

1 current student from participating in curricular or
2 extracurricular activities; or

3 (2) Failing to or refusing to admit a prospective student.

4 "Content" means information, other than login information,
5 that is contained in a protected personal online account,
6 accessible to the account holder, and not publicly available.

7 "Educational institution" means a person that provides
8 students at the postsecondary level an organized program of
9 study or training that is academic, technical, trade-oriented,
10 or preparatory for gaining employment and for which the person
11 gives academic credit. The term includes:

12 (1) A public or private institution; and

13 (2) An agent, excluding independent contractors, or
14 designee of the educational institution.

15 "Electronic" means relating to technology having
16 electrical, digital, magnetic, wireless, optical,
17 electromagnetic, or similar capabilities.

18 "Employee" means an individual who provides services or
19 labor to an employer in exchange for salary, wages, or the
20 equivalent or, for an unpaid intern, academic credit or
21 occupational experience. The term includes:



- 1 (1) A prospective employee who has:
 - 2 (A) Expressed to the employer an interest in being an
 - 3 employee; or
 - 4 (B) Applied to or is applying for employment by, or
 - 5 is being recruited for employment by, the
 - 6 employer; and
- 7 (2) An independent contractor.

8 "Employer" means a person that:

- 9 (1) Provides salary, wages, or the equivalent to an
- 10 employee in exchange for services or labor; or
- 11 (2) Engages the services or labor of an unpaid intern.

12 The term includes an agent, excluding independent contractors,
13 or designee of an employer, but does not include the United
14 States or any federal branch, department, or agency thereof.

15 "Login information" means a user name, password, or other
16 means or credentials of authentication required to access or
17 control:

- 18 (1) A protected personal online account; or
- 19 (2) An electronic device, which the employee's employer or
- 20 the student's educational institution has not supplied



1 or paid for in full, that itself provides access to or
2 control over a protected personal online account.

3 "Login requirement" means a requirement that login
4 information shall be provided before a protected personal online
5 account or electronic device can be accessed or controlled.

6 "Online" means accessible by means of a computer network or
7 the Internet.

8 "Person" means an individual, estate, business or nonprofit
9 entity, public corporation, government or governmental
10 subdivision, agency, or instrumentality, or other legal entity.

11 "Personal technological device" means a technological
12 device owned, leased, or otherwise lawfully possessed by an
13 employee or student. The term does not include a device that:

14 (1) An employer or educational institution supplies or
15 pays for in full; or

16 (2) An employee or student possesses, maintains, or uses
17 primarily on behalf of or under the direction of an
18 employer or educational institution in connection with
19 the employee's employment or the student's education.

20 "Protected personal online account" means an employee's or
21 student's online account that is protected by a login



1 requirement. The term does not include an online account or the
2 part of an online account:

3 (1) That is publicly available; or

4 (2) That the employer or educational institution has
5 notified the employee or student might be subject to a
6 request for login information or content, and that:

7 (A) The employer or educational institution supplies,
8 pays for in full, or issues login information
9 under its domain name; or

10 (B) The employee or student creates, maintains, or
11 uses primarily on behalf of or under the
12 direction of the employer or educational
13 institution in connection with the employee's
14 employment or the student's education.

15 "Publicly available" means available to the general public.

16 "Record" means information that is inscribed on a tangible
17 medium or that is stored in an electronic or other medium and is
18 retrievable in a perceivable form.

19 "State" means a state of the United States, the District of
20 Columbia, the United States Virgin Islands, or any territory or



1 insular possession subject to the jurisdiction of the United
2 States.

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

- 6 (1) A prospective student who expresses to the institution
7 an interest in being admitted to, applies for
8 admission to, or is being recruited for admission by,
9 the educational institution; and
10 (2) A parent or legal guardian of a minor student.

11 "Technological device" means any computer, cellular phone,
12 smartphone, digital camera, video camera, audio recording
13 device, or other electronic device that can be used for
14 creating, storing, or transmitting information in the form of
15 electronic data.

16 § -3 Protected personal online accounts. Except as
17 provided in section -4, no employer or educational
18 institution shall:

- 19 (1) Require or coerce an employee or student to:
20 (A) Disclose the login information for a protected
21 personal online account;



- 1 (B) Disclose the content of or provide access to a
2 protected personal online account; provided that
3 an employer or educational institution may
4 request that an employee or student add or not
5 remove any person, including the employer or
6 educational institution, to or from the set of
7 persons to which the employee or student grants
8 access to the content;
- 9 (C) Alter the settings of a protected personal online
10 account in a manner that makes the login
11 information for, or content of the account more
12 accessible to others;
- 13 (D) Access a protected personal online account in the
14 presence of the employer or educational
15 institution in a manner that enables the employer
16 or educational institution to observe the login
17 information for or content of the account; or
- 18 (E) Provide to the employer or educational
19 institution the password or authentication
20 information to a personal technological device
21 for the purpose of gaining access to a protected



1 personal online account, or relinquish a personal
2 technological device to the employer or
3 educational institution for the purpose of
4 gaining access to a protected personal online
5 account; or

6 (2) Take, or threaten to take, adverse action against an
7 employee or student for failure or refusal to comply
8 with:

9 (A) An employer's or educational institution's
10 requirement or coercive action that violates
11 paragraph (1); or

12 (B) An employer's or educational institution's
13 request under paragraph (1)(B) to add any person
14 to, or not remove any person from, the set of
15 persons to which the employee or student grants
16 access to the content of a protected personal
17 online account.

