

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1358

99TH GENERAL ASSEMBLY

4168H.03P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To amend chapter 407, RSMo, by adding thereto seven 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 seven new sections, to be known as sections 407.1700, 407.1710, 407.1720, 407.1730, 407.1740, 407.1750, and 407.1760, to read as follows:

**407.1700. As used in sections 407.1700 to 407.1760, the following terms shall mean:**

**(1) "Applicant", an applicant for employment;**

**(2) "Educational institution", a public or private institution of higher education or a public or private school giving instruction in a grade or grades not higher than the twelfth grade 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;**

**(3) "Employee", an individual who provides services or labor to an employer in return for wages or other remuneration or compensation;**

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

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

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.

16 (7) "Personal online account", any online account maintained by a person and  
17 protected by a password, pin number, or other login requirement including, but not limited  
18 to, a social media or email account. The term "personal online account" does not include  
19 an account, or a discrete portion of an account, that was:

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

22 (b) Opened at an educational institution's behest or provided by an educational  
23 institution and intended to be used solely or primarily on behalf of or under the direction  
24 of the educational institution; or

25 (c) Accessed at an educational institution using the educational institution's  
26 resources;

27 (8) "Prospective student", those who seek admission to an educational institution  
28 and who are eighteen years of age or older;

29 (9) "Prospective tenant", those who inquire about or apply to rent real property  
30 from a landlord for residential purposes;

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

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

38 (12) "Tenant", those who lease real property from a landlord, in exchange for rent,  
39 for residential purposes.

407.1710. Employers shall not:

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

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

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

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

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

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

14 (2) Require or coerce an employee or applicant to add anyone, including the  
15 employer, to his or her list of contacts associated with a personal online account;

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

21 (4) Fail or refuse to hire any applicant as a result of an applicant's refusal to  
22 disclose any information specified in paragraphs (a) to (c) of subdivision (1) of this section  
23 or refusal to take any action specified in paragraphs (d) and (e) of subdivision (1) of this  
24 section or subdivision (2) of this section.

**407.1720. Educational institutions shall not:**

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

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

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

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

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

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

16 (2) Require or coerce a student or prospective student to add anyone, including a  
17 coach, teacher, school administrator, or other employee or volunteer of an educational  
18 institution, to his or her list of contacts associated with a personal online account;

19 (3) Take any action or threaten to take any action to discharge, discipline, prohibit  
20 from participating in curricular or extracurricular activities, or otherwise penalize a  
21 student in response to a student's refusal to disclose any information specified in  
22 paragraphs (a) to (c) of subdivision (1) of this section or refusal to take any action specified

23 in paragraphs (d) and (e) of subdivision (1) of this section or subdivision (2) of this section;  
24 or

25 (4) Fail or refuse to admit any prospective student as a result of the prospective  
26 student's refusal to disclose any information specified in paragraphs (a) to (c) of  
27 subdivision (1) of this section or refusal to take any action specified in paragraphs (d) and  
28 (e) of subdivision (1) of 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 means of  
4 authentication, or provide access through the username or password, to a personal online  
5 account;

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

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

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

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

14 (2) Require or coerce a tenant or prospective tenant to add anyone, including the  
15 landlord, to his or her list of contacts associated with a personal online account;

16 (3) Take any action or threaten to take any action to evict or otherwise penalize a  
17 tenant in response to the tenant's refusal to disclose any information specified in  
18 paragraphs (a) to (c) of subdivision (1) of this section or refusal to take any action specified  
19 in paragraphs (d) and (e) of subdivision (1) of this section or subdivision (2) of this section;

20 (4) Fail or refuse to rent real property to or otherwise penalize any prospective  
21 tenant as a result of a prospective tenant's refusal to disclose any information specified in  
22 paragraphs (a) to (c) of subdivision (1) of this section or refusal to take any action specified  
23 in paragraphs (d) and (e) of subdivision (1) of this section or subdivision (2) of this section;  
24 or

25 (5) Include any provisions in a new or renewal lease, executed on or after the date  
26 the provisions of sections 407.1700 to 407.1760 take effect, that conflict with this section.  
27 Any such conflicting lease provisions shall be deemed void and legally unenforceable.

