

Regular Session, 2013

HOUSE BILL NO. 314

BY REPRESENTATIVE JAMES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PRIVACY/COMPUTERS: Creates the Social Media Privacy Protection Act

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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 1956, relative to Internet privacy; to prohibit employers and educational institutions from requiring certain individuals to grant access to, allow observation of, or disclose information that allows access to or observation of personal social media; to prohibit employers and educational institutions from taking certain actions for failure to allow access to, observation of, or disclosure of information that allows access to personal social media; to provide for exceptions; to limit liability for failure to search or monitor the activity of an individual's personal social media; to provide for a misdemeanor penalty; to authorize suit for injunction; to provide for an affirmative defense; to provide for an effective date; 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 1956, is hereby enacted to read as follows:

CHAPTER 28. SOCIAL MEDIA PRIVACY PROTECTION ACT

§1951. Title

This Chapter shall be known and may be cited as the "Social Media Privacy Protection Act".

1 §1952. Definitions

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

4 (1) "Access information" means user name, password, login information, or
5 other security information that protects access to personal social media.

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

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

10 (b) An academy.

11 (c) An elementary or secondary school.

12 (d) An extension course.

13 (e) A kindergarten.

14 (f) A nursery school.

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

16 (h) A business, nursing, professional, secretarial, technical, or vocational
17 school.

18 (I) A public or private educational testing service or administrator.

19 (j) An agent of an educational institution.

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

23 (4) "Social media" means an electronic service or account, or electronic
24 content, including but not limited to videos, still photographs, blogs, video blogs,
25 podcasts, instant and text messages, e-mail, online services or accounts, or Internet
26 website profiles or locations.

27 §1953. Employers; prohibited activities; exceptions

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

1 (1) Request an employee or an applicant for employment to grant access to,
2 allow observation of, or disclose information that allows access to or observation of
3 the employee's or applicant's personal social media.

4 (2) Discharge, discipline, fail to hire, or otherwise penalize or threaten to
5 penalize an employee or applicant for employment for failure to grant access to,
6 allow observation of, or disclose information that allows access to or observation of
7 the employee's or applicant's personal social media.

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

9 (1) Requesting or requiring an employee to disclose access information to
10 the employer to gain access to or operate any of the following:

11 (a) An electronic communications device paid for in whole or in part by the
12 employer.

13 (b) An account or service provided by the employer, obtained by virtue of
14 the employee's employment relationship with the employer, or used for the
15 employer's business purposes.

16 (2) Disciplining or discharging an employee for transferring the employer's
17 proprietary or confidential information or financial data to an employee's personal
18 social media without the employer's authorization.

19 (3) Conducting an investigation or requiring an employee to cooperate in an
20 investigation in any of the following circumstances:

21 (a) If there is specific information about activity on the employee's personal
22 social media, for the purpose of ensuring compliance with applicable laws,
23 regulatory requirements, or prohibitions against work-related employee misconduct.

24 (b) If the employer has specific information about an unauthorized transfer
25 of the employer's proprietary information, confidential information, or financial data
26 to an employee's personal social media.

27 (4) Restricting or prohibiting an employee's access to certain websites while
28 using an electronic communications device paid for in whole or in part by the

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

3 (5) Monitoring, reviewing, or accessing electronic data stored on an
4 electronic communications device paid for in whole or in part by the employer, or
5 traveling through or stored on an employer's network, in accordance with state and
6 federal law, except where the employee is connecting to an employer's wireless
7 Internet network, also known as Wi-Fi, through the employee's personal
8 communications device.

9 C. An employer shall not be prohibited or restricted from complying with a
10 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.

12 D. An employer shall not be prohibited or restricted from viewing,
13 accessing, or utilizing information about an employee or applicant that can be
14 obtained without any required access information or that is available in the public
15 domain.

16 §1954. Educational institutions; prohibited activities; exceptions

17 A. An educational institution shall not do any of the following:

18 (1) Request a student or prospective student to grant access to, allow
19 observation of, or disclose information that allows access to or observation of the
20 student's or prospective student's personal social media.

21 (2) Expel, discipline, fail to admit, or otherwise penalize or threaten to
22 penalize a student or prospective student for failure to grant access to, allow
23 observation of, or disclose information that allows access to or observation of the
24 student's or prospective student's personal social media.

