

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 13-0049.01 Kristen Forrestal x4217

HOUSE BILL 13-1046

HOUSE SPONSORSHIP

Williams,

SENATE SPONSORSHIP

Ulibarri,

House Committees

Business, Labor, Economic, & Workforce Development

Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING EMPLOYER ACCESS TO PERSONAL INFORMATION**
102 **THROUGH ELECTRONIC COMMUNICATION DEVICES, AND, IN**
103 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill prohibits an employer from requiring an employee or applicant for employment to disclose a user name, password, or other means for accessing a personal account or service through an electronic communications device. This does not include access to nonpersonal

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
March 5, 2013

HOUSE
Amended 2nd Reading
March 1, 2013

accounts or services that provide access to the employer's internal computer or information systems. The bill also prohibits an employer from discharging, disciplining, penalizing, or refusing to hire an employee or applicant who does not provide access to personal accounts or services.

The bill clarifies that an employer may investigate an employee to ensure compliance with securities or financial law or for suspected unauthorized downloading of proprietary information based on the receipt of information about these activities.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 8-2-126 as
3 follows:

4 **8-2-126. Prohibitions of employer - requiring access to**
5 **personal electronic communication devices - definitions - rules.**

6 (1) AS USED IN THIS SECTION:

7 (a) "APPLICANT" MEANS AN APPLICANT FOR EMPLOYMENT.

8 (b) "ELECTRONIC COMMUNICATIONS DEVICE" MEANS A DEVICE
9 THAT USES ELECTRONIC SIGNALS TO CREATE, TRANSMIT, AND RECEIVE
10 INFORMATION, INCLUDING COMPUTERS, TELEPHONES, PERSONAL DIGITAL
11 ASSISTANTS, AND OTHER SIMILAR DEVICES.

12 (c) "EMPLOYER" MEANS A PERSON ENGAGED IN A BUSINESS,
13 INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN THE STATE OR
14 A UNIT OF STATE OR LOCAL GOVERNMENT. "EMPLOYER" INCLUDES AN
15 AGENT, A REPRESENTATIVE, OR A DESIGNEE OF THE EMPLOYER.
16 "EMPLOYER" DOES NOT INCLUDE THE DEPARTMENT OF CORRECTIONS,
17 COUNTY CORRECTIONS DEPARTMENTS, OR ANY STATE OR LOCAL LAW
18 ENFORCEMENT AGENCY.

19 (2) (a) AN EMPLOYER MAY NOT SUGGEST, REQUEST, OR REQUIRE
20 THAT AN EMPLOYEE OR APPLICANT DISCLOSE, OR CAUSE AN EMPLOYEE OR

1 APPLICANT TO DISCLOSE, ANY USER NAME, PASSWORD, OR OTHER MEANS
2 FOR ACCESSING THE EMPLOYEE'S OR APPLICANT'S PERSONAL ACCOUNT OR
3 SERVICE THROUGH THE EMPLOYEE'S OR APPLICANT'S PERSONAL
4 ELECTRONIC COMMUNICATIONS DEVICE. AN EMPLOYER SHALL NOT
5 COMPEL AN EMPLOYEE OR APPLICANT TO ADD ANYONE, INCLUDING THE
6 EMPLOYER OR HIS OR HER AGENT, TO THE EMPLOYEE'S OR APPLICANT'S
7 LIST OF CONTACTS ASSOCIATED WITH A SOCIAL MEDIA ACCOUNT OR
8 REQUIRE, REQUEST, SUGGEST, OR CAUSE AN EMPLOYEE OR APPLICANT TO
9 CHANGE PRIVACY SETTINGS ASSOCIATED WITH A SOCIAL NETWORKING
10 ACCOUNT.

11 (b) PARAGRAPH (a) OF THIS SUBSECTION (2) DOES NOT PROHIBIT
12 AN EMPLOYER FROM REQUIRING AN EMPLOYEE TO DISCLOSE ANY USER
13 NAME, PASSWORD, OR OTHER MEANS FOR ACCESSING NONPERSONAL
14 ACCOUNTS OR SERVICES THAT PROVIDE ACCESS TO THE EMPLOYER'S
15 INTERNAL COMPUTER OR INFORMATION SYSTEMS.

