

D R A F T

FOR DISCUSSION ONLY

SOCIAL MEDIA PRIVACY ACT

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SOCIAL MEDIA PRIVACY ACT

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 1, 2015

SOCIAL MEDIA PRIVACY ACT

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1 (9) "Protected personal online account" means an individual's online account that
2 requires login information in order to access or control that account. The term does not include
3 an online account that:

4 (A) an employer or educational institution supplies or pays for;

5 (B) an employee creates or maintains on behalf of or under the direction of an
6 employer in connection with that employee's employment; or

7 (C) a student creates or maintains on behalf of or under the direction of an
8 educational institution in connection with that student's education.

9 (10) "Record" means information that is inscribed on a tangible medium or that is stored
10 in an electronic or other medium and is retrievable in a perceivable form.

11 (11) "Student" means an individual who participates, on a full-time or part-time basis, in
12 an educational institution's organized course of study. The term includes:

13 (A) a prospective student who has expressed an interest in attending or applied for
14 admission to an educational institution or whom an educational institution is otherwise
15 considering for admission; and

16 (B) a parent or legal guardian of a student who is under the age of [majority].

17 **SECTION 3. APPLICABILITY.** This [act] does not apply to:

18 (1) the federal government;

19 (2) a state, county, or local law enforcement agency;

20 (3) a state, county, or local department of correction;

21 (4) a child care provider; or

22 (5) a home health care provider.

1 **SECTION 4. EMPLOYEE PROTECTIONS.**

2 (a) Except as otherwise provided in subsection (b) or (c):

3 (1) An employer may not require, request or coerce an employee to:

4 (A) disclose the content or metadata of, or login information for, a
5 protected personal online account;

6 (B) alter the settings of a protected personal online account, including
7 settings that affect whether another person is able to view the content of that account;

8 (C) add the employer to the employee’s list of contacts associated with a
9 protected personal online account; or

10 (D) access a protected personal online account in the presence of the
11 employer in a manner that enables the employer to observe the content of the account.

12 (2) An employer may not take or threaten to take an adverse action against an
13 employee because the employee does not comply with a requirement, request, or coercive action
14 that paragraph (1) prohibits.

15 (3) An employer that, without violating paragraph (1), acquires login information
16 for, or the login-protected content or metadata of, an employee’s protected personal online
17 account:

18 (A) may possess the login information, content, and metadata;

19 (B) may not use the login information to access or alter an employee’s
20 protected personal online account;

21 (C) may not take or threaten to take an adverse action against the
22 employee based on the content or metadata of the employee’s protected personal online account;

23 (D) may not read, review, record, or share the login information for, or the

1 content or metadata of, the employee’s protected personal online account; and

2 (E) shall dispose of the login information for, and the content or metadata
3 of, the employee’s protected personal online account as soon as practicable.

4 (b) Subsection (a) does not apply to an employer action that is necessary to:

5 (1) comply with federal, state, or local law, or with the rules of a self-regulatory
6 organization defined in section 3(a)(26) of the Securities and Exchange Act of 1934, 15 USC
7 78c(a)(26);

8 (2) investigate whether the employee has violated or is violating [or intends to
9 violate] federal, state, or local law or an employer policy that is in writing or otherwise in a
10 record and of which the employee had reasonable notice, where the employer reasonably
11 suspects that the employee has violated or is violating [or intends to violate] the law or policy
12 and the employer accesses only accounts, content or metadata that it reasonably believes to be
13 relevant to the investigation of the employee;

14 (3) take adverse action against the employee for violating federal, state, or local
15 law or an employer policy that is in writing or otherwise in a record and of which the employee
16 had reasonable notice; or

17 (4) protect against:

18 (A) a significant threat to health or safety or to employer information or
19 communications technology systems or other employer property; or

20 (B) disclosure of information that the employer has a proprietary interest
21 in or has a legal obligation to keep confidential.

22 (c) An employer may:

23 (1) access an employee’s protected personal online account if it can do so without

1 the employee's login information and without taking an action that subsection (a) prohibits; and

2 (2) [maintain and monitor the functioning of the employer's information and
3 communications technology systems and equipment if the employer can do so without employee
4 login information and without taking an action that subsection (a) prohibits.]

5 (d) Subsections (b) and (c) do not permit an employer to:

6 (1) use its access to, or the content or metadata of, an employee's protected
7 personal online account obtained pursuant to subsection (b) for a purpose other than a purpose
8 specified in subsection (b); or

9 (2) alter the settings or content of an employee's protected personal online
10 account, except that an employer may alter the [settings and] content of an employee's protected
11 personal online account if:

12 (A) the employer has a proprietary interest in [those settings or] that
13 content;

14 (B) federal, state or local law or a court order requires or authorizes the
15 employer to alter [those settings or] that content; or

16 (C) doing so is necessary to protect against a significant threat to health or
17 safety.

18 **SECTION 5. STUDENT PROTECTIONS.**

19 (a) Except as otherwise provided in subsection (b) or (c):

20 (1) An educational institution may not require, request, or coerce a student, to:

21 (A) disclose the content or metadata of, or login information for, a
22 protected personal online account;

23 (B) alter the settings of a protected personal online account, including

1 settings that affect whether another person is able to view the content of that account;

2 (C) add the educational institution to the student's list of contacts

3 associated with a protected personal online account; or

4 (D) access a protected personal online account in the presence of the

5 educational institution in a manner that enables the educational institution to observe the content

6 of the account.

