Assemblyman LOUIS D. GREENWALD**  
**District 6 (Burlington and Camden)**  
**Assemblyman RUBEN J. RAMOS, JR.**  
**District 33 (Hudson)**  
**Assemblyman HERB CONAWAY, JR.**  
**District 7 (Burlington)**

**Co-Sponsored by:**

**Assemblywoman Wagner**

**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 introduced.



**(Sponsorship Updated As Of: 6/22/2012)**

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:

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.

15 “Social networking website” means an Internet-based service  
16 that allows individuals to construct a public or semi-public profile  
17 within a bounded system created by the service, create a list of  
18 other users with whom they share a connection within the system,  
19 and view and navigate their list of connections and those made by  
20 others within the system.

21  
22 2. No employer shall:

23 a. Require a current or prospective employee to provide or  
24 disclose any user name or password, or in any way provide the  
25 employer access to, a personal account or service through an  
26 electronic communications device; or

27 b. In any way inquire as to whether a current or prospective  
28 employee has an account or profile on a social networking website.

29  
30 3. No employer shall require an individual to waive or limit  
31 any protection granted under this act as a condition of applying for  
32 or receiving an offer of employment. An agreement to waive any  
33 right or protection under this act is against the public policy of this  
34 State and is void and unenforceable.

35  
36 4. No employer shall retaliate or discriminate against an  
37 individual because the individual has done or was about to do any  
38 of the following:

39 a. Refuse to provide or disclose any user name or password, or  
40 in any way provide access to, a personal account or service through  
41 an electronic communications device;

42 b. File a complaint under this act;

43 c. Testify, assist, or participate in an investigation, proceeding,  
44 or action concerning a violation of this act; or

45 d. Otherwise oppose a violation of this act.

46  
47 5. Upon violation of any provision of this act, an aggrieved  
48 person may, in addition to any other available remedy, institute a

1 civil action in a court of competent jurisdiction, within one year  
2 from the date of the alleged violation. In response to the action, the  
3 court may, as it deems appropriate, order or award any one or more  
4 of the following:

5 a. With respect to a prospective employee:

6 (1) injunctive relief;

7 (2) compensatory and consequential damages incurred by the  
8 prospective employee as a result of the violation, taking into  
9 consideration any failure to hire in connection with the violation;  
10 and

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

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

13 (1) injunctive relief as it deems appropriate, including  
14 reinstatement of the employee to the same position held before the  
15 violation or the position the employee would have held but for the  
16 violation, as well as the reinstatement of full fringe benefits and  
17 seniority rights;

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

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

22

23 6. An employer who violates any provision of this act shall be  
24 subject to a civil penalty in an amount not to exceed \$1,000 for the  
25 first violation and \$2,500 for each subsequent violation, collectible  
26 by the Commissioner of Labor and Workforce Development in a  
27 summary proceeding pursuant to the "Penalty Enforcement Law of  
28 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

29

30 7. This act shall take effect immediately.

31

32

33

#### STATEMENT

34

35 This bill prohibits an employer from requiring a current or  
36 prospective employee to provide or disclose any user name or  
37 password, or in any way provide the employer access to, a personal  
38 account or service through an electronic communications device.  
39 An employer is also prohibited from asking a current or prospective  
40 employee if he has an account or profile on a social networking  
41 website.

42 The bill prohibits an employer from requiring a prospective  
43 employee to waive or limit any protection granted under the bill as  
44 a condition of applying for or receiving an offer of employment.  
45 The bill also prohibits retaliation or discrimination against an  
46 individual because the individual has done or was about to do any  
47 of the following:



1 (1) refuse to provide or disclose any user name or password, or  
2 in any way provide the employer access to, a personal account or  
3 service through an electronic communications device;

4 (2) file a complaint pursuant to provisions of the bill;

5 (3) testify, assist, or participate in an investigation, proceeding,  
6 or action concerning a violation of the bill; or

7 (4) otherwise oppose a violation of the bill.

8 Any current, prospective, or former employee aggrieved under  
9 the provisions of the bill may bring action in a court of competent  
10 jurisdiction for appropriate injunctive relief and damages, including  
11 reasonable attorneys' fees and court costs. In addition, the bill  
12 provides for the imposition of civil penalties in an amount not to  
13 exceed \$1,000 for the first violation, or \$2,500 for each subsequent  
14 violation, collectible by the Commissioner of Labor and Workforce  
15 Development.

