



Ohio Legislative Service Commission

Bill Analysis

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H.B. 424

130th General Assembly
(As Introduced)

Reps. Bishoff and Hackett, Becker, Derickson, Milkovich, Reece, Terhar

BILL SUMMARY

- Prohibits an employer or educational institution from requiring an employee, applicant, student, or prospective student to provide access to the employee's, applicant's, student's, or prospective student's personal Internet-based account.
- Prohibits an employer or educational institution from taking adverse action against those individuals for failing or refusing to grant access to, allow observation of, or provide access information to the individual's personal Internet-based account.
- Lists exceptions to the prohibitions, including accessing publicly available information.
- Makes violations of these prohibitions a first degree misdemeanor and requires the offender to be fined not more than \$1,000.
- Allows an individual to bring a lawsuit against the employer or educational institution to enjoin the violation and to recover up to \$1,000 in damages, plus reasonable attorney's fees and court costs.
- Requires an individual, prior to bringing a lawsuit, to make a written demand of the alleged violator and lists requirements for that written demand.
- Creates an affirmative defense for an employer or educational institution if allegedly committed a violation of the bill's prohibitions acted to comply with requirements of a federal or state law.

CONTENT AND OPERATION

Prohibition against requiring Internet account access

The bill prohibits employers and educational institutions from requiring an employee, applicant, student, or prospective student to provide access to the employee's, applicant's, student's, or prospective student's personal Internet-based account. An "Internet-based account" is an account created within a bounded, Internet-based system that requires an individual to use an electronic device to view, create, utilize, or edit the individual's account information, profile, display, communications, or other stored data.¹ Examples of Internet-based accounts include Facebook, Gmail, and LinkedIn.

Employer prohibition

The bill prohibits any employer from doing either of the following:

- Asking or requiring an employee or an applicant for employment to grant access to, allow observation of, or provide access information to the employee's or applicant's personal Internet-based account;
- Discharging, disciplining, failing to hire, or otherwise penalizing an employee or an applicant for employment for failing or refusing to grant access to, allow observation of, or provide access information to the employee's or applicant's personal Internet-based account.²

Whoever violates this prohibition may be subject to a lawsuit as described under "**Civil action**," below. Additionally, under the bill, whoever violates this prohibition is guilty of a first degree misdemeanor and must be fined not more than \$1,000. Currently, if an individual is guilty of a first degree misdemeanor, the individual is subject to a possible jail term of not more than 180 days, fine of not more than \$1,000, and other possible sanctions. If the offender is an organization, under current law the organization is subject to a fine of not more than \$5,000 if convicted of an offense that is a first degree misdemeanor.³

Exceptions to the employer prohibition

The bill does not prohibit an employer from doing any of the following activities:

¹ R.C. 4113.36, 4113.37, and 4113.35(D).

² R.C. 4113.36.

³ R.C. 4113.99(D) and R.C. 2929.24 to 2929.28 and 2929.31, not in the bill.



- Requesting or requiring an employee to disclose access information to allow the employer to gain access to or operate (1) an electronic communication device paid for in whole or in part by the employer or (2) an Internet-based account or other service provided by the employer, obtained by virtue of the employee's employment relationship with the employer or used for the employer's business purposes.
- Disciplining or discharging an employee for transferring the employer's proprietary, confidential, or financial information to an employee's personal Internet-based account without the employer's authorization;
- Conducting an investigation or requiring an employee to cooperate in an investigation in either of the following circumstances:
 - The employer has specific information about activity on the employee's personal Internet-based account and must conduct the investigation to ensure compliance with applicable laws, regulations, or other prohibitions against work-related employee misconduct.
 - The employer has specific information about an unauthorized transfer of the employer's proprietary, confidential, or financial information to an employee's personal Internet-based account.
- Restricting or prohibiting an employee's access to certain websites while using an electronic communication device paid for in whole or in part by the employer or while using the employer's network or resources, in accordance with state or federal law;
- Monitoring, reviewing, or accessing electronic data that is stored on an electronic communication device paid for in whole or in part by the employer or that is traveling through or stored on an employer's network, in accordance with state or federal law;
- Complying with a duty that is established under state or federal law or by a self-regulatory organization as defined under the federal Securities Exchange Act of 1934 (see "**Definitions**," below) to screen an employee or an applicant prior to hiring or to monitor or retain employee communications;

- Viewing, accessing, or utilizing information about an employee or applicant for employment that can be obtained without the employee's or applicant's access information or that is available in the public domain.⁴

Educational institution prohibition

Similar to the prohibition placed on an employer, the bill prohibits any educational institution from doing either of the following:

- Asking or requiring a student or prospective student to grant access to, allow observation of, or provide access information to the employee's or applicant's personal Internet-based account;
- Expelling, disciplining, failing or refusing to admit, or otherwise penalizing a student or prospective student for failure to grant access to, allow observation of, or provide access information to the student's or prospective student's personal Internet-based account.

