
DIGEST

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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)