16 (3) AN EMPLOYER SHALL NOT:

17 (a) DISCHARGE, DISCIPLINE, OR OTHERWISE PENALIZE OR
18 THREATEN TO DISCHARGE, DISCIPLINE, OR OTHERWISE PENALIZE AN
19 EMPLOYEE FOR AN EMPLOYEE'S REFUSAL TO DISCLOSE ANY INFORMATION
20 SPECIFIED IN PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION OR
21 REFUSAL TO ADD THE EMPLOYER TO THE LIST OF THE EMPLOYEE'S
22 CONTACTS OR TO CHANGE THE PRIVACY SETTINGS ASSOCIATED WITH A
23 SOCIAL MEDIA ACCOUNT; OR

24 (b) FAIL OR REFUSE TO HIRE AN APPLICANT BECAUSE THE
25 APPLICANT REFUSES TO DISCLOSE ANY INFORMATION SPECIFIED IN
26 PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION OR REFUSES TO ADD
27 THE EMPLOYER TO THE APPLICANT'S LIST OF CONTACTS OR TO THE CHANGE

1 THE PRIVACY SETTINGS ASSOCIATED WITH A SOCIAL MEDIA ACCOUNT.

2 (4) THIS SECTION DOES NOT PREVENT AN EMPLOYER FROM:

3 (a) CONDUCTING AN INVESTIGATION TO ENSURE COMPLIANCE WITH
4 APPLICABLE SECURITIES OR FINANCIAL LAW OR REGULATORY
5 REQUIREMENTS BASED ON THE RECEIPT OF INFORMATION ABOUT THE USE
6 OF A PERSONAL WEB SITE, INTERNET WEB SITE, WEB-BASED ACCOUNT, OR
7 SIMILAR ACCOUNT BY AN EMPLOYEE FOR BUSINESS PURPOSES; OR

8 (b) INVESTIGATING AN EMPLOYEE'S ELECTRONIC
9 COMMUNICATIONS BASED ON THE RECEIPT OF INFORMATION ABOUT THE
10 UNAUTHORIZED DOWNLOADING OF AN EMPLOYER'S PROPRIETARY
11 INFORMATION OR FINANCIAL DATA TO A PERSONAL WEB SITE, INTERNET
12 WEB SITE, WEB-BASED ACCOUNT, OR SIMILAR ACCOUNT BY AN EMPLOYEE.

13 (5) A PERSON WHO IS INJURED BY A VIOLATION OF THIS
14 SECTION MAY FILE A COMPLAINT WITH THE DEPARTMENT OF LABOR AND
15 EMPLOYMENT. THE DEPARTMENT SHALL INVESTIGATE THE COMPLAINT
16 AND ISSUE FINDINGS THIRTY DAYS AFTER A HEARING. THE DEPARTMENT
17 MAY PROMULGATE RULES REGARDING PENALTIES THAT INCLUDE A FINE OF
18 UP TO ONE THOUSAND DOLLARS FOR THE FIRST OFFENSE AND A FINE NOT
19 TO EXCEED FIVE THOUSAND DOLLARS FOR EACH SUBSEQUENT OFFENSE.

20 (6) NOTHING IN THIS SECTION PROHIBITS AN EMPLOYER FROM
21 ENFORCING EXISTING PERSONNEL POLICIES THAT DO NOT CONFLICT WITH
22 THIS SECTION.

23 **SECTION 2. Appropriation.** In addition to any other
24 appropriation, there is hereby appropriated, out of any moneys in the
25 employment support fund created in section 8-77-109 (1), Colorado
26 Revised Statutes, not otherwise appropriated, to the department of labor
27 and employment, for the fiscal year beginning July 1, 2013, the sum of

1 \$23,064 and 0.3 FTE, or so much thereof as may be necessary, for
2 allocation to the division of labor related to the implementation of this
3 act.

4 **SECTION 3. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.