7 (2) An educational institution may not take or threaten to take an adverse action

8 against a student because the student does not comply with a requirement, request, or coercive

9 action that paragraph (1) prohibits.

10 (3) An educational institution that, without violating paragraph (1), acquires login

11 information for, or the login-protected content or metadata of, a student's protected personal

12 online account:

13 (A) may possess the login information, content and metadata;

14 (B) may not use the login information to access or alter a student's

15 protected personal online account;

16 (C) may not take or threaten to take an adverse action against a student

17 based on the content or metadata of the student's protected personal online account;

18 (D) may not read, review, record, or share the login information for, or the

19 content or metadata of, the student's protected personal online account; and

20 (E) shall dispose of the login information for, and content or metadata of,

21 the student's protected personal online account as soon as practicable.

22 (b) Subsection (a) does not apply to an educational institution's action that is necessary

23 to:

1 (1) comply with federal, state, or local law;

2 (2) investigate whether the student has violated or is violating [or intends to
3 violate] federal, state, or local law or an educational institution policy that is in writing or
4 otherwise in a record and of which the student had reasonable notice, where the educational
5 institution reasonably suspects that the student has violated or is violating [or intends to violate]
6 the law or policy and the educational institution accesses only accounts, content, or metadata that
7 it reasonably believes to be relevant to the investigation of the student;

8 (3) take adverse action against the student for violating federal, state, or local law
9 or an educational institution policy that is in writing or otherwise in a record and of which the
10 student had reasonable notice; or

11 (4) protect against:

12 (A) a significant threat to health or safety or to educational institution
13 information or communications technology systems or other educational institution property; or

14 (B) disclosure of information that the educational institution has a
15 proprietary interest in or has a legal obligation to keep confidential.

16 (c) An educational institution may:

17 (1) access a student's online account if it can do so without the student's login
18 information and without taking an action that subsection (a) prohibits[; and]

19 (2) [maintain and monitor the functioning of its information and communications
20 technology systems and equipment if it can do so without student login information and without
21 taking an action that subsection (a) prohibits.]

22 (d) Subsections (b) and (c) do not permit an educational institution to:

23 (1) use its access to, or the content or metadata of, a student's protected personal

1 online account obtained pursuant to subsection (b) for a purpose other than a purpose specified in
2 subsection (b); or

3 (2) alter the settings or content of a student’s protected personal online account,
4 except that an educational institution may alter the [settings and] content of a student’s protected
5 personal online account if:

6 (A) the educational institution has a proprietary interest in [those settings
7 or] that content;

8 (B) federal, state or local law or a court order requires or authorizes the
9 educational institution to alter [those settings or] that content; or

10 (C) doing so is necessary to protect against a significant threat to health or
11 safety.

12 **SECTION 6. NO WAIVER.**

13 (a) Except where necessary to demonstrate a skill or proficiency that is directly relevant
14 to the employee’s employment or application for employment, an employee may not:

15 (1) authorize an employer to take an action that Section 4 prohibits with respect to
16 the employee; or

17 (2) provide an employer with access to, control over, or the content or metadata
18 of, the employee’s protected personal online account.

19 (b) Except where necessary to demonstrate a skill or proficiency that is directly relevant
20 to the student’s education or application for admission to an educational institution, a student
21 may not:

22 (1) authorize an educational institution to take an action that Section 5 prohibits
23 with respect to the student; or

1 (2) provide an educational institution with access to, control over, or the content
2 or metadata of, the student's protected personal online account.

3 **SECTION 7. CIVIL ACTION.**

4 (a) [A public authority] may bring a civil action against an employer or educational
5 institution alleging a violation of this Act, and may obtain:

6 (1) injunctive and other equitable relief; and

7 (2) a civil penalty of [\$1000] for each violation.

8 (b) The affected employee or student may bring a civil action against an employer or
9 educational institution alleging a violation of this Act. An action under subsection (a) does not
10 preclude an action under this subsection.

11 (c) In a civil action under subsection (b):

12 (1) a prevailing employee or student may obtain:

13 (A) injunctive and other equitable relief;

14 [(B) for each violation, damages in the amount of [\$1000] or] actual
15 damages[, whichever is greater];

16 [(C) punitive damages]; and

17 (D) costs and reasonable attorneys' fees.

18 (2) the court may award a prevailing employer or educational institution costs and
19 reasonable attorneys' fees if the court determines the action was frivolous.

20 **SECTION 8. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
21 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
22 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
23 modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize

1 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
2 Section 7003(b).

3 **[SECTION 9. SEVERABILITY.** If any provision of this [act] or its application to any
4 person or circumstance is held invalid, the invalidity does not affect other provisions or
5 applications of this [act] which can be given effect without the invalid provision or application,
6 and to this end the provisions of this [act] are severable.]

7 *Legislative Note: Include this section only if this state lacks a general severability statute*
8 *or a decision by the highest court of this state stating a general rule of severability.*

9
10 **SECTION 10. REPEALS; CONFORMING AMENDMENTS.**

11 (a)

12 (b)

13 (c)

14 **SECTION 11. EFFECTIVE DATE.** This [act] takes effect on [effective date].