

**FIRST ENGROSSMENT  
with Senate Amendments  
ENGROSSED HOUSE BILL NO. 1455**

Introduced by

Representatives Hanson, Beadle, Boschee, Oversen

1 A BILL for an Act to create and enact a new chapter to title 34 of the North Dakota Century  
2 Code, relating to internet accounts and workplace privacy of social media accounts.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 34 of the North Dakota Century Code is created and  
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

8 1. "Applicant" means a prospective employee applying for employment.

9 2. "Electronic communication device" includes a cellular telephone, personal digital  
10 assistant, electronic device with mobile data access, laptop computer, pager,  
11 broadband personal communication device, two-way messaging device, electronic  
12 game, and portable computing device.

13 3. "Employer" means a person engaged in a business, an industry, a profession, a trade,  
14 or other enterprise in the state. The term includes any agent, representative, or  
15 designee of such an employer.

16 4. "Social networking site" includes an internet-based, personalized, privacy-protected  
17 website or application whether free or commercial which allows users to construct a  
18 private or semiprivate profile site within a bounded system; create a list of other  
19 system users who are granted reciprocal access to the individual's profile site; send  
20 and receive electronic mail; and share personal content, communications, and  
21 contacts. The term does not include electronic mail or any account created,  
22 maintained, used, or accessed by an employee or applicant for business-related  
23 communications or for a business purpose of the employer.

1        **Prohibited acts of employer.**

2        An employer may not:

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

11       **Waiver of protection prohibited.**

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

16       **Retaliation prohibited.**

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

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

24       **Employee's prohibited acts.**

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

27       **Application.**

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

- 29       1.    Adopt and maintain lawful workplace policies governing the use of the employer's  
30           electronic equipment, including policies regarding internet use, social networking site  
31           use, and electronic mail use;

- 1       2. Request or require an employee or applicant to disclose access information to the
- 2       employer to gain access to or operate:
- 3       a. An electronic communications device paid for in whole or in part by the employer;
- 4       or
- 5       b. An account or service provided by the employer, obtained by virtue of the
- 6       employee's employment relationship with the employer, or used for the
- 7       employer's business purposes;
- 8       3. Access information about an employee or applicant which is in the public domain or is
- 9       otherwise obtained in compliance with this chapter;
- 10      4. Conduct an investigation based on the receipt of information about employee
- 11      wrongdoing or unauthorized downloading of an employer's proprietary information or
- 12      financial data to a personal website or a social networking site;
- 13      5. Discipline or dismiss an employee for conduct other than conduct protected under this
- 14      chapter; or
- 15      6. Implement and enforce a policy pertaining to the use of an employer-issued electronic
- 16      communications device or to the use of an employee-owned device that will be used
- 17      for business purposes.

18       **Violation.**

19       Upon violation of this chapter, an aggrieved person may, in addition to any other available

20 remedy, institute a civil action in a court of competent jurisdiction within one year after the date

21 of the alleged violation. In response to the action, a court may award reasonable attorney's fees

22 and costs to a prevailing employee or applicant in addition to any award of actual damages.

23       **Construction.**

24       This Act may not be construed to prevent an employer from complying with the

25 requirements of state or federal statutes, rules, or regulations; case law; or rules of

26 self-regulatory organizations.