

Bill as
Introduced

HB 379 - AS INTRODUCED

2013 SESSION

13-0082

06/01

HOUSE BILL

379

AN ACT

prohibiting an employer from requiring an employee or prospective employee to disclose his or her social media passwords.

SPONSORS:

Rep. P. Sullivan, Hills 10; Rep. K. Rogers, Merr 28; Rep. Timothy Smith, Hills 17; Sen. Soucy, Dist 18

COMMITTEE:

Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill prohibits an employer from requiring an employee or prospective employee to disclose his or her social media passwords.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 379

BILL TITLE: prohibiting an employer from requiring an employee or prospective employee to disclose his or her social media passwords.

DATE: February 12, 2013

LOB ROOM: 307 **Time Public Hearing Called to Order:** 2:36 p.m.

Time Adjourned: 3:50 p.m.

(please circle if present)

Committee Members: Reps. A. White, S. Kelly, Coulombe, C. Rice, Weed, J. Schmidt, DiSilvestro, Andrews, Cahill, Ley, Panner, Daniels, Burchell, H. Richardson, Infantine, Pellegrino, Flanagan, Emerick, Sedensky and St. James.

Bill Sponsors: Rep. P. Sullivan, Hills 10; Rep. K. Rogers, Merr 28; Rep. Timothy Smith, Hills 17; Sen. Soucy, Dist 18

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

* **Rep. Peter Sullivan** - Prime sponsor of the bill. Written testimony.

Rep. Katherine Rogers - Co-sponsor of the bill. Supports the bill. This bill prevents an employer from seeing your most private information – that you choose to share with family and friends on account such as “Facebook”. By allowing an employer to ask for a person’s user name and password – would enable the employer to answer any private medical information that you may have showed a person of your choice. Today people are revealing how important it is to protect their privacy on the “internet” and they shouldn’t be forced to give their employer the right to view their social media sites.

Mark MacKenzie, NH AFL-CIO - Supports the bill. Believes this bill will stop employer from discrimination in the work place by leaving of activities, health, and any other personal information an employee may have in their social media site.

* **Lt. John Marasco, NH Department of Safety** - Opposes the bill. Written testimony.

Devon Chaffee, New Hampshire Civil Liberties Union - Supports the bill. Feels strongly that this is a right to privacy to be expected when using a social media site and that information that is shared previous to the technology era of today would have been through mail, phone, person to person and we would not have expected any of this information to be shared with an employer. Just because the technology is out there doesn’t mean it should be used to obtain any and all private information if our citizens recommends OTP.

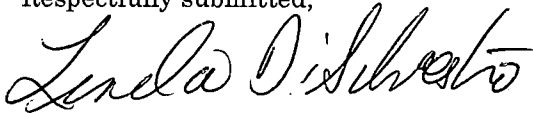
Barry Glennon, NH Bureau of Securities - Supports the bill. Doesn't feel private information should be shared but does tend social media shines a behavior pattern which is helpful in his industries.

Diana Lacey, State Employees Association - Supports the bill. When a person submits to an employer their password and user name, an employer would not only see your information, but would be able to see information of all friends and family information.

* **Dave Juvet, Business & Industry Association (BIA)** - Neither for or against. Written testimony. Suggest a study committee.

Paul Brochu - Supports the bill. Feels social media is used by all ages of people and feels this bill guards as persons first amendment rights.

Respectfully submitted,



Rep. Linda A. DiSilvestro
Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

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Bill Sponsors: Rep. P. Sullivan, Hills 10; Rep. K. Rogers, Merr 28; Rep. Timothy Smith, Hills 17; Sen. Soucy, Dist 18

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

1. Rep Peter Sullivan - Support - written testimony
2. Rep Kathleen Roger - Support

This bill prevent an employer from seeing your most private information - that you choose to share with family & friends on account such as "Facebook". By allowing an employer to ask for a person's user name and password - would enable the employer to also see any private medical information that you may have shared a person of your choice. Today people are really saying how important it is to protect their privacy on the "Internet" and they shouldn't be forced to give their employer the right to view their social media sites.

