

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

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No. 1194

H.P. 838

House of Representatives, March 26, 2013

An Act To Protect Social Media Privacy in School and the Workplace

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative McCLELLAN of Raymond.
Cosponsored by Representatives: DAUGHTRY of Brunswick, HUBBELL of Bar Harbor,
MAKER of Calais, POULIOT of Augusta, RUSSELL of Portland, WOOD of Sabattus.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 20-A MRSA c. 804** is enacted to read:

3 **CHAPTER 804**

4 **SOCIAL MEDIA PRIVACY IN EDUCATION**

5 **§19351. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Applicant.** "Applicant" means an applicant for admission to an educational
9 institution.

10 **2. Educational institution.** "Educational institution" means:

11 A. A public or private school;

12 B. A school administrative unit;

13 C. An accredited Maine community college, college or university as defined in
14 section 12541, subsection 1; or

15 D. A career and technical education center, as described in section 8301-A,
16 subsection 3.

17 **3. Personal e-mail account.** "Personal e-mail account" means an account with an
18 electronic medium or service through which users may send or receive e-mail delivered
19 by transmission over the Internet. "Personal e-mail account" does not include an account
20 opened at an educational institution's behest, or provided by an educational institution,
21 that is intended to be used solely on behalf of the educational institution.

22 **4. Social media account.** "Social media account" means an account with an
23 electronic medium or service through which users create, share and view user-generated
24 content, including, but not limited to, uploading or downloading videos or still
25 photographs, blogs, video blogs, podcasts, messages, e-mails and website profiles or
26 locations. "Social media account" does not include an account opened at an educational
27 institution's behest, or provided by an educational institution, that is intended to be used
28 solely on behalf of the educational institution.

29 **5. Student.** "Student" means a student, participant or trainee, whether full-time or
30 part-time, in an organized course of study at an educational institution.

31 **§19352. Prohibition on educational institution**

32 An educational institution may not:

33 **1. Disclosure for access.** Require or cause a student or applicant to disclose, or
34 request or suggest that a student or applicant disclose, the username, password or any

1 other means for access, or provide access through the username, password or other
2 means, to a social media account or personal e-mail account;

3 **2. List of contacts.** Compel a student or applicant, as a condition of acceptance or
4 participation in curricular or extracurricular activities, to add anyone, including a coach,
5 teacher, school administrator or other school employee or school volunteer, to that
6 student's or applicant's list of contacts associated with a social media account or personal
7 e-mail account or require or cause a student or applicant to change, or request or suggest
8 that a student or applicant change, the privacy settings associated with a social media
9 account or personal e-mail account;

10 **3. Punitive action against student.** Take action or threaten to take action to
11 discharge, discipline, prohibit from participating in curricular or extracurricular activities
12 or otherwise penalize a student for a student's refusal to disclose any information
13 specified in subsection 1 or for refusal to add anyone, including a coach, teacher, school
14 administrator or other school employee or school volunteer, to the student's list of
15 contacts associated with a social media account or personal e-mail account or to change
16 the privacy settings associated with a social media account or personal e-mail account; or

17 **4. Punitive action against applicant.** Fail or refuse to admit an applicant as a result
18 of the applicant's refusal to disclose any information specified in subsection 1 or for
19 refusal to add anyone, including a coach, teacher, school administrator or other school
20 employee or school volunteer, to the applicant's list of contacts associated with a social
21 media account or personal e-mail account or to change the privacy settings associated
22 with a social media account or personal e-mail account.

23 **§19353. Application to publicly available information**

24 This chapter does not apply to information about an applicant or a student that is
25 publicly available.

26 **§19354. Penalty; harassment; enforcement; defense**

27 The following provisions apply to a violation of this chapter.

28 **1. Penalty.** An educational institution that violates section 19352 is subject to a fine
29 of not more than \$1,000. A student or applicant may bring a civil action to enjoin a
30 violation of section 19352 and may recover not more than \$1,000 in damages plus
31 reasonable attorney's fees and court costs. If the educational institution has discharged a
32 student in violation of section 19352, the educational institution shall reinstate that
33 student.

34 **2. Harassment.** In addition to the liability imposed under subsection 1, an
35 educational institution that, in violation of section 19352, requires or repeatedly attempts
36 to require an applicant or student to disclose the username, password or other means for
37 access, or provide access through the username, password or other means, to a social
38 media account or personal e-mail account:

39 A. Is subject to a civil penalty not to exceed \$1,000, payable to the affected applicant
40 or student, to be recovered in a civil action; and

1 B. For any subsequent offense against the same applicant or student, is subject to a
2 civil penalty of \$2,000, payable to the affected applicant or student, to be recovered
3 in a civil action.

4 **3. Enforcement by Attorney General.** The Attorney General or an affected student
5 or applicant may bring an action to enforce this chapter. The Attorney General may:

6 A. Collect the judgment on behalf of the student or applicant; or

7 B. Supervise the payment of the judgment and the reinstatement of the student.

8 **4. Defense.** It is an affirmative defense to an action brought under this section that
9 the educational institution acted to comply with federal law or laws of this State.

