ASSEMBLY BILL NO. 181–ASSEMBLYMEN BOBZIEN, KIRKPATRICK, EISEN, ELLIOT ANDERSON, FRIERSON; AIZLEY, BENITEZ-THOMPSON, CARLTON, COHEN, DALY, DONDERO LOOP, HEALEY, OHRENSCHALL, PIERCE, SPIEGEL AND SWANK

MARCH 1, 2013

JOINT SPONSORS: SENATORS DENIS, ATKINSON, JONES AND SMITH

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing employment practices. (BDR 53-48)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to employment; prohibiting employers from conditioning employment on access to an employee's social media account; prohibiting a person from requesting or considering a consumer report for purposes relating to employment except under certain circumstances; revising provisions relating to the release of a consumer report that is subject to a security freeze; providing civil remedies; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes various unlawful employment practices. (Chapter 613 of NRS) This bill prohibits an employer from conditioning the employment of an employee or prospective employee on his or her disclosure of the user name, password or any other information that provides access to the employee's or prospective employee's personal social media account. This bill also prohibits an employer from taking certain employment actions based on the refusal of an employee or prospective employee to disclose such information. This bill further provides, however, that it is not unlawful for an employer to require an employee to disclose his or her user name, password or any other information to an account or a service, other than a personal social media account, for the purpose of accessing the employer's own internal computer or information system.

Under existing law, a person who complies with the requirements of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq., and chapter 598C of NRS is allowed to obtain a consumer report for purposes relating to the employment of the consumer. **Sections 3 and 4** of this bill prohibit a person from requesting or considering a consumer report for purposes of evaluating a consumer for employment, promotion, reassignment or retention as an employee unless: (1) the use of the report is required or authorized by state or federal law; (2) the person reasonably believes that the consumer has engaged in specific activity which may constitute a violation of state or federal law and is likely to be reflected in the report; or (3) the information in the report is reasonably related to the position for which the consumer is being evaluated.

Existing law provides that if a consumer places a security freeze on his or her file maintained by a credit reporting agency, the agency is not allowed to release the consumer report without the consumer's consent except for certain purposes, which include certain purposes relating to employment of the consumer. (NRS 598C.350, 598C.380) **Section 5** of this bill revises the scope of that exception to conform with **section 4**.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 613 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. ***1. It is unlawful for any employer in this State to:***

(a) Directly or indirectly, require, request, suggest or cause any employee or prospective employee to disclose the user name, password or any other information that provides access to his or her personal social media account.

(b) Discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee who refuses, declines or fails to disclose the user name, password or any other information that provides access to his or her personal social media account.

2. It is not unlawful for an employer in this State to require an employee to disclose the user name, password or any other information to an account or a service, other than a personal social media account, for the purpose of accessing the employer's own internal computer or information system.

3. Nothing in this section shall be construed to prevent an employer from complying with any state or federal law or regulation or with any rule of a self-regulatory organization, as defined in NRS 90.300.

4. As used in this section, "social media account" means any electronic service or account or electronic content, including, without limitation, videos, photographs, blogs, video blogs,

podcasts, instant and text messages, electronic mail programs or services, online services or Internet website profiles.

Sec. 3. ***1. Except as otherwise provided in section 4 of this act, a person shall not request or consider a consumer report for the purpose of evaluating any other person for employment, promotion, reassignment or retention as an employee.***

2. As used in this section, "consumer report" has the meaning ascribed to it in NRS 598C.060.

Sec. 4. Chapter 598C of NRS is hereby amended by adding thereto a new section to read as follows:

A person may request or consider a consumer report for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee if:

1. The person is required or authorized, pursuant to state or federal law, to use a consumer report for that purpose;

2. The person reasonably believes that the consumer has engaged in specific activity which may constitute a violation of state or federal law; or

3. The information contained in the consumer report is reasonably related to the position for which the consumer is being evaluated for employment, promotion, reassignment or retention as an employee. The information in the consumer report shall be deemed to be reasonably related to such an evaluation if the duties of the position involve:

(a) The care, custody and handling of or responsibility for money, financial accounts, corporate credit or debit cards, or other assets;

(b) Access to trade secrets or other proprietary or confidential information;

(c) Managerial or supervisory responsibility;

(d) The direct exercise of law enforcement authority as an employee of a state or local law enforcement agency;

(e) The care, custody and handling of or responsibility for the personal information, as defined in NRS 603A.040, of another person;

(f) Access to the personal financial information of another person;

(g) Employment with a financial institution that is chartered under federal or state law; or

(h) Employment with a licensed gaming establishment, as defined in NRS 463.0169.

Sec. 5. NRS 598C.380 is hereby amended to read as follows:

598C.380 Notwithstanding that a security freeze has been placed in the file of a consumer, a reporting agency may release the consumer report of the consumer to:

1. A person with whom the consumer has an existing business relationship, or the subsidiary, affiliate or agent of that person, for any purpose relating to that business relationship.

2. A licensed collection agency to which an account of the consumer has been assigned for the purposes of collection.

3. A person with whom the consumer has an account or contract or to whom the consumer has issued a negotiable instrument, or the subsidiary, affiliate, agent, assignee or prospective assignee of that person, for purposes relating to that account, contract or negotiable instrument.

4. A person seeking to use information in the file of the consumer for the purposes of prescreening pursuant to the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq.

5. A subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom access has been granted pursuant to NRS 598C.350 for the purposes of facilitating the extension of credit.

6. A person seeking to provide the consumer with a copy of the consumer report or the credit score of the consumer upon the request of the consumer.

7. A person administering a credit file monitoring subscription service to which the consumer has subscribed.

8. A person requesting the consumer report pursuant to a court order, warrant or subpoena.

9. A federal, state or local governmental entity, agency or instrumentality that is acting within the scope of its authority, including, without limitation, an agency which is seeking to collect child support payments pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. §§ 651 et seq.

10. A person holding a license issued by the Nevada Gaming Commission pursuant to title 41 of NRS, or the subsidiary, affiliate, agent, assignee or prospective assignee of that person, for purposes relating to any activities conducted pursuant to the license.

11. ~~[An]~~ ***If authorized pursuant to section 4 of this act, an*** employer, or the subsidiary, affiliate, agent, assignee or prospective assignee of that employer, for purposes of:

(a) Preemployment screenings relating to the consumer; or

(b) Decisions or investigations relating to the consumer's current or former employment with the employer.