

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5523**

A bill to prohibit employers and educational institutions from requiring certain individuals to grant access to, allow observation of, or disclose information that allows access to or observation of personal internet accounts; to prohibit employers and educational institutions from taking certain actions for failure to allow access to, observation of, or disclosure of information that allows access to personal internet accounts; and to provide sanctions and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "internet privacy protection act".

3 Sec. 2. As used in this act:

4 (a) "Access information" means user name, password, login
5 information, or other security information that protects access to

1 a personal internet account.

2 (b) "Educational institution" means a public or private
3 educational institution or a separate school or department of a
4 public or private educational institution, and includes an academy;
5 elementary or secondary school; extension course; kindergarten;
6 nursery school; school system; school district; intermediate school
7 district; business, nursing, professional, secretarial, technical,
8 or vocational school; public or private educational testing service
9 or administrator; and an agent of an educational institution.
10 Educational institution shall be construed broadly to include
11 public and private institutions of higher education to the greatest
12 extent consistent with constitutional limitations.

13 (c) "Employer" means a person, including a unit of state or
14 local government, engaged in a business, industry, profession,
15 trade, or other enterprise in this state and includes an agent,
16 representative, or designee of the employer.

17 (d) "Personal internet account" means an account created via a
18 bounded system established by an internet-based service that
19 requires a user to input or store access information via an
20 electronic device to view, create, utilize, or edit the user's
21 account information, profile, display, communications, or stored
22 data.

23 Sec. 3. An employer shall not do any of the following:

24 (a) Request an employee or an applicant for employment to
25 grant access to, allow observation of, or disclose information that
26 allows access to or observation of the employee's or applicant's
27 personal internet account.

1 (b) Discharge, discipline, fail to hire, or otherwise penalize
2 an employee or applicant for employment for failure to grant access
3 to, allow observation of, or disclose information that allows
4 access to or observation of the employee's or applicant's personal
5 internet account.

6 Sec. 4. An educational institution shall not do any of the
7 following:

8 (a) Request a student or prospective student to grant access
9 to, allow observation of, or disclose information that allows
10 access to or observation of the student's or prospective student's
11 personal internet account.

12 (b) Expel, discipline, fail to admit, or otherwise penalize a
13 student or prospective student for failure to grant access to,
14 allow observation of, or disclose information that allows access to
15 or observation of the student's or prospective student's personal
16 internet account.

17 Sec. 5. (1) This act does not prohibit an employer from doing
18 any of the following:

19 (a) Requesting or requiring an employee to disclose access
20 information to the employer to gain access to or operate any of the
21 following:

22 (i) An electronic communications device paid for in whole or in
23 part by the employer.

24 (ii) An account or service provided by the employer, obtained
25 by virtue of the employee's employment relationship with the
26 employer, or used for the employer's business purposes.

27 (b) Disciplining or discharging an employee for transferring

1 the employer's proprietary or confidential information or financial
2 data to an employee's personal internet account without the
3 employer's authorization.

4 (c) Conducting an investigation or requiring an employee to
5 cooperate in an investigation in any of the following
6 circumstances:

7 (i) If there is specific information about activity on the
8 employee's personal internet account, for the purpose of ensuring
9 compliance with applicable laws, regulatory requirements, or
10 prohibitions against work-related employee misconduct.

11 (ii) If the employer has specific information about an
12 unauthorized transfer of the employer's proprietary information,
13 confidential information, or financial data to an employee's
14 personal internet account.

15 (d) Restricting or prohibiting an employee's access to certain
16 websites while using an electronic communications device paid for
17 in whole or in part by the employer or while using an employer's
18 network or resources, in accordance with state and federal law.

19 (e) Monitoring, reviewing, or accessing electronic data stored
20 on an electronic communications device paid for in whole or in part
21 by the employer, or traveling through or stored on an employer's
22 network, in accordance with state and federal law.

23 (2) This act does not prohibit or restrict an employer from
24 complying with a duty to screen employees or applicants prior to
25 hiring or to monitor or retain employee communications that is
26 established under federal law or by a self-regulatory organization,
27 as defined in section 3(a)(26) of the securities and exchange act

1 of 1934, 15 USC 78c(a)(26).

2 (3) This act does not prohibit or restrict an employer from
3 viewing, accessing, or utilizing information about an employee or
4 applicant that can be obtained without any required access
5 information or that is available in the public domain.

6 Sec. 6. (1) This act does not prohibit an educational
7 institution from requesting or requiring a student to disclose
8 access information to the educational institution to gain access to
9 or operate any of the following:

10 (a) An electronic communications device paid for in whole or
11 in part by the educational institution.

12 (b) An account or service provided by the educational
13 institution that is either obtained by virtue of the student's
14 admission to the educational institution or used by the student for
15 educational purposes.

16 (2) This act does not prohibit or restrict an educational
17 institution from viewing, accessing, or utilizing information about
18 a student or applicant that can be obtained without any required
19 access information or that is available in the public domain.

20 Sec. 7. (1) This act does not create a duty for an employer or
21 educational institution to search or monitor the activity of a
22 personal internet account.

23 (2) An employer or educational institution is not liable under
24 this act for failure to request or require that an employee, a
25 student, an applicant for employment, or a prospective student
26 grant access to, allow observation of, or disclose information that
27 allows access to or observation of the employee's, student's,

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1 applicant for employment's, or prospective student's personal
2 internet account.

3 Sec. 8. (1) A person who violates section 3 or 4 is guilty of
4 a misdemeanor punishable by a fine of not more than \$1,000.00.

5 (2) An individual who is the subject of a violation of this
6 act may bring a civil action to enjoin a violation of section 3 or
7 4 and may recover not more than \$1,000.00 in damages plus
8 reasonable attorney fees and court costs. Not later than 60 days
9 before filing a civil action for damages or 60 days before adding a
10 claim for damages to an action seeking injunctive relief, the
11 individual shall make a written demand of the alleged violator for
12 not more than \$1,000.00. The written demand shall include
13 reasonable documentation of the violation. The written demand and
14 documentation shall either be served in the manner provided by law
15 for service of process in civil actions or mailed by certified mail
16 with sufficient postage affixed and addressed to the alleged
17 violator at his or her residence, principal office, or place of
18 business. An action under this subsection may be brought in the
19 <<district>> court for the county where the alleged violation occurred
20 or for the county where the person against whom the civil complaint
21 is filed resides or has his or her principal place of business.

22 (3) It is an affirmative defense to an action under this act
23 that the employer or educational institution acted to comply with
24 requirements of a federal law or a law of this state.