

House Bill 2654

Sponsored by Representative DOHERTY (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits employer from compelling employee or applicant for employment to provide access to personal social media account or to add employer to social media contact list. Prohibits retaliation by employer against employee or applicant for refusal to provide access to accounts or to add employer to contact list.

Prohibits certain educational institutions from compelling student or prospective student to provide access to personal social media account or to add coach, teacher, administrator or other employee or volunteer of educational institution to social media contact list. Prohibits retaliation by educational institutions against student or prospective student for refusal to provide access to accounts or to add certain persons to contact list. Authorizes civil action for violation.

A BILL FOR AN ACT

1 Relating to compelled access to social media accounts.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 659A.**

4 **SECTION 2. (1) It is an unlawful employment practice for an employer to:**

5 (a) **Require, request, suggest or cause an employee or an applicant for employment to**
6 **disclose or to provide access through the employee's or applicant's user name or password**
7 **to a personal social media account;**

8 (b) **Compel an employee or applicant for employment to add the employer or an employ-**
9 **ment agency to the employee's or applicant's list of contacts associated with a social media**
10 **website;**

11 (c) **Take, or threaten to take, any action to discharge, discipline or otherwise penalize**
12 **an employee for the employee's refusal to disclose, or to provide access through, the**
13 **employee's user name or password associated with a personal social media account, or to add**
14 **the employer to the employee's list of contacts associated with a social media website; or**

15 (d) **Fail or refuse to hire an applicant for employment because the applicant refused to**
16 **disclose, or to provide access through, the applicant's user name or password associated with**
17 **a personal social media account, or to add the employer to the applicant's list of contacts**
18 **associated with a social media website.**

19 (2) **An employer may require an employee to disclose any user name, password or other**
20 **means for accessing nonpersonal accounts that provide access to the employer's internal**
21 **computer or information systems.**

22 (3) **As used in this section, "social media" means an electronic medium that allows users**
23 **to create, share and view user-generated content, including, but not limited to, uploading or**
24 **downloading videos, still photographs, blogs, video blogs, podcasts, instant messages, elec-**
25 **tronic mail or Internet website profiles or locations.**

26 **SECTION 3. (1) A public or private educational institution may not:**

27 **NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (a) Require, request, suggest or cause a student or prospective student to disclose or to
 2 provide access through the student’s or prospective student’s user name or password to a
 3 personal social media account.

4 (b) Compel a student or prospective student, as a condition of participation in curricular
 5 or extracurricular activities or of acceptance, to add a coach, teacher, administrator or
 6 other employee or volunteer of the educational institution to the student’s or prospective
 7 student’s list of contacts associated with a social media website.

8 (c) Take, or threaten to take, any action to discharge, discipline, prohibit from partic-
 9 ipation in curricular or extracurricular activities or otherwise penalize a student or potential
 10 student for refusal to disclose the information or take actions specified in paragraphs (a) and
 11 (b) of this subsection.

12 (d) Fail or refuse to admit a potential student as a result of the refusal by the potential
 13 student to disclose the information or take actions specified in paragraphs (a) and (b) of this
 14 subsection.

15 (2) As used in this section:

16 (a) “Educational institution” means an institution that offers participants, students or
 17 trainees an organized course of study or training that is academic, technical, trade-oriented
 18 or preparatory for gainful employment in a recognized occupation. “Educational
 19 institution” includes, but is not limited to, community colleges and the public universities
 20 listed in ORS 352.002 but does not include kindergarten, elementary or secondary schools.

21 (b) “Social media” means an electronic medium that allows users to create, share and
 22 view user-generated content, including, but not limited to, uploading or downloading videos,
 23 still photographs, blogs, video blogs, podcasts, instant messages, electronic mail or Internet
 24 website profiles or locations.

25 **SECTION 4.** (1) Any person claiming to be aggrieved by a violation of section 3 of this
 26 2013 Act may file a civil action in circuit court for equitable relief or, subject to the terms
 27 and conditions of ORS 30.265 to 30.300, damages, or both. The court may order such other
 28 relief as may be appropriate. Damages shall be \$200 or actual damages, whichever is greater.

29 (2) The action authorized by this section shall be filed within one year of the filing of a
 30 grievance.

31 (3) An action under this section may not be filed unless, within 180 days of the alleged
 32 violation, a grievance has been filed with the governing body of the educational institution
 33 against which the violation is alleged.

34 (4) An action under this section may not be filed until 90 days after filing a grievance
 35 unless only injunctive relief is sought pursuant to ORCP 79. The right to temporary or pre-
 36 liminary injunctive relief shall be independent of the right to pursue any administrative
 37 remedy available to complainants.

38 (5) An action under this section may not be filed if the governing body of the educational
 39 institution has obtained a conciliation agreement with the person filing the grievance or if
 40 a final determination of the grievance has been made except as provided in ORS 183.480.

41 (6) Notwithstanding the filing of a grievance pursuant to subsection (3) of this section,
 42 a person seeking to maintain an action under this section against a public educational insti-
 43 tution shall also file a notice of claim within 180 days of the alleged violation in the manner
 44 provided by ORS 30.275.

45 (7) The court shall award reasonable attorney fees to a prevailing plaintiff in any action

1 **under this section. The court may award reasonable attorney fees and expert witness fees**
2 **incurred by a defendant who prevails in the action if the court determines that the plaintiff**
3 **had no objectively reasonable basis for asserting a claim or no objectively reasonable basis**
4 **for appealing an adverse decision of a trial court.**

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