

D R A F T

FOR APPROVAL

**UNIFORM EMPLOYEE AND STUDENT ONLINE
PRIVACY PROTECTION ACT**

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ON UNIFORM STATE LAWS

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**UNIFORM EMPLOYEE AND STUDENT ONLINE
PRIVACY PROTECTION ACT**

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ON UNIFORM STATE LAWS

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June 10, 2016

UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT

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1 **UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Employee and
3 Student Online Privacy Protection Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Content” means information, other than login information, that is contained in a
6 protected personal online account, accessible to the account holder, and not publicly available.

7 (2) “Educational institution” means a person that provides students at the postsecondary
8 level an organized program of study or training that is academic, technical, trade-oriented, or
9 preparatory for gaining employment. The term includes a public or private educational
10 institution. The term includes an agent or designee of the educational institution.

11 (3) “Educational institution policy” means a policy an educational institution establishes
12 for the institution, which is in a record, of which students have reasonable notice, and which was
13 not created primarily to gain access to a protected personal online account.

14 (4) “Electronic” means relating to technology having electrical, digital, magnetic,
15 wireless, optical, electromagnetic, or similar capabilities.

16 (5) “Employee” means an individual who provides services or labor to an employer in
17 exchange for salary, wages, or the equivalent. The term includes a prospective employee who
18 has expressed to the employer an interest in, has applied or is applying to the employer for, or is
19 being recruited by the employer for employment with the employer.

20 (6) “Employer” means a person that provides salary, wages, or the equivalent to an
21 employee in exchange for services or labor. The term includes an agent or designee of the
22 employer.

23 (7) “Employer policy” means a policy an employer establishes for its workplace, which is

1 in a record, of which employees have reasonable notice, and which was not created primarily to
2 gain access to a protected personal online account.

3 (8) "Login information" means a user name and password, password, or other means or
4 credentials of authentication required to access or control:

5 (A) a protected personal online account; or

6 (B) an electronic device the employer or educational institution has not supplied
7 or paid for in full, which itself provides access to or control over a protected personal online
8 account.

9 (9) "Login requirement" means a requirement that login information be provided before
10 an online account or electronic device can be accessed or controlled.

11 (10) "Online" means accessed by means of a computer network or the Internet.

12 (11) "Person" means an individual, estate, business or nonprofit entity, public
13 corporation, government or governmental subdivision, agency, instrumentality, or other legal
14 entity.

15 (12) "Protected personal online account" means an individual's online account that is
16 protected by a login requirement. The term does not include an online account or the part of an
17 online account:

18 (A) that is publicly available; or

19 (B) that an employer or educational institution has notified the employee or
20 student might be subject to a request for login information or content, and which:

21 (i) the employer or educational institution supplies or pays for in full; or

22 (ii) an employee or student creates, maintains, or uses primarily on behalf
23 of or under the direction of the employer or educational institution in connection with the

1 employee's employment or the student's education.

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

4 (14) "Student" means an individual who participates in an educational institution's
5 organized program of study or training. The term includes:

6 (A) a prospective student who expresses an interest in being admitted to, applies
7 for admission to, or is being recruited by, the educational institution; and

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

9 **SECTION 3. PROTECTION OF EMPLOYEE ONLINE ACCOUNTS.**

10 (a) An employer may not:

11 (1) require, coerce, or request an employee to:

12 (A) disclose the login information for a protected personal online account;

13 (B) disclose the content of a protected personal online account, except that
14 an employer may request an employee to add the employer to, or not remove the employer from,
15 the set of persons to whom the employee grants access to the content;

16 (C) alter the settings of the employee's protected personal online account
17 in a manner that makes the login information for, or content of, the account more accessible to
18 others;

19 (D) access the employee's protected personal online account in the
20 presence of the employer in a manner that enables the employer to observe the login information
21 for, or content of, the account; or

22 (2) take, or threaten to take, adverse action against an employee for failure to
23 comply with an employer requirement, coercive action, or request that violates subsection (a)(1).

1 (b) Nothing in subsection (a) shall prevent an employer from:

2 (1) accessing information about an employee that is publicly available;

3 (2) complying with a federal or state law, court order, or rule of a self-regulatory
4 organization defined in Section 3(a)(26) of the Securities and Exchange Act of 1934, 15 USC
5 78c(a)(26) or of another self-regulatory organization established by federal or state statute; or

6 (3) requiring or requesting, based on specific information about the employee's
7 protected personal online account, access to content for the purpose of:

8 (A) ensuring compliance, or investigating non-compliance, with federal or
9 state law or an employer policy; or

10 (B) protecting against:

11 (i) a threat to health or safety;

12 (ii) a threat to employer information technology or
13 communications technology systems or to property; or

14 (iii) disclosure of information in which the employer has a
15 proprietary interest or information the employer has a legal obligation to keep confidential.

16 (c) An employer that accesses employee content for a purpose specified in subsection
17 (b)(3):

18 (1) shall reasonably attempt to limit its access to content that is relevant to the
19 specified purpose;

20 (2) shall use its access only for the specified purpose; and

21 (3) shall not alter the content of the employee's protected personal online account
22 unless necessary to achieve the specified purpose.

23 (d) An employer that acquires the login information for an employee's protected personal

1 online account by means of otherwise lawful technology that monitors the employer’s network,
2 or employer-provided devices, for a network security, data confidentiality, or system
3 maintenance purpose:

4 (1) may not use the login information to access, or to enable another person to
5 access, the employee’s protected personal online account;

6 (2) shall make reasonable efforts to secure the login information; and

7 (3) shall dispose of the login information as soon as and to the extent reasonably
8 practicable, unless the employer retains the login information for use in an ongoing investigation
9 of an actual or suspected breach of computer, network, or data security, in which case the
10 employer shall take reasonable steps to secure the login information and shall dispose of it as
11 soon as reasonably practicable after completing the investigation.

12 **SECTION 4. PROTECTION OF STUDENT ONLINE ACCOUNTS.**

13 (a) An educational institution may not:

14 (1) require, coerce, or request a student to:

15 (A) disclose the login information for a protected personal online account;

16 (B) disclose the content of a protected personal online account, except that
17 an educational institution may request a student to add the educational institution to, or not
18 remove the educational institution from, the set of persons to whom the student grants access to
19 the content;

20 (C) alter the settings of the student’s protected personal online account in a
21 manner that makes the login information for, or content of, the account more accessible to
22 others; or

23 (D) access the student’s protected personal online account in the presence

1 of the educational institution in a manner that enables the educational institution to observe the
2 login information for, or content of, the account; or

3 (2) take, or threaten to take, adverse action against a student for failure to comply
4 with an educational institution requirement, coercive action, or request that violates subsection
5 (a)(1).

6 (b) Nothing in subsection (a) shall prevent an educational institution from:

7 (1) accessing information about a student that is publicly available;

8 (2) complying with a federal or state law, court order, or rule of a self-regulatory
9 organization established by federal or state statute; or

10 (3) requiring or requesting, based on specific information about the student's
11 protected personal online account, access to content for the purpose of:

12 (A) ensuring compliance, or investigating non-compliance, with federal or
13 state law or an educational institution policy; or

14 (B) protecting against:

15 (i) a threat to health or safety;

16 (ii) a threat to educational institution information technology or
17 communications technology systems or to property; or

18 (iii) disclosure of information in which the educational institution
19 has a proprietary interest or information the educational institution has a legal obligation to keep
20 confidential.

21 (c) An educational institution that accesses student content for a purpose specified in
22 subsection (b)(3):

23 (1) shall reasonably attempt to limit its access to content that is relevant to the

1 specified purpose;

2 (2) shall use its access only for the specified purpose; and

3 (3) shall not alter the content of the student's protected personal online account
4 unless necessary to achieve the specified purpose.

5 (d) An educational institution that acquires the login information for a student's protected
6 personal online account by means of otherwise lawful technology that monitors the educational
7 institution's network, or educational institution-provided devices, for a network security, data
8 confidentiality, or system maintenance purpose:

9 (1) may not use the login information to access, or to enable another person to
10 access, the student's protected personal online account;

11 (2) shall make reasonable efforts to secure the login information; and

12 (3) shall dispose of the login information as soon as and to the extent reasonably
13 practicable, unless the educational institution retains the login information for use in an ongoing
14 investigation of an actual or suspected breach of computer, network, or data security, in which
15 case the educational institution shall take reasonable steps to secure the login information and
16 shall dispose of it as soon as reasonably practicable after completing the investigation.

17 **SECTION 5. CIVIL ACTION.**

18 (a) The [Attorney General] may bring a civil action against an employer or educational
19 institution for a violation of this [act] seeking[:

20 (1)] injunctive and other equitable relief [; and

21 (2) a civil penalty of up to \$[1000] for each violation, but if the same act of the
22 employer or educational institution causes more than one violation, the maximum penalty under
23 this subsection is \$[100,000]].

1 (b) An employee or student may bring a civil action against the individual’s employer or
2 educational institution for a violation of this [act] seeking:

3 (1) injunctive and other equitable relief;

4 (2) actual damages; and

5 (3) costs and reasonable attorney’s fees.

6 (c) An action under subsection (a) does not preclude an action under subsection (b), and
7 an action under subsection (b) does not preclude an action under subsection (a).

8 **SECTION 6. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
9 applying and construing this [act], consideration must be given to the need to promote uniformity
10 of the law with respect to its subject matter among states that enact it.

11 **SECTION 7. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
12 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
13 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
14 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
15 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
16 Section 7003(b).

17 **[SECTION 8. SEVERABILITY.** If any provision of this [act] or its application to any
18 person or circumstance is held invalid, the invalidity does not affect other provisions or
19 applications of this [act] which can be given effect without the invalid provision or application,
20 and to this end the provisions of this [act] are severable.]

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

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

24 (a)

1 (b)

2 (c)

3 **SECTION 10. EFFECTIVE DATE.** This [act] takes effect