3. Mark Makingie - Support.

Believes this bill will stop employees from discrimination in the work place by learning of activities, health, and any other personal info about an employee may have in their social media site.

4. Lt. John Marasco - Oppose - Written testimony -

5. Devon Chaffee - Support -

Feels strongly that this is a right to privacy to be expected when using a social media site and that information that is shared previous to the technology era of today - would have been through - mail, phone, person to person and we would not have expected any of this information to be shared w/ an employer. Just because the technology is out there doesn't mean it should be used to obtain any and all private information of our citizens. Recommends OTP.

6. Barry Glennon - Support - State Director of NH Bureau of Securities and doesn't feel private information should be shared - but does think social media shows a behavior pattern which is helpful in his industries.

7. Diana Lacey - Support - When a person submits to an employer their password and username - an employer would not only see your information but would be able to see information of all friends & family information.

8 Dave Junet - neither for or against - written testimony -
suggest a Study committee. 6

9 Paul Brochu - support
Feels social media is used by all ages of
people and feels ^{the} ~~it~~ ^{two bills} guards a persons / staff members
rights.

Sub-Committee Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 379

BILL TITLE: prohibiting an employer from requiring an employee or prospective employee to disclose his or her social media passwords.

DATE: February 28, 2013

Subcommittee Members: Reps. White, Kelly, Weed, Rice, Coulombe, Andrews, Cahill, DiSilvestro, Ley, Schmidt, Tanner, Daniels, Infantine, Richardson, Pellegrino, Sedensky, Flanagan, Burchell, Emerick, and St. James

Comments and Recommendations:

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Linda A. DiSilvestro
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

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Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Testimony



Business and Industry Association
New Hampshire's Statewide Chamber of Commerce

122 North Main Street, Concord, NH 03301
Tel: 603.224.5388 • Fax: 603.224.2872 • Web: www.nhbia.org

Testimony of David Juvet
Business & Industry Association
HB 379 & HB 414
February 12, 2013

House Labor and Industrial and Rehabilitative Services

Mr. Chairmen, members of the House Labor committee, thank you for the opportunity to comment on HB 379 and HB 414. In concept, the BIA does not have a problem with the purpose of these HB 414 or HB 379. In practice, the language as drafted will create problems for employers.

For example, HB 379 does not differentiate between an employee's personal social media accounts and the social media accounts that the employee uses for work purposes which is occurring with greater and greater frequency. HB 414 references "personal accounts", but most social media sites require that the accounts be registered to a person, not a company, so social media accounts used for business purposes still look "personal" in the sense that they are registered and (in the eyes of the social media site) owned by the individual employee.

Departing employees sometimes do not disclose to their employers the passwords for work-related social media accounts, intending to keep the accounts and use them in competition with their employers since the accounts are valuable marketing tools. As social media becomes more and more important to more and more companies as a marketing resource, recovering access to and ownership of work-related social media accounts from departing employees becomes critical. The proposed bills can be read to prevent employers from recovering these work-related social media accounts from departing employees.

HB 379 defines "social media" but HB 414 does not. Unfortunately, we believe the definition in HB 379 is overbroad. It is as follows: "'social media' means an electronic medium where users may create and view user-generated content, including uploading or downloading videos or still photographs, blogs, video blogs, podcasts, or instant messages." Read literally, this includes any "electronic medium" (including company

owned PCs, laptops, tablets, servers, USB devices, CDs, DVDs, smartphones, external hard drives, etc.) where an employee creates any "user-generated content" (including both work-related and personal data, such as Word, Excel, PowerPoint, photos, videos, etc. data).

Employees frequently create "spaces" on employer-owned electronic devices where they create and store work-related data, personal data, and/or both). Departing employees sometimes refuse to reveal the passwords for these spaces out of spite and/or to prevent the employer from discovering their bad/disloyal workplace behavior. HB 379 prevents employers from requiring employees to disclose these passwords.