16 For purposes of the bill: "electronic communications device"  
17 means any device that uses electronic signals to create, transmit,  
18 and receive information, including a computer, telephone, personal  
19 digital assistant, or other similar device; "employer" means any  
20 employer or employer's agent, representative, or designee; and  
21 "social networking website" means an Internet-based service that  
22 allows individuals to construct a public or semi-public profile  
23 within a bounded system created by the service, create a list of  
24 other users with whom they share a connection within the system,  
25 and view and navigate their list of connections and those made by  
26 others within the system.

# ASSEMBLY CONSUMER AFFAIRS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2878

# STATE OF NEW JERSEY

DATED: MAY 10, 2012

The Assembly Consumer Affairs Committee reports favorably Assembly Bill No. 2878.

This bill prohibits an employer from requiring a current or prospective employee to provide or disclose any user name or password, or in any way provide the employer access to, a personal account or service through an electronic communications device. An employer is also prohibited from asking a current or prospective employee if he has an account or profile on a social networking website.

The bill prohibits an employer from requiring a prospective employee to waive or limit any protection granted under the bill as a condition of applying for or receiving an offer of employment. The bill also prohibits retaliation or discrimination against an individual who:

- (1) refuses to provide or disclose any user name or password, or in any way provide the employer access to, a personal account or service through an electronic communications device;
- (2) files a complaint pursuant to provisions of the bill;
- (3) testifies, assists, or participates in an investigation, proceeding, or action concerning a violation of the bill; or
- (4) otherwise opposes a violation of the bill.

Any current, prospective, or former employee aggrieved under the provisions of the bill may bring action in a court of competent jurisdiction for appropriate injunctive relief and damages, including reasonable attorneys' fees and court costs. In addition, the bill provides for the imposition of civil penalties in an amount not to exceed \$1,000 for the first violation, or \$2,500 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development.

Finally, for purposes of the bill: "electronic communications device" means any device that uses electronic signals to create, transmit, and receive information, including a computer, telephone, personal digital assistant, or other similar device; "employer" means any employer or employer's agent, representative, or designee; and "social networking website" means an Internet-based service that allows individuals to construct a public or semi-public profile within a bounded system created by the service, create a list of other users with whom they share a connection within the system, and view and

navigate their list of connections and those made by others within the system.

STATEMENT TO  
**ASSEMBLY, No. 2878**

with Assembly Floor Amendments  
(Proposed by Assemblyman BURZICHELLI)

ADOPTED: JUNE 21, 2012

These Assembly amendments define “personal account” for purposes of the bill. The amendments provide that a “personal account” means an account, service or profile on a social networking website that is exclusively used by a current or prospective employee for personal purposes unrelated to any business purposes of the employer. The amendments further provide that the definition does not apply to any account, service or profile created, maintained, used or accessed by a current or prospective employee for business purposes of the employer.

Additionally, these amendments specify that nothing in the bill is to be construed so as to prevent an employer from complying with the requirements of State or federal statutes, rules or regulations, or rules of self-regulatory organizations. The amendments also provide that nothing in the bill prevents an employer from implementing and enforcing a policy pertaining to the use of an employer issued electronic communications device.

Finally, the amendments change the effective date of the bill from immediately, to the first day of the fourth month following enactment.

# SENATE LABOR COMMITTEE

## STATEMENT TO

[First Reprint]

## **ASSEMBLY, No. 2878**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: SEPTEMBER 20, 2012

The Senate Labor Committee reports favorably and with committee amendments Assembly Bill No. 2878 (1R).

As amended by the committee, this bill prohibits an employer from requiring or requesting a current or prospective employee to provide or disclose any user name or password, or in any way provide the employer access to, a personal account on a social networking website through an electronic communications device. An employer is also prohibited from requiring or requesting a current or prospective employee to disclose whether he has a personal account.

The bill prohibits an employer from requiring a prospective employee to waive or limit any protection granted under the bill as a condition of applying for or receiving an offer of employment. The bill also prohibits retaliation or discrimination against an individual who:

- (1) refuses to provide or disclose any user name or password, or in any way provide the employer access to, a personal account through an electronic communications device;
- (2) files a complaint pursuant to provisions of the bill;
- (3) testifies, assists, or participates in an investigation, proceeding, or action concerning a violation of the bill; or
- (4) otherwise opposes a violation of the bill.

