



Rep. Will Guzzardi

Filed: 3/28/2016

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LRB099 17796 JLS 46385 a

1 AMENDMENT TO HOUSE BILL 4999

2 AMENDMENT NO. _____. Amend House Bill 4999 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Freedom From Location Surveillance Act is
5 amended by changing Section 5 as follows:

6 (725 ILCS 168/5)

7 Sec. 5. Definitions. For the purpose of this Act:

8 "Basic subscriber information" means name, address, local
9 and long distance telephone connection records or records of
10 session time and durations; length of services, including start
11 dates, and types of services utilized; telephone or instrument
12 number or other subscriber number or identity, including any
13 temporarily assigned network address; and the means and source
14 of payment for the service, including the credit card or bank
15 account number.

16 "Electronic device" means any device that enables access

1 to, or use of:

2 (1) an electronic communication service that provides
3 the ability to send or receive wire or electronic
4 communications;

5 (2) a remote computing service that provides computer
6 storage or processing services by means of an electronic
7 communications system; or

8 (3) a location information service such as a global
9 positioning service or other mapping, locational, or
10 directional information service.

11 "Electronic device" does not mean devices used by a
12 governmental agency or by a company operating under a contract
13 with a governmental agency for toll collection, traffic
14 enforcement, or license plate reading.

15 "Law enforcement agency" means any agency of this State or
16 a political subdivision of this State which is vested by law
17 with the duty to maintain public order or enforce criminal
18 laws.

19 "Location information" means any information concerning
20 the location of an electronic device that, in whole or in part,
21 is generated by or derived from the operation of that device.

22 "Social networking website" has the same meaning ascribed
23 to the term in ~~paragraph (4) of~~ subsection (b) of Section 10 of
24 the Right to Privacy in the Workplace Act.

25 (Source: P.A. 98-1104, eff. 8-26-14.)

1 Section 10. The Right to Privacy in the Workplace Act is
2 amended by changing Section 10 as follows:

3 (820 ILCS 55/10) (from Ch. 48, par. 2860)

4 Sec. 10. Prohibited inquiries; online activities.

5 (a) It shall be unlawful for any employer to inquire, in a
6 written application or in any other manner, of any prospective
7 employee or of the prospective employee's previous employers,
8 whether that prospective employee has ever filed a claim for
9 benefits under the Workers' Compensation Act or Workers'
10 Occupational Diseases Act or received benefits under these
11 Acts.

12 (b) (1) Except as provided in this subsection, it shall be
13 unlawful for any employer or prospective employer to:

14 (A) request, ~~or~~ require, or coerce any employee or
15 prospective employee to provide a user name and password or
16 any password or other related account information in order
17 to gain access to the employee's or prospective employee's
18 personal online account ~~or profile on a social networking~~
19 ~~website~~ or to demand access in any manner to an employee's
20 or prospective employee's personal online account; ~~or~~
21 ~~profile on a social networking website.~~

22 (B) request, require, or coerce an employee or
23 applicant to authenticate or access a personal online
24 account in the presence of the employer;

25 (C) require or coerce an employee or applicant to

1 invite the employer to join a group affiliated with any
2 personal online account of the employee or applicant;

3 (D) require or coerce an employee or applicant to join
4 an online account established by the employer or add the
5 employer or an employment agency to the employee's or
6 applicant's list of contacts that enable the contacts to
7 access the employee or applicant's personal online
8 account;

9 (E) discharge, discipline, discriminate against,
10 retaliate against, or otherwise penalize an employee for
11 (i) refusing or declining to provide the employer with a
12 user name and password, password, or any other
13 authentication means for accessing his or her personal
14 online account, (ii) refusing or declining to authenticate
15 or access a personal online account in the presence of the
16 employer, (iii) refusing to invite the employer to join a
17 group affiliated with any personal online account of the
18 employee, (iv) refusing to join an online account
19 established by the employer, or (v) filing or causing to be
20 filed any complaint, whether orally or in writing, with a
21 public or private body or court concerning the employer's
22 violation of this subsection; or

23 (F) fail or refuse to hire an applicant as a result of
24 his or her refusal to (i) provide the employer with a user
25 name and password, password, or any other authentication
26 means for accessing a personal online account, (ii)

1 authenticate or access a personal online account in the
2 presence of the employer, or (iii) invite the employer to
3 join a group affiliated with a personal online account of
4 the applicant.

