

As Engrossed: H3/22/13 S4/16/13

For An Act To Be Entitled

AN ACT TO PROHIBIT AN EMPLOYER FROM REQUIRING OR REQUESTING A CURRENT OR PROSPECTIVE EMPLOYEE FROM DISCLOSING HIS OR HER USERNAME OR PASSWORD FOR A SOCIAL MEDIA ACCOUNT OR TO PROVIDE ACCESS TO THE CONTENT OF HIS OR HER SOCIAL MEDIA ACCOUNT; AND FOR OTHER PURPOSES.

Subtitle

TO PROHIBIT AN EMPLOYER FROM REQUIRING OR REQUESTING A CURRENT OR PROSPECTIVE EMPLOYEE FROM DISCLOSING HIS OR HER USERNAME OR PASSWORD FOR A SOCIAL MEDIA ACCOUNT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 11, Chapter 2, Subchapter 1, is amended to add an additional section to read as follows:

11-2-124. Social media accounts of current and prospective employees.

(a) As used in this section:

(1) "Employee" means an individual who provides services or labor for wages or other remuneration for an employer;

(2) "Employer" means a person or entity engaged in business, an industry, a profession, a trade, or other enterprise in the state or a unit of state or local government, including without limitation an agent, representative, or designee of the employer; and

(3)(A) "Social media account" means a personal account with an



1 electronic medium or service where users may create, share, or view user-
2 generated content, including without limitation:

3 (i) Videos;

4 (ii) Photographs;

5 (iii) Blogs;

6 (iv) Podcasts;

7 (v) Messages;

8 (vi) Emails; or

9 (vii) Website profiles or locations.

10 (B) "Social media account" does not include an account:

11 (i) Opened by an employee at the request of an employer;

12 (ii) Provided to an employee by an employer such as a
13 company email account or other software program owned or operated exclusively
14 by an employer;

15 (iii) Setup by an employee on behalf of an employer; or

16 (iv) Setup by an employee to impersonate an employer
17 through the use of the employer's name, logos, or trademarks.

18 (C) "Social media account" includes without limitation an
19 account established with Facebook, Twitter, LinkedIn, MySpace, or Instagram.

20 (b)(1) An employer shall not require, request, suggest, or cause a
21 current or prospective employee to:

22 (A) Disclose his or her username and password to the current or
23 prospective employee's social media account;

24 (B) Add an employee, supervisor, or administrator to the list or
25 contacts associated with his or her social media account; or

26 (C) Change the privacy settings associated with his or her
27 social media account.

28 (2) If an employer inadvertently receives an employee's
29 username, password, or other login information to the employee's social media
30 account through the use of an electronic device provided to the employee by
31 the employer or a program that monitors an employer's network the employer is
32 not liable for having the information but may not use the information to gain
33 access to an employee's social media account.

34 (c) An employer shall not:

35 (1) Take action against or threaten to discharge, discipline, of
36 otherwise penalize a current employee for exercising his or her rights under

1 subsection (b) of this section; or

2 (2) Fail or refuse to hire a prospective employee for exercising
3 his or her rights under subsection (b) of this section.

4 (d) This section does not prohibit an employer from viewing
5 information about a current or prospective employee that is publicly
6 available on the Internet.

7 (e) Nothing in this section:

8 (1) Prevents an employer from complying with the requirements of
9 federal, state, or local laws, rules, or regulations or the rules or
10 regulations of self-regulatory organizations; or

11 (2)(A) Affects an employer's existing rights or obligations to
12 request an employee to disclose his or her username and password for the
13 purpose of accessing a social media account if the employee's social media
14 account activity is reasonably believed to be relevant to a formal
15 investigation or related proceeding by the employer of allegations of an
16 employee's violation of federal, state, or local laws or regulations or of
17 the employer's written policies.

18 (B) If an employer exercises its rights under subdivision
19 (e)(2)(A) of this section, the employee's username and password shall only be
20 used for the purpose of the formal investigation or a related proceeding.

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22 /s/Steel
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