18 This paragraph shall not prohibit an employer or
19 educational institution from taking or threatening to
20 take adverse action against an employee or student for



1 failure or refusal to comply with requirements or
2 requests made pursuant to section -4.

3 § -4 Limitations to prohibitions regarding employers and
4 educational institutions. (a) Nothing in this chapter shall
5 prohibit an employer or educational institution from:

6 (1) Accessing information about an employee or student
7 that is publicly available;

8 (2) Complying with a federal or state law, order of a
9 court of competent jurisdiction, court or
10 administrative agency subpoena, or rule of a self-
11 regulatory organization established by federal or
12 state law, including a self-regulatory organization as
13 defined in the Securities and Exchange Act of 1934,
14 title 15 United States Code section 78c(a)(26);

15 (3) Requiring or requesting, based on specific allegations
16 about an employee's or student's protected personal
17 online account, access to content, but not login
18 information, of the account in order to:

19 (A) Ensure compliance or investigate noncompliance,
20 with:

21 (i) Federal or state law; or



- 1 (ii) An employer's or educational institution's
- 2 prohibition against work-related employee or
- 3 education-related student misconduct;
- 4 provided that the employee or student has
- 5 reasonable written notice of the prohibition
- 6 and the prohibition was not created
- 7 primarily to gain access to a protected
- 8 personal online account;
- 9 provided that the access to content is subject to
- 10 all legal and constitutional protections
- 11 otherwise available to the employee or student;
- 12 or
- 13 (B) Protect against:
- 14 (i) A threat to safety;
- 15 (ii) A threat to the employer's or educational
- 16 institution's information technology or
- 17 communications technology systems, or
- 18 property; or
- 19 (iii) Disclosure of the employer's or educational
- 20 institution's nonpublic financial
- 21 information, information in which the



1 employer or educational institution has a
2 proprietary interest, or information that
3 the employer or educational institution has
4 a legal obligation to keep confidential; or

5 (4) Prohibiting an employee or student from:

6 (A) Using a protected personal online account for the
7 employer's business or the educational
8 institution's purposes; or

9 (B) Accessing or operating a protected personal
10 online account during business or school hours,
11 while on the employer's or educational
12 institution's property, or while using the
13 employer's or educational institution's
14 technological device.

15 (b) An employer that accesses an employee's content for a
16 purpose specified in subsection (a) (3):

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

19 (2) Shall use the content only for the specified purpose;
20 and



- 1 (3) Shall not alter the content unless necessary to
2 achieve the specified purpose.
- 3 (c) An employer or educational institution that acquires
4 the login information for an employee's or a student's protected
5 personal online account by means of otherwise lawful technology
6 that monitors the network or devices owned or provided by the
7 employer or educational institution, for a network security,
8 data confidentiality, or system maintenance purpose:
- 9 (1) Shall not use the login information to access or
10 enable another person to access the account;
- 11 (2) Shall make a reasonable effort to keep the login
12 information secure;
- 13 (3) Unless otherwise provided in paragraph (4), shall
14 dispose of the login information as soon as and as
15 securely as reasonably practicable; and
- 16 (4) If the employer or educational institution retains the
17 login information for use in an anticipated or ongoing
18 civil action or ongoing investigation of an actual or
19 suspected breach of computer, network, or data
20 security, shall make a reasonable effort to keep the
21 login information secure and dispose of it as soon as



1 and as securely as reasonably practicable after
2 completing the civil action or investigation.

3 **§ -5 Civil actions for injunctive relief or damages.**

4 (a) A person who alleges a violation of this chapter may bring
5 a civil action for appropriate injunctive relief or actual
6 damages, or both, within one hundred eighty days after the
7 occurrence of the alleged violation.

8 (b) An action commenced pursuant to subsection (a) may be
9 brought in the circuit court for the circuit where the alleged
10 violation occurred, where the complainant resides, or where the
11 person against whom the civil complaint is filed resides or has
12 a principal place of business.

13 (c) As used in this section, "damages" means damages for
14 injury or loss caused by each violation of this chapter,
15 including reasonable attorney fees.

16 **§ -6 Admissibility.** No data obtained, accessed, used,
17 copied, disclosed, or retained in violation of this chapter, nor
18 any evidence derived therefrom, shall be admissible in any
19 criminal, civil, administrative, or other proceeding, except as
20 proof of a violation of this chapter."



1 SECTION 2. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 3. This Act shall take effect on January 1, 2050.



Report Title:

Internet; Privacy; Employees; Students

Description:

Prohibits employers and educational institutions from requiring employees, students, and prospective employees and students to provide protected personal online account information.

Authorizes private civil actions against violators. (HB2173 HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

