

**WEST VIRGINIA LEGISLATURE** FILED

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**2016 REGULAR SESSION**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

**House Bill 4364**

(BY DELEGATES SKINNER, MCGEEHAN, HAMRICK,  
FLUHARTY, HOUSEHOLDER, BLAIR, SPONAUGLE,  
MANCHIN, MILEY, BYRD AND MARCUM)

[Passed March 12, 2016; in effect ninety days from passage.]

HB 4364

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FLUHARTY, HOUSEHOLDER, BLAIR, SPONAUGLE,  
MANCHIN, MILEY, BYRD AND MARCUM)

[Passed March 12, 2016; in effect ninety days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §21-5G-1, relating to employee personal social media; prohibiting an employer  
3 from requesting or requiring that an employee or potential employee disclose any user  
4 name, password or other authentication information for accessing a personal account;  
5 prohibiting an employer from requesting or requiring that an employee or potential  
6 employee access his or her personal account in the employer's presence; setting forth  
7 permissible actions for an employer; specifying required action when an employer  
8 inadvertently receives an employee's or potential employee's username, password or  
9 other authentication information; setting forth circumstances under which an employer is  
10 liable for having that information; setting forth authority and obligation of employer to  
11 investigate complaints, allegations or the occurrence of sexual, racial or other harassment;  
12 and defining the term personal account.

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

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

**ARTICLE 5G. EMPLOYEE PERSONAL SOCIAL MEDIA.**

**§21-5G-1. Employer access to employee or potential employee personal accounts prohibited.**

- 1 (a) An employer shall not do any of the following:
- 2 (1) Request, require or coerce an employee or a potential employee to disclose a  
3 username and password, password or any other authentication information that allows access to  
4 the employee or potential employee's personal account;
- 5 (2) Request, require or coerce an employee or a potential employee to access the  
6 employee or the potential employee's personal account in the presence of the employer; or
- 7 (3) Compel an employee or potential employee to add the employer or an employment  
8 agency to their list of contacts that enable the contacts to access a personal account.

34           (1) Uses that information, or enables a third party to use that information, to access the  
35 employee or potential employee's personal account;

36           (2) After the employer becomes aware that that information was received, does not delete  
37 the information as soon as is reasonably practicable, unless that information is being retained by  
38 the employer in connection with an ongoing investigation of an actual or suspected breach of the  
39 computer, network or data security. Where an employer knows or, through reasonable efforts,  
40 should be aware that its network monitoring technology is likely inadvertently to receive such  
41 information, the employer shall make reasonable efforts to secure that information.

42           (d) Nothing in this section diminishes the authority and obligation of an employer to  
43 investigate complaints, allegations or the occurrence of sexual, racial, or other harassment as  
44 provided in this code.

45           (e) As used in this section, "personal account" means an account, service or profile on a  
46 social networking website that is used by an employee or potential employee exclusively for  
47 personal communications unrelated to any business purposes of the employer.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
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Chairman, House Committee

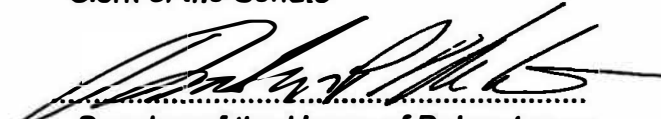
  
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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

  
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Clerk of the House of Delegates

  
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Clerk of the Senate

  
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Speaker of the House of Delegates

  
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President of the Senate

The within *is* approved this the *1<sup>st</sup>* day of *April*, 2016.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

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Time 3:44 pm