25 B. An educational institution shall not be prohibited from requesting or
26 requiring a student to disclose access information to the educational institution to
27 gain access to or operate any of the following:

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

4 (2) An account or service provided by the educational institution that is
5 either obtained by virtue of the student's admission to the educational institution or
6 used by the student for educational purposes.

7 C. An educational institution shall not be prohibited or restricted from
8 viewing, accessing, or utilizing information about a student or applicant that can be
9 obtained without any required access information or that is available in the public
10 domain.

11 §1955. No duty to monitor; liability

12 A. This Chapter shall not create a duty for an employer or educational
13 institution to search or monitor the activity of an individual's personal social media.

14 B. An employer or educational institution shall not be liable under this
15 Chapter for failure to request or require that an employee, a student, an applicant for
16 employment, or a prospective student grant access to, allow observation of, or
17 disclose information that allows access to or observation of the employee's, student's,
18 applicants for employment, or prospective student's personal social media.

19 §1956. Violations; penalties; injunction; affirmative defense

20 A. Any person who violates any provision of this Chapter shall be guilty of
21 a misdemeanor and shall be fined not more than one thousand dollars.

22 B. An individual who is the subject of a violation of this Chapter may bring
23 a civil action to enjoin a violation of this Chapter. An action pursuant to this Section
24 may be brought in the district court for the parish where the alleged violation
25 occurred or for the parish where the person against whom the civil complaint is filed
26 resides or has his principal place of business.

27 C. It shall be an affirmative defense to an action under this Section that the
28 employer or educational institution acted to comply with requirements of a federal
29 law or a law of this state.

1 Section 2. This Act shall become effective upon signature by the governor or, if not
2 signed by the governor, upon expiration of the time for bills to become law without signature
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
5 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

James

HB No. 314

Abstract: Creates the Social Media Privacy Protection Act.

Proposed law shall be known and may be cited as the "Social Media Privacy Protection Act".

Proposed law defines "access information" as user name, password, login information, or other security information that protects access to personal social media.

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 or private educational testing service or 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 "social media" as an electronic service or account, or electronic content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant and text messages, e-mail, online services or accounts, or Internet website profiles or locations.

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

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

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

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

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

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

- (1) If there is specific information about activity on the employee's personal social media, 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 personal social media.

Proposed law provides that an employer shall not be prohibited from restricting or prohibiting an employee's access to certain websites while using an electronic communications device paid for 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 shall not be prohibited from monitoring, reviewing, or accessing electronic data stored on an electronic communications device paid for in whole or in part by the employer, or traveling through or stored on an employer's network, in accordance with state and federal law, except where the employee is connecting to an employer's wireless Internet network, also known as Wi-Fi, through the employee's personal communications device.

Proposed law provides that an employer shall not be 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 shall not be 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 prohibits an educational institution from doing any of the following:

- (1) Requesting a student or prospective student to grant access to, allow observation of, or disclose information that allows access to or observation of the student's or prospective student's personal social media.
- (2) Expelling, disciplining, failing to admit, or otherwise penalizing or threatening to penalize a student or prospective student for failure to grant access to, allow observation of, or disclose information that allows access to or observation of the student's or prospective student's personal social media.

Proposed law provides that an educational institution shall not be prohibited from requesting or requiring a 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 in whole or in part by the educational institution, except where the device has been provided to the student with the intent to permanently transfer the ownership of the device to the student.
- (2) An account or service provided by the educational institution that is either obtained by virtue of the student's admission to the educational institution or used by the student for educational purposes.

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

Proposed law shall not create a duty for an employer or educational institution to search or monitor the activity of an individual's personal social media.

An employer or educational institution shall not be liable under proposed law for failure to request or require that an employee, a student, an applicant for employment, or a prospective student grant access to, allow observation of, or disclose information that allows access to or observation of the employee's, student's, applicants for employment, or prospective student's personal social media.

Any person who violates any provision of proposed law shall be guilty of a misdemeanor and shall be fined not more than \$1,000.

An individual who is the subject of a violation of proposed law may bring a civil action to enjoin a violation of proposed law in the district court for the parish where the alleged violation occurred or for the parish where the person against whom the civil complaint is filed resides or has his principal place of business.

It shall be an affirmative defense to an action under proposed law that the employer or educational institution acted to comply with requirements of a federal law or a law of this state.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 51:1951-1956)