

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 164
97TH GENERAL ASSEMBLY

Reported from the Committee on General Laws, February 28, 2013, with recommendation that the Senate Committee Substitute do pass.

0438S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 285, RSMo, by adding thereto one new section relating to employee password protection.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 285, RSMo, is amended by adding thereto one new
2 section, to be known as section 285.045, to read as follows:

**285.045. 1. This section shall be known and may be cited as "The
2 Password Privacy Protection Act".**

3 **2. As used in this section, the following terms shall mean:**

4 **(1) "Applicant", any person applying for employment;**

5 **(2) "Electronic communications device", any device that uses
6 electronic signals to create, transmit, and receive information which
7 shall include, but not be limited to, computers, telephones, personal
8 digital assistants, and other similar devices;**

9 **(3) "Employee", any person performing work or service of any
10 kind or character for hire within the state of Missouri, including
11 independent contractors;**

12 **(4) "Employer", any person or entity employing any person for
13 hire within the state of Missouri, including a public employer;**

14 **(5) "Employment", the act of employing or state of being
15 employed, engaged, or hired to perform work or services of any kind or
16 character within the state of Missouri;**

17 **(6) "Personal online account", an online account that is used by
18 an employee or applicant exclusively for personal communications
19 unrelated to any business purposes of the employer. Such account shall
20 not include any account created, maintained, used, or accessed by an**

21 employee or applicant for business related communications or for a
22 business purpose of the employer;

23 (7) "Personal online service", an online service that is used by an
24 employee or applicant exclusively for personal communication or use
25 unrelated to any business purposes of the employer. Such service shall
26 not include any service maintained, used, or accessed by an employee
27 or applicant for business related communications or uses or for a
28 business purpose of the employer;

29 (8) "Political subdivision", any agency of the state, county, city,
30 town, township, village, special district or subdistrict, or any unit of
31 the state authorized to levy taxes;

32 (9) "Public employer", every department, agency, or
33 instrumentality of the state or political subdivision of the state;

34 (10) "Work", any job, task, labor, services, or any other activity
35 for which compensation is provided, expected, or due.

36 3. Subject to the exceptions provided in subsection 4 of this
37 section, an employer shall not request or require an employee or
38 applicant to disclose any user name, password, or other authentication
39 means for accessing any personal online account or personal online
40 service.

41 4. An employer may request or require an employee to disclose
42 any user name, password, or other authentication means for accessing:

43 (1) Any electronic communications device supplied by or paid for
44 in whole or in part by the employer;

45 (2) Any accounts or services provided by the employer;

46 (3) Any accounts or services the employee uses for business
47 purposes; or

48 (4) Any accounts or services used as a result of the employee's
49 employment relationship with the employer.

50 5. An employer shall not:

51 (1) Discharge, discipline, or otherwise penalize or threaten to
52 discharge, discipline, or otherwise penalize an employee solely for an
53 employee's refusal to disclose any information specified in subsection
54 3 of this section;

55 (2) Fail or refuse to hire any applicant as a result of the
56 applicant's refusal to disclose any information specified in subsection
57 3 of this section; or

58 (3) Be held liable for failure to request or require that an
59 applicant or employee disclose any information specified in subsection
60 3 of this section.

61 6. An employee shall not transfer an employer's proprietary or
62 confidential information or financial data to an employee's personal
63 online account or personal online service without the employer's
64 authorization.

65 7. This section shall not be construed to prevent an employer
66 from engaging in any of the following activities:

67 (1) Conducting an investigation for the purposes of ensuring
68 compliance with applicable laws or regulations against work-related
69 employee misconduct based on the receipt of specific information about
70 activity on a personal online account or personal online service by an
71 employee or other source;

72 (2) Conducting an investigation of an employee's actions based
73 on the receipt of specific information about the unauthorized transfer
74 of an employer's proprietary information, confidential information or
75 financial data to a personal online account or personal online service
76 by an employee or other source;

77 (3) Conducting an investigation as specified in subdivision (1) or
78 (2) of this subsection that requires the employee's cooperation to share
79 the content that has been reported in order to make a factual
80 determination;

81 (4) Disciplining or discharging an employee for transferring the
82 employer's proprietary or confidential information or financial data to
83 an employee's personal internet account without the employer's
84 authorization;

85 (5) Restricting or prohibiting an employee's access to certain
86 websites while using an electronic communications device that is paid
87 for in whole or in part by the employer or while using an employer's
88 network or resources, in compliance with state and federal law; or

89 (6) Monitoring, reviewing, accessing, or blocking electronic data
90 stored on an electronic communications device that is paid for in whole
91 or in part by the employer, or such data that is traveling through or
92 stored on an employer's network, in compliance with state and federal
93 law.

94 8. This act shall not prohibit or restrict any employer from

95 viewing, accessing, or utilizing information about any employee or
96 applicant that can be obtained without the information specified in
97 subsection 3 of this section or that is available to the public.

98 **9. This act shall not be construed to prevent an employer from**
99 **complying with state or federal laws or regulations or the rules of self-**
100 **regulatory organizations as that term is defined in 15 U.S.C. 78c(a)(26).**

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