

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 964
Economic Matters

(Delegate Washington, *et al.*)

Finance

Labor and Employment - User Name and Password Privacy Protection and Exclusions

This bill prohibits an employer, including the State and local governments, from requesting or requiring an employee or applicant for employment to disclose a user name, password, or other means of accessing an Internet site or electronic account. An employer may not penalize or threaten to penalize an employee or applicant for employment for refusing to disclose this information.

Fiscal Summary

State Effect: None. The practices forbidden by the bill are not part of the State's recruitment and hiring procedures. The bill does not establish any State role in enforcing the bill's provisions. No effect on revenues.

Local Effect: None. The bill does not materially affect local government finances or operations.

Small Business Effect: None. The bill does not materially affect small business finances or operations.

Analysis

Bill Summary: An employer may require an employee to disclose a user name, password, or other means of accessing nonpersonal accounts that provide access to the employer's internal computer or information systems.

An employee may not download the employer's unauthorized proprietary or financial information to the employee's personal website or other online site or account.

The bill does not prevent an employer from conducting an investigation to ensure compliance with applicable securities or financial law or regulations, if the employer receives information about the use of a personal account or website for business purposes. It also does not prevent an employer from investigating an employee's actions if the employer receives information about the unauthorized downloading of proprietary information to a personal website or similar online site or account.

Current Law: State law includes several prohibited practices that apply to employers' recruitment, hiring, and retention practices. Except for specified law enforcement and correctional positions, employees and applicants for employment may not be required by their employer or prospective employer to submit to or take a polygraph examination or similar test as a condition of employment, prospective employment, or continued employment.

Subject to specified exceptions, an employer may not use an applicant's or employee's credit report or credit history in determining whether to deny employment to the applicant, discharge the employee, or determine compensation or terms of employment. Employers may request or use an applicant's or employee's credit report or credit history after an offer of employment has been extended and if (1) the information will not be used for a forbidden purpose; or (2) the employer has a bona fide purpose for requesting the information that is substantially job-related and disclosed in writing to the employee or applicant.

Background: In 2010 and 2011, the Department of Public Safety and Correctional Services (DPSCS) asked prospective employees for their user names and passwords to social media websites as part of the department's background investigation process. DPSCS discontinued the practice after an employee in the recertification process to return to work with the agency claimed that the process was a violation of his personal privacy. DPSCS originally authorized the practice in 2010 in an effort to screen employees for gang affiliations in order to combat gang violence in the State's prison system.

Several companies offer a fee-based service that monitors the Twitter, Facebook, and other social media accounts of individuals by installing monitoring software on electronic devices. Though currently concentrated primarily on student-athletes in collegiate sports, such services could be used to monitor social media activity by employees. More than two dozen institutions, including the University of Louisville, Louisiana State University, and Texas A&M, have signed up with a social media monitoring company to monitor social media activity of their student-athletes.

Additional Information

Prior Introductions: SB 971 of 2011, a similar bill, received a hearing from the Senate Finance Committee, but no further action was taken.

Cross File: SB 433 (Senator Young, *et al.*) - Finance.

Information Source(s): Charles, Frederick, and Montgomery counties; Department of Budget and Management; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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