Any current, prospective, or former employee aggrieved under the provisions of the bill may bring action in a court of competent jurisdiction for appropriate injunctive relief and damages, including reasonable attorneys' fees and court costs. In addition, the bill provides for the imposition of civil penalties in an amount not to exceed \$1,000 for the first violation, or \$2,500 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development.

The bill also provides that no provision contained therein may be construed to prevent an employer from complying with the requirements of State or federal statutes, rules or regulations, case law or rules of self-regulatory organizations, or prevent an employer from

implementing and enforcing a policy regarding employer issued electronic communications devices.

For purposes of the bill: “electronic communications device” means any device that uses electronic signals to create, transmit, or receive information, including a computer, telephone, personal digital assistant, or other similar device; “employer” means any employer or employer’s agent, representative, or designee; “personal account” means an account, service or profile on a social networking website that is used by a current or prospective employee exclusively for personal communications, not including any account, service or profile used for business purposes of an employer or to engage in business related communications; and “social networking website” means an Internet-based service that allows individuals to construct a public or semi-public profile within a bounded system created by the service, create a list of other users with whom they share a connection within the system, and view and navigate their list of connections and those made by others within the system.

The committee amendments remove the bill’s previous prohibition of employers making inquiries as to whether an employee has a personal account, instead prohibiting the employer from requiring or requesting the employee to disclose whether he has an account.

This bill, as amended, is identical to the Senate Committee Substitute for Senate Bill Nos. 1915 and 1898, also reported by the committee today.

STATEMENT TO  
[Second Reprint]  
**ASSEMBLY, No. 2878**

with Senate Floor Amendments  
(Proposed by Senator SWEENEY)

ADOPTED: OCTOBER 4, 2012

These Senate amendments exempt the Department of Corrections, State Parole Board, county corrections departments, and all State or local law enforcement agencies from the provisions of the bill by excluding all of those public entities from the definition of “employer.”

**ASSEMBLY BILL NO. 2878**  
**(Third Reprint)**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2878 (Third Reprint) with my recommendations for reconsideration.

This bill prohibits an employer from requiring a current or prospective employee to disclose their usernames, passwords, and related information concerning the current or prospective employee's personal social media accounts.

I greatly appreciate the sponsors' earnest effort to safeguard the privacy of job candidates and employees from overly aggressive invasions by employers. Cognizant of the ills surrounding unwanted and unnecessary intrusions into an individual's personal information, I recently signed similar legislation that prohibited institutions of higher education from asking current or prospective students to provide information about their personal social media accounts. I commend the sponsors for continuing to focus on this important issue.

Those privacy concerns, however, must be balanced against an employer's need to hire appropriate personnel, manage its operations, and safeguard its business assets and proprietary information. Unfortunately, this bill paints with too broad a brush. For example, under this bill, an employer interviewing a candidate for a marketing job would be prohibited from asking about the candidate's use of social networking so as to gauge the candidate's technological skills and media savvy. Such a relevant and innocuous inquiry would, under this bill, subject an employer to protracted litigation, compensatory damages, and



attorneys' fees - a result that could not have been the sponsors' intent.

In view of the over-breadth of this well-intentioned bill, I return it with my recommendations that more properly balance between protecting the privacy of employees and job candidates, while ensuring that employers may appropriately screen job candidates, manage their personnel, and protect their business assets and proprietary information.

Accordingly, I herewith return Assembly Bill No. 2878 (Third Reprint) and recommend that it be amended as follows:

Page 2, Section 2, Lines 33-34: Delete ": a. Require" and insert "require"

Page 2, Section 2, Lines 39-42: Delete in their entirety

Page 3, Section 4, Line 13: Delete in its entirety and insert "b. Report an alleged violation of this act to the Commissioner of Labor and Workforce Development;"

Page 3, Section 5, Lines 18-40: Delete in their entirety

Page 3, Section 6, Line 42: Delete "6" and insert "5"

Page 4, Section 7, Line 1: Delete "7" and insert "6"

Page 4, Section 7, Line 7: After "device" insert "or any accounts or services provided by the employer or that the employee uses for business purposes.

