



1 current student from participating in curricular or  
2 extracurricular activities; or

3 (2) Failing to or refusing to admit a prospective student.

4 "Content" means information, other than login information,  
5 that is contained in a protected personal online account,  
6 accessible to the account holder, and not publicly available.

7 "Educational institution" means a person that provides  
8 students at the postsecondary level an organized program of  
9 study or training that is academic, technical, trade-oriented,  
10 or preparatory for gaining employment and for which the person  
11 gives academic credit. The term includes:

12 (1) A public or private institution; and

13 (2) An agent or designee of the educational institution.

14 "Electronic" means relating to technology having  
15 electrical, digital, magnetic, wireless, optical,  
16 electromagnetic, or similar capabilities.

17 "Employee" means an individual who provides services or  
18 labor to an employer in exchange for salary, wages, or the  
19 equivalent or, for an unpaid intern, academic credit or  
20 occupational experience. The term includes:

21 (1) A prospective employee who has:



- 1 (A) Expressed to the employer an interest in being an
- 2 employee; or
- 3 (B) Applied to or is applying for employment by, or
- 4 is being recruited for employment by, the
- 5 employer; and

6 (2) An independent contractor.

7 "Employer" means a person that:

- 8 (1) Provides salary, wages, or the equivalent to an
- 9 employee in exchange for services or labor; or
- 10 (2) Engages the services or labor of an unpaid intern.

11 The term includes an agent or designee of an employer, but does  
12 not include the United States or any federal branch, department,  
13 or agency thereof.

14 "Login information" means a user name, password, or other  
15 means or credentials of authentication required to access or  
16 control:

- 17 (1) A protected personal online account; or
- 18 (2) An electronic device, which the employee's employer or
- 19 the student's educational institution has not supplied
- 20 or paid for in full, that itself provides access to or
- 21 control over a protected personal online account.



1 "Login requirement" means a requirement that login  
2 information shall be provided before a protected personal online  
3 account or electronic device can be accessed or controlled.

4 "Online" means accessible by means of a computer network or  
5 the Internet.

6 "Person" means an individual, estate, business or nonprofit  
7 entity, public corporation, government or governmental  
8 subdivision, agency, or instrumentality, or other legal entity.

9 "Personal technological device" means a technological  
10 device owned, leased, or otherwise lawfully possessed by an  
11 employee or student. The term does not include a device that:

12 (1) An employer or educational institution supplies or  
13 pays for in full; or

14 (2) An employee or student possesses, maintains, or uses  
15 primarily on behalf of or under the direction of an  
16 employer or educational institution in connection with  
17 the employee's employment or the student's education.

18 "Protected personal online account" means an employee's or  
19 student's online account that is protected by a login  
20 requirement. The term does not include an online account or the  
21 part of an online account:



- 1           (1) That is publicly available; or
- 2           (2) That the employer or educational institution has
- 3           notified the employee or student might be subject to a
- 4           request for login information or content, and that:
- 5           (A) The employer or educational institution supplies,
- 6           pays for in full, or issues login information
- 7           under its domain name; or
- 8           (B) The employee or student creates, maintains, or
- 9           uses primarily on behalf of or under the
- 10          direction of the employer or educational
- 11          institution in connection with the employee's
- 12          employment or the student's education.

13           "Publicly available" means available to the general public.

14           "Record" means information that is inscribed on a tangible  
15 medium or that is stored in an electronic or other medium and is  
16 retrievable in a perceivable form.

17           "State" means a state of the United States, the District of  
18 Columbia, the United States Virgin Islands, or any territory or  
19 insular possession subject to the jurisdiction of the United  
20 States.



1 "Student" means an individual who participates in an  
2 educational institution's organized program of study or  
3 training. The term includes:

4 (1) A prospective student who expresses to the institution  
5 an interest in being admitted to, applies for  
6 admission to, or is being recruited for admission by,  
7 the educational institution; and

8 (2) A parent or legal guardian of a minor student.

9 "Technological device" means any computer, cellular phone,  
10 smartphone, digital camera, video camera, audio recording  
11 device, or other electronic device that can be used for  
12 creating, storing, or transmitting information in the form of  
13 electronic data.

14 § -3 **Protected personal online accounts.** Except as  
15 provided in section -4, no employer or educational institution  
16 shall:

17 (1) Require, request, or coerce an employee or student to:

18 (A) Disclose the login information for a protected  
19 personal online account;

20 (B) Disclose the content of or provide access to a  
21 protected personal online account; provided that



1 an employer or educational institution may  
2 request an employee or student to add any person,  
3 including the employer or educational  
4 institution, to, or not remove any person from,  
5 the set of persons to which the employee or  
6 student grants access to the content;

7 (C) Alter the settings of a protected personal online  
8 account in a manner that makes the login  
9 information for, or content of the account more  
10 accessible to others;

11 (D) Access a protected personal online account in the  
12 presence of the employer or educational  
13 institution in a manner that enables the employer  
14 or educational institution to observe the login  
15 information for or content of the account; or

16 (E) Provide to the employer or educational  
17 institution the password or authentication  
18 information to a personal technological device  
19 for the purpose of gaining access to a protected  
20 personal online account, or relinquish a personal  
21 technological device to the employer or



1 educational institution for the purpose of  
2 gaining access to a protected personal online  
3 account; or

4 (2) Take, or threaten to take, adverse action against an  
5 employee or student for failure or refusal to comply  
6 with:

7 (A) An employer's or educational institution's  
8 requirement, request, or coercive action that  
9 violates paragraph (1); or

10 (B) An employer's or educational institution's  
11 request under paragraph (1)(B) to add any person  
12 to, or not remove any person from, the set of  
13 persons to which the employee or student grants  
14 access to the content of a protected personal  
15 online account.

