

**NetChoice** *Promoting Convenience, Choice, and Commerce on the Net*

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Wyoming Task Force on Digital Information Privacy  
125 College Drive  
Casper, Wyoming 82601

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**RE: *Follow-up From First Task Force Meeting***

Dear Task Force Members:

Thank you again for the opportunity to speak about digital information privacy. This is a growing issue and this Task Force represents the best approach to protecting the privacy of Wyoming residents – a deep analysis of the issue.

As I presented last week, I ask the Task Force to consider its existing legal and statutory authority before considering new laws. This avoids duplicative laws and new regulations that could forestall new tools for residents. I also suggest that the Task Force center on actual harms rather than hypothetical cases. This allows for focused analysis and identifiable solutions.

I welcome the opportunity to continue working with the Task Force. To that end, I have attached a copy of the "Employee Online Privacy Act" which limits employers' access to employees' online accounts. At the same time, this model balances the needs of employers to maintain a safe work environment, identify intellectual property theft, and access business issued devices.

Thank you again, and please let me know if I can provide further information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carl Szabo".

Carl M. Szabo  
Policy Counsel, NetChoice

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1 **Employee Online Privacy Act**

2 **Summary**

3 Job applicants and employees are increasingly using online accounts for their personal communication  
4 and social networking. Potential and actual employers should not request or require access to these  
5 personal accounts, except in cases where the employer is obligated to investigate activities that may  
6 involve personal accounts. The Model Employee Online Privacy Act protects employees and applicants’  
7 personal Internet accounts from unwarranted access by employers. At the same time, the Act preserves  
8 employers’ obligations to maintain a safe work environment, protect intellectual property, and comply  
9 with applicable laws.

10 **Section 1 – Title.**

11 This chapter is known as the “Employee Online Privacy Act.”

12 **Section 2 – Definitions.**

13 As used in this chapter:

14 (1) “Adverse action” means to discharge, threaten, or otherwise discriminate against an employee in any  
15 manner that affects the employee’s employment, including compensation, terms, conditions, location,  
16 rights, immunities, promotions, or privileges.

17 (2) “Employer” means a person, including the state or a political subdivision of the state, that has one or  
18 more workers employed in the same business, or in or about the same establishment, with the right to  
19 control and direct the work provided by such workers.

20 (3) “Law enforcement agency” is as defined in [insert section].

21 (4)

22 (a) “Personal Internet account” means an online account that is used by an employee or  
23 applicant exclusively for personal communications unrelated to any business purpose of the  
24 employer.

25 (b) “Personal Internet account” does not include an account created, maintained, used, or  
26 accessed by an employee or applicant for business related communications or for a business  
27 purpose of the employer.

28 **Section 3 – Prohibited and Permitted Activities**

29 Employer may not request disclosure of information related to personal Internet account.

30 An employer may not do any of the following:

31 (1) request or require an employee or an applicant for employment to disclose a username and  
32 password, or a password that allows access to the employee’s or applicant’s personal Internet account;  
33 or

34 (2) compel an employee or applicant for employment to add the employer or an employment agency to  
35 the employee’s or applicant’s list of contacts associated with a personal Internet account;

36 (3) compel an employee or an applicant for employment to access a personal Internet account in the  
37 presence of the employer in a manner that enables the employer to observe the contents of the  
38 employee’s or applicant’s personal Internet account.

39 (4) take adverse action, fail to hire, or otherwise penalize an employee or applicant for  
40 employment for failure to disclose information or take actions specified in subsection (1)-(3).

41 *Permitted actions by an employer.*

42 (1) This chapter does not prohibit an employer from doing any of the following:

43 (a) requesting or requiring an employee to disclose a username or password required only to  
44 gain access to the following:

45 (i) an electronic communications device supplied by or paid for in whole or in part by  
46 the employer; or

47 (ii) an account or service provided by the employer, obtained by virtue of the  
48 employee's employment relationship with the employer, or used for the employer's  
49 business purposes;

50 (b) disciplining or discharging an employee for transferring the employer's proprietary or  
51 confidential information or financial data to an employee's personal Internet account without  
52 the employer's authorization;

53 (c) conducting an investigation or requiring an employee to cooperate in an investigation in any  
54 of the following:

55 (i) if there is specific information about activity on the employee's personal Internet  
56 account, for the purpose of ensuring compliance with applicable laws, regulatory  
57 requirements, or prohibitions against work-related employee misconduct; or

58 (ii) if the employer has specific information about an unauthorized transfer of the  
59 employer's proprietary information, confidential information, or financial data to an  
60 employee's personal Internet account;

61 (d) restricting or prohibiting an employee's access to certain websites while using an electronic  
62 communications device supplied by, or paid for in whole or in part by, the employer or while  
63 using an employer's network or resources, to the extent permissible under applicable laws; or

64 (e) monitoring, reviewing, accessing, or blocking electronic data stored on an electronic  
65 communications device supplied by, or paid for in whole or in part by, the employer, or stored  
66 on an employer's network, to the extent permissible under applicable laws.

67 (2) Conducting an investigation or requiring an employee to cooperate in an investigation as specified in  
68 Subsection (1)(c) includes requiring the employee to share the content that has been reported in order  
69 to make a factual determination.

70 (3) This chapter does not prohibit or restrict an employer from complying with a duty to screen  
71 employees or applicants before hiring or to monitor or retain employee communications that is  
72 established under federal law, by a self-regulatory organization under the Securities and Exchange Act of  
73 1934, 15 U.S.C. Sec. 78c(a)(26), or in the course of a law enforcement employment application or law  
74 enforcement officer conduct investigation performed by a law enforcement agency.

75 (4) This chapter does not prohibit or restrict an employer from viewing, accessing, or using information  
76 about an employee or applicant that can be obtained without the information described in Subsection  
77 (1) or that is available in the public domain.

78 *Chapter does not create duties.*

79 (1) This chapter does not create a duty for an employer to search or monitor the activity of a personal  
80 Internet account.

81 (2) An employer is not liable under this chapter for failure to request or require that an employee or  
82 applicant for employment grant access to, allow observation of, or disclose information that allows  
83 access to or observation of the employee's or applicant for employment's personal Internet account.

84 **Section 4 – Remedy**

85 (1) The state Attorney General may bring a civil cause of action against an employer in a court  
86 of competent jurisdiction on behalf of a citizen aggrieved by a violation of this chapter.

87 (2) In an action brought under Subsection (1), if the court finds a violation of this chapter, the court shall  
88 award the state not more than \$500 per violation.

89 **Section 5 – Effective Date**

90 This act takes effect upon approval by the Governor.

91 **Section 6. Severability Clause**

92 If any provision of this chapter or the application of any provision of this chapter is found invalid, the  
93 remainder of this chapter shall be given effect without the invalid provision or application.

94 **Section 7. Repealer Clause**

95 The following laws are hereby repealed: