

A-Engrossed
Senate Bill 344

Ordered by the Senate April 17
Including Senate Amendments dated April 17

Sponsored by Senators BURDICK, STEINER HAYWARD, STARR, KNOPP; 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.

[Establishes unlawful employment practice for certain actions taken by employer to access employee's or prospective employee's personal account on social networking website for employment purposes.]

[Declares emergency, effective on passage.]

Prohibits certain educational institutions from requiring or compelling student or prospective student to provide institution with access to personal social media account through user name and password, password or other means of authentication. Allows educational institution to require student to provide specific information from social media account to institution under certain circumstances. Authorizes civil action for violation.

A BILL FOR AN ACT

1
2 Relating to online information.

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

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

5 **(a) Require, request or otherwise compel a student or prospective student to disclose or**
6 **to provide access to a personal social media account through the student's or prospective**
7 **student's user name and password, password or other means of authentication that provides**
8 **access.**

9 **(b) Require, request or otherwise compel a student or prospective student to access a**
10 **personal social media account in the presence of an administrator or other employee of the**
11 **educational institution in a manner that enables the administrator or employee to observe**
12 **the contents of the personal social media account.**

13 **(c) Take, or threaten to take, any action to discipline or to prohibit from participation**
14 **in curricular or extracurricular activities a student or prospective student for refusal to**
15 **disclose the information or take actions specified in paragraph (a) or (b) of this subsection.**

16 **(d) Fail or refuse to admit a prospective student as a result of the refusal by the pro-**
17 **spective student to disclose the information or take actions specified in paragraph (a) or (b)**
18 **of this subsection.**

19 **(2) Nothing in this section prohibits an educational institution from:**

20 **(a) Conducting an investigation, for the purpose of ensuring compliance with applicable**
21 **law, regulatory requirements or prohibitions against student misconduct, that is based on**
22 **the receipt of specific information about activity associated with a personal social media ac-**
23 **count.**

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 **(b) Conducting an investigation authorized under paragraph (a) of this subsection that**
2 **requires the student to share specific content on a social media account with the educational**
3 **institution in order for the educational institution to make a factual determination about**
4 **that content. Student cooperation required under this paragraph does not include providing**
5 **the student’s user name and password, password or other means of authentication that**
6 **provides access to the student’s personal social media account to the educational institution.**

7 **(c) Revoking a student’s access, in whole or in part, to equipment or computer networks**
8 **owned or operated by the educational institution.**

9 **(3) An educational institution is not liable for obtaining the user name and password,**
10 **password or other means of authentication that provides access to a student’s social media**
11 **account through the application of the educational institution’s policies governing the use**
12 **of university equipment or computer networks owned or operated by the educational insti-**
13 **tution. However, the educational institution may not use the information obtained without**
14 **the voluntary consent of the student.**

15 **(4) Nothing in this section applies to social media accounts intended for use solely for**
16 **educational purposes at an educational institution or to social media accounts that are cre-**
17 **ated by the educational institution and provided to the student if the student has been pro-**
18 **vided advance notice that the account may be monitored at any time by the educational**
19 **institution.**

20 **(5) As used in this section:**

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

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

30 **SECTION 2.** **(1) Any person claiming to be aggrieved by a violation of section 1 of this**
31 **2013 Act may file a civil action in circuit court for equitable relief or, subject to the terms**
32 **and conditions of ORS 30.265 to 30.300, damages, or both. The court may order such other**
33 **relief as may be appropriate. Damages shall be \$200 or actual damages, whichever is greater.**

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

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

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

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

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

5 **(7) The court shall award reasonable attorney fees to a prevailing plaintiff in any action**
6 **under this section. The court may award reasonable attorney fees and expert witness fees**
7 **incurred by a defendant who prevails in the action if the court determines that the plaintiff**
8 **had no objectively reasonable basis for asserting a claim or no objectively reasonable basis**
9 **for appealing an adverse decision of a trial court.**

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