



## Student User Name and Password Privacy Protection Model Bill

### Section 1. Definitions – As used in this Act,

- (A) “Personal social media account” shall mean 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, e-mails, or Internet website profiles or locations. Personal social media account does not include an account opened at a school’s behest, or provided by a school, and intended to be used solely on behalf of the school.
- (B) “Educational institution” shall mean:
  - (1) A private or public school, institution or school district, or any subdivision thereof, that offers participants, students or trainees an organized course of study or training that is academic, trade-oriented, or preparatory for gainful employment, as well as school employees and agents acting under the authority or on behalf of an educational institution; or
  - (2) A state or local educational agency authorized to direct or control an entity in Section 1(E)(1).
- (C) “Prospective student” shall mean an applicant for admission to an educational institution.
- (D) “Specific content” shall mean data or information on a personal social media account that is identified with sufficient particularity to:
  - (1) Demonstrate prior knowledge of the content’s details; and
  - (2) Distinguish the content from other data or information on the account with which it may share similar characteristics.
- (E) “Student” shall mean any student, participant or trainee, whether full-time or part-time, in an organized course of study at an educational institution.

### Section 2. An educational institution shall not:

- (A) Require, request, or coerce a student or prospective student to disclose the user name and password, password, or any other means of authentication, or provide access through the user name or password, to a personal social media account;
- (B) Require, request, or coerce a student or prospective student to access a personal social media account in the presence of a school employee or school volunteer, including, but not limited to, a coach, teacher, or school administrator, in a manner that enables the school employee or school volunteer to observe the contents of such account; or
- (C) Compel a student or prospective student to add anyone, including a coach, teacher, school administrator, or other school employee or school volunteer, to their list of contacts



associated with a personal social media account or require, request, or otherwise coerce a student or applicant to change the settings that affect a third party's ability to view the contents of a personal social networking account.

**Section 3.** An education institution shall not:

- (A) Take any action or threaten to take any action to discharge, discipline, prohibit from participating in curricular or extracurricular activities, or otherwise penalize a student for a student's refusal to disclose any information specified in Section 2(A), for refusal to take any action specified in Section 2(B) or for refusal to add a coach, teacher, school administrator, or other school employee or school volunteer to their list of contacts associated with a personal social media account or to change the settings that affect a third party's ability to view the contents of a personal social media account, as specified in Section 2(C); or
- (B) Fail or refuse to admit any prospective student as a result of the prospective student's refusal to disclose any information specified in Section 2(A) or for refusal to take any action specified in Section 2(B), for refusal to add a coach, teacher, school administrator, or other school employee or school volunteer to their list of contacts associated with a personal social media account or to change the settings that affect a third party's ability to view the contents of a personal social media account, as specified in Section 2(C).

**Section 4.** Nothing in this Act shall prevent an educational institution from:

- (A) Accessing information about a student or prospective student that is publicly available;
- (B) Complying with state and federal laws, rules, and regulations and the rules of self-regulatory organizations, where applicable;
- (C) Requesting or requiring a student or prospective student to share specific content that has been reported to the school, without requesting or requiring an student or prospective student to provide a user name and password, password, or other means of authentication that provides access to a personal social media account, for the purpose of:
  - (1) Ensuring compliance with applicable laws or regulatory requirements; or
  - (2) Investigating an allegation, based on receipt of specific information, of the unlawful harassment or bullying of another student by the student or prospective student from whom the content is requested or required.
- (D) Prohibiting a student or prospective student from using a personal social media account for school purposes; or
- (E) Prohibiting a student or prospective student from accessing or operating a personal social media account during school hours or while on school property.



**Section 5.** If an educational institution inadvertently receives the user name and password, password, or other means of authentication that provides access to a personal social media account of an employee, applicant, student, or prospective student through the use of an otherwise lawful virus scan or firewall that monitors the educational institution’s network or educational institution-provided devices, the educational institution is not liable for having the information, but may not use the information to access the personal social media account of the student or prospective student, may not share the information with anyone, and must delete the information immediately or as soon as is reasonably practicable.

**Section 6. Enforcement**

- (A) Any educational institution, including its employee or agents, who violates this Act shall be subject to legal action for damages and/or equitable relief, to be brought by any other person claiming a violation of this Act has injured his or her person or reputation. A person so injured shall be entitled to actual damages, including mental pain and suffering endured on account of violation of the provisions of this Act, and a reasonable attorney’s fee and other costs of litigation.
- (B) Any educational institution employee or agent who violates this Act may be subject to disciplinary proceedings and punishment. For educational institution employees who are represented under the terms of a collective bargaining agreement, this Act prevails except where it conflicts with the collective bargaining agreement, any memorandum of agreement or understanding signed pursuant to the collective bargaining agreement, or any recognized and established practice relative to the members of the bargaining unit.

**Section 7. Severability:**

The provisions in this Act are severable. If any part or provision of this Act, or the application of this Act to any person, entity, or circumstance, is held invalid, the remainder of this Act, including the application of such part or provision to other persons, entities, or circumstances, shall not be affected by such holding and shall continue to have force and effect.

**Section 8. Effective Date:**

This Act shall take effect upon passage.