

HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 340 by Representative James

PRIVACY/COMPUTERS: Creates the Personal Online Account Privacy Protection Act

Synopsis of Senate Amendments

1. Changed may to shall, prohibiting an employer from using personal online account access information obtained inadvertently by the employer.

Digest of Bill as Finally Passed by Senate

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

Proposed law defines "educational institution" as 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 university, college, or junior college.
- (2) An academy.
- (3) An elementary or secondary school.
- (4) An extension course.
- (5) A kindergarten.
- (6) A nursery school.
- (7) A school system, school district, or intermediate school district.
- (8) A business, nursing, professional, secretarial, technical, or vocational school.
- (9) A public educational testing service or test administrator.
- (10) An agent of an educational institution.

Proposed law defines "employer" as a person, including a unit of state or local government, engaged in a business, industry, profession, trade, or other enterprise in this state and includes an agent, representative, or designee of the employer.

Proposed law defines "personal online account" as an online account that is used by an employee, applicant, student, or prospective student exclusively for personal communications unrelated to any business purpose of the employer or educational institution.

Proposed law provides that a "personal online account" does not extend to any account or profile created, serviced, maintained, used, or accessed by a current or prospective employee, applicant, student, or prospective student for either business purposes of the employer or educational institution or to engage in business-related communications.

Proposed law defines "electronic communications device" as any device using electronic signals to create, transmit, and receive information, including a computer, telephone, personal digital assistant, or other similar device.

Proposed law prohibits an employer from doing any of the following:

- (1) Requesting or requiring an employee or an applicant for employment to disclose information that allows access to the employee's or applicant's personal online account.
- (2) Discharging, disciplining, failing to hire, or otherwise penalizing or threatening to penalize an employee or applicant for employment for failure to disclose information that allows access to or observation of the employee's or applicant's personal online account.

Proposed law provides that an employer is not prohibited from requesting or requiring an employee or applicant for employment to disclose access information to the employer to gain access to or operate any of the following:

- (1) An electronic communications device paid for or supplied in whole or in part by the employer.
- (2) An account or service provided by the employer, obtained by virtue of the employee's or applicant's relationship with the employer, or used for the employer's business purposes.

Proposed law provides that an employer is not prohibited from disciplining or discharging an employee for transferring the employer's proprietary or confidential information or financial data to an employee's personal online account without the employer's authorization.

Proposed law provides that an employer is not prohibited from conducting an investigation or requiring an employee or applicant to cooperate in an investigation in any of the following circumstances:

- (1) If there is specific information about activity on the employee's personal online account, for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct.
- (2) If the employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information, or financial data to an employee's or applicant's personal online account.

Proposed law provides that an employer is not prohibited from conducting an investigation or requiring an employee or applicant to cooperate in an investigation, including requiring the employee or applicant to share the content that has been reported in order to make a factual determination, without obtaining the username and password to the employee's or applicant's personal online account.

Proposed law provides that an employer is not prohibited from restricting or prohibiting an employee's or applicant's access to certain websites while using an electronic communications device paid for or supplied in whole or in part by the employer or while using an employer's network or resources, in accordance with state and federal law.

Proposed law provides that an employer is not liable for the inadvertent receipt of personal online account access information through the use of any electronic device or program monitoring the employer's network or employer provided device; however, the employer shall not use the information to access the employee's or applicant's personal online account.

Proposed law provides that an employer is not prohibited or restricted from complying with a duty to screen employees or applicants prior to hiring or to monitor or retain employee communications that is established under state or federal law.

Proposed law provides that an employer is not prohibited or restricted from viewing,

accessing, or utilizing information about an employee or applicant that can be obtained without any required access information or that is available in the public domain.

Proposed law provides that an employer is not prohibited or restricted from requiring an employee to provide a personal e-mail address in order to facilitate communication with the employee, in the event the employer's e-mail system fails.

Proposed law provides that no provision of proposed law shall be construed to prohibit or restrict an employee or applicant for employment from self-disclosing any username, password, or other authentication information to the employer allowing access to the employee's or applicant's personal online account.

Proposed law prohibits an educational institution from doing any of the following:

- (1) Requesting or requiring a student or prospective student to disclose information that allows access to the student's or prospective student's personal online account.
- (2) Expelling, disciplining, failing to admit, or otherwise penalizing or threatening to penalize a student or prospective student for failure to disclose information that allows access to the student's or prospective student's personal online account.

Proposed law provides that an educational institution is not prohibited from requesting or requiring a student or prospective student to disclose access information to the educational institution to gain access to or operate any of the following:

- (1) An electronic communications device paid for or supplied in whole or in part by the educational institution, except where the device has been provided to the student or prospective student with the intent to permanently transfer the ownership of the device to the student or prospective student.
- (2) An account or service provided by the educational institution that is either obtained by virtue of the student's or prospective student's admission to the educational institution or used by the student or prospective student for educational purposes.

Proposed law provides that an educational institution is not prohibited from viewing, accessing, or utilizing information about a student or prospective student that can be obtained without any required access information or that is available in the public domain.

Proposed law provides that an educational institution is not prohibited from restricting or prohibiting a student's or prospective student's access to certain websites while the student or prospective student uses an electronic communications device paid for or supplied in whole or in part by the educational institution or while the student or prospective student uses an educational institution's network, unless the device has been provided with the intent to permanently transfer ownership of the device to the student or prospective student.

Proposed law provides that no provision of proposed law shall be construed to prohibit or restrict an employee or applicant for employment from self-disclosing any username, password, or other authentication information to the employer allowing access to the employee's or applicant's personal online account.

Proposed law does not create a duty for an employer or educational institution to search or monitor the activity of an individual's personal online account.

Proposed law provides that an employer or educational institution is not liable for failure to request or require an employee, a student, an applicant for employment, or a prospective student to disclose information that allows access to the employee's, applicant's, student's, or prospective student's personal online account.

(Adds R.S. 51:1951-1955)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Added a provision to include that an employer is not prohibited or restricted from requiring an employee to provide a personal e-mail address to facilitate communication with the employee, in the event the employer's e-mail system fails.
2. Made technical change.

House Floor Amendments to the engrossed bill.

1. Clarified the term "administrator" as a "test administrator" with respect to an educational testing service or test administrator.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the reengrossed bill

1. Prohibits an employer from using personal online account access information obtained inadvertently by the employer.