16 § -4 **Limitations to prohibitions regarding employers and**  
17 **educational institutions.** (a) Nothing in this chapter shall

18 prohibit an employer or educational institution from:

19 (1) Accessing information about an employee or student  
20 that is publicly available;





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- 1           (2) Complying with a federal or state law, order of a  
2           court of competent jurisdiction, or rule of a self-  
3           regulatory organization established by federal or  
4           state law, including a self-regulatory organization as  
5           defined in the Securities and Exchange Act of 1934,  
6           title 15 United States Code section 78c(a)(26);
- 7           (3) Requiring or requesting, based on specific facts about  
8           an employee's or student's protected personal online  
9           account, access to content, but not login information,  
10          of the account in order to:
- 11          (A) Ensure compliance or investigate noncompliance,  
12             with:
- 13             (i) Federal or state law; or
- 14             (ii) An employer's or educational institution's  
15             prohibition against work-related employee or  
16             education-related student misconduct;  
17             provided that the employee or student has  
18             reasonable notice, is documented, of the  
19             prohibition and the prohibition was not  
20             created primarily to gain access to a  
21             protected personal online account;



1 provided that the access to content is subject to  
2 all legal and constitutional protections  
3 otherwise available to the employee or student;  
4 or

5 (B) Protect against:  
6 (i) A threat to safety;  
7 (ii) A threat to the employer's or educational  
8 institution's information technology,  
9 communications technology systems, or  
10 property; or

11 (iii) Disclosure of the employer or educational  
12 institution's nonpublic financial  
13 information, information in which the  
14 employer or educational institution has a  
15 proprietary interest, or information that  
16 the employer or educational institution has  
17 a legal obligation to keep confidential; or

18 (4) Prohibiting an employee or student from:  
19 (A) Using a protected personal online account for the  
20 employer's business or the educational  
21 institution's purposes; or



1 (B) Accessing or operating a protected personal  
2 online account during business or school hours,  
3 while on the employer's or educational  
4 institution's property, or while using the  
5 employer's or educational institution's  
6 technological device.

7 (b) An employer that accesses an employee's content for a  
8 purpose specified in subsection (a)(3):

9 (1) Shall reasonably attempt to limit its access to  
10 content that is relevant to the specified purpose;

11 (2) Shall use the content only for the specified purpose;  
12 and

13 (3) Shall not alter the content unless necessary to  
14 achieve the specified purpose.

15 (c) An employer or educational institution that acquires  
16 the login information for an employee's or a student's protected  
17 personal online account by means of otherwise lawful technology  
18 that monitors the network or devices owned or provided by the  
19 employer or educational institution, for a network security,  
20 data confidentiality, or system maintenance purpose:



- 1           (1) Shall not use the login information to access or  
2           enable another person to access the account;
- 3           (2) Shall make a reasonable effort to keep the login  
4           information secure;
- 5           (3) Unless otherwise provided in paragraph (4), shall  
6           dispose of the login information as soon as and as  
7           securely as reasonably practicable; and
- 8           (4) If the employer or educational institution retains the  
9           login information for use in an ongoing investigation  
10          of an actual or suspected breach of computer, network,  
11          or data security, shall make a reasonable effort to  
12          keep the login information secure and dispose of it as  
13          soon as and as securely as reasonably practicable  
14          after completing the investigation.

15           **§ -5 Civil actions for injunctive relief or damages.**

16          (a) A person who alleges a violation of this chapter may bring  
17          a civil action for appropriate injunctive relief or actual  
18          damages, or both, within one hundred eighty days after the  
19          occurrence of the alleged violation.

20          (b) An action commenced pursuant to subsection (a) may be  
21          brought in the circuit court for the circuit where the alleged



1 violation occurred, where the complainant resides, or where the  
2 person against whom the civil complaint is filed resides or has  
3 a principal place of business.

4 (c) As used in this section, "damages" means damages for  
5 injury or loss caused by each violation of this chapter,  
6 including reasonable attorney fees.

7 § -6 **Admissibility.** No data obtained, accessed, used,  
8 copied, disclosed, or retained in violation of this chapter, nor  
9 any evidence derived therefrom, shall be admissible in any  
10 criminal, civil, administrative, or other proceeding, except as  
11 proof of a violation of this chapter."

12 SECTION 2. This Act does not affect rights and duties that  
13 matured, penalties that were incurred, and proceedings that were  
14 begun before its effective date.

15 SECTION 3. This Act shall take effect upon its approval.

16

INTRODUCED BY:



JAN 19 2018



# H.B. NO. 2173

**Report Title:**

Internet; Privacy; Employees; Students

**Description:**

Prohibits employers and educational institutions from requiring employees, students, and prospective employees and students to provide protected personal online account information. Authorizes private civil actions against violators.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

