

112TH CONGRESS
2D SESSION

S. 3074

To prohibit employers from compelling or coercing any person to authorize access to a protected computer, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2012

Mr. BLUMENTHAL (for himself, Mr. SCHUMER, Ms. KLOBUCHAR, Mr. WYDEN, Mrs. SHAHEEN, Mr. AKAKA, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit employers from compelling or coercing any person to authorize access to a protected computer, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Password Protection
5 Act of 2012”.

6 **SEC. 2. PROHIBITED ACTIVITY.**

7 (a) IN GENERAL.—Section 1030(a) of title 18,
8 United States Code, is amended—

1 (1) in paragraph (7)(C), by inserting “or” after
2 the semicolon; and

3 (2) by inserting after paragraph (7)(C) the fol-
4 lowing:

5 “(8) acting as an employer, knowingly and in-
6 tentionally—

7 “(A) for the purposes of employing, pro-
8 moting, or terminating employment, compels or
9 coerces any person to authorize access, such as
10 by providing a password or similar information
11 through which a computer may be accessed, to
12 a protected computer that is not the employer’s
13 protected computer, and thereby obtains infor-
14 mation from such protected computer; or

15 “(B) discharges, disciplines, discriminates
16 against in any manner, or threatens to take any
17 such action against, any person—

18 “(i) for failing to authorize access de-
19 scribed in subparagraph (A) to a protected
20 computer that is not the employer’s pro-
21 tected computer; or

22 “(ii) who has filed any complaint or
23 instituted or caused to be instituted any
24 proceeding under or related to this para-

1 graph, or has testified or is about to testify
2 in any such proceeding;”.

3 (b) FINE.—Section 1030(e) of title 18, United States
4 Code, is amended—

5 (1) in paragraph (4)(G)(ii), by striking the pe-
6 riod at the end and inserting “; and”; and

7 (2) by adding at the end the following:

8 “(5) a fine under this title, in the case of an
9 offense under subsection (a)(8) or an attempt to
10 commit an offense punishable under this para-
11 graph.”.

12 (c) DEFINITIONS.—Section 1030(e) of title 18,
13 United States Code, is amended—

14 (1) in paragraph (11), by striking “and” after
15 the semicolon;

16 (2) in paragraph (12), by striking the period
17 and inserting a semicolon; and

18 (3) by adding at the end the following:

19 “(13) the term ‘employee’ means an employee,
20 as such term is defined in section 201(2) of the Ge-
21 netic Information Nondiscrimination Act of 2008
22 (42 U.S.C. 2000ff(2));

23 “(14) the term ‘employer’ means an employer,
24 as such term is defined in such section 201(2); and

1 “(15) the term ‘employer’s protected computer’
2 means a protected computer of the employer, includ-
3 ing any protected computer owned, operated, or oth-
4 erwise controlled by, for, or on behalf of that em-
5 ployer.”.

6 (d) EXCEPTIONS.—Section 1030(f) of title 18,
7 United States Code, is amended—

8 (1) by striking “(f) This” and inserting “(f)(1)
9 This”; and

10 (2) by adding at the end the following:

11 “(2)(A) Nothing in subsection (a)(8) shall be con-
12 strued to limit the authority of a court of competent juris-
13 diction to grant equitable relief in a civil action, if the
14 court determines that there are specific and articulable
15 facts showing that there are reasonable grounds to believe
16 that the information sought to be obtained is relevant and
17 material to protecting the intellectual property, a trade se-
18 cret, or confidential business information of the party
19 seeking the relief.

20 “(B) Notwithstanding subsection (a)(8), the prohibi-
21 tion in such subsection shall not apply to an employer’s
22 actions if—

23 “(i) the employer discharges or otherwise dis-
24 ciplines an individual for good cause and an activity
25 protected under subsection (a)(8) is not a motivating

1 factor for the discharge or discipline of the indi-
2 vidual;

3 “(ii) a State enacts a law that specifically
4 waives subsection (a)(8) with respect to a particular
5 class of State government employees or employees
6 who work with individuals under 13 years of age,
7 and the employer’s action relates to an employee in
8 such class; or

9 “(iii) an Executive agency (as defined in section
10 105 of title 5), a military department (as defined in
11 section 102 of such title), or any other entity within
12 the executive branch that comes into the possession
13 of classified information, including the Defense In-
14 telligence Agency, National Security Agency, and
15 National Reconnaissance Office, specifically waives
16 subsection (a)(8) with respect to a particular class
17 of employees requiring eligibility for access to classi-
18 fied information under Executive Order 12968 (60
19 Fed. Reg. 40245), or any successor thereto, and the
20 employer’s action relates to an employee in such
21 class.”.

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