

# HOUSE BILL REPORT

## SSB 5211

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**As Reported by House Committee On:**  
Labor & Workforce Development

**Title:** An act relating to social networking accounts and profiles.

**Brief Description:** Concerning social networking accounts and profiles.

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

**Brief History:**

**Committee Activity:**

Labor & Workforce Development: 3/26/13, 4/3/13 [DP].

**Brief Summary of Substitute Bill**

- Prohibits demanding access to an employee's or prospective employee's personal account or profile on a social networking website.
- Prohibits requiring, as a condition of employment, that an employee or prospective employee provide a password or related account information for a personal account or profile on a social networking website.
- Permits an employee or prospective employee to bring a civil suit, and provides a penalty.

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### HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

**Majority Report:** Do pass. Signed by 8 members: Representatives Sells, Chair; Reykdal, Vice Chair; Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Holy, Moeller, Ormsby and Short.

**Minority Report:** Do not pass. Signed by 1 member: Representative Green.

**Staff:** Alexa Silver (786-7190).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

According to the National Conference of State Legislatures, seven states enacted legislation in 2012 and 2013 to prohibit employers or institutions of higher education from requiring an employee, applicant, or student to provide a username or password to a social media account. The laws in California, Illinois, Maryland, Michigan, and Utah apply to employers, and the laws in California, Delaware, Michigan, New Jersey, and Utah apply to institutions of higher education. Washington law does not address requests by an employer to access an employee's or prospective employee's social networking accounts.

Facebook's user agreement prohibits a user from sharing his or her password, letting anyone else access his or her account, or doing anything else that may jeopardize the security of the account. It also prohibits a user from soliciting login information or access to another person's account. Twitter's Terms of Service provide that a user is responsible for safeguarding his or her password and is responsible for any activities under his or her password.

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### **Summary of Bill:**

It is unlawful for a person, a company, the state, or a local government to:

- directly or indirectly require, as a condition of employment, that an employee or prospective employee submit a password or other related account information to gain access to the employee's or prospective employee's personal account or profile on a social networking website; or
- demand access to an employee's or prospective employee's personal account or profile on a social networking website.

A "social networking website" is an Internet-based service that allows individuals to: construct a public or semipublic profile in a system created by the service; create a list of other users with whom they share a connection in the system; and view and navigate their list of connections and those made by others within the system.

An employer is not prohibited from obtaining information about an employee or prospective employee that is in the public domain or from complying with the requirements of state or federal law or the rules of a self-regulatory organization.

In a civil action alleging violation of these prohibitions, a court may award a \$500 penalty, as well as actual damages, attorneys' fees, and costs. If the judge finds that the action was frivolous and brought without reasonable cause, the judge may award a prevailing defendant reasonable expenses and attorneys' fees.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill will protect people's privacy on social networks. There is growing concern about certain employers asking their employees for their Facebook passwords. A password should not be requested as a tool for research when a person wants to apply for a job. The bill may need some work to address incorrect use of social media on a company's intranet.

(With concerns) If an employer receives information about work-related employee misconduct, the employer needs to be able to investigate to ensure compliance. For example, an employee may have used a work computer to post information on his or her personal online account that could be construed as harassment. An employer should also be able to investigate when it receives information about the unauthorized transfer of information to a personal account, which could be used for identity theft or industrial espionage. The bill creates a safe zone where information may be received and transferred improperly. An employee should be required to cooperate with the employer investigation. Work-related information exchanged between or among employees should be exempted.

There is a high standard in federal and state law to protect the personal financial information of a bank's customers. If a bank learns that an employee may be inappropriately sharing financial information, the bank needs to be able to investigate. Without access to the employee's password, the employee could create an account in Facebook that is known only to the friends to whom they give the password.

(Opposed) There is support for the purpose of the bill, but it needs amendments. Other states have enacted legislation with varying degrees of success. The definition of "social media" in the bill may not actually include Facebook or Twitter. It refers to creating a list of other users, but on Facebook two people must consent to interact, and on Twitter people choose to follow you. The definition in current law is broader. Shared social media accounts are not addressed. An employer may hire a person to market the employer's firm based on the person's Facebook followers.

**Persons Testifying:** (In support) Senator Hobbs, prime sponsor.

(With concerns) Tom McBride, TechAmerica; and Denny Eliason, Washington Bankers Association.

(Opposed) Michael Shaw, Washington State Bar Association.

**Persons Signed In To Testify But Not Testifying:** None.