

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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Rep. Jeff Hickman
2300 N. Lincoln Blvd.
Room 336
Oklahoma City, OK 73105

RE: HB 2372, *Protects employees from being required to disclose personal user names or passwords*

Dear Speaker Hickman:

We appreciate goals of HB 2372 however, there are several fundamental flaws that would create unintended harms for businesses. To overcome these flaws, we recommend adopting the amendments proposed by the State Privacy & Security Coalition – some of these amendments can be found below.

First, the bill prohibits an employer for asking for a “user name” alone. The problem is that the “user name” for a personal email account *is* the email address. So, an employer would violate the law just by asking for an applicant’s email address to follow-up on a job interview. I’m sure this is not what you had intended when you drafted this legislation.

To correct this problem, while maintaining the integrity of the bill, we suggest that you simply add the word “and,” thus making it illegal for an employer to request a “user name *and* password.”

Here are the in-line edits:

Section 1(A)

1. Request or require an employee or prospective employee to disclose a username and password, password or other means of authentication for accessing a personal online account through an electronic communications device;

Second, the bill gives terminated employees new opportunities for abusive lawsuits. To avoid this issue we suggest the following edits:

Section 1(A)

3. Take retaliatory personnel action against an employee solely for the employee’s refusal to give the employer access to the employee’s personal online account; and

Third, the bill overly constrains an employer’s ability to investigate crimes committed such as harassment or theft, or monitor business issued devices. To address these concerns we recommend the following edits:

Section (1):

B. An employer may request or require an employee to disclose any username or password for accessing:

1. Any electronic communications device provided or subsidized by the employer, or
2. Any accounts or services provided by the employer or by virtue of the employee's employment relationship with the employer or that the employee uses for business purposes.

C. If, through the use of an electronic device or program that monitors an employer's network or the use of employer provided devices, an employer inadvertently receives an employee's username and password, password, or other authentication information, the employer is not liable for having this information, but may not use this information to access an employee's personal online account.

D. Nothing in this section shall prevent an employer from:

1. Conducting an investigation:

(a) for the purpose of ensuring compliance with applicable laws, regulatory requirements or prohibitions against work-related employee misconduct based on the receipt of specific information about activity on a personal online account or personal online service by an employee or other source;

(b) of an employee's actions based on the receipt of specific information about the unauthorized transfer of an employer's proprietary information, confidential information or financial data to a personal online account or personal online service by an employee or other source;

(c) conducting an investigation as specified in paragraphs (a) and (b) includes requiring the employee's cooperation to share the content that has been reported in order to make a factual determination.

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

Finally, we suggest that the bill clearly state what is and is not a personal online account. We suggest the following definition:

2. "Personal online account" means an online account that is used by an employee or prospective employee primarily or exclusively for personal communications.

Thank you for your work on this bill and for considering our views. Please let me know if we can provide further information.

Sincerely,



Carl Szabo

Policy Counsel, NetChoice

NetChoice is a coalition of e-Commerce businesses. More information at www.netchoice.org