

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5211

63rd Legislature
2013 Regular Session

Passed by the Senate April 27, 2013
YEAS 44 NAYS 0

President of the Senate

Passed by the House April 24, 2013
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5211** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5211

AS AMENDED BY THE HOUSE

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By Senate Commerce & Labor (originally sponsored by Senators Hobbs, Eide, Kline, Ranker, Hatfield, Harper, Billig, Hasegawa, Kohl-Welles, Shin, Keiser, Frockt, Rolfes, Hill, Conway, and Nelson)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to social networking accounts and profiles; adding
2 new sections to chapter 49.44 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44 RCW
5 to read as follows:

6 (1) An employer may not:

7 (a) Request, require, or otherwise coerce an employee or applicant
8 to disclose login information for the employee's or applicant's
9 personal social networking account;

10 (b) Request, require, or otherwise coerce an employee or applicant
11 to access his or her personal social networking account in the
12 employer's presence in a manner that enables the employer to observe
13 the contents of the account;

14 (c) Compel or coerce an employee or applicant to add a person,
15 including the employer, to the list of contacts associated with the
16 employee's or applicant's personal social networking account;

17 (d) Request, require, or cause an employee or applicant to alter
18 the settings on his or her personal social networking account that
19 affect a third party's ability to view the contents of the account; or

1 (e) Take adverse action against an employee or applicant because
2 the employee or applicant refuses to disclose his or her login
3 information, access his or her personal social networking account in
4 the employer's presence, add a person to the list of contacts
5 associated with his or her personal social networking account, or alter
6 the settings on his or her personal social networking account that
7 affect a third party's ability to view the contents of the account.

8 (2) This section does not apply to an employer's request or
9 requirement that an employee share content from his or her personal
10 social networking account if the following conditions are met:

11 (a) The employer requests or requires the content to make a factual
12 determination in the course of conducting an investigation;

13 (b) The employer undertakes the investigation in response to
14 receipt of information about the employee's activity on his or her
15 personal social networking account;

16 (c) The purpose of the investigation is to: (i) Ensure compliance
17 with applicable laws, regulatory requirements, or prohibitions against
18 work-related employee misconduct; or (ii) investigate an allegation of
19 unauthorized transfer of an employer's proprietary information,
20 confidential information, or financial data to the employee's personal
21 social networking account; and

22 (d) The employer does not request or require the employee to
23 provide his or her login information.

24 (3) This section does not:

25 (a) Apply to a social network, intranet, or other technology
26 platform that is intended primarily to facilitate work-related
27 information exchange, collaboration, or communication by employees or
28 other workers;

29 (b) Prohibit an employer from requesting or requiring an employee
30 to disclose login information for access to: (i) An account or service
31 provided by virtue of the employee's employment relationship with the
32 employer; or (ii) an electronic communications device or online account
33 paid for or supplied by the employer;

34 (c) Prohibit an employer from enforcing existing personnel policies
35 that do not conflict with this section; or

36 (d) Prevent an employer from complying with the requirements of
37 state or federal statutes, rules or regulations, case law, or rules of
38 self-regulatory organizations.

1 (4) If, through the use of an employer-provided electronic
2 communications device or an electronic device or program that monitors
3 an employer's network, an employer inadvertently receives an employee's
4 login information, the employer is not liable for possessing the
5 information but may not use the login information to access the
6 employee's personal social networking account.

7 (5) For the purposes of this section and section 2 of this act:

8 (a) "Adverse action" means: Discharging, disciplining, or
9 otherwise penalizing an employee; threatening to discharge, discipline,
10 or otherwise penalize an employee; and failing or refusing to hire an
11 applicant.

12 (b) "Applicant" means an applicant for employment.

13 (c) "Electronic communications device" means a device that uses
14 electronic signals to create, transmit, and receive information,
15 including computers, telephones, personal digital assistants, and other
16 similar devices.

17 (d) "Employer" means any person, firm, corporation, partnership,
18 business trust, legal representative, or other business entity which
19 engages in any business, industry, profession, or other activity in
20 this state and employs one or more employees, and includes the state,
21 any state institution, state agency, political subdivisions of the
22 state, and any municipal corporation or quasi-municipal corporation.
23 "Employer" includes an agent, a representative, or a designee of the
24 employer.

25 (e) "Login information" means a user name and password, a password,
26 or other means of authentication that protects access to a personal
27 social networking account.

28 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44 RCW
29 to read as follows:

30 An employee or applicant aggrieved by a violation of section 1 of
31 this act may bring a civil action in a court of competent jurisdiction.
32 The court may:

33 (1) Award a prevailing employee or applicant injunctive or other
34 equitable relief, actual damages, a penalty in the amount of five
35 hundred dollars, and reasonable attorneys' fees and costs; and

36 (2) Pursuant to RCW 4.84.185, award any prevailing party against
37 whom an action has been brought for a violation of section 1 of this

1 act reasonable expenses and attorneys' fees upon final judgment and
2 written findings by the trial judge that the action was frivolous and
3 advanced without reasonable cause.

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