

ACT No. 165

Regular Session, 2014

HOUSE BILL NO. 340

BY REPRESENTATIVE JAMES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

AN ACT

To enact Chapter 28 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:1951 through 1955, relative to Internet privacy; to prohibit employers and educational institutions from requesting or requiring certain individuals to disclose information that allows access to or observation of personal online accounts; to prohibit employers and educational institutions from taking certain actions for failure to disclose information that allows access to personal online accounts; to provide for certain individuals to self-disclose information that allows access to or observation of personal online accounts; to limit liability for failure to search or monitor the activity of an individual's personal online account; to provide for exceptions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 28 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:1951 through 1955, is hereby enacted to read as follows:

CHAPTER 28. PERSONAL ONLINE ACCOUNT PRIVACY PROTECTION ACT

§1951. Title

This Chapter shall be known and may be cited as the "Personal Online Account Privacy Protection Act".

§1952. Definitions

As used in this Chapter, the terms defined in this Section have the meanings herein given to them, except where the context expressly indicates otherwise:

(1) "Educational institution" means a public or private educational institution or a separate school or department of a public or private educational institution and includes but is not limited to the following:

1 (a) A university, college, or junior college.

2 (b) An academy.

3 (c) An elementary or secondary school.

4 (d) An extension course.

5 (e) A kindergarten.

6 (f) A nursery school.

7 (g) A school system, school district, or intermediate school district.

8 (h) A business, nursing, professional, secretarial, technical, or vocational
9 school.

10 (i) A public or private educational testing service or test administrator.

11 (j) An agent of an educational institution.

12 (2) "Employer" means a person, including a unit of state or local
13 government, engaged in a business, industry, profession, trade, or other enterprise
14 in this state and includes an agent, representative, or designee of the employer.

15 (3) "Personal online account" means an online account that the employee,
16 applicant for employment, student, or prospective student uses exclusively for
17 personal communications unrelated to any business purpose of the employer or
18 educational institution. A personal online account does not extend to any account
19 or profile created, serviced, maintained, used, or accessed by a current employee,
20 applicant for employment, student, or prospective student for either business
21 purposes of the employer or educational institution or to engage in business-related
22 communications.

23 (4) "Electronic communications device" means any device that uses
24 electronic signals to create, transmit, and receive information, including a computer,
25 telephone, personal digital assistant, or other similar device.

26 §1953. Employers; prohibited activities; exceptions

27 A. An employer shall not do any of the following:

28 (1) Request or require an employee or applicant for employment to disclose
29 any username, password, or other authentication information that allows access to
30 the employee's or applicant's personal online account.

1 (2) Discharge, discipline, fail to hire, or otherwise penalize or threaten to
2 penalize an employee or applicant for employment for failure to disclose any
3 information specified in this Subsection.

4 B. An employer shall not be prohibited from doing any of the following:

5 (1) Requesting or requiring an employee or applicant for employment to
6 disclose any username, password, or other authentication information to the
7 employer to gain access to or operate any of the following:

8 (a) An electronic communications device paid for or supplied in whole or in
9 part by the employer.

10 (b) An account or service provided by the employer, obtained by virtue of
11 the employee's or applicant's relationship with the employer, or used for the
12 employer's business purposes.

13 (2) Disciplining or discharging an employee for transferring the employer's
14 proprietary or confidential information or financial data to an employee's personal
15 online account without the employer's authorization.

16 (3) Conducting an investigation or requiring an employee or applicant to
17 cooperate in an investigation in any of the following circumstances:

18 (a) If there is specific information about activity on the employee's personal
19 online account, for the purpose of ensuring compliance with applicable laws,
20 regulatory requirements, or prohibitions against work-related employee misconduct.

21 (b) If the employer has specific information about an unauthorized transfer
22 of the employer's proprietary information, confidential information, or financial data
23 to an employee's or applicant's personal online account.

