

UNIFORM EMPLOYEE AND STUDENT PRIVACY PROTECTION ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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WITHOUT PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT

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

SECTION 2. DEFINITIONS. In this [act]:

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

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

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

(4) “Employee” means an individual who provides services or labor to an employer in exchange for salary, wages, or the equivalent and, with respect to an unpaid intern, academic credit or occupational experience. The term includes a prospective employee who has expressed to the employer an interest in being an employee of the employer, has applied to or is applying to, or is being recruited by, the employer. The term includes an independent contractor and an unpaid intern.

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

(6) “Login information” means a user name and password, password, or other means or

credentials of authentication required to access or control:

(A) a protected personal online account; or

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

(7) “Login requirement” means a requirement that login information be provided before an online account or electronic device can be accessed or controlled.

(8) “Online” means accessible by means of a computer network or the Internet.

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

(10) “Protected personal online account” means an individual’s online account that is protected by a login requirement. The term does not include an online account or the part of an online account:

(A) that is publicly available; or

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

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

(ii) an employee or student creates, maintains, or uses primarily on behalf of or under the direction of the employer or educational institution in connection with the employee’s employment or the student’s education.

(11) “Publicly available” means available to the general public.

(12) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) “Student” means an individual who participates in an educational institution’s organized program of study or training. The term includes:

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

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

SECTION 3. PROTECTION OF EMPLOYEE ONLINE ACCOUNTS.

(a) An employer may not:

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

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

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

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

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

(2) take, or threaten to take, adverse action against an employee for failure to comply with an employer requirement, coercive action, or request that violates subsection (a)(1), or for failure to comply with an employer request under subsection (a)(1)(B) to add the employer to, or not remove the employer from, the set of persons to whom the employee grants access to the content.

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

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

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

(3) requiring or requesting, based on specific facts about the employee's protected personal online account, access to the content of, but not the login information for, the account, for the purpose of:

(A) ensuring compliance, or investigating non-compliance, with:

(i) federal or state law; or

(ii) an employer prohibition against work-related employee misconduct which is in a record, of which the employee has reasonable notice, and which was not created primarily to gain access to a protected personal online account; or

(B) protecting against:

(i) a threat to health or safety;

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

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

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

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

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

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

(d) An employer that acquires the login information for an employee's protected personal online account by means of otherwise lawful technology that monitors the employer's network, or employer-provided devices, for a network security, data confidentiality, or system maintenance purpose:

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

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

(3) shall dispose of the login information as soon as, as securely as, and to the extent reasonably practicable, unless the employer retains the login information for use in an ongoing investigation of an actual or suspected breach of computer, network, or data security, in which case the employer shall make reasonable efforts to keep the login information secure and shall dispose of it as soon as, as securely as, and to the extent reasonably practicable after completing the investigation.

SECTION 4. PROTECTION OF STUDENT ONLINE ACCOUNTS.

(a) An educational institution may not:

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

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

(B) disclose the content of a protected personal online account, except that

an educational institution may request a student to add the educational institution to, or not remove the educational institution from, the set of persons to whom the student grants access to

the content;

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

(D) access the student's protected personal online account in the presence of the educational institution in a manner that enables the educational institution to observe the login information for, or content of, the account; or

(2) take, or threaten to take, adverse action against a student for failure to comply with an educational institution requirement, coercive action, or request that violates subsection (a)(1), or for failure to comply with an educational institution request under subsection (a)(1)(B) to add the educational institution to, or not remove the educational institution from, the set of persons to whom the student grants access to the content.

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

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

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

(3) requiring or requesting, based on specific facts about the student's protected personal online account, access to the content of, but not the login information for, the account, for the purpose of:

(A) ensuring compliance, or investigating non-compliance, with:

(i) federal or state law; or

(ii) an educational institution prohibition against education-related student misconduct which is in a record, of which the student has reasonable notice, and which

was not created primarily to gain access to a protected personal online account; or

(B) protecting against:

(i) a threat to health or safety;

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

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

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

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

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

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

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

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

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

(3) shall dispose of the login information as soon as, as securely as, and to the

extent reasonably practicable, unless the educational institution retains the login information for use in an ongoing investigation of an actual or suspected breach of computer, network, or data security, in which case the educational institution shall make reasonable efforts to keep the login information secure and shall dispose of it as soon as, as securely as, and to the extent reasonably practicable after completing the investigation.

SECTION 5. CIVIL ACTION.

(a) The [Attorney General] may bring a civil action against an employer or educational institution for a violation of this [act]. A prevailing [Attorney General] may obtain [:

(1) injunctive and other equitable relief [; and

(2) a civil penalty of up to \$[1000] for each violation, but not exceeding \$ [100,000] for all violations caused by the same act].

(b) An employee or student may bring a civil action against the individual's employer or educational institution for a violation of this [act]. A prevailing employee or student may obtain:

(1) injunctive and other equitable relief;

(2) actual damages; and

(3) costs and reasonable attorney's fees.

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

(d) This [act] does not affect a right or remedy available under law other than this [act].

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

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

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

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

SECTION 9. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

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