HB414 contains a provision stating that it does not "limit an employer's right to maintain workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use, social networking site use, and electronic mail use." While this clause might be read to permit employers to require employees to disclose passwords for space on company owned devices, that outcome would certainly have to be read into the language, and would be contrary to the main provision in the statute, which states that "[n]o employer shall request or require that an employee or prospective employee disclose a user name or password for accessing a personal account or service through an electronic communication device."

Thus, the social media bills need a lot work to avoid unintended consequences. The BIA respectfully suggests that the House Labor committee consider using the legislation to study this issue, seek input from various stakeholders, and hopefully produce a consensus bill for next session. If the Labor committee moves in this direction the BIA would be happy to work cooperatively with the study committee.

PREPARED TESTIMONY OF BARRY J. GLENNON
DIRECTOR OF THE NEW HAMPSHIRE BUREAU OF SECURITIES
REGULATION

BEFORE THE
HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND
REHABILITATIVE SERVICES

At a HEARING ON

"HB 414, Relative to Privacy in the Workplace."

AND

**"H.B. 379, Prohibiting an Employer from Requiring an
Employee or Prospective Employee to Disclose His or Her
Social Media Passwords."**

2:00 PM

FEBRUARY 12, 2013

CONCORD, NEW HAMPSHIRE

Thank you for the opportunity to appear today and to provide testimony to the House Committee on Labor, Industrial and Rehabilitative Services regarding the social media privacy legislation now before the Committee.

As the state official responsible for the oversight and enforcement of the securities laws in New Hampshire, I have no objection to the Committee's effort to expand and improve personal privacy protections for users of social media.

I am very concerned, however, that in their present form, H.B. 379 and H.B. 414 would adversely impact the supervisory and record-keeping responsibilities of broker-dealers and investment advisers. Specifically, the bills would hamper my office's ability to enforce state investor protection laws, and additionally, potentially harm the growing number of investors in our state who increasingly rely on social media outlets to gather information about their investments.

State laws require broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives to maintain books and records relating to the firm's business, which can include business communications made or transmitted using social media. To comply with these requirements, broker-dealers and investment advisers must be able to access social media accounts used by employees for *business* purposes. If passed in their present form, H.B. 414 and H.B. 379 would place broker dealers and investment-advisers in a precarious position where compliance with state privacy laws would cause them to run afoul of their supervisory and record-keeping responsibilities under state and federal securities laws and regulations, and vice-versa.

I want to be clear that neither I nor the New Hampshire Bureau of Securities has any objection to privacy laws covering social media accounts used for *personal* purposes. However, In order for my office to enforce investor protection laws and regulations, including the supervision of business-related communications, it is imperative that these bills be amended to establish a carve-out that will allow broker-dealers and investment advisers to access the social media accounts of their agents, representatives, and other employees, in instances where such social media accounts are used for *business* purposes.

To this end, I respectfully request to submit, to the Committee, language which has been developed by the North American Securities Administrators Association on behalf of state securities administrators. This proposed language establishes an exemption in the bills that would allow broker-dealers and investment advisers to access their employees' social media accounts when those accounts are used to conduct business and, therefore, remain in compliance with state and federal securities laws and regulations.

Model Legislation Language

This act [or statute] shall not apply to the personal social media accounts or devices of an investment adviser representative, broker-dealer agent, or other employee of a broker-dealer or investment adviser, who uses such accounts to carry out the business of the broker-dealer or investment adviser firm that is subject to the content, supervision and retention requirements imposed by federal securities laws and regulations, or a self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, or applicable state laws, rules or regulations governing broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives.

Thank you again for the opportunity to appear before the Committee today. I would be very pleased to answer any questions the Committee may have, or to provide additional information about the impact of these bills in writing.



State of New Hampshire

DEPARTMENT OF SAFETY
JAMES H. HAYES BLDG. 33 HAZEN DR.
CONCORD, N.H. 03305
603/271-2559

JOHN J. BARTHELMES
COMMISSIONER OF SAFETY

NH DEPARTMENT OF SAFETY

EARL M. SWEENEY
ASSISTANT COMMISSIONER

LEGISLATION POSITION PAPER

HB 414 SB ___ AS INTRODUCED () AMENDMENT NO. ___

This bill prohibits an employer from requiring an employee or prospective employee to disclose his or her social media passwords.