24 (4) Conducting an investigation or requiring an employee or applicant to
25 cooperate in an investigation as specified in this Subsection, including requiring the
26 employee or applicant to share the content that has been reported in order to make
27 a factual determination, without obtaining the username and password to the
28 employee's or applicant's personal online account.

29 (5) Restricting or prohibiting an employee's or applicant's access to certain
30 websites while using an electronic communications device paid for or supplied in

1 whole or in part by the employer or while using an employer's network or resources,
 2 in accordance with state and federal law.

3 C. If through the use of an electronic device or program that monitors an
 4 employer's network or the use of an employer-provided device, an employer
 5 inadvertently receives an employee's or applicant's username, password, or other
 6 authentication information, the employer shall not be liable for having the
 7 information, but shall not use the information to access the employee's or applicant's
 8 personal online account.

9 D. An employer shall not be prohibited or restricted from complying with
 10 a duty to screen employees or applicants prior to hiring or to monitor or retain
 11 employee communications that are established pursuant to state or federal law, rules
 12 or regulations, case law, or rules of self-regulatory organizations.

13 E. An employer shall not be prohibited or restricted from viewing, accessing,
 14 or utilizing information about an employee or applicant that can be obtained without
 15 the information specified in Paragraph (A)(1) of this Section or that is available in
 16 the public domain.

17 F. An employer shall not be prohibited or restricted from requiring an
 18 employee to provide a personal e-mail address in order to facilitate communication
 19 with the employee in the event the employer's e-mail system fails.

20 G. Nothing in this Section shall be construed to prohibit or restrict an
 21 employee or applicant for employment from self-disclosing any username, password,
 22 or other authentication information to the employer that allows access to the
 23 employee's or applicant's personal online account.

24 §1954. Educational institutions; prohibited activities; exceptions

25 A. An educational institution shall not do any of the following:
 26 (1) Request or require a student or prospective student to disclose any
 27 username, password, or other authentication information that allows access to the
 28 student's or prospective student's personal online account.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (2) Expel, discipline, fail to admit, or otherwise penalize or threaten to
2 penalize a student or prospective student for failure to disclose any information
3 specified in this Subsection.

4 B. An educational institution shall not be prohibited from requesting or
5 requiring a student or prospective student to disclose any username, password, or
6 other authentication information to the educational institution to gain access to or
7 operate any of the following:

8 (1) An electronic communications device paid for or supplied in whole or
9 in part by the educational institution, except where the device has been provided to
10 the student or prospective student with the intent to permanently transfer ownership
11 of the device to the student or prospective student.

12 (2) An account or service provided by the educational institution that is
13 either obtained by virtue of the student's or prospective student's admission to the
14 educational institution or used by the student or prospective student for educational
15 purposes.

16 C. An educational institution shall not be prohibited from doing any of the
17 following:

18 (1) Viewing, accessing, or utilizing information about a student or
19 prospective student that can be obtained without the information specified in
20 Paragraph (A)(1) of this Section or that is available in the public domain.

21 (2) Restricting or prohibiting a student's or prospective student's access to
22 certain websites while using an electronic communications device paid for or
23 supplied in whole or in part by the educational institution or while using an
24 educational institution's network or resources, in accordance with state and federal
25 law, except where the device has been provided to the student or prospective student
26 with the intent to permanently transfer the ownership of the device to the student or
27 prospective student.

28 D. Nothing in this Section shall be construed to prohibit or restrict a student
29 or prospective student from self-disclosing any username, password, or other

1 authentication information to the educational institution that allows access to the
2 student's or prospective student's personal online account.

3 §1955. No duty to monitor; liability

4 A. This Chapter shall not create a duty for an employer or educational
5 institution to search or monitor the activity of an individual's personal online
6 account.

7 B. An employer or educational institution shall not be liable under this
8 Chapter for failure to request or require an employee, a student, an applicant for
9 employment, or a prospective student to disclose information that allows access to
10 the employee's, student's, applicant's, or prospective student's personal online
11 account.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____