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Sixty-third
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1455

Introduced by

Representatives Hanson, Beadle, Boschee, Oversen

A BILL for an Act to create and enact a new subsection to section 30.1-18-15 and a new chapter to title 34 of the North Dakota Century Code, relating to authority of personal representatives relating to internet accounts and workplace privacy of social media accounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 30.1-18-15 of the North Dakota Century Code is created and enacted as follows:

Take control of, conduct, continue, or terminate an account of a decedent on any social networking website, microblogging or short message service website, or e-mail service website, except for any copyrighted material that may be hosted on a file sharing hosting site.

SECTION 2. A new chapter to title 34 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Applicant" means a prospective employee applying for employment.
2. "Electronic communication device" includes a cellular telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, and portable computing device.
3. "Employer" means a person engaged in a business, an industry, a profession, a trade, or other enterprise in the state. The term includes any agent, representative, or designee of such an employer.
4. "Social networking site" includes an internet-based, personalized, privacy-protected website or application whether free or commercial which allows users to construct a

private or semiprivate profile site within a bounded system; create a list of other system users who are granted reciprocal access to the individual's profile site; send and receive electronic mail; and share personal content, communications, and contacts. The term does not include electronic mail.

Prohibited acts of employer.

An employer may not:

1. Require or request that an employee or applicant provide or disclose a user name or password or any other related account information in order to gain access to the employee's or applicant's social networking site profile or account by way of an electronic communication device; or
2. Require or request that an employee or applicant log onto a social networking site by way of an electronic communication device in the presence of the employer in order to provide the employer access to the employee's or applicant's social networking profile or account.

Waiver of protection prohibited.

An employer may not require an employee or applicant to waive or limit any protection granted under this chapter as a condition of continued employment or of applying for or receiving an offer of employment. An agreement to waive any right or protection under this chapter is unenforceable.

Retaliation prohibited.

An employer may not retaliate or discriminate against an employee or applicant because the employee or applicant:

1. Refuses to provide or disclose a user name or password or in any other way provide access to a social networking site through an electronic communications device;
2. Files a complaint under this chapter; or
3. Testifies, assists, or participates in an investigation, proceeding, or action concerning a violation of this chapter.

Employee's prohibited acts.

An employee may not download an employer's proprietary information or financial data to a personal website or to a social networking site without authorization from the employer.

Application.

This chapter does not limit an employer's right to:

1. Adopt and maintain lawful workplace policies governing the use of the employer's electronic equipment, including policies regarding internet use, social networking site use, and electronic mail use;
2. Request or require an employee or applicant to disclose access information to the employer to gain access to or operate:
   a. An electronic communications device paid for in whole or in part by the employer; or
   b. An account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes;
3. Access information about an employee or applicant which is in the public domain or is otherwise obtained in compliance with this chapter;
4. Conduct an investigation based on the receipt of information about employee wrongdoing or unauthorized downloading of an employer's proprietary information or financial data to a personal website or a social networking site; or
5. Discipline or dismiss an employee for conduct other than conduct protected under this chapter.

Violation.

Upon violation of this chapter, an aggrieved person may, in addition to any other available remedy, institute a civil action in a court of competent jurisdiction within one year after the date of the alleged violation. In response to the action, a court may award reasonable attorney's fees and costs to a prevailing employee or applicant in addition to any award of actual damages.