



**Testimony of Becky Straus, Legislative Director  
In Support of HB 2654A and A7 Amendment  
Senate Committee on General Government, Consumer and Small Business Protection  
May 1, 2013**

Chair Shields and Members of the Committee:

HB 2654A would prohibit employers from compelling access to employees' personal social media accounts. Thank you for the opportunity to testify in support of the bill. This committee held a public hearing on this concept as SB 344 on February 13. On April 10 this committee held a work session on SB 344 to remove the provisions in that bill addressing social media password privacy in the employment context. HB 2654A carries that concept and it passed the House with a vote of 56-3-1.

HB 2654A has been negotiated to address concerns from large technology employers, represented by TechAmerica, and includes provisions to clarify that nothing in the bill would prevent employers from protecting the security of their business-related information or from conducting investigations of employee misconduct. We are pleased with the product of these negotiations and ask for your support.

**Social media passwords vulnerable to privacy violation**

A growing number of employers are demanding that job applicants and employees hand over the passwords to their private social networking accounts such as Facebook.

Such demands constitute an invasion of privacy. Private activities that would never be intruded upon offline should not receive less privacy protection simply because they take place online. Of course an employer would not be permitted to read an applicant's diary or postal mail, listen in on the chatter at private gatherings with friends, or look at that person's private videos and photo albums. They should not expect the right to do the electronic equivalent.

In states across the country, examples of this abuse are surfacing. We commend Representative Doherty for her foresight to put in place the necessary legal protections before we hear of a great number of instances in Oregon.

**Examples**

- Robert Collins of Maryland was required to provide his Facebook login to his employer, the Maryland Division of Corrections, as part of a reinstatement interview after a leave of absence.<sup>1</sup>
- Justin Bassett, a statistician from New York, was asked for his Facebook password during a job interview. (He withdrew his application saying he didn't want to work for an organization that would seek such personal information.)<sup>2</sup>

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<sup>1</sup> Curtis, Meredith. "Want a Job? Password, Please!" *ACLU Blog of Rights*. 18 February 2011.  
<http://www.aclu.org/blog/technology-and-liberty/want-job-password-please>

- The Norman, Oklahoma Police Department asks applicants to turn over their Facebook passwords as part of background checks.<sup>3</sup>
- Until 2011, when there was public outcry, the City of Bozeman, Montana instructed all job applicants to provide passwords for all social media accounts.<sup>4</sup>
- As of January 1, 2012, anyone seeking to become a Virginia state trooper is required to reveal the contents of all of his/her social media accounts as part of the interview process.<sup>5</sup>
- A North Carolina police department asks job applicants for social media user names and passwords as part of its application for clerical positions.<sup>6</sup>

### **Implications for third parties and legal liability**

Once a person shares his or her social media or other electronic account passwords, that person can be subject to screening not just at that time but also on an ongoing basis. Some companies even sell software that performs such continual screening automatically, alerting employers to any behavior or speech they might find objectionable.<sup>7</sup>

Further, when a person is forced to share the password to a private account, not only that person's privacy has been violated, but also the privacy of friends, family, clients, and anyone else with whom he or she may have communicated or shared files.

In fact, these types of practices also violate Facebook's own policies. Facebook's Statement of Rights and Responsibilities states under the "Registration and Account Security" section that Facebook users must make ten commitments to the company relating to the registration and maintenance of the security of the account. The Eighth Commitment states, "You will not share your password, (or in the case of developers, your secret key), let anyone else access your account, or do anything else that might jeopardize the security of your account."<sup>8</sup> Thus, sharing one's password or access to one's account with potential or current employers violates these terms of agreement.

Finally, sharing a social network password may also expose a lot of information about a job applicant – such as age, religion, ethnicity, pregnancy – about which an employer is forbidden to ask. That information can expose an applicant to unlawful discrimination. Learning such

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<sup>2</sup> Valdes, Manuel. "Job seekers getting asked for Facebook passwords." *AP*. 20 March 2012.

<http://finance.yahoo.com/news/job-seekers-getting-asked-facebook-080920368.html>

<sup>3</sup> Charette, Robert. "Should you have to turn over your Facebook password to get a job?" *IEEE Spectrum*. 24 February 2011. <http://spectrum.ieee.org/riskfactor/computing/it/should-you-have-to-turn-over-your-facebook-password-to-get-a-job>

<sup>4</sup> Gouras, Matt. "City drops request for internet passwords." *AP*. 19 June 2009.

[http://www.msnbc.msn.com/id/31446037/ns/technology\\_and\\_science-security/t/city-drops-request-internet-passwords/#](http://www.msnbc.msn.com/id/31446037/ns/technology_and_science-security/t/city-drops-request-internet-passwords/#)

<sup>5</sup> Bowes, Mark. "Sharing Facebook profile part of Va. Trooper application." *Richmond Times-Dispatch*. 22 March 2012. <http://www2.timesdispatch.com/news/news/2012/mar/22/tdmain01-trooper-applicants-must-share-websites-ar-1784527/#fbcomments>

<sup>6</sup> Wehner, Mike. "Could employers begin asking for Facebook passwords on applications?" *Tecca*. 30 November 2011. <http://www.tecca.com/news/2011/11/30/facebook-password-jobs>

<sup>7</sup> One example: Data Facts (<http://www.datafacts.com/background-screening/new-products-whats-hot/social-media-screening>)

<sup>8</sup> <https://www.facebook.com/terms#!/legal/terms>

information may also expose an employer to lawsuits from rejected job candidates claiming such discrimination.

### **HB 2654A**

HB 2654A takes a reasoned approach to this issue, applying offline privacy principles to an online medium while respecting the rights of employers to access information that is public.

**Section 1:** Incorporates Section 2 into ORS 659A.

**Section 2:** Makes it an unlawful employment practice for an employer to:

- Ask an employee/applicant for his/her username or password to his/her social media account,
- Compel an employee/applicant to add the employer to his/her contacts on social media,
- Penalize an employee for refusing to disclose account info or add employer to contacts,
- Refuse to hire an applicant because he/she refused to disclose account info or add employer to contacts.

Clarifies that the protections do not apply to non-personal accounts that provide access to employment-related information systems or public information. Clarifies that nothing in the bill prevents employers from conducting investigations about misconduct or criminal activity, or from taking measures to protect cybersecurity of company information.

Defines “social media.”

### **HB 2654 A7**

The A7 amendment, negotiated and agreed upon by ACLU and TechAmerica, is intended to clarify that an employer may not compel access to a private social media account by “shoulder surfing.” An employer may not ask an applicant or employee to log-in to his or her account so as to enable the employer to look through the account without actually obtaining the password.

### **Oregon Should Join List of States Enacting Protections**

To date, legislatures in Arkansas, New Jersey, New Mexico, Utah, Maryland, Illinois, Michigan and California have passed laws prohibiting employers from compelling access to social media accounts. Legislation is pending in several additional states to address these issues in the 2013 session.<sup>9</sup>

We urge you to adopt the A7 amendment and move the bill to the floor for a vote. Thank you for the opportunity to provide testimony. Please be in touch at any time with comments or questions.

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<sup>9</sup> <http://www.ncsl.org/issues-research/telecom/employer-access-to-social-media-passwords-2013.aspx>