

By Senator Farmer

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1                   A bill to be entitled  
2       An act relating to personal online accounts; defining  
3       terms; prohibiting employers, educational  
4       institutions, or landlords from taking specified  
5       actions relating to personal online accounts;  
6       providing construction; requiring employers,  
7       educational institutions, or landlords that  
8       inadvertently receive authentication information for  
9       personal online accounts to take certain actions;  
10      providing that such employers, educational  
11      institutions, or landlords are not liable for having  
12      such information, subject to certain requirements;  
13      authorizing a person with specified injuries as a  
14      result of a violation of the act to bring legal  
15      action; specifying that such person is entitled to  
16      certain damages, fees, and costs; providing  
17      construction; providing that certain data relating to  
18      a violation of the act is inadmissible in certain  
19      proceedings, except for proof of a violation;  
20      providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24       Section 1. Personal Online Account Privacy Act.-

25       (1) DEFINITIONS.-As used in this section, the term:

26       (a) "Employee" has the same meaning as in s. 448.101,  
27 Florida Statutes.

28       (b) "Employer" has the same meaning as in s. 448.101,  
29 Florida Statutes.

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30 (c) "Educational institution" means:

31 1. A private or public school, institution, or school  
32 district, or any subdivision thereof, which offers participants,  
33 students, or trainees an organized course of study or training  
34 that is academic, trade oriented, or preparatory for gainful  
35 employment;

36 2. Educational institution employees or agents acting under  
37 the authority or on behalf of an educational institution; or

38 3. A state or local educational agency authorized to direct  
39 or control an entity identified in subparagraph 1.

40 (d) "Landlord" has the same meaning as in s. 83.43(3),  
41 Florida Statutes.

42 (e) "Lease" means a legally binding agreement between a  
43 landlord and a tenant for the rental of real property.

44 (f) "Personal online account" means any online account  
45 maintained by a person which is password protected, including,  
46 but not limited to, a social media account or an e-mail account.  
47 The term does not include an account or a discrete portion of an  
48 account that:

49 1. Was opened at an employer's behest or provided by an  
50 employer and intended to be used solely or primarily on behalf  
51 of or under the direction of the employer; or

52 2. Opened at an educational institution's behest or  
53 provided by an educational institution and intended to be used  
54 solely or primarily on behalf of or under the direction of the  
55 educational institution.

56 (g) "Prospective employee" means an applicant for  
57 employment.

58 (h) "Prospective student" means an applicant for admission

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59 to an educational institution.

60 (i) "Prospective tenant" means a person who inquires about  
61 or applies to rent for residential purposes a real property from  
62 a landlord.

63 (j) "Specifically identified content" means data or  
64 information stored in a personal online account which is  
65 identified with sufficient particularity to distinguish such  
66 content from any other data or information stored in the account  
67 with which it may share similar characteristics.

68 (k) "Student" means any person who is enrolled in a class  
69 or any other organized course of study at an educational  
70 institution, regardless of whether the enrollment is full-time  
71 or part-time.

72 (l) "Tenant" means a person who leases real property for  
73 residential purposes from a landlord.

74 (2) EMPLOYERS; PROHIBITED ACTS.—An employer may not do any  
75 of the following:

76 (a) Request, require, or coerce an employee or prospective  
77 employee to:

78 1. Disclose the username, password, or any other means of  
79 authentication, or provide access through the username or  
80 password, to a personal online account;

81 2. Disclose contents of a personal online account which are  
82 not available to the public;

83 3. Provide a password or any other authentication  
84 information to a personal technological device for the purposes  
85 of gaining access to a personal online account;

86 4. Turn over an unlocked personal technological device for  
87 purposes of gaining access to a personal online account;

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88       5. Access a personal online account in the presence of the  
89 employer in a manner that enables the employer to observe the  
90 contents of such account; or

91       6. Change the settings of an account so as to increase  
92 third-party access to such account's contents.

93       (b) Require or coerce an employee or a prospective employee  
94 to add any other person, including the employer, to the list of  
95 contacts associated with such employee's personal online  
96 account.

