

May 6, 2013

**ASSEMBLY BILL NO. 2878
(Third Reprint)**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2878 (Third Reprint) with my recommendations for reconsideration.

This bill prohibits an employer from requiring a current or prospective employee to disclose their usernames, passwords, and related information concerning the current or prospective employee's personal social media accounts.

I greatly appreciate the sponsors' earnest effort to safeguard the privacy of job candidates and employees from overly aggressive invasions by employers. Cognizant of the ills surrounding unwanted and unnecessary intrusions into an individual's personal information, I recently signed similar legislation that prohibited institutions of higher education from asking current or prospective students to provide information about their personal social media accounts. I commend the sponsors for continuing to focus on this important issue.

Those privacy concerns, however, must be balanced against an employer's need to hire appropriate personnel, manage its operations, and safeguard its business assets and proprietary information. Unfortunately, this bill paints with too broad a brush. For example, under this bill, an employer interviewing a candidate for a marketing job would be prohibited from asking about the candidate's use of social networking so as to gauge the candidate's technological skills and media savvy. Such a relevant and innocuous inquiry would, under this bill, subject an employer to protracted litigation, compensatory damages, and

attorneys' fees - a result that could not have been the sponsors' intent.

In view of the over-breadth of this well-intentioned bill, I return it with my recommendations that more properly balance between protecting the privacy of employees and job candidates, while ensuring that employers may appropriately screen job candidates, manage their personnel, and protect their business assets and proprietary information.

Accordingly, I herewith return Assembly Bill No. 2878 (Third Reprint) and recommend that it be amended as follows:

- Page 2, Section 2, Lines 33-34: Delete ": a. Require" and insert "require"
- Page 2, Section 2, Lines 39-42: Delete in their entirety
- Page 3, Section 4, Line 13: Delete in its entirety and insert "b. Report an alleged violation of this act to the Commissioner of Labor and Workforce Development;"
- Page 3, Section 5, Lines 18-40: Delete in their entirety
- Page 3, Section 6, Line 42: Delete "6" and insert "5"
- Page 4, Section 7, Line 1: Delete "7" and insert "6"
- Page 4, Section 7, Line 7: After "device" insert "or any accounts or services provided by the employer or that the employee uses for business purposes.
- c. Nothing in this act shall prevent an employer from conducting an investigation:
- (1) for the purpose of ensuring compliance with applicable laws, regulatory requirements or prohibitions against work-related employee misconduct based on the receipt of specific information about activity on a personal account by an employee; or
- (2) of an employee's actions based on the receipt of specific information about the unauthorized transfer of an employer's proprietary information, confidential information or financial data to a personal account by an employee

d. Nothing in this act shall prevent an employer from viewing, accessing, or utilizing information about a current or prospective employee that can be obtained in the public domain"

Page 4, Section 8, Line 9:

Delete "8" and insert "7"

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Charles B. McKenna

Chief Counsel to the Governor