

FIRST REGULAR SESSION

[CORRECTED]

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 316

99TH GENERAL ASSEMBLY

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Reported from the Committee on General Laws, March 2, 2017, with recommendation that the Senate Committee Substitute do pass.

1356S.02C

ADRIANE D. CROUSE, Secretary.

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## AN ACT

To amend chapter 407, RSMo, by adding thereto eight new sections relating to password protection.

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

Section A. Chapter 407, RSMo, is amended by adding thereto eight new sections, to be known as sections 407.1700, 407.1710, 407.1720, 407.1730, 407.1740, 407.1750, 407.1760, and 407.1770, to read as follows:

**407.1700. As used in sections 407.1700 to 407.1770 the following words and phrases shall mean:**

(1) "Applicant", an applicant for employment who is eighteen years of age or older;

(2) "Educational institution", either:

(a) A private or public school, institution, or school district, or any subdivision thereof, that offers participants, students, or trainees an organized course of study or training that is academic, trade-oriented, or preparatory for gainful employment, as well as school employees and agents acting under the authority or on behalf of an educational institution; or

(b) A state or local educational agency authorized to direct or control an entity described in paragraph (a) of this subdivision;

(3) "Employee", an individual who is eighteen years of age or older and who provides services or labor to an employer in return for wages or other remuneration or compensation;

(4) "Employer", shall mean a person who is acting directly as an employer, or acting under the authority or on behalf of an employer, in

19 relation to an employee;

20 (5) "Personal online account", any online account maintained by  
21 an employee, student, or tenant, including but not limited to a social  
22 media or email account, that is protected by a login  
23 requirement. "Personal online account" does not include an account, or  
24 a discrete portion of an account, that was either:

25 (a) Opened at an employer's behest, or provided by an employer  
26 and intended to be used solely or primarily on behalf of or under the  
27 direction of the employer; or

28 (b) Opened at a school's behest, or provided by a school and  
29 intended to be used solely or primarily on behalf of or under the  
30 direction of the school;

31 (6) "Prospective student", an applicant for admission to an  
32 educational institution who is eighteen years of age or older;

33 (7) "Prospective tenant", a person who is eighteen years of age or  
34 older and who inquires about or applies to rent real property from a  
35 landlord for residential purposes;

36 (8) "Landlord", the owner or lawful possessor of real property  
37 who, in an exchange for rent, leases it to another person or persons for  
38 residential purposes;

39 (9) "Lease", a legally binding agreement between a landlord and  
40 a residential tenant or tenants for the rental of real property;

41 (10) "Specifically identified content", data or information stored  
42 in a personal online account that is identified with sufficient  
43 particularity to distinguish the discrete, individual piece of content  
44 being sought from any other data or information stored in the account  
45 with which it may share similar characteristics;

46 (11) "Student", any full-time or part-time student, participant, or  
47 trainee who is eighteen years of age or older and who is enrolled in a  
48 class or any other organized course of study at an educational  
49 institution;

50 (12) "Tenant", a person who is eighteen years of age or older who  
51 leases real property from a landlord, in exchange for rent, for  
52 residential purposes.

407.1710. Employers shall not:

2 (1) Require, request, or coerce an employee or applicant to:

3 (a) Disclose the username and password, password, or any other

4 means of authentication, or to provide access through the username or  
5 password, to a personal online account;

6 (b) Disclose the nonpublic contents of a personal online account;

7 (c) Provide password or authentication information to a personal  
8 technological device for purposes of gaining access to a personal online  
9 account, or to turn over an unlocked personal technological device for  
10 purposes of gaining access to a personal online account;

11 (d) Access a personal online account in the presence of the  
12 employer in a manner that enables the employer to observe the  
13 contents of such account; or

14 (e) Change the account settings of a personal online account so  
15 as to increase third party access to its content;

16 (2) Require or coerce an employee or applicant to add anyone,  
17 including the employer, to their list of contacts associated with a  
18 personal online account;

19 (3) Take any action or threaten to take any action to discharge,  
20 discipline, or otherwise penalize an employee in response to an  
21 employee's refusal to disclose any information specified in paragraphs  
22 (a) to (c) of subdivision (1) of this section or refusal to take any action  
23 specified in paragraphs (d) and (e) of subdivision (1) of this section or  
24 subdivision (2) of this section; or

25 (4) Fail or refuse to hire any applicant as a result of an  
26 applicant's refusal to disclose any information specified in paragraphs  
27 (a) to (c) of subdivision (1) of this section or refusal to take any action  
28 specified in paragraphs (d) and (e) of subdivision (1) of this section or  
29 subdivision (2) of this section.

