

MAINE STATE LEGISLATURE

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L.D. 921

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Date: 6/29/15

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STATE OF MAINE

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SENATE

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127TH LEGISLATURE

7

FIRST REGULAR SESSION

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SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "B" to H.P. 640,
L.D. 921, Bill, "An Act To Strengthen the Right of a Victim of Sexual Assault or
Domestic Violence To Take Necessary Leave from Employment"

11

Amend the amendment by inserting after the title the following:

12

'Amend the bill by striking out the title and substituting the following:

13

14

15

**'An Act To Strengthen the Right of a Victim of Sexual Assault or Domestic Violence
To Take Necessary Leave from Employment and To Promote Employee Social
Media Privacy' '**

16

Amend the amendment by inserting before section 1 the following:

17

'PART A'

18

Amend the amendment by striking out all of section 2 and inserting the following:

19

'PART B

20

Sec. B-1. 26 MRSA c. 7, sub-c. 1-C is enacted to read:

21

SUBCHAPTER 1-C

22

EMPLOYEE SOCIAL MEDIA PRIVACY

23

§615. Definitions

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

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

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2. Employee. "Employee" means an individual who provides services or labor for
an employer for wages or other remuneration.

1 **3. Employer.** "Employer" means a person in this State who employs individuals and
2 includes the State and political subdivisions of the State. "Employer" includes a person
3 acting in the interest of an employer directly or indirectly.

4 **4. Social media account.** "Social media account" means an account with an
5 electronic medium or service through which users create, share and view user-generated
6 content including but not limited to videos, still photographs, blogs, video blogs,
7 podcasts, instant and text messages, e-mail, online service accounts and Internet website
8 profiles and locations. "Social media account" does not include an account opened at an
9 employer's behest or provided by an employer or intended to be used primarily on behalf
10 of an employer.

11 **§616. Prohibitions**

12 An employer may not:

13 **1. Passwords.** Require or coerce an employee or applicant to disclose, or request
14 that an employee or applicant disclose, the password or any other means for accessing a
15 personal social media account;

16 **2. Access in presence.** Require or coerce an employee or applicant to access, or
17 request that an employee or applicant access, a personal social media account in the
18 presence of the employer or an agent of the employer;

19 **3. Information.** Require or coerce an employee or applicant to disclose any
20 personal social media account information;

21 **4. Contacts.** Require or cause an employee or applicant to add anyone, including
22 the employer or an agent of the employer, to the employee's or applicant's list of contacts
23 associated with a personal social media account;

24 **5. Settings.** Require or cause an employee or applicant to alter, or request that an
25 employee or applicant alter, settings that affect a 3rd party's ability to view the contents of
26 a personal social media account;

27 **6. Employees.** Discharge, discipline or otherwise penalize or threaten to discharge,
28 discipline or otherwise penalize an employee for the employee's refusal to disclose or
29 provide access to information as specified in subsection 1, 2 or 3 or for refusal to add
30 anyone to the employee's list of contacts associated with a personal social media account
31 as specified in subsection 4 or to alter the settings associated with a personal social media
32 account as specified in subsection 5; or

33 **7. Applicants.** Fail or refuse to hire an applicant as a result of the applicant's refusal
34 to disclose or provide access to information specified in subsection 1, 2 or 3 or refusal to
35 add anyone to the applicant's list of contacts associated with a personal social media
36 account as specified in subsection 4 or to alter the settings associated with a personal
37 social media account as specified in subsection 5.

38 **§617. Exceptions**

39 **1. Publicly available information.** This subchapter does not apply to information
40 about an applicant or employee that is publicly available.

1 2. Duty to screen or supervise. This subchapter does not prohibit or restrict an
 2 employer from complying with a duty to screen employees or applicants before hiring or
 3 to monitor or retain employee communications that is established by a self-regulatory
 4 organization as defined by the federal Securities Exchange Act of 1934, 15 United States
 5 Code, Section 78c(a)(26) or under state or federal law, regulation or rule to the extent
 6 necessary to supervise communications of regulated financial institutions or insurance or
 7 securities licensees for banking-related, insurance-related or securities-related business
 8 purposes.

