

STATE PRIVACY AND SECURITY COALITION

April 12, 2017

Sen. Kevin Mullin
Chair, Senate Committee on Economic Development,
Housing and General Affairs
115 State Street
Montpelier, Vermont 05633-5301

Re: Vermont H. 462, Relating to Social Media Privacy for Employees

Chair Mullin and Members of the Committee:

Thank you for the opportunity to testify regarding Vermont H. 462, relating to social media privacy for employers. I am speaking on behalf of the State Privacy & Security Coalition, which is comprised of 25 major technology and media companies and six trade associations. Our coalition supports H. 462, as passed by the House. The bill closely resembles a model social media privacy bill drafted by our Coalition and the ACLU. We ask that you consider two small but necessary amendments to the bill.

First, we support H. 462 because would prohibit employers from *compelling* employees or applicants to add the employer to a social media contact list, but would allow *requests* to do so. This is a valuable change in light of the way businesses communicate with employees, customers, and the general public today. Many businesses post updates and offers or specials on social media, for example, and it is reasonable that the employer would invite employees to add the employer to their list of contacts.

Second, employers must be able to ensure compliance with all applicable laws and regulatory requirements, in addition to prohibitions against work-related employee misconduct. The bill, as amended by the House, would allow for that. It would allow employers to request that an employee share specific content regarding a personal account for these limited purposes.

We respectfully request that you consider two amendments to the bill. The first pertains to Section 495(k)(1)(C), regarding investigations of unlawful harassment, threats of violence, or discriminatory or disparaging content concerning an employee. As currently drafted, the bill would limit employers to investigating these allegations as they pertain to “employees in the workplace”. Employers need the ability to investigate these allegations even if they pertain to people who come into the workplace but who are not employees – contractors, for example. We suggest striking “in the workplace” and changing the phrase “concerning another employee” to “concerning an employee, agent or contractor”. The revised section would state, “investigating an allegation of unlawful harassment, threats of violence, or discriminatory or disparaging content concerning an employee, agent or contractor.”

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The second proposed change pertains to Section 495(k)(f), regarding employer-issued electronic devices. As currently drafted, the bill limits employers to accessing employer-issued electronic devices. More and more frequently, however, businesses are allowing employees to do work on their own devices – also known as “bring your own device”. It is possible the only copy of certain work-related data could be on an employee’s own device, which they were using for both personal matters and work-related matters. We propose adding the following phrase to the end of that clause. The section would state, “Nothing in this section shall preclude an employer from requesting or requiring an employee to provide a username or password that is necessary to access an employer-issued electronic device or an account or service provided by the employer, obtained by virtue of the employee’s employment relationship with the employer, or used for the employer’s business purposes.” The addition would ensure that employers could acquire data needed for one of the purposes allowed under the bill.

Overall, the bill strikes an appropriate balance of protecting employee privacy while leaving room for employer practices to protect employers’ networks, systems, and proprietary information. With the addition of our proposed amendments, the bill mirrors the model bill developed by industry and the ACLU.

Thank you for your consideration.