



SPONSOR: Rep. Scott & Rep. Carson & Sen. Bushweller  
Rep. Brady

HOUSE OF REPRESENTATIVES  
146th GENERAL ASSEMBLY

HOUSE BILL NO. 308

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO LABOR.

WHEREAS, social networking is illustrative of our new technologically advanced community;

WHEREAS, 35% of American adult internet users and 65% of American teen internet users have a profile on a social networking site;

WHEREAS, personal uses of social networking applications for maintaining community contacts and content sharing are more prevalent than professional uses;

WHEREAS, the current trend toward using social networking sites as a primary vehicle for effecting positive social and political change establishes social networking sites as the new digital age "public square" for important discourse;

WHEREAS, permitting employers to demand that employee's and applicant's provide access their social networking site profiles and accounts could substantially chill the important discourse occurring on social networking sites;

WHEREAS, internet users have a reasonable expectation of privacy in their social networking site communications and affairs;

NOW, THEREFORE:

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

Section 1. Amend Chapter 7 of Title 19 of the Delaware Code by adding a new § 710 by underlining as follows:

§ 710. Right to privacy in the workplace.

(a) Short Title.--

This Act may be known and cited as the "Workplace Privacy Act."

(b). Definitions.--

(1) "Applicant" means an a prospective employee applying for employment.

(2) "Electronic communication device" means a cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, 2-way messaging device, electronic game, or portable computing device.

24           (3) “Employer” means a public or nonpublic entity or person engaged in a business, an industry, a profession, a  
25   trade, or other enterprise in the State, to include any agent, representative or designee of the employer.

26           (4) “Social networking site” means an internet-based, personalized, privacy-protected website or application  
27   whether free or commercial that allows users to construct a private or semi-private profile site within a bounded system,  
28   create a list of other system users who are granted reciprocal access to the individual’s profile site, send and receive email,  
29   and share personal content, communications, and contacts.

30           (c) Public and nonpublic employer; prohibited acts.--

31           (1) No employer shall require or request that an employee or applicant disclose any password or other related  
32   account information in order to gain access to the employee’s or applicant’s social networking site profile or account by  
33   way of an electronic communication device.

34           (2) No employer shall require or request that an employee or applicant log onto a social networking site by way of  
35   an electronic communications device in the presence of the employer, or its agent, so as to provide the employer access to  
36   the employee’s or applicant’s social networking profile or account.

37           (3) An employer is prohibited from accessing an employee’s or applicant’s social networking site profile or  
38   account indirectly through any other person who is a social networking contact of the employee or applicant.

39           (d) Employer; wrongful discharge or refusal to hire.--

40           An employer may not discharge, discipline or otherwise penalize or threaten to discharge, discipline  
41   or otherwise penalize an employee for an employee’s refusal to disclose any information specified in subsection (c) of this  
42   section. It shall also be unlawful for an employer to fail or refuse to hire any applicant as a result of the applicant’s refusal  
43   to disclose any information specified in subsection (c) of this section.

44           (e) Employer, permitted acts.

45           This Act shall not prohibit employers in the financial services industry, who are subject to the laws and regulations  
46   of the SEC, FINRA, or other financial regulators, from conducting internal investigations into employee wrong doing,  
47   complying with the supervision requirements of the SEC, FINRA or other financial regulators, or achieving waiver of the  
48   personal communications protections in employment contracts.

49           Section 2. This provision of this Act shall be effective upon its enactment into law.

#### SYNOPSIS

Under current law there is no recognized right to privacy in an employee or applicant’s social networking site passwords and account information. This Bill makes it unlawful for employers to mandate that an employee or applicant disclose password or account information that would grant the employer access the employee’s or applicant’s social networking profile or account. This Bill also prohibits employers from requesting that employees or applicants log onto

their respective social networking site profiles or account to provide the employer direct access. It is acknowledged by the General Assembly that new technological advances in internet use and social networking require new approaches to protecting reasonable expectations of privacy in personal information.