CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5211

Chapter 330, Laws of 2013

63rd Legislature
2013 Regular Session

LABOR--SOCIAL NETWORK INFORMATION--EMPLOYER LIABILITY

EFFECTIVE DATE: 07/28/13

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

BRAD OWEN
President of the Senate

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

FRANK CHOPP
Speaker of the House of Representatives

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.

HUNTER G. GOODMAN
Secretary

Approved May 21, 2013, 2:46 p.m.

FILED
May 21, 2013

JAY INSLEE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
AN ACT Relating to social networking accounts and profiles; adding new sections to chapter 49.44 RCW; and prescribing penalties.

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

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

(1) An employer may not:

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

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

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

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

(2) This section does not apply to an employer's request or
requirement that an employee share content from his or her personal
social networking account if the following conditions are met:
(a) The employer requests or requires the content to make a factual
determination in the course of conducting an investigation;
(b) The employer undertakes the investigation in response to
receipt of information about the employee's activity on his or her
personal social networking account;
(c) The purpose of the investigation is to: (i) Ensure compliance
with applicable laws, regulatory requirements, or prohibitions against
work-related employee misconduct; or (ii) investigate an allegation of
unauthorized transfer of an employer's proprietary information,
confidential information, or financial data to the employee's personal
social networking account; and
(d) The employer does not request or require the employee to
provide his or her login information.

(3) This section does not:
(a) Apply to a social network, intranet, or other technology
platform that is intended primarily to facilitate work-related
information exchange, collaboration, or communication by employees or
other workers;
(b) Prohibit an employer from requesting or requiring an employee
to disclose login information for access to: (i) An account or service
provided by virtue of the employee's employment relationship with the
employer; or (ii) an electronic communications device or online account
paid for or supplied by the employer;
(c) Prohibit an employer from enforcing existing personnel policies
that do not conflict with this section; or
(d) Prevent an employer from complying with the requirements of
state or federal statutes, rules or regulations, case law, or rules of
self-regulatory organizations.
(4) If, through the use of an employer-provided electronic communications device or an electronic device or program that monitors an employer's network, an employer inadvertently receives an employee's login information, the employer is not liable for possessing the information but may not use the login information to access the employee's personal social networking account.

(5) For the purposes of this section and section 2 of this act:
(a) "Adverse action" means: Discharging, disciplining, or otherwise penalizing an employee; threatening to discharge, discipline, or otherwise penalize an employee; and failing or refusing to hire an applicant.
(b) "Applicant" means an applicant for employment.
(c) "Electronic communications device" means a device that uses electronic signals to create, transmit, and receive information, including computers, telephones, personal digital assistants, and other similar devices.
(d) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or other activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation. "Employer" includes an agent, a representative, or a designee of the employer.
(e) "Login information" means a user name and password, a password, or other means of authentication that protects access to a personal social networking account.

NEW SECTION. Sec. 2. A new section is added to chapter 49.44 RCW to read as follows:
An employee or applicant aggrieved by a violation of section 1 of this act may bring a civil action in a court of competent jurisdiction. The court may:
(1) Award a prevailing employee or applicant injunctive or other equitable relief, actual damages, a penalty in the amount of five hundred dollars, and reasonable attorneys' fees and costs; and
(2) Pursuant to RCW 4.84.185, award any prevailing party against whom an action has been brought for a violation of section 1 of this
act reasonable expenses and attorneys' fees upon final judgment and
written findings by the trial judge that the action was frivolous and
advanced without reasonable cause.

Passed by the Senate April 27, 2013.
Passed by the House April 24, 2013.
Approved by the Governor May 21, 2013.
Filed in Office of Secretary of State May 21, 2013.