Similar to an employer, an educational institution that violates the prohibition is guilty of a first degree misdemeanor and must be fined not more than \$1,000. Additionally, the educational institution may be subject to a lawsuit as described under "**Civil action**," below.⁵

Exceptions to the educational institution prohibition

The bill does not prohibit an educational institution from doing either of the following activities:

- Requesting or requiring a student to disclose access information to allow the educational institution to gain access to or operate (1) an electronic communication device paid for in whole or in part by the educational institution or (2) an account or service provided by the educational institution that is either obtained by virtue of the student's admission to the educational institution or is used by the student for the institution's educational purposes.
- Viewing, accessing, or utilizing information about a student or prospective student that can be obtained without the student's or prospective student's access information or that is available in the public domain.

⁴ R.C. 4113.38(A).

⁵ R.C. 4113.37 and 4113.99(D).

Civil action

Subject to the written demand requirement described below, an individual who is the subject of an alleged violation of the prohibitions described under "**Employer prohibition**" and "**Educational institution prohibition**" above may sue to enjoin the violation and to recover up to \$1,000 in damages, plus reasonable attorney's fees and court costs. The individual may file the suit in the court of common pleas of either the county where the alleged violation occurred or where the person alleged to have committed the violation resides.⁶

Written demand

The bill prohibits an individual from bringing a lawsuit as described above until the individual has made a written demand of the alleged violator. An individual must make a written demand at least 60 days before filing the lawsuit. The individual's written demand must be for not more than \$1,000, and the individual must include reasonable documentation of the alleged violation in the demand. The individual must serve the written demand by certified mail to the alleged violator's address at the alleged violator's residence, principal office, or place of business or by any other means permitted by the Rules of Civil Procedure for service of process.⁷

Affirmative defense

The bill makes it an affirmative defense to a lawsuit under the bill if an employer or educational institution that allegedly committed a violation of the prohibitions described under "**Employer prohibition**" and "**Educational institution prohibition**" above acted to comply with requirements of a federal or state law.⁸

Definitions

The bill defines the following terms:

"Access information" means a user name, password, login information, or other security information that protects access to a personal Internet-based account or electronic device.⁹

⁶ R.C. 4113.39(A).

⁷ R.C. 4113.39(B).

⁸ R.C. 4113.39(C).

⁹ R.C. 4113.35(A).



"Educational institution" means a public or private educational institution and each separate school of a public or private educational institution, and includes all of the following:

- A state institution of higher education;
- A private, nonprofit institution holding a certificate of authorization from the Ohio Board of Regents (a private university);
- A private career school that holds a certificate of registration from the State Board of Career Colleges and Schools (that is, a for profit private institution or "proprietary school");
- A private for profit institution (such as DeVry University) that is exempt from regulation by the State Board of Career Colleges and Schools as prescribed under continuing law;
- A school operated by a board of education or an educational service center;
- A community (charter) school;
- A STEM school;
- A college-preparatory boarding school;
- A chartered nonpublic school;
- A nonchartered nonpublic school;
- A career-technical center, joint vocational school district, comprehensive career-technical center, or compact career-technical center;
- An educational testing service.¹⁰

"Employer" means any person who has one or more employees and includes an employer's agent, the state or any agency or instrumentality of the state, and any municipal corporation, county, township, school district, or other political subdivision or any agency or instrumentality thereof.¹¹

¹⁰ R.C. 4113.35(B).

¹¹ R.C. 4113.35(C), by reference to R.C. 4113.51, not in the bill.

"Self-regulatory organization" means any national securities exchange, registered securities association, registered clearing agency, or, in limited circumstances, the Municipal Securities Rulemaking Board.¹²

HISTORY

ACTION	DATE
Introduced	02-04-14

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¹² 15 United States Code 78c(26).