10 **Sec. 2. 26 MRSA c. 7, sub-c. 11** is enacted to read:

11 **SUBCHAPTER 11**

12 **SOCIAL MEDIA PRIVACY IN THE WORKPLACE**

13 **§876. Definitions**

14 As used in this subchapter, unless the context otherwise indicates, the following
15 terms have the following meanings.

16 **1. Applicant.** "Applicant" means an applicant for employment.

17 **2. Employee.** "Employee" means a person who is permitted, required or directed by
18 an employer to engage in employment for consideration of direct or indirect gain or
19 profit. "Employee" includes an independent contractor.

20 **3. Employer.** "Employer" means a person, partnership, corporation, association or
21 other legal entity, public or private, including an agent, representative or designee of that
22 person, partnership, corporation, association or other legal entity, that employs one or
23 more employees.

24 **4. Personal e-mail account.** "Personal e-mail account" means an account with an
25 electronic medium or service through which users may send or receive e-mail delivered
26 by transmission over the Internet. "Personal e-mail account" does not include an account
27 opened at an employer's behest, or provided by an employer, that is intended to be used
28 solely on behalf of the employer.

29 **5. Social media account.** "Social media account" means an account with an
30 electronic medium or service through which users create, share and view user-generated
31 content, including, but not limited to, uploading or downloading videos or still
32 photographs, blogs, video blogs, podcasts, messages, e-mails and website profiles or
33 locations. "Social media account" does not include an account opened at an employer's
34 behest, or provided by an employer, that is intended to be used solely on behalf of the
35 employer.

1 **§877. Prohibition on employer**

2 An employer may not:

3 **1. Disclosure.** Require or cause an employee or applicant to disclose, or request or
4 suggest that an employee or applicant disclose, the username, password or any other
5 means for access, or provide access through the username, password or other means, to a
6 social media account or personal e-mail account;

7 **2. Contact list.** Compel an employee or applicant to add anyone, including the
8 employer or the employer's agent, to the employee's or applicant's list of contacts
9 associated with a social media account or personal e-mail account or require or cause an
10 employee or applicant to change, or request or suggest that an employee or applicant
11 change, the privacy settings associated with a social media account or personal e-mail
12 account;

13 **3. Punitive action against employee.** Take action or threaten to take action to
14 discharge, discipline or otherwise penalize an employee for an employee's refusal to
15 disclose any information specified in subsection 1 or for refusal to add anyone, including
16 the employer or the employer's agent, to the employee's list of contacts associated with a
17 social media account or personal e-mail account or to change the privacy settings
18 associated with a social media account or personal e-mail account; or

19 **4. Punitive action against applicant.** Fail or refuse to hire an applicant as a result
20 of the applicant's refusal to disclose any information specified in subsection 1 or for
21 refusal to add anyone, including the employer or the employer's agent, to the applicant's
22 list of contacts associated with a social media account or personal e-mail account or to
23 change the privacy settings associated with a social media account or personal e-mail
24 account.

25 **§878. Application to publicly available information**

26 This subchapter does not apply to information about an applicant or an employee that
27 is publicly available.

28 **§879. Remedies; harassment; enforcement; defense**

29 The following provisions apply to a violation of this subchapter.

30 **1. Remedies.** An employer who violates section 877 is liable to an employee or
31 applicant who is the subject of the violation for the following:

32 A. An amount equal to 3 times any lost wages;

33 B. Reinstatement, with full benefits, of the employee to the employee's position at
34 the time of the violation or employment of the applicant in the position applied for by
35 the applicant;

36 C. Civil damages of no more than \$1,000;

37 D. Court costs; and

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E. Reasonable attorney's fees.

2. Harassment. In addition to the liability imposed under subsection 1, an employer who requires or repeatedly attempts to require an employee or applicant to disclose the username, password or any other means for access, or provide access through the username, password or other means, to a social media account or personal e-mail account:

A. Is subject to a civil penalty not to exceed \$1,000, payable to the affected employee or applicant, to be recovered in a civil action; and

B. For any subsequent offense against the same employee or applicant, is subject to a civil penalty of \$2,000, payable to the affected employee or applicant to be recovered in a civil action.

3. Enforcement. The Attorney General or an affected employee or applicant may bring an action to enforce this subchapter. The Attorney General may:

A. Collect the judgment on behalf of the employee or applicant; or

B. Supervise the payment of the judgment and the reinstatement of the employee or the employment of the applicant.

4. Defense. It is an affirmative defense to an action brought under this section that the employer acted to comply with federal law or laws of this State.

SUMMARY

This bill prohibits an employer or educational institution, whether public or private, from requiring or requesting an employee or a student, or a prospective employee or student, to disclose the username or account password for a personal social media account or e-mail account or to otherwise provide the employer or institution with access to those accounts.