97       (c) Take or threaten any action to discharge, discipline,  
98 or otherwise penalize an employee as a result of his or her  
99 refusal to perform any of the actions specified in paragraph (a)  
100 or paragraph (b).

101       (d) Fail or refuse to hire a prospective employee as a  
102 result of the employee refusing to perform any of the actions  
103 specified in paragraph (a) or paragraph (b).

104       (3) EDUCATIONAL INSTITUTIONS; PROHIBITED ACTS.—An  
105 educational institution may not do any of the following:

106       (a) Require, request, or coerce a student or prospective  
107 student to:

108       1. Disclose the username, password, or any other means of  
109 authentication, or provide access through the username or  
110 password, to a personal online account;

111       2. Disclose contents of a personal online account which are  
112 not available to the public;

113       3. Provide a password or any other authentication  
114 information to a personal technological device for the purposes  
115 of gaining access to a personal online account;

116       4. Turn over an unlocked personal technological device for

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117 purposes of gaining access to a personal online account;

118 5. Access a personal online account in the presence of an  
119 employee or a volunteer of the educational institution,  
120 including, but not limited to, a coach, teacher, or school  
121 administrator, in a manner that enables such employee or  
122 volunteer to observe the contents of such account; or

123 6. Change the settings of an account so as to increase  
124 third-party access to such account's contents.

125 (b) Require or coerce a student or prospective student to  
126 add any person to the list of contacts associated with such  
127 student's personal online account.

128 (c) Take or threaten any action to discharge, discipline,  
129 prohibit from participating in curricular or extracurricular  
130 activities, or otherwise penalize a student as a result of the  
131 student refusing to perform any of the actions specified in  
132 paragraph (a) or paragraph (b).

133 (d) Fail or refuse to admit a prospective student as a  
134 result of the student refusing to perform any of the actions  
135 specified in paragraph (a) or paragraph (b).

136 (4) LANDLORDS; PROHIBITED ACTS.—A landlord may not do any  
137 of the following:

138 (a) Require, request, or coerce a tenant or prospective  
139 tenant to:

140 1. Disclose the username, password, or any other means of  
141 authentication, or provide access through the username or  
142 password, to a personal online account;

143 2. Disclose contents of a personal online account that are  
144 not available to the public;

145 3. Provide a password or any other authentication

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146 information to a personal technological device for the purposes  
147 of gaining access to a personal online account;

148 4. Turn over an unlocked personal technological device for  
149 purposes of gaining access to a personal online account;

150 5. Access a personal online account in the presence of the  
151 landlord in a manner that enables the landlord to observe the  
152 contents of such account; or

153 6. Change the settings of an account so as to increase  
154 third-party access to such account's contents.

155 (b) Require or coerce a tenant or prospective tenant to add  
156 any person to the list of contacts associated with such tenant's  
157 personal online account.

158 (c) Evict or otherwise penalize a tenant as a result of the  
159 tenant refusing to perform any of the actions specified in  
160 paragraph (a) or paragraph (b).

161 (d) Fail or refuse to rent to a prospective tenant as a  
162 result of the tenant refusing to perform any of the actions  
163 specified in paragraph (a) or paragraph (b).

164 (e) Include a provision in a lease which conflicts with  
165 this act. If a landlord includes such a provision, it is void  
166 and unenforceable.

167 (5) LIMITATIONS.—This act does not prohibit any of the  
168 following:

169 (a) An employer, an educational institution, or a landlord  
170 from:

171 1. Accessing information about an employee, a student, or a  
172 tenant, or a prospective employee, a student, or a tenant, as  
173 applicable, which is publicly available; or

174 2. Complying with state or federal laws, rules, or

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175 regulations or the rules of self-regulatory organizations as  
176 defined in s. 3(a)(26) of the Securities and Exchange Act of  
177 1934.

178 (b) An employer or an educational institution from:

179 1. Prohibiting an employee or student, or a prospective  
180 employee or a student, as applicable, from using a personal  
181 online account for business or educational institution purposes;  
182 or

183 2. Prohibiting an employee, a student, a prospective  
184 employee, or a prospective student from accessing or operating a  
185 personal online account during business or school hours or while  
186 on business or school property.

