

SENATE BILL 851

K3, E4

2lr2652

By: **Senator Carter (By Request – Baltimore City Administration)**

Introduced and read first time: February 7, 2022

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 7, 2022

CHAPTER _____

1 AN ACT concerning

2 **Labor and Employment – User Name and Password Privacy – Law Enforcement**
3 **Agency Exemption Agencies**

4 FOR the purpose of ~~exempting~~ authorizing certain law enforcement agencies ~~from the~~
5 ~~prohibition against employers requiring employees or applicants to disclose the~~
6 ~~means for accessing a personal account or service through an electronic~~
7 ~~communications device~~ to access, under certain circumstances, social media accounts
8 of applicants; and generally relating to user name and password privacy and law
9 enforcement agencies.

10 BY repealing and reenacting, with amendments,
11 Article – Labor and Employment
12 Section 3–712
13 Annotated Code of Maryland
14 (2016 Replacement Volume and 2021 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article – Public Safety
17 Section 3–201(a) and (d)
18 Annotated Code of Maryland
19 (2018 Replacement Volume and 2021 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Article – Labor and Employment

3–712.

(a) (1) In this section the following words have the meanings indicated.

(2) “Applicant” means an applicant for employment.

(3) (i) “Electronic communications device” means any device that uses electronic signals to create, transmit, and receive information.

(ii) “Electronic communications device” includes computers, telephones, personal digital assistants, and other similar devices.

(4) (i) “Employer” means:

1. a person engaged in a business, an industry, a profession, a trade, or other enterprise in the State; or

2. a unit of State or local government.

(ii) “Employer” includes an agent, a representative, and a designee of the employer.

~~(iii) “EMPLOYER” DOES NOT INCLUDE A LAW ENFORCEMENT AGENCY AS DEFINED IN § 3–201 OF THE PUBLIC SAFETY ARTICLE.~~

(5) “LAW ENFORCEMENT AGENCY” HAS THE MEANING STATED IN § 3–201 OF THE PUBLIC SAFETY ARTICLE.

(b) (1) Subject to paragraph (2) of this subsection, an employer may not request or require that an employee or applicant disclose any user name, password, or other means for accessing a personal account or service through an electronic communications device.

(2) An employer may require an employee to disclose any user name, password, or other means for accessing nonpersonal accounts or services that provide access to the employer’s internal computer or information systems.

(c) An employer may not:

(1) discharge, discipline, or otherwise penalize or threaten to discharge, discipline, or otherwise penalize an employee for an employee’s refusal to disclose any information specified in subsection (b)(1) of this section; or

(2) fail or refuse to hire any applicant as a result of the applicant’s refusal to disclose any information specified in subsection (b)(1) of this section.

(d) An employee may not download unauthorized employer proprietary information or financial data to an employee's personal Web site, an Internet Web site, a Web-based account, or a similar account.

(e) This section does not prevent an employer:

(1) based on the receipt of information about the use of a personal Web site, Internet Web site, Web-based account, or similar account by an employee for business purposes, from conducting an investigation for the purpose of ensuring compliance with applicable securities or financial law, or regulatory requirements; or

(2) based on the receipt of information about the unauthorized downloading of an employer's proprietary information or financial data to a personal Web site, Internet Web site, Web-based account, or similar account by an employee, from investigating an employee's actions under subsection (d) of this section.

(F) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A LAW ENFORCEMENT AGENCY MAY, DURING THE COURSE OF A BACKGROUND CHECK, REQUIRE AN APPLICANT TO OPEN ALL OF THE APPLICANT'S SOCIAL MEDIA ACCOUNTS FOR REVIEW BY AN INVESTIGATOR.

(2) (I) DURING A REVIEW OF THE APPLICANT'S SOCIAL MEDIA ACCOUNTS, THE APPLICANT SHALL BE PRESENT.

(II) AN INVESTIGATOR MAY PRINT SELECTIONS FROM THE APPLICANT'S SOCIAL MEDIA ACCOUNTS ONLY IF THE SELECTIONS TO BE PRINTED DO NOT CONTAIN A USER NAME, PASSWORD, OR OTHER MEANS FOR ACCESSING A PERSONAL ACCOUNT OR SERVICE.

(III) THE LAW ENFORCEMENT AGENCY MAY NOT:

1. KEEP OR RESERVE THE APPLICANT'S USER NAME, PASSWORD, OR OTHER MEANS FOR ACCESSING A PERSONAL ACCOUNT OR SERVICE THROUGH AN ELECTRONIC COMMUNICATIONS DEVICE; AND

2. PROHIBIT AN APPLICANT FROM CHANGING A USER NAME, PASSWORD, OR OTHER MEANS FOR ACCESSING A PERSONAL ACCOUNT OR SERVICE.

~~(F)~~ **(G)** (1) Whenever the Commissioner determines that this section has been violated, the Commissioner shall:

(i) try to resolve any issue involved in the violation informally by mediation; or

(ii) ask the Attorney General to bring an action on behalf of the applicant or employee.

(2) The Attorney General may bring an action under this subsection in the county where the violation allegedly occurred for injunctive relief, damages, or other relief.

Article – Public Safety

3–201.

(a) In this subtitle the following words have the meanings indicated.

(d) (1) “Law enforcement agency” means a governmental police force, sheriff’s office, or security force or law enforcement organization of the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State.

(2) “Law enforcement agency” does not include members of the Maryland National Guard who:

(i) are under the control and jurisdiction of the Military Department;

(ii) are assigned to the military property designated as the Martin State Airport; and

(iii) are charged with exercising police powers in and for the Martin State Airport.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.