

1 **SENATE FLOOR VERSION**

2 April 3, 2014

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2372

By: Trebilcock, Turner,
Sherrer, Kern, Shelton and
Bennett of the House

6 and

7 Loveless of the Senate

8
9
10 An Act relating to labor; prohibiting employer from
11 requiring access to personal online social media
12 account of certain employees; prohibiting an employer
13 from taking retaliatory personnel action for failure
14 to provide access to personal online social media
15 account; construing provisions; authorizing civil
16 actions for violations; authorizing injunctive
17 relief; providing for recovery of limited damage
18 amount; setting maximum damages; defining terms;
19 prohibiting liability for failure to review or access
20 certain accounts; providing for codification; and
21 providing an effective date.

22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

23 SECTION 1. NEW LAW A new section of law to be codified
24 in the Oklahoma Statutes as Section 173.2 of Title 40, unless there
is created a duplication in numbering, reads as follows:

A. No employer, as defined by paragraph 1 of Section 1301 of
Title 25 of the Oklahoma Statutes, located in this state shall:

1 1. Require an employee or prospective employee to disclose a
2 user name and password or other means of authentication for
3 accessing a personal online social media account through an
4 electronic communications device;

5 2. Require an employee or prospective employee to access the
6 employee's or prospective employee's personal online social media
7 account in the presence of the employer in a manner that enables the
8 employer to observe the contents of such accounts if the account's
9 contents are not available to the general public, except pursuant to
10 an investigation as provided in subsection D of this act;

11 3. Take retaliatory personnel action that materially and
12 negatively affects the terms and conditions of employment against an
13 employee solely for refusal to give the employer the user name or
14 password to the employee's personal online social media account; or

15 4. Refuse to hire a prospective employee solely as a result of
16 the prospective employee's refusal to give the employer the user
17 name and password to the prospective employee's personal online
18 social media account.

19 B. An employer may request or require an employee to disclose
20 any user name and password for accessing:

21 1. Any computer system, information technology network, or
22 electronic communications device provided or subsidized by the
23 employer, or
24

1 2. Any accounts or services provided by the employer or by
2 virtue of the employee's employment relationship with the employer
3 or that the employee uses for business purposes.

4 C. If, through the use of an electronic device or program that
5 monitors an employer's network or the use of employer provided
6 devices, an employer inadvertently receives an employee's user name
7 and password or other authentication information, the employer is
8 not liable for having such information, but may not use the
9 information to access an employee's personal online social media
10 account.

11 D. Nothing in this section shall prevent an employer from:

12 1. Conducting an investigation:

- 13 a. for the purpose of ensuring compliance with applicable
14 laws, regulatory requirements or prohibitions against
15 work-related employee misconduct based on the receipt
16 of specific information about activity on a personal
17 online social media account or personal online social
18 media service by an employee or other source, or
19 b. of an employee's actions based on the receipt of
20 specific information about the unauthorized transfer
21 of an employer's proprietary information, confidential
22 information or financial data to a personal online
23 social media account or personal online social media
24 service by an employee or other source;

1 2. Conducting an investigation as specified in subparagraphs a
2 and b of paragraph 1 of subsection D of this section includes
3 requiring the employee's cooperation to share the content that has
4 been reported in order to make a factual determination.

5 E. Nothing in this section shall be construed to prevent an
6 employer from complying with the requirements of state or federal
7 statutes, rules or regulations, case law, or rules of self-
8 regulatory organizations.

9 F. Nothing in this section shall be construed to prohibit an
10 employer from accessing its computer system or information
11 technology network, including electronic communications devices
12 owned by the employer. Neither this section nor any other Oklahoma
13 law shall prohibit an employer from reviewing or accessing personal
14 online social media accounts that an employee may choose to use
15 while utilizing an employer's computer system, information
16 technology network or an employer's electronic communication device.

17 G. An employee or prospective employee may bring a civil action
18 against an employer who violates this section in a court located in
19 the county in which the alleged violation occurred. Such action
20 shall be brought within six (6) months after the alleged violation
21 occurred. The employee or prospective employee may seek injunctive
22 relief to restrain the employer from continuing to act in violation
23 of this section, but must show by clear and convincing evidence that
24 the employer violated this act. The only damages recoverable for a

1 violation of this act are Five Hundred Dollars (\$500.00) per
2 violation. No punitive or emotional damages are recoverable and
3 this section may not be utilized for the basis of a public policy
4 tort.

5 H. As used in this section:

6 1. "Electronic communications device" means a device that uses
7 electronic signals to create, transmit or receive information,
8 including computers, telephones, personal digital assistants and
9 other similar devices; and

10 2. "Personal online social media account" means an online
11 account that is used by an employee or prospective employee
12 exclusively for personal communications that an individual
13 establishes and uses through an electronic application, service or
14 platform used to generate or store content, including, but not
15 limited to, videos, still photographs, blogs, video blogs, instant
16 messages, audio recordings or email that is not available to the
17 general public.

18 SECTION 2. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 173.3 of Title 40, unless there
20 is created a duplication in numbering, reads as follows:

21 No business or employer shall be held liable in any regard for
22 not reviewing an employee's personal online social media accounts as
23 defined herein. Furthermore, no business or employer shall be held
24 liable in any regard for not requesting, accessing or reviewing the

1 personal online social media accounts of any employee. The
2 employer's failure to access such information shall not be
3 admissible in any legal proceeding.

4 SECTION 3. This act shall become effective November 1, 2014.

5 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
6 April 3, 2014 - DO PASS AS AMENDED
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