9 3. Investigation. This subchapter does not prohibit or restrict an employer from
 10 requiring an employee to disclose personal social media account information that the
 11 employer reasonably believes to be relevant to an investigation of allegations of
 12 employee misconduct or a workplace-related violation of applicable laws, rules or
 13 regulations if requiring the disclosure is not otherwise prohibited by law, as long as the
 14 information disclosed is accessed and used solely to the extent necessary for purposes of
 15 that investigation or a related proceeding.

16 **§618. Workplace policies**

17 This subchapter does not limit an employer's right to promulgate and maintain lawful
 18 workplace policies governing the use of the employer's electronic equipment, including a
 19 requirement that an employee disclose to the employer the employee's user name,
 20 password or other information necessary to access employer-issued electronic devices,
 21 including but not limited to cellular telephones and computers, or to access employer-
 22 provided software or e-mail accounts.

23 **§619. Penalties for violation**

24 An employer who violates this subchapter is subject to a fine imposed by the
 25 Department of Labor of not less than \$100 for the first violation, not less than \$250 for
 26 the 2nd violation and not less than \$500 for each subsequent violation.

27 **PART C**

28 **Sec. C-1. Appropriations and allocations.** The following appropriations and
 29 allocations are made.

30 **LABOR, DEPARTMENT OF**

31 **Regulation and Enforcement 0159**

32 Initiative: Provides funds for a 1/2-time Labor and Safety Inspector position and related
 33 All Other costs for the additional enforcement requirements associated with the
 34 disclosure of personal social media account information and with employee rights
 35 regarding a leave of absence when the employee is a victim of violence.

36	GENERAL FUND	2015-16	2016-17
37	POSITIONS - LEGISLATIVE COUNT	0.500	0.500
38	Personal Services	\$23,867	\$32,372

1	All Other	\$22,600	\$22,600
2			
3	GENERAL FUND TOTAL	<u>\$46,467</u>	<u>\$54,972</u>
4			

5 Amend the amendment by relettering or renumbering any nonconsecutive Part letter
6 or section number to read consecutively.

7 **SUMMARY**

8 This amendment amends Committee Amendment "B" to strike the bill and replace it.
9 Part A changes the penalties that may be assessed for violations of the employment leave
10 for victims of violence law, as follows.

11 1. It increases the fine from up to \$200 per violation to up to \$1,000 per violation
12 and provides that the fine applies only to denials of leave in violation of the law.

13 2. It provides that, for denial of leave in violation of the law, the employer must pay
14 the affected individual an amount 3 times the total assessed fines.

15 3. It provides that, for termination in connection with exercising a right granted
16 under the law, the affected individual may choose either to receive an amount 3 times the
17 total assessed fines or reemployment with the employer with back wages.

18 Part B incorporates the substance of L.D. 686 as amended by Committee Amendment
19 "A" to that L.D. to protect the social media privacy of employees and applicants for
20 employment.

21 Part C contains an appropriations and allocations section.

22 **FISCAL NOTE REQUIRED**

23 (See attached)

24 SPONSORED BY: Jim Hamper 

25 (Senator HAMPER)

26 COUNTY: Oxford



127th MAINE LEGISLATURE

LD 921

LR 1243(06)

An Act To Strengthen the Right of a Victim of Sexual Assault or Domestic Violence To Take Necessary Leave from Employment

Fiscal Note for Senate Amendment "A" to Committee Amendment "B" (S-323)

Sponsor: Sen. Hamper of Oxford

Fiscal Note Required: Yes

Fiscal Note

Consolidation of positions in 2 bills, reduced overall cost - General Fund

Fiscal Detail and Notes

This amendment adds the provisions of LD 686, An Act To Promote Privacy in Social Media, as amended by Committee Amendment "A" to this legislation, but does not add the funding and half-time position that were in LD 686. The activities required in LD 686 will be added to the activities required of the half-time position granted in this bill. As amended, this bill still includes General Fund appropriations of \$46,467 in fiscal year 2015-16 and \$54,972 in fiscal year 2016-17 to the Regulation and Enforcement program within the Department of Labor for one half-time Labor and Safety Inspector position and related all other costs for the additional enforcement activity associated with the disclosure of personal social media account information and with employee rights regarding a leave of absence when the employee is a victim of violence.

The amount of General Fund revenue to be received from penalties assessed as a result of violations associated with the disclosure of personal social media account information can not be determined at this time.