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

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

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

d. Nothing in this act shall prevent an employer from viewing, accessing, or utilizing information about a current or prospective employee that can be obtained in the public domain"

Page 4, Section 8, Line 9:

Delete "8" and insert "7"

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Charles B. McKenna

Chief Counsel to the Governor

**SENATE, No. 1915**

---

**STATE OF NEW JERSEY**

**215th LEGISLATURE**

---

INTRODUCED MAY 14, 2012

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator JIM WHELAN**

**District 2 (Atlantic)**

**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 introduced.



**(Sponsorship Updated As Of: 5/15/2012)**

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:

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. The term “employer” does not include  
15 the State Department of Corrections, State Parole Board, county  
16 corrections departments, or any State or local law enforcement  
17 agency.

18 “Social networking website” means an Internet-based service  
19 that allows individuals to construct a public or semi-public profile  
20 within a bounded system created by the service, create a list of  
21 other users with whom they share a connection within the system,  
22 and view and navigate their list of connections and those made by  
23 others within the system.

24  
25 2. No employer shall:

26 a. Require a current or prospective employee to provide or  
27 disclose any user name or password, or in any way provide the  
28 employer access to, a personal account or service through an  
29 electronic communications device; or

30 b. In any way inquire as to whether a current or prospective  
31 employee has an account or profile on a social networking website.

32  
33 3. No employer shall require an individual to waive or limit  
34 any protection granted under this act as a condition of applying for  
35 or receiving an offer of employment. An agreement to waive any  
36 right or protection under this act is against the public policy of this  
37 State and is void and unenforceable.

38  
39 4. No employer shall retaliate or discriminate against an  
40 individual because the individual has done or was about to do any  
41 of the following:

42 a. Refuse to provide or disclose any user name or password, or  
43 in any way provide access to, a personal account or service through  
44 an electronic communications device;

45 b. File a complaint under this act;

46 c. Testify, assist, or participate in an investigation, proceeding,  
47 or action concerning a violation of this act; or

48 d. Otherwise oppose a violation of this act.



1 individual because the individual has done or was about to do any  
2 of the following:

3 (1) refuse to provide or disclose any user name or password, or  
4 in any way provide the employer access to, a personal account or  
5 service through an electronic communications device;

6 (2) file a complaint pursuant to provisions of the bill;

7 (3) testify, assist, or participate in an investigation, proceeding,  
8 or action concerning a violation of the bill; or

9 (4) otherwise oppose a violation of the bill.

10 Any current, prospective, or former employee aggrieved under  
11 the provisions of the bill may bring action in a court of competent  
12 jurisdiction for appropriate injunctive relief and damages, including  
13 reasonable attorneys' fees and court costs. In addition, the bill  
14 provides for the imposition of civil penalties in an amount not to  
15 exceed \$1,000 for the first violation, or \$2,500 for each subsequent  
16 violation, collectible by the Commissioner of Labor and Workforce  
17 Development.

18 For purposes of the bill: "electronic communications device"  
19 means any device that uses electronic signals to create, transmit,  
20 and receive information, including a computer, telephone, personal  
21 digital assistant, or other similar device; "employer" means any  
22 employer or employer's agent, representative, or designee;  
23 however, the term "employer" does not include the State  
24 Department of Corrections, State Parole Board, county corrections  
25 departments, or any State or local law enforcement agency; and  
26 "social networking website" means an Internet-based service that  
27 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.

**SENATE, No. 1898**

**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

INTRODUCED MAY 14, 2012

**Sponsored by:**

**Senator KEVIN J. O'TOOLE**

**District 40 (Bergen, Essex, Morris and Passaic)**

**Senator DIANE B. ALLEN**

**District 7 (Burlington)**

**SYNOPSIS**

Prohibits requirement to provide information for access to account on social networking website by employer.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT prohibiting a requirement to provide information to access  
2 an account on a social networking website by an employer.

3

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

6

7 1. For purposes of this act:

8 “Employer” means an employer or employer’s agent,  
9 representative, or designee. The term “employer” does not include  
10 any State or local law enforcement agency.

11 “Social networking website” means an Internet-based service  
12 that allows individuals to construct a public or semi-public profile  
13 within a bounded system created by the service, create a list of  
14 other users with whom they share a connection within the system,  
15 and view and navigate their list of connections and those made by  
16 others within the system.

17

18 2. No employer shall require a current or prospective employee  
19 to:

20 a. Provide a password or any other related account information  
21 in order to gain access to the current or prospective employee’s  
22 account or profile on a social networking website; or

23 b. In any other way provide access to an account or profile on a  
24 social networking website.

