

FIRST REGULAR SESSION

HOUSE BILL NO. 912

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORNEJO.

1610L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapters 173 and 285, RSMo, by adding thereto two new sections relating to user name and password privacy protections.

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

Section A. Chapters 173 and 285, RSMo, are amended by adding thereto two new sections, to be known as sections 173.1600 and 285.050, to read as follows:

173.1600. 1. As used in this section, the following words mean:

(1) "Educational institution" or "school", a private or public institution that offers participants, students, or trainees an organized course of study or training that is academic, technical, trade-oriented, or preparatory for gainful employment in a recognized occupation;

(2) "Personal social media account", an account with an electronic medium or service where users may create, share, and view user-generated content, including, but not limited to, uploading or downloading videos or still photographs, blogs, video blogs, podcasts, messages, emails, or internet website profiles or locations. Personal social media account does not include an account opened at an employer's behest, or provided by an employer, and intended to be used solely on behalf of the employer, or to an account opened at a school's behest, or provided by a school, and intended to be used solely on behalf of the school;

(3) "Prospective student", an applicant for admission to an educational institution;

(4) "Student", any student, participant, or trainee, whether full-time or part-time, in an organized course of study at an educational institution.

2. An educational institution shall not:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

18 **(1) Require, request, or coerce a student or prospective student to disclose the user**
19 **name and password, password, or any other means of authentication, or provide access**
20 **through the user name or password, to a personal social media account;**

21 **(2) Require, request, or coerce a student or prospective student to access a personal**
22 **social media account in the presence of a school employee or school volunteer, including,**
23 **but not limited to, a coach, teacher, or school administrator, in a manner that enables the**
24 **school employee or school volunteer to observe the contents of such account; or**

25 **(3) Compel a student or prospective student to add anyone, including a coach,**
26 **teacher, school administrator, or other school employee or school volunteer, to his or her**
27 **list of contacts associated with a personal social media account or require, request, or**
28 **otherwise coerce a student or prospective student to change the settings that affect a third**
29 **party's ability to view the contents of a personal social media account.**

30 **3. An educational institution shall not:**

31 **(1) Take any action or threaten to take any action to discharge, discipline, prohibit**
32 **from participating in curricular or extracurricular activities, or otherwise penalize a**
33 **student for a student's refusal to disclose any information specified in subdivision (1) of**
34 **subsection 2 of this section, for refusal to take any action specified in subdivision (2) of**
35 **subsection 2 of this section, or for refusal to add a coach, teacher, school administrator, or**
36 **other school employee or school volunteer to his or her list of contacts associated with a**
37 **personal social media account or to change the settings that affect a third party's ability**
38 **to view the contents of a personal social media account, as specified in subdivision (3) of**
39 **subsection 2 of this section; or**

40 **(2) Fail or refuse to admit any prospective student as a result of the prospective**
41 **student's refusal to disclose any information specified in subdivision (1) of subsection 2 of**
42 **this section, for refusal to take any action specified in subdivision (2) of subsection 2 of this**
43 **section, or for refusal to add a coach, teacher, school administrator, or other school**
44 **employee or school volunteer to his or her list of contacts associated with a personal social**
45 **media account or to change the settings that affect a third party's ability to view the**
46 **contents of a personal social media account, as specified in subdivision (3) of subsection 2**
47 **of this section.**

48 **4. Nothing in this section prevents an educational institution from:**

49 **(1) Accessing information about a student or prospective student that is publicly**
50 **available;**

51 **(2) Complying with state and federal laws, rules, and regulations and the rules of**
52 **self-regulatory organizations, where applicable;**

53 **(3) Requesting or requiring a student or prospective student to share specific**
54 **content that has been reported to the school, without requesting or requiring a student or**
55 **prospective student to provide a user name and password, password, or other means of**
56 **authentication that provides access to a personal social media account, as part of:**

57 **(a) An investigation for the purpose of ensuring compliance with applicable laws**
58 **or regulatory requirements;**

59 **(b) An investigation of actual disruption to school functions based on receipt of**
60 **specific information about the unlawful harassment or bullying of a student by the student**
61 **or prospective student from whom the content is requested or required;**

62 **(4) Prohibiting a student or prospective student from using a personal social media**
63 **account for school purposes; or**

64 **(5) Prohibiting a student or prospective student from accessing or operating a**
65 **personal social media account during school hours or while on school property.**

66 **5. If a school inadvertently receives the user name and password, password, or**
67 **other means of authentication that provides access to a personal social media account of**
68 **a student or prospective student through the use of an otherwise lawful virus scan or**
69 **firewall that monitors the school's network or school-provided devices, the school is not**
70 **liable for having the information but shall not use the information to access the personal**
71 **social media account of the student or prospective student or share the information with**
72 **anyone, and shall delete the information immediately, if reasonably practicable.**

