

112TH CONGRESS
2D SESSION

S. _____

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

Mr. BLUMENTHAL introduced the following bill; which was read twice and referred to the Committee on _____

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—

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

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

3 “(8) acting as an employer, knowingly and in-
4 tentionally—

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

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

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

20 “(ii) who has filed any complaint or
21 instituted or caused to be instituted any
22 proceeding under or related to this para-
23 graph, or has testified or is about to testify
24 in any such proceeding;”.

1 (b) FINE.—Section 1030(c) of title 18, United States
2 Code, is amended—

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

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

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

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

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

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

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

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

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

23 “(15) the term ‘employer’s protected computer’
24 means a protected computer of the employer, includ-
25 ing any protected computer owned, operated, or oth-

1 erwise controlled by, for, or on behalf of that em-
2 ployer.”.

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

5 (1) by striking “(f) This” and inserting “(f)(1)
6 This”; and

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

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

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

20 “(i) the employer discharges or otherwise dis-
21 ciplines an individual for good cause and an activity
22 protected under subsection (a)(8) is not a motivating
23 factor for the discharge or discipline of the indi-
24 vidual;

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

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