187 (c) An employer, if the employer does not also request or  
188 require an employee or a prospective employee to provide his or  
189 her username and password, his or her password, or another means  
190 of authentication which provides access to a personal online  
191 account, from requesting or requiring the employee or  
192 prospective employee to share specifically identified content  
193 that has been reported to the employer for the purpose of:

194 1. Enabling the employer to comply with its own legal and  
195 regulatory obligations;

196 2. Investigating an allegation, based on the receipt of  
197 information regarding specifically identified content, of the  
198 unauthorized transfer of an employer's proprietary or  
199 confidential information or financial data to an employee or  
200 prospective employee's personal online account; or

201 3. Investigating an allegation, based on the receipt of  
202 information regarding specifically identified content, of  
203 unlawful harassment or threats of violence in the workplace.

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204       (d) An educational institution, if it does not also request  
205 or require a student or prospective student to provide his or  
206 her username and password, his or her password, or another means  
207 of authentication that provides access to a personal online  
208 account, from requesting or requiring the student or prospective  
209 student to share specifically identified content that has been  
210 reported to the educational institution for the purpose of  
211 complying with its own legal obligations, subject to all legal  
212 and constitutional protections that are applicable to the  
213 student or prospective student.

214       (e) A landlord, if the landlord does not also request or  
215 require a tenant or prospective tenant to provide his or her  
216 username and password, his or her password, or another means of  
217 authentication that provides access to a personal online  
218 account, from requesting or requiring the tenant or prospective  
219 tenant to share specifically identified content that has been  
220 reported to the landlord for the purpose of:

221           1. Enabling a landlord to comply with its own legal and  
222 regulatory obligations; or

223           2. Investigating an allegation, based on the receipt of  
224 information regarding specifically identified content, of a  
225 lease violation by the tenant where such a violation presents an  
226 imminent threat of harm to the health or safety of another  
227 tenant or occupant of the real property or of damage to the real  
228 property.

229       (6) INADVERTENT RECEIPT OF PASSWORD.—If, through the use of  
230 an otherwise lawful technology that monitors its network or  
231 devices that it has provided to an employee, a student, or a  
232 tenant, or a prospective employee, student, or tenant, for



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233 network security or data confidentiality purposes, an employer,  
234 an educational institution, or a landlord that inadvertently  
235 receives the username and password, the password, or another  
236 means of authentication that provides access to a personal  
237 online account of the employee, student, or tenant, or the  
238 prospective employee, student, or tenant, as applicable, the  
239 employer, educational institution, or landlord, as applicable:

240 (a) Is not liable for having the information;

241 (b) May not use the information to access the personal  
242 online account of the employee, student, or tenant, or the  
243 prospective employee, student, or tenant;

244 (c) May not share the information with any other person or  
245 entity; and

246 (d) Must delete the information as soon as is reasonably  
247 practicable, unless it is retaining the information in  
248 connection with the pursuit of a specific criminal complaint or  
249 civil action, or the investigation thereof.

250 (7) ENFORCEMENT.—

251 (a) A person who is injured by a violation of this act,  
252 including an injury to his or her reputation, may bring an  
253 action for damages or equitable relief against his or her  
254 employer, educational institution, or landlord, including its  
255 employees or agents responsible for the violation. Such person  
256 is entitled to actual damages, including mental pain and  
257 suffering arising out of a violation of this act, and reasonable  
258 attorney fees and other costs of litigation.

259 (b) Any employee or agent of an educational institution who  
260 violates this act may be subject to disciplinary proceedings and  
261 action. If the educational institution employees are represented

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262 under the terms of a collective bargaining agreement, this act  
263 prevails except where it conflicts with the collective  
264 bargaining agreement, any memorandum of agreement or  
265 understanding signed pursuant to the collective bargaining  
266 agreement, or any recognized and established practice relative  
267 to the members of the bargaining unit.

268 (8) ADMISSIBILITY.—Except as proof of a violation of this  
269 act, data obtained, accessed, used, copied, disclosed, or  
270 retained in violation of this act, or any evidence derived  
271 therefrom, is not admissible in any criminal, civil,  
272 administrative, or other proceeding.

273 Section 2. This act shall take effect upon becoming a law.