

SENATE BILL REPORT

SB 5211

As Reported by Senate Committee On:
Commerce & Labor, February 22, 2013

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

Brief Description: Concerning social networking accounts and profiles.

Sponsors: Senators Hobbs, Eide, Kline, Ranker, Hatfield, Harper, Billig, Hasegawa, Kohl-Welles, Shin, Keiser, Frockt, Rolfes, Hill, Conway and Nelson.

Brief History:

Committee Activity: Commerce & Labor: 2/18/13, 2/22/13 [DPS].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 5211 be substituted therefor, and the substitute bill do pass.

Signed by Senators Holmquist Newbry, Chair; Braun, Vice Chair; Conway, Ranking Member; Hasegawa, Hewitt, Keiser and King.

Staff: Mac Nicholson (786-7445)

Background: State law does not prohibit an employer from requiring an employee or prospective employee to submit social media passwords or other account information as a condition of employment or continued employment.

Summary of Bill (Recommended Substitute): An employer cannot require, as a condition of employment, any employee or prospective employee to submit any password or other related account information in order to gain access to the individual's personal social networking website account or profile.

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

An employer may obtain information about an employee or prospective employee that is in the public domain or that is otherwise obtained in compliance with the legislation.

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.

The legislation does not prevent an employer from complying with the requirements of state or federal statutes, rules or regulations, case law, or rules of self-regulatory organizations.

An employee may bring a civil action alleging a violation of the legislation. The court may award a prevailing employee statutory damages of \$500, actual damages, and reasonable attorneys' fees and costs. If the court finds the action was frivolous and advanced without reasonable cause, the court may award reasonable expenses and attorneys' fees to the employer.

EFFECT OF CHANGES MADE BY COMMERCE & LABOR COMMITTEE (Recommended Substitute): The proposed substitute provides that it is the personal social network accounts of employees that are protected. The proposed substitute also allows employers to require access to personal social network accounts in order to comply with requirements of state or federal laws.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This bill is driven from news articles about employers asking employees for Facebook passwords. Other states have passed similar laws, and while it is not prevalent in Washington State yet, social media use is growing and it is a good idea to do this now.

CON: This is a complex issue, and it is not clear if certain social network programs do not meet the definition in the bill. It is going to take some time to get the bill ready and to come up with necessary exemptions, such as emergency situations and trade secrets.

OTHER: There is a concern about employers having access to passwords for company accounts maintained by an employee. Under federal security laws, there is an obligation to monitor the social network activity of employees so personal and business financial activities do not blend. Exemption language used in other states should be incorporated into this bill as well.

Persons Testifying: PRO: Senator Hobbs, prime sponsor.

CON: Michael Shaw, WA State Bar Assn.

OTHER: Patrick Connor, National Federation of Independent Business; Bill Stauffacher, Securities Industry and Financial University Place Markets Assn.