25

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

31

32 4. No employer shall retaliate or discriminate against an  
33 individual because the individual has done or was about to do any  
34 of the following:

35 a. Refuse to provide a password or any other related account  
36 information, or in any other way refuse to provide access to an  
37 account or profile on a social networking website;

38 b. File a complaint under this act;

39 c. Testify, assist, or participate in an investigation, proceeding,  
40 or action concerning a violation of this act; or

41 d. Otherwise oppose a violation of this act.

42

43 5. Upon violation of any provision of this act, an aggrieved  
44 person may, in addition to any other available remedy, institute a  
45 civil action in a court of competent jurisdiction, within one year  
46 from the date of the alleged violation. In response to the action, the  
47 court may, as it deems appropriate, order or award any one or more  
48 of the following:





- 1 construct a public or semi-public profile within a bounded system
- 2 created by the service, create a list of other users with whom they
- 3 share a connection within the system, and view and navigate their
- 4 list of connections and those made by others within the system.

# SENATE LABOR COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 1915 and 1898**

# **STATE OF NEW JERSEY**

DATED: SEPTEMBER 20, 2012

The Senate Labor Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 1915 and 1898.

This committee substitute bill prohibits an employer from requiring or requesting a current or prospective employee to provide or disclose any user name or password, or in any way provide the employer access to, a personal account on a social networking website through an electronic communications device. An employer is also prohibited from requiring or requesting a current or prospective employee to disclose whether he has a personal account.

The bill prohibits an employer from requiring a prospective employee to waive or limit any protection granted under the bill as a condition of applying for or receiving an offer of employment. The bill also prohibits retaliation or discrimination against an individual who:

1. refuses to provide or disclose any user name or password, or in any way provide the employer access to, a personal account through an electronic communications device;
2. files a complaint pursuant to provisions of the bill;
3. testifies, assists, or participates in an investigation, proceeding, or action concerning a violation of the bill; or
4. otherwise opposes a violation of the bill.

Any current, prospective, or former employee aggrieved under the provisions of the bill may bring action in a court of competent jurisdiction for appropriate injunctive relief and damages, including reasonable attorneys' fees and court costs. In addition, the bill provides for the imposition of civil penalties in an amount not to exceed \$1,000 for the first violation, or \$2,500 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development.

Section 7 substance:

The bill also provides that no provision contained therein may be construed to prevent an employer from complying with the requirements of State or federal statutes, rules or regulations, case law or rules of self-regulatory organizations, or prevent an employer from implementing and enforcing a policy regarding employer issued electronic communications devices.

For purposes of the bill: “electronic communications device” means any device that uses electronic signals to create, transmit, or receive information, including a computer, telephone, personal digital assistant, or other similar device; “employer” means any employer or employer’s agent, representative, or designee; “personal account” means an account, service or profile on a social networking website that is used by a current or prospective employee exclusively for personal communications, not including any account, service or profile used for business purposes of an employer or to engage in business related communications; and “social networking website” means an Internet-based service that allows individuals to construct a public or semi-public profile within a bounded system created by the service, create a list of other users with whom they share a connection within the system, and view and navigate their list of connections and those made by others within the system.

This substitute is identical to Assembly Bill No. 2878 (1R) as amended and reported by the committee today.

