

FIRST REGULAR SESSION

# SENATE BILL NO. 316

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROWDEN.

Read 1st time January 19, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1356S.011

## AN ACT

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

*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;

(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 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 relation to an employee;

(5) "Personal online account", any online account maintained by an employee, student, or tenant, including but not limited to a social

21 media or email account, that is protected by a login  
22 requirement. "Personal online account" does not include an account, or  
23 a discrete portion of an account, that was either:

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

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

30 (6) "Prospective student", an applicant for admission to an  
31 educational institution;

32 (7) "Prospective tenant", a person who inquires about or applies  
33 to rent real property from a landlord for residential purposes;

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

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

39 (10) "Specifically identified content", data or information on a  
40 personal online account that is identified with sufficient particularity  
41 to:

42 (a) Demonstrate prior knowledge of the content's details; and

43 (b) Distinguish the content from other data or information on the  
44 account with which it may share similar characteristics;

45 (11) "Student", any full-time or part-time student, participant, or  
46 trainee that is enrolled in a class or any other organized course of  
47 study at an educational institution;

48 (12) "Tenant", a person who leases real property from a landlord,  
49 in exchange for rent, for 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 settings that affect a third party's ability to view  
15 the contents of a personal online account;

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 settings that affect a third party's ability to view**  
19 **the contents of a personal online account;**

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 settings that affect a third party's ability to view**  
15 **the contents of a personal online account;**

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, of unlawful**  
25 **harassment or threats of violence in the workplace;**

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

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

41 **(a) Enabling a landlord to comply with its own legal and**  
42 **regulatory obligations; or**

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

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

51 **(7) Prohibiting an employee, applicant, student, or prospective**  
52 **student from accessing or operating a personal online account during**  
53 **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.**

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