73 **6. It shall be an unlawful employment practice for an educational institution to**
74 **violate the provisions of this section. A student or prospective student may bring a cause**
75 **of action for general or specific damages based on any violation of this section.**

285.050. 1. As used in this section, the following words mean:

2 **(1) "Applicant", a person applying for employment;**

3 **(2) "Employee", an individual who provides services or labor for an employer for**
4 **wages or other remuneration;**

5 **(3) "Employer", a person engaged in a business, an industry, a profession, a trade,**
6 **or other enterprise in the state; or a unit of state or local government, including, but not**
7 **limited to, an agent, a representative, or a designee of the employer;**

8 **(4) "Personal social media account", an account with an electronic medium or**
9 **service where users may create, share, and view user-generated content, including, but not**
10 **limited to, uploading or downloading videos or still photographs, blogs, video blogs,**
11 **podcasts, messages, emails, or internet website profiles or locations. Personal social media**
12 **account does not include an account opened at an employer's behest, or provided by an**
13 **employer, and intended to be used solely on behalf of the employer, or to an account**

14 opened at a school's behest, or provided by a school, and intended to be used solely on
15 behalf of the school.

16 **2. An employer shall not:**

17 **(1) Require, request, or coerce an employee or applicant to disclose the user name
18 and password, password, or any other means of authentication, or to provide access
19 through the user name or password, to a personal social media account;**

20 **(2) Require, request, or coerce an employee or applicant to access a personal social
21 media account in the presence of the employer in a manner that enables the employer to
22 observe the contents of such account; or**

23 **(3) Compel an employee or applicant to add anyone, including the employer, to his
24 or her list of contacts associated with a personal social media account or require, request,
25 or otherwise coerce an employee or applicant to change the settings that affect a third
26 party's ability to view the contents of a personal social media account.**

27 **3. An employer shall not:**

28 **(1) Take any action or threaten to take any action to discharge, discipline, or
29 otherwise penalize an employee for an employee's refusal to disclose any information
30 specified in subdivision (1) of subsection 2 of this section, for refusal to take any action
31 specified in subdivision (2) of subsection 2 of this section, or for refusal to add the employer
32 to his or her list of contacts associated with a personal social media account or to change
33 the settings that affect a third party's ability to view the contents of a personal social media
34 account, as specified in subdivision (3) of subsection 2 of this section; or**

35 **(2) Fail or refuse to hire any applicant as a result of the applicant's refusal to
36 disclose any information specified in subdivision (1) of subsection 2 of this section, for
37 refusal to take any action specified in subdivision (2) of subsection 2 of this section, or for
38 refusal to add the employer to his or her list of contacts associated with a personal social
39 media account or to change the settings that affect a third party's ability to view the
40 contents of a personal social media account, as specified in subdivision (3) of subsection 2
41 of this section.**

42 **4. Nothing in this section prevents an employer from:**

43 **(1) Accessing information about an applicant or employee that is publicly available;**

44 **(2) Complying with state and federal laws, rules, and regulations and the rules of
45 self-regulatory organizations, where applicable;**

46 **(3) Requesting or requiring an employee or applicant to share specific content that
47 has been reported to the employer, without requesting or requiring an employee or
48 applicant to provide a user name and password, password, or other means of**

49 authentication that provides access to a personal social media account, as part of an
50 investigation for the purpose of:

51 (a) Ensuring compliance with applicable laws and regulatory requirements;

52 (b) An investigation based on receipt of specific information about the
53 unauthorized transfer of an employer's proprietary or confidential information or
54 financial data to an employee's or applicant's personal social media account;

55 (c) An investigation based on receipt of specific information about unlawful
56 harassment in the workplace;

57 (4) Prohibiting an employee or applicant from using a personal social media
58 account for business purposes; or

59 (5) Prohibiting an employee or applicant from accessing or operating a personal
60 social media account during business hours or while on business property.

61 5. If an employer inadvertently receives the user name and password, password,
62 or other means of authentication that provides access to a personal social media account
63 of an employee or applicant through the use of an otherwise lawful virus scan or firewall
64 that monitors the employer's network or employer-provided devices, the employer is not
65 liable for having the information but shall not use the information to access the personal
66 social media account of the employee or applicant or share the information with anyone,
67 and shall delete the information immediately, if reasonably practicable.

68 6. Nothing in this section shall be construed to prevent an employer from complying
69 with the requirements of state or federal statutes, rules or regulations, case law, or rules
70 of self-regulatory organizations.

71 7. It shall be an unlawful employment practice for an employer to violate the
72 provisions of this section. An aggrieved employee or applicant may bring an action as
73 established under sections 213.075 to 213.111.

✓