5 (2) Nothing in this subsection shall limit an employer's
6 right to:

7 (A) promulgate and maintain lawful workplace policies
8 governing the use of the employer's electronic equipment,
9 including policies regarding Internet use, social
10 networking site use, and electronic mail use; ~~or and~~

11 (B) monitor usage of the employer's electronic
12 equipment and the employer's electronic mail without
13 requesting or using ~~requiring~~ any employee or prospective
14 employee to provide any password or other related account
15 information in order to gain access to the employee's or
16 prospective employee's personal online account ~~or profile~~
17 ~~on a social networking website.~~

18 (3) Nothing in this subsection shall prohibit an employer
19 from:

20 (A) obtaining about a prospective employee or an
21 employee information that is in the public domain or that
22 is otherwise obtained in compliance with this amendatory
23 Act of the 97th General Assembly;

24 (B) complying with State and federal laws, rules, and
25 regulations and the rules of self-regulatory organizations
26 created pursuant to federal or State law when applicable;

1 (C) requesting or requiring an employee or applicant to
2 share specific content that has been reported to the
3 employer, without requesting or requiring an employee or
4 applicant to provide a user name and password, password, or
5 other means of authentication that provides access to an
6 employee's or applicant's personal online account, for the
7 purpose of:

8 (i) ensuring compliance with applicable laws or
9 regulatory requirements;

10 (ii) investigating an allegation, based on receipt
11 of specific information, of the unauthorized transfer
12 of an employer's proprietary or confidential
13 information or financial data to an employee or
14 applicant's personal account;

15 (iii) investigating an allegation, based on
16 receipt of specific information, of a violation of
17 applicable laws, regulatory requirements, or
18 prohibitions against work-related employee misconduct;

19 (iv) prohibiting an employee from using a personal
20 online account for business purposes; or

21 (v) prohibiting an employee or applicant from
22 accessing or operating a personal online account
23 during business hours, while on business property,
24 while using an electronic communication device
25 supplied by, or paid for by, the employer, or while
26 using the employer's network or resources, to the

1 extent permissible under applicable laws.

2 (4) If an employer inadvertently receives the username,
3 password, or any other information that would enable the
4 employer to gain access to the employee's or potential
5 employee's personal online account through the use of an
6 otherwise lawful technology that monitors the employer's
7 network or employer-provided devices for network security or
8 data confidentiality purposes, then the employer is not liable
9 for having that information, unless the employer:

10 (A) uses that information, or enables a third party to
11 use that information, to access the employee or potential
12 employee's personal online account; or

13 (B) after the employer becomes aware that such
14 information was received, does not delete the information
15 as soon as is reasonably practicable, unless that
16 information is being retained by the employer in connection
17 with an ongoing investigation of an actual or suspected
18 breach of computer, network, or data security. Where an
19 employer knows or, through reasonable efforts, should be
20 aware that its network monitoring technology is likely to
21 inadvertently to receive such information, the employer
22 shall make reasonable efforts to secure that information.

23 (5) Nothing in this subsection shall prohibit or restrict
24 an employer from complying with a duty to screen employees or
25 applicants prior to hiring or to monitor or retain employee
26 communications as required under Illinois insurance laws or

1 federal law or by a self-regulatory organization as defined in
2 Section 3(A)(26) of the Securities Exchange Act of 1934, 15
3 U.S.C. 78(A)(26) provided ~~(3.5) Provided~~ that the password,
4 account information, or access sought by the employer only
5 relates to an online account that:

6 (A) an employer supplies or pays for in full (except
7 where an employer pays only for additional features or
8 enhancements to an employee's personal online account); or

9 (B) an employee creates or maintains on behalf of or
10 under direction of an employer in connection with that
11 employee's employment. ~~a professional account, and not a~~
12 ~~personal account, nothing in this subsection shall~~
13 ~~prohibit or restrict an employer from complying with a duty~~
14 ~~to screen employees or applicants prior to hiring or to~~
15 ~~monitor or retain employee communications as required~~
16 ~~under Illinois insurance laws or federal law or by a~~
17 ~~self-regulatory organization as defined in Section~~
18 ~~3(A)(26) of the Securities Exchange Act of 1934, 15 U.S.C.~~
19 ~~78(A)(26).~~

20 (6) (4) For the purposes of this subsection:

21 (A) "Social ~~social~~ networking website" means an
22 Internet-based service that allows individuals to:

23 (i) (A) construct a public or semi-public profile
24 within a bounded system, created by the service;

25 (ii) (B) create a list of other users with whom
26 they share a connection within the system; and

1 (iii) ~~(C)~~ view and navigate their list of
2 connections and those made by others within the system.

3 "Social networking website" does ~~shall~~ not include
4 electronic mail.

5 (B) "Personal online account" means an online account,
6 that is used by a person primarily for personal purposes.

7 "Personal online account" does not include an account
8 created, maintained, used, or accessed by a person for a
9 business purpose of the person's employer or prospective
10 employer, except that where an employer pays for additional
11 features or enhancements to an employee's personal online
12 account and the employee uses only those features or
13 enhancements for such business purpose, then the rest of
14 the account shall be considered an personal online account.

15 ~~For the purposes of paragraph (3.5) of this subsection,~~
16 ~~"professional account" means an account, service, or profile~~
17 ~~created, maintained, used, or accessed by a current or~~
18 ~~prospective employee for business purposes of the employer.~~

19 ~~For the purposes of paragraph (3.5) of this subsection,~~
20 ~~"personal account" means an account, service, or profile on a~~
21 ~~social networking website that is used by a current or~~
22 ~~prospective employee exclusively for personal communications~~
23 ~~unrelated to any business purposes of the employer.~~

24 (Source: P.A. 97-875, eff. 1-1-13; 98-501, eff. 1-1-14.)".