407.1720. Educational institutions shall not:

2 (1) Require, request, or coerce a student or prospective student  
3 to:

4 (a) Disclose the username and password, password, or any other  
5 means of authentication, or provide access through the username or  
6 password, to a personal online account;

7 (b) Disclose the nonpublic contents of a personal online account;

8 (c) Provide password or authentication information to a personal  
9 technological device for purposes of gaining access to a personal online  
10 account, or to turn over an unlocked personal technological device for  
11 purposes of gaining access to a personal online account;

12           **(d) Access a personal online account in the presence of an**  
13 **educational institution employee or educational institution volunteer,**  
14 **including, but not limited to, a coach, teacher, or school administrator,**  
15 **in a manner that enables the educational institution employee or**  
16 **educational institution volunteer to observe the contents of such**  
17 **account; or**

18           **(e) Change the account settings of a personal online account so**  
19 **as to increase third party access to its content;**

20           **(2) Require or coerce a student or prospective student to add**  
21 **anyone, including a coach, teacher, school administrator, or other**  
22 **educational institution employee or educational institution volunteer,**  
23 **to their list of contacts associated with a personal online account;**

24           **(3) Take any action or threaten to take any action to discharge,**  
25 **discipline, prohibit from participating in curricular or extracurricular**  
26 **activities, or otherwise penalize a student in response to a student's**  
27 **refusal to disclose any information specified in paragraphs (a) to (c) of**  
28 **subdivision (1) of this section or refusal to take any action specified in**  
29 **paragraphs (d) and (e) of subdivision (1) of this section or subdivision**  
30 **(2) of this section; or**

31           **(4) Fail or refuse to admit any prospective student as a result of**  
32 **the prospective student's refusal to disclose any information specified**  
33 **in paragraphs (a) to (c) of subdivision (1) of this section or refusal to**  
34 **take any action specified in paragraphs (d) and (e) of subdivision (1) of**  
35 **this section or subdivision (2) of this section.**

**407.1730. Landlords shall not:**

2           **(1) Require, request, or coerce a tenant or prospective tenant to:**  
3           **(a) Disclose the username and password, password, or any other**  
4 **means of authentication, or to provide access through the username or**  
5 **password, to a personal online account;**

6           **(b) Disclose the nonpublic contents of a personal online account;**

7           **(c) Provide password or authentication information to a personal**  
8 **technological device for purposes of gaining access to a personal online**  
9 **account, or to turn over an unlocked personal technological device for**  
10 **purposes of gaining access to a personal online account;**

11           **(d) Access a personal online account in the presence of the**  
12 **landlord in a manner that enables the landlord to observe the contents**  
13 **of such account; or**

14           **(e) Change the account settings of a personal online account so**  
15 **as to increase third party access to its content;**

16           **(2) Require or coerce a tenant or prospective tenant to add**  
17 **anyone, including the landlord, to their list of contacts associated with**  
18 **a personal online account;**

19           **(3) Take any action or threaten to take any action to evict or**  
20 **otherwise penalize a tenant in response to tenant's refusal to disclose**  
21 **any information specified in paragraphs (a) to (c) of subdivision (1) of**  
22 **this section or refusal to take any action specified in paragraphs (d)**  
23 **and (e) of subdivision (1) of this section or subdivision (2) of this**  
24 **section;**

25           **(4) Fail or refuse to rent real property to, or otherwise penalize**  
26 **any prospective tenant as a result of a prospective tenant's refusal to**  
27 **disclose any information specified in paragraphs (a) to (c) of**  
28 **subdivision (1) of this section or refusal to take any action specified in**  
29 **paragraphs (d) and (e) of subdivision (1) of this section or subdivision**  
30 **(2) of this section; or**

31           **(5) Include any provisions in a new or renewal lease, executed**  
32 **after the date the provisions of sections 407.1700 to 407.1770 take effect,**  
33 **that conflict with this section. Any such conflicting lease provisions**  
34 **shall be deemed void and legally unenforceable.**

**407.1740. Nothing in sections 407.1700 to 407.1770 shall prevent**  
2 **an employer, educational institution, or landlord from:**

3           **(1) Accessing information about an applicant, employee, student,**  
4 **prospective student, tenant, or prospective tenant that is publicly**  
5 **available;**

6           **(2) Complying with state and federal laws, rules, and regulations,**  
7 **and the rules of self-regulatory organizations as defined in section**  
8 **3(a)(26) of the Securities and Exchange Act of 1934, 15 U.S.C. 78c(a)(26),**  
9 **or another statute governing self-regulatory organizations;**

