

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2966**

4 (By Delegates Skinner, Lawrence, Barrett, Young,  
5 Sponaugle, Lynch, Tomblin, Eldridge, Poore,  
6 Marcum and Caputo)

7  
8 (Originating in the Committee on the Judiciary)

9 [March 27, 2013]

10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §21-5G-1, §21-5G-2,  
12 and §21-5G-3, all relating to employment and privacy  
13 protection; prohibiting an employer from requesting or  
14 requiring that an employee or applicant disclose any user  
15 name, password, or other means for accessing a personal  
16 account or service through certain electronic communications  
17 devices; prohibiting an employer from taking or threatening to  
18 take, certain disciplinary actions for an employee's refusal  
19 to disclose certain password and related information;  
20 prohibiting an employer from failing or refusing to hire an  
21 applicant as a result of the applicant's refusal to disclose  
22 certain password and related information; prohibiting an  
23 employee from downloading certain unauthorized information or  
24 data to certain Web sites or Web-based accounts; and providing  
25 that an employer is not prevented from conducting certain  
26 investigations for certain purposes, including gathering  
27 information needed for compliance with mandatory state or  
28 federal regulations.

1 *Be it enacted by the Legislature of West Virginia:*

2 That the Code of West Virginia, 1931, as amended, be amended  
3 by adding thereto a new article, designated §21-5G-1, §21-5G-2 and  
4 §21-5G-3, all to read as follows:

5 **ARTICLE 5G. INTERNET PRIVACY PROTECTION ACT.**

6 **§21-5G-1. Short Title.**

7 This article shall be known and may be cited as the "Internet  
8 Privacy Protection Act".

9 **§21-5G-2. Definitions.**

10 As used in this article:

11 (a) "Applicant" means an applicant for employment.

12 (b) "Electronic Communications Device" means any device that  
13 uses electronic signals to create, transmit and receive  
14 information, and includes computers, telephones, personal digital  
15 assistants, and other similar devices.

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

20 **§21-5G-3. Certain acts prohibited; not prohibited.**

21 (a) An employer may not request or require that an employee or  
22 applicant disclose any user name, password, or other means for  
23 accessing a personal account or service through an electronic  
24 communications device.

25 (b) (1) An employer may not discharge, discipline, or

1 otherwise penalize or threaten to discharge, discipline, or  
2 otherwise penalize an employee for the employee's refusal to  
3 disclose any information specified in subsection (a) of this  
4 section.

5 (2) An employer may not fail or refuse to hire any applicant  
6 as a result of the applicant's refusal to disclose any information  
7 specified in subsection (a) of this section.

8 (c) An employee may not download any information not  
9 authorized by the employer, including but not limited to  
10 proprietary information, trade secrets, or financial data to an  
11 employee's personal Web site, an Internet Web site, a Web-based  
12 account or a similar account, or to any other electronic or digital  
13 storage device or medium.

14 (d) (1) This section does not prevent an employer, based on the  
15 receipt of information about the use of a personal Web site,  
16 Internet Web site, Web-based account, or similar account by an  
17 employee for business purposes, from conducting an investigation  
18 for the purpose of ensuring compliance with applicable securities  
19 or financial law, or regulatory requirements.

20 (2) This section does not prevent an employer, based on the  
21 receipt of information about unauthorized downloading of an  
22 employer's proprietary information or financial data to a personal  
23 Web site, Internet Web site, Web-based account or similar account,  
24 or to any other electronic or digital storage device or medium, by  
25 an employee, from investigating an employee's actions under  
26 subsection (c) of this section.

1       (3) This section shall not impede an employer from gathering  
2 information needed for compliance with mandatory state or federal  
3 regulations.