**407.1740. 1. Nothing in sections 407.1700 to 407.1760 shall prevent an employer  
2 from:**

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

4           **(2) Complying with state and federal laws, rules, and regulations and the rules of**  
5 **self-regulatory organizations, as defined in 15 U.S.C. Section 78c(a)(26), or another statute**  
6 **governing self-regulatory organizations;**

7           **(3) Without requiring an employee or applicant to provide a username and**  
8 **password, password, or other means of authentication that provides access to a personal**  
9 **online account, requesting or requiring an employee or applicant to share specifically**  
10 **identified content that has been reported to the employer for the purpose of:**

11           **(a) Enabling an employer to comply with its own legal and regulatory obligations**  
12 **or adopted policies or procedures;**

13           **(b) Investigating an allegation, based on the receipt of information regarding**  
14 **specifically identified content, of the unauthorized transfer of an employer's proprietary**  
15 **or confidential information or financial data to an employee's or applicant's personal**  
16 **online account; or**

17           **(c) Investigating an allegation, based on the receipt of information regarding**  
18 **specifically identified content, that has been reported to the employer for the purpose of**  
19 **complying with its own legal obligations or adopted policies or procedures, subject to all**  
20 **legal and constitutional protections that are applicable to the employee or applicant;**

21           **(4) Prohibiting an employee or applicant from using a personal online account for**  
22 **business purposes; or**

23           **(5) Prohibiting an employee or applicant from accessing or operating a personal**  
24 **online account during business hours or while on business property.**

25           **2. Nothing in sections 407.1700 to 407.1760 shall prevent an educational institution**  
26 **from:**

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

29           **(2) Complying with state and federal laws, rules, and regulations, and the rules of**  
30 **self-regulatory organizations, as defined in 15 U.S.C. Section 78c(a)(26), or another statute**  
31 **governing self-regulatory organizations;**

32           **(3) Without requiring a student or prospective student to provide a username and**  
33 **password, password, or other means of authentication that provides access to a personal**  
34 **online account, requesting or requiring a student or prospective student to share**  
35 **specifically identified content that has been reported to the educational institution for the**  
36 **purpose of complying with its own legal obligations or adopted policies or procedures,**  
37 **subject to all legal and constitutional protections that are applicable to the student or**  
38 **prospective student;**

39           **(4) Prohibiting a student or prospective student from using a personal online**  
40 **account for educational institution purposes; or**

41           **(5) Prohibiting a student or prospective student from accessing or operating a**  
42 **personal online account during educational institution hours or while on educational**  
43 **institution property.**

44           **3. Nothing in sections 407.1700 to 407.1760 shall prevent a landlord from:**

45           **(1) Accessing information about a tenant or prospective tenant that is publicly**  
46 **available;**

47           **(2) Complying with state and federal laws, rules, and regulations, and the rules of**  
48 **self-regulatory organizations, as defined in 15 U.S.C. Section 78c(a)(26), or another statute**  
49 **governing self-regulatory organizations; or**

50           **(3) Without requesting or requiring a tenant or prospective tenant to provide a**  
51 **username and password, password, or other means of authentication that provides access**  
52 **to a personal online account, requesting or requiring a tenant or prospective tenant to**  
53 **share specifically identified content that has been reported to the landlord for the purpose**  
54 **of:**

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

56           **(b) Investigating an allegation, based on the receipt of information regarding**  
57 **specifically identified content, of a lease violation by the tenant where such a violation**  
58 **presents an imminent threat of harm to the health or safety of another tenant or occupant**  
59 **of the real property or of damage to the real property.**

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

8           **(1) Is not liable for obtaining, possessing, or otherwise having the information;**

9           **(2) Shall not use the information to access the personal online account of the**  
10 **employee, applicant, student, prospective student, tenant, or prospective tenant without**  
11 **the individual's express written consent;**

12           **(3) Shall not share the information with any other person or entity, unless such**  
13 **disclosure is required by law; and**

14           **(4) Shall delete the information as soon as is reasonably practicable, unless the**  
15 **information is being retained by the employer, educational institution, or landlord in**

16 connection with the pursuit of a specific criminal complaint or civil action, or the  
17 investigation thereof.

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

9 2. Any employee or agent of an educational institution who violates the provisions  
10 of sections 407.1700 to 407.1760 may be subject to disciplinary proceedings and  
11 punishment. For educational institution employees who are represented under the terms  
12 of a collective bargaining agreement, the provisions of sections 407.1700 to 407.1760 prevail  
13 except where they conflict with the collective bargaining agreement, any memorandum of  
14 agreement or understanding signed pursuant to the collective bargaining agreement, or  
15 any recognized and established practice relative to the members of the bargaining unit.

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