The New Hampshire State Police conducts stringent and extensive examinations of police candidates in order to ensure that only the most ethical and trustworthy candidates are chosen to protect the citizens of the State of New Hampshire. This extensive process includes a written examination, physical agility test, a structured oral board, a background investigation, a polygraph investigation, a psychological examination, and a medical assessment. Prospective candidates sign a "Consent" form, which authorizes the investigating agency to review a variety of information pertaining to the applicant, to include an applicant's financial information, previous employment records, educational records, and to inquire of the candidates' family and friends his or suitability for the position.

It is essential that law enforcement agencies have the opportunity to request usernames and passwords from prospective applicants for their internet-related social networking sites in order to ensure that no illegal or unbecoming material is present on the specified medium, which, if present, could negatively reflect on the integrity of the hiring agency and could allow for candidates that are unsuitable for law enforcement positions to potentially attain said position without the hiring agency having knowledge of the damaging material.

While the Department of safety fully recognizes the protections afforded to all citizens through the fourth amendment to The U.S. Constitution, social networking websites have become common place in society for an open exchange of information. The presence of on-line, public-facing information relating to an applicant is relevant to current day hiring practices and does not appear to be any more invasive than conducting a consensual review of an applicant's personal, financial, and limited medical information from a variety of sources.

Therefore, the position of the Department of Safety is: OPPOSED

Position Paper Approved:

Assistant Commissioner

Rep. Peter Sullivan
Testimony
House Labor Committee
HB 379 and HB 414

Good afternoon, members of the Committee. I am Rep. Peter Sullivan, Hillsborough County District 10, the City of Manchester, and I come before you today as sponsor, along with Rep. Rogers and Sen. Soucy, of House Bill 379 and House Bill 414.

Most of us here today grew up in technologically simpler times. When I graduated from high school, nobody had an email account or a social media profile.

Today, I have email accounts for work, legislative business, and family matters. I have accounts on Facebook, Twitter, Soundcloud, Reverb Nation, and Quora.

The world is a different place. Email and social networking sites are part of how we as a society communicate and conduct our lives. The challenge we as legislators face is ensuring that our laws reflect the realities of a changing culture.

As social media sites have proliferated in recent years, some employers began to scrutinize their employees (and prospective employees) social media profiles. Since every action seems to have an equal and opposite reaction, employees and prospective employees changed their privacy settings, making their information visible only to selected individuals or networks.

Employers responded by requesting, or even demanding, that employees provide access to these social media profiles.

Some might ask "what's the harm"? They might say that if a person has drunken party pictures, then they get what they deserve. This legislation isn't about those situations.

This legislation is designed to protect the fundamental privacy of workers.

Providing unfettered access to one's Facebook page provides access to a host of information about a person's life. It can provide information about a person's religion, ethnicity, political views, and medical condition. It can provide an employer with back-door access to information that would otherwise be considered off-limits under existing laws, such as the Americans with Disabilities Act.

Employers already have enough information at their disposal to ascertain whether an employee or applicant is worthy of employment. There is no need to expose every aspect of one's private life to unfettered, unrestricted scrutiny. The bills before you are a common-sense step towards ensuring that the benefits of living in a digital age are not overwhelmed by concerns over personal privacy.

Voting Sheets

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 379

BILL TITLE: prohibiting an employer from requiring an employee or prospective employee to disclose his or her social media passwords.

DATE: March 5, 2013

LOB ROOM: 307

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Coulmbe

Seconded by Rep. Flanagan

Vote: 20-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Linda A. DiSilvestro, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 379

BILL TITLE: prohibiting an employer from requiring an employee or prospective employee to disclose his or her social media passwords.

DATE: 3/5/13

LOB ROOM: 307

Amendments:

Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *Coulombe*

Seconded by Rep. *Flanagan*

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: *20/0*

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Linda