10           **(3) For an employer, without requesting or requiring an**  
11 **employee or applicant to provide a username and password, password,**  
12 **or other means of authentication that provides access to a personal**  
13 **online account, requesting or requiring an employee or applicant to**  
14 **share specifically identified content that has been reported to the**  
15 **employer for the purpose of:**

16           **(a) Enabling an employer to comply with its own legal and**

17 regulatory obligations;

18 (b) Investigating an allegation, based on the receipt of  
19 information regarding specifically identified content, of the  
20 unauthorized transfer of an employer's proprietary or confidential  
21 information or financial data to an employee or applicant's personal  
22 online account; or

23 (c) Investigating an allegation, based on the receipt of  
24 information regarding specifically identified content, that has been  
25 reported to the employer for the purpose of complying with its own  
26 legal obligations, subject to all legal and constitutional protections that  
27 are applicable to the employee or applicant;

28 (4) For an educational institution, without requesting or  
29 requiring a student or prospective student to provide a username and  
30 password, password, or other means of authentication that provides  
31 access to a personal online account, requesting or requiring a student  
32 or prospective student to share specifically identified content that has  
33 been reported to the educational institution for the purpose of  
34 complying with its own legal obligations, subject to all legal and  
35 constitutional protections that are applicable to the student or  
36 prospective student;

37 (5) For a landlord, without requesting or requiring tenant or  
38 prospective tenant to provide a username and password, password, or  
39 other means of authentication that provides access to a personal online  
40 account, requesting or requiring a tenant or prospective tenant to  
41 share specifically identified content that has been reported to the  
42 landlord for the purpose of:

43 (a) Enabling a landlord to comply with its own legal and  
44 regulatory obligations; or

45 (b) Investigating an allegation, based on the receipt of  
46 information regarding specifically identified content, of a lease  
47 violation by the tenant where such a violation presents an imminent  
48 threat of harm to the health or safety of another tenant or occupant of  
49 the real property or of damage to the real property;

50 (6) Prohibiting an employee, applicant, student, or prospective  
51 student from using a personal online account for business or  
52 educational institution purposes; or

53 (7) Prohibiting an employee, applicant, student, or prospective

54 student from accessing or operating a personal online account during  
55 business or school hours or while on business or school property.

407.1750. If an employer, educational institution, or landlord  
2 inadvertently receives the username and password, password, or other  
3 means of authentication that provides access to a personal online  
4 account of an employee, applicant, student, prospective student, tenant,  
5 or prospective tenant through the use of an otherwise lawful  
6 technology that monitors the employer's, educational institution's, or  
7 landlord's network or employer-provided, educational  
8 institution-provided, or landlord-provided devices for network security  
9 or data confidentiality purposes, the employer, educational institution,  
10 or landlord:

11 (1) Is not liable for having the information;

12 (2) May not use the information to access the personal online  
13 account of the employee, applicant, student, prospective student,  
14 tenant, or prospective tenant;

15 (3) May not share the information with any other person or  
16 entity; and

17 (4) Shall delete the information as soon as is reasonably  
18 practicable, unless the information is being retained by the employer,  
19 educational institution, or landlord in connection with the pursuit of  
20 a specific criminal complaint or civil action, or the investigation  
21 thereof.

407.1760. 1. Any employer, educational institution, or landlord,  
2 including its employee or agents, who violates the provisions of  
3 sections 407.1700 to 407.1770 shall be subject to legal action for  
4 damages, to be brought by any person claiming a violation of the  
5 provisions of sections 407.1700 to 407.1770 has injured his or her person  
6 or reputation. A person so injured shall be entitled to actual damages,  
7 including mental pain and suffering endured on account of violation of  
8 the provisions of sections 407.1700 to 407.1770, reasonable attorneys'  
9 fees and other costs of litigation, and equitable relief, as may be  
10 appropriate.

11 2. Any employee or agent of an educational institution who  
12 violates the provisions of sections 407.1700 to 407.1770 may be subject  
13 to disciplinary proceedings and punishment. For educational  
14 institution employees who are represented under the terms of a

15 collective bargaining agreement, the provisions of sections 407.1700 to  
16 407.1770 prevail except where it conflicts with the collective bargaining  
17 agreement, any memorandum of agreement or understanding signed  
18 pursuant to the collective bargaining agreement, or any recognized and  
19 established practice relative to the members of the bargaining unit.

407.1770. Except as proof of a violation of the provisions of  
2 sections 407.1700 to 407.1770, no data obtained, accessed, used, copied,  
3 disclosed, or retained in violation of the provisions of sections 407.1700  
4 to 407.1770, nor any evidence derived therefrom, shall be admissible in  
5 any criminal, civil, administrative, or other proceeding.

Unofficial ✓

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