

**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

1 information, or other security information that protects access to
2 a personal internet account.

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

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

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

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

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

1 personal internet account.

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

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

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

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

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

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

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

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

1 (b) Disciplining or discharging an employee for transferring
2 the employer's proprietary or confidential information or financial
3 data to an employee's personal internet account without the
4 employer's authorization.

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

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

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

16 (2) This act does not prohibit or restrict an employer from
17 complying with a duty to screen employees or applicants prior to
18 hiring or to monitor or retain employee communications that is
19 established under federal law or by a self-regulatory organization,
20 as defined in section 3(a)(26) of the securities and exchange act
21 of 1934, 15 USC 78c(a)(26).

22 Sec. 6. This act does not prohibit an educational institution
23 from requesting or requiring a student to disclose access
24 information to the educational institution to gain access to or
25 operate any of the following:

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

1 (b) An account or service provided by the educational
2 institution that is either obtained by virtue of the student's
3 admission to the educational institution or used by the student for
4 educational purposes.

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

8 (2) An employer or educational institution is not liable under
9 this act for failure to request or require that an employee, a
10 student, an applicant for employment, or a prospective student
11 grant access to, allow observation of, or disclose information that
12 allows access to or observation of the employee's, student's,
13 applicant for employment's, or prospective student's personal
14 internet account.

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

17 (2) An individual who is the subject of a violation of this
18 act may bring a civil action to enjoin a violation of section 3 or
19 4 and may recover not more than \$1,000.00 in damages plus
20 reasonable attorney fees and court costs. Not later than 60 days
21 before filing a civil action for damages or 60 days before adding a
22 claim for damages to an action seeking injunctive relief, the
23 individual shall make a written demand of the alleged violator for
24 not more than \$1,000.00. The written demand shall include
25 reasonable documentation of the violation. The written demand and
26 documentation shall either be served in the manner provided by law
27 for service of process in civil actions or mailed by certified mail

1 with sufficient postage affixed and addressed to the alleged
2 violator at his or her residence, principal office, or place of
3 business. An action under this subsection may be brought in the
4 circuit court for the county where the alleged violation occurred
5 or for the county where the person against whom the civil complaint
6 is filed resides or has his or her principal place of business.

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