

D R A F T
FOR DISCUSSION ONLY

SOCIAL MEDIA PRIVACY ACT

(EMPLOYEE ONLINE PRIVACY PROTECTION ACT)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

April 17-19, 2015 Drafting Committee Meeting

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April 3, 2015

SOCIAL MEDIA PRIVACY ACT

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EMPLOYEE ONLINE PRIVACY PROTECTION ACT

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EMPLOYEE ONLINE PRIVACY PROTECTION ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the [Employee Online Privacy Protection Act.]

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

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

7 (2) "Employee" means an individual who provides services or labor to an employer in
8 exchange for wages or other remuneration. The term includes a prospective employee who has
9 expressed an interest in or applied for employment, or whom an employer is otherwise
10 considering for employment.

(3) "Employer" means a person that pays wages or other remuneration to one or more employees in exchange for services or labor. The term:

(A) includes an agent, a representative, or a designee of the employer; and

14 (B) does not include:

15 (i) The United States of America, or any agency thereof;

16 (ii) a state, county, or local law enforcement agency;

18 (iv) [a child care provider; or]

19 (v) [a home health care provider.]

20 (4) "Login information" means a user name, a password, or other information used to gain access to a computer system.

21 required to access to a protected personal online account.

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

1 (6) “Protected personal online account” means an online account, created or maintained
2 by an individual, that requires login information to access or exercise control over that account.

3 The term:

4 (A) includes an electronic device that provides access to a protected personal
5 online account; and

6 (B) does not include an online account  electronic device that:
7 (i) an employer supplies or pays for; or
8 (ii) an employee creates or maintains on behalf of or under the direction of
9 an employer pursuant to that employee’s employment-related responsibilities.

10 **SECTION 3. PROHIBITIONS AND RESTRICTIONS.** Except as otherwise

11 provided in Section 4:

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

13 (A) disclose the [existence of,] [identifying information for,] contents or meta-
14 data of, or login information for, a protected personal online account;

15 (B) alter the settings of a protected personal online account, including settings that
16 affect whether another person is able to view the contents of that account; or

17 (C) access a protected personal online account in the presence of the employer in
18 a manner that enables the employer to observe the contents of the account.

19 (2) An employer may not discharge, discipline, or otherwise penalize, or threaten to
20 discharge, discipline, or otherwise penalize, an employee for refusing or failing to comply with
21 an employer action that violates paragraph (1).

22 (3) [An employer that inadvertently, or through a person other than the employee, [learns
23 of the existence of,] acquires [identifying information or] login information for, or accesses the

1 contents or meta-data of, an employee's protected personal online account:

2 (A) [properly] may possess the information;

3 (B) may not use the [identifying or] login information to access or alter the

4 employee's protected personal online account;

5 (C) may not use the existence, contents or meta-data of the employee's protected

6 personal online account as the basis for a decision or action detrimental to any employee; and

7 (D) shall dispose of the [identifying information or] login information for, or

8 contents or meta-data of, the employee's protected personal online account as soon as

9 practicable.]

10 **SECTION 4. EXCEPTIONS.**

11 (a) Section 3 does not apply to an employer's actions that would otherwise violate

12 Section 3 if the employer's actions are necessary to:

13 (1) comply with federal, state, or local law, or with the rules of a self-regulatory

14 organization, including a self-regulatory organization as defined in section 3(a)(26) of the

15 Securities and Exchange Act of 1934, 15 USC 78c(a)(26), that exercises delegated federal, state

16 or local power to make those rules;

17 (2) investigate an employee's violation of law, or of written employer policies

18 regarding employment-related misconduct of which the employee had reasonable notice, where 

19 the employer reasonably suspects that the employee has violated, is violating, or will violate

20 those laws or policies, and the employer accesses only accounts, content and meta-data that it

21 reasonably believes to be directly relevant to the investigation;

22 (3) penalize an employee violating the law, or written employer policies regarding

23 employment-related misconduct of which the employee had reasonable notice; or

(4) protect against

(A) an imminent and significant threat to health, safety, [property], or the

3 functioning of the employer's information or communications technology systems; or

(B) disclosure of information that the employer has a proprietary interest

5 in, or has a legal obligation to keep confidential.

6 (b) Section 3 does not apply to an employer insofar as it accesses or uses information

7 about an employee that can be obtained without login information and without taking an action

8 that Section 3 otherwise prohibits.

(c) This section does not permit an employer to:

(1) alter the settings of an employee's protected personal online account, or

(2) alter or remove the content or meta-data of an employee's protected personal

12 online account, except that an employer may [alter the settings of an employee's protected

13 personal online account and] alter or remove the content or meta-data of an employee's protected

14 personal online account if it has a clear proprietary interest in, or the law requires it to, alter or

remove [those settings and] that content or meta-data, or if authorized by court order or other law.

¹⁶ to do so.]

SECTION 5. CIVIL ACTION.

(a) An employer that violates this [act] is subject to a civil penalty of [\$1000] for each

19 violation. For this purpose, each violation of this [act] with respect to a particular online account

20 is a separate violation.

21 (b) An employee injured by a violation of this [act] may bring a civil action against the

22 employer.

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

- 1 (1) a prevailing employee may obtain:
- 2 (A) injunctive or other equitable relief;
- 3 (B) [damages in the amount of [\$1000] or] actual damages[, whichever is
- 4 greater];
- 5 (C) [punitive damages]; and
- 6 (D) costs and reasonable attorneys' fees.

7 (2) the court may award a prevailing employer costs and reasonable attorneys'

8 fees if the court determines the action was frivolous and without reasonable cause.

9 **SECTION 6. SEVERABILITY.** If any provision of this [act] or its application to any

10 person or circumstance is held invalid, the invalidity does not affect other provisions or

11 applications of this [act] which can be given effect without the invalid provision or application,

12 and to this end the provisions of this [act] are severable.

13 **SECTION 7. REPEALS; CONFORMING AMENDMENTS.**

14 (a)

15 (b)

16 (c)

17 **SECTION 8. EFFECTIVE DATE.** This [act] takes effect on [effective date].