



Ohio Legislative Service Commission

Bill Analysis

Kelly Bomba

S.B. 70

131st General Assembly
(As Introduced)

Sens. Tavares and Thomas, Brown, Skindell

BILL SUMMARY

- Prohibits employers, employment agencies, personnel placement services, and labor organizations from asking or requiring an applicant or employee to provide access to the individual's private electronic accounts.
- Prohibits employers, employment agencies, personnel placement services, and labor organizations from penalizing an employee that refuses to provide access or refuses to provide the username and password to the employee's private electronic account.
- Prohibits employers, employment agencies, personnel placement services, and labor organizations from failing or refusing to hire an applicant for employment because the applicant refuses to provide access or refuses to provide the username and password to the applicant's private electronic account.
- Makes a violation of any of the bill's prohibitions an unlawful discriminatory practice under Ohio's Civil Rights Law.
- Creates a monetary penalty for violating any of the bill's prohibitions, which is in addition to any other damages or relief that may be available under Ohio's Civil Rights Law.

CONTENT AND OPERATION

Requiring access to private electronic accounts prohibited

The bill prohibits an employer, employment agency, personnel placement service, or labor organization (essentially, a union) from recklessly doing any of the following:

(1) Asking or requiring an applicant or employee to provide access to the individual's private electronic account or to disclose the individual's username or password to such an account.

(2) Discharging, disciplining, threatening to discharge or discipline, or otherwise penalizing an employee who refuses to provide access or refuses to provide the username and password to the employee's private electronic account.

(3) Failing or refusing to hire an applicant for employment because the applicant refuses to disclose the username or password to the applicant's private electronic account or to provide access to that account.

A "private electronic account," for purposes of the bill, is a collection of electronically stored private information regarding an individual, including those collections stored on social media Internet websites, in electronic mail, and on electronic devices.¹

Exceptions

The bill does not prohibit an employer, employment agency, personnel placement service, or labor organization from doing either of the following:

(1) Monitoring the electronic accounts of employees or applicants on the electronic mail or Internet system of the employer, employment agency, personnel placement service, or labor organization;

(2) Complying with a duty to screen an employee or an applicant before hiring or to monitor or retain employee communications that is established under state or federal law or by a self-regulatory organization as defined under the federal Securities Exchange Act of 1934.²

Violating the prohibitions

A violation of any of the bill's prohibitions is an unlawful discriminatory practice under Ohio's Civil Rights Law. Under continuing law, any person may file a charge with Ohio's Civil Rights Commission alleging that another person has engaged or is engaging in an unlawful discriminatory practice. The Commission may investigate the charge and may initiate further action in accordance with procedures specified in continuing law. Although the Commission must first attempt to induce compliance

¹ R.C. 4112.02(K), with conforming changes in R.C. 4112.08 and 4112.14.

² R.C. 4112.02(K), with conforming changes in R.C. 4112.08 and 4112.14.



with Ohio's Civil Rights Law through informal methods, if, after a hearing, the Commission ultimately determines that an unlawful discriminatory practice has occurred, the Commission is required to issue a cease and desist order to remedy the situation and order any further action necessary to effectuate the purpose of Ohio's Civil Rights Law, which may include requiring back pay, reinstatement, or hiring. The bill requires the Commission to assess a civil penalty for violations of the bill's prohibitions. The amount of the penalty is up to \$1,000 for the first violation and up to \$2,000 for each subsequent violation. This penalty must be assessed in addition to any other remedy that may be ordered.³

Additionally, continuing law allows an individual subject to an unlawful discriminatory action to sue for damages, injunctive relief, or any other appropriate relief. The bill requires the fine described immediately above to be assessed against whoever violates the bill's prohibitions, in addition to any damages and relief that an individual may receive in a lawsuit. The bill requires this fine to be deposited in the Civil Rights Commission General Reimbursement Fund created under continuing law.⁴

Definition – social media

The bill defines a "social media Internet website" as an Internet website that allows individuals to do all of the following:

- Construct a public or semipublic profile within a bounded system created by the service;
- Create a list of other users with whom the individual shares a connection within the system;
- View and navigate the list of users with whom the individual shares a connection and those lists of users made by others within the system.⁵

HISTORY

ACTION	DATE
Introduced	02-23-15

S0070-I-131.docx/emr

³ R.C. 4112.05 and 4112.99(B).

⁴ R.C. 4112.15 and 4112.99.

⁵ R.C. 4112.02(K)(3).