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 1915 and 1898**

**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

ADOPTED SEPTEMBER 20, 2012

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator JIM WHELAN**

**District 2 (Atlantic)**

**Senator KEVIN J. O'TOOLE**

**District 40 (Bergen, Essex, Morris and Passaic)**

**Senator DIANE B. ALLEN**

**District 7 (Burlington)**

**Co-Sponsored by:**

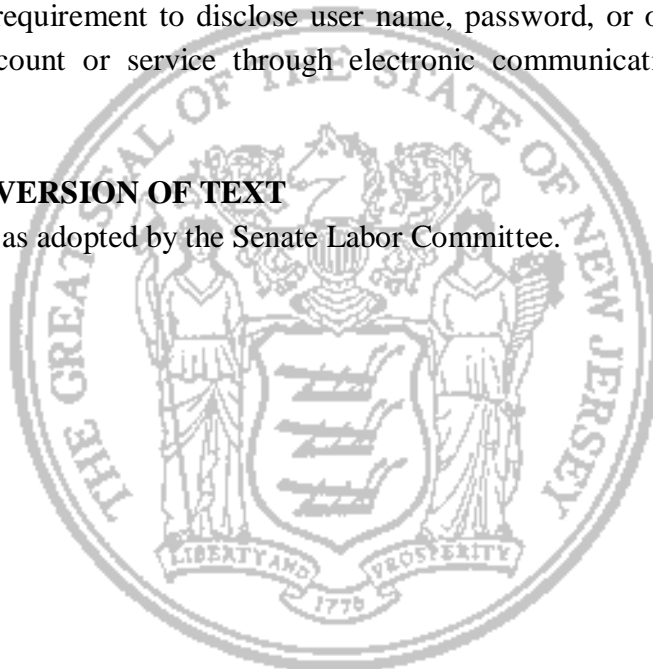
**Senator Gordon**

**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**

Substitute as adopted by the Senate Labor Committee.



**(Sponsorship Updated As Of: 10/26/2012)**

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:

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.

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

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

30 2. No employer shall:

31 a. Require or request a current or prospective employee to  
32 provide or disclose any user name or password, or in any way  
33 provide the employer access to, a personal account through an  
34 electronic communications device; or

35 b. In any way require or request that a current or prospective  
36 employee disclose whether the employee has a personal account.  
37

38 3. No employer shall require an individual to waive or limit  
39 any protection granted under this act as a condition of applying for  
40 or receiving an offer of employment. An agreement to waive any  
41 right or protection under this act is against the public policy of this  
42 State and is void and unenforceable.  
43

44 4. No employer shall retaliate or discriminate against an  
45 individual because the individual has done or was about to do any  
46 of the following:

- 1 a. Refuse to provide or disclose any user name or password, or  
2 in any way provide access to, a personal account through an  
3 electronic communications device;  
4 b. File a complaint under this act;  
5 c. Testify, assist, or participate in any investigation,  
6 proceeding, or action concerning a violation of this act; or  
7 d. Otherwise oppose a violation of this act.

8  
9 5. Upon violation of any provision of this act, an aggrieved  
10 person may, in addition to any other available remedy, institute a  
11 civil action in a court of competent jurisdiction, within one year  
12 from the date of the alleged violation. In response to the action, the  
13 court may, as it deems appropriate, order or award any one or more  
14 of the following:

- 15 a. With respect to a prospective employee:  
16 (1) injunctive relief;  
17 (2) compensatory and consequential damages incurred by the  
18 prospective employee as a result of the violation, taking into  
19 consideration any failure to hire in connection with the violation;  
20 and  
21 (3) reasonable attorneys' fees and court costs.  
22 b. With respect to a current or former employee:  
23 (1) injunctive relief as it deems appropriate, including  
24 reinstatement of the employee to the same position held before the  
25 violation or the position the employee would have held but for the  
26 violation, as well as the reinstatement of full fringe benefits and  
27 seniority rights;  
28 (2) compensatory and consequential damages incurred by the  
29 employee or former employee as a result of the violation, including  
30 compensation for lost wages, benefits and other remuneration; and  
31 (3) reasonable attorneys' fees and court costs.

32  
33 6. An employer who violates any provision of this act shall be  
34 subject to a civil penalty in an amount not to exceed \$1,000 for the  
35 first violation and \$2,500 for each subsequent violation, collectible  
36 by the Commissioner of Labor and Workforce Development in a  
37 summary proceeding pursuant to the "Penalty Enforcement Law of  
38 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

- 39  
40 7. a. Nothing in this act shall be construed to prevent an  
41 employer from complying with the requirements of State or federal  
42 statutes, rules or regulations, case law or rules of self-regulatory  
43 organizations.  
44 b. Nothing in this act shall prevent an employer from  
45 implementing and enforcing a policy pertaining to the use of an  
46 employer issued electronic communications device.

1       8. This act shall take effect on the first day of the fourth month  
2 following enactment.



STATEMENT TO  
  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 1915 and 1898**

Senate Floor Amendments  
(Proposed by Senator SWEENEY)

ADOPTED: OCTOBER 25, 2012

These Senate amendments exempt the Department of Corrections, State Parole Board, county corrections departments, and all State or local law enforcement agencies from the provisions of the bill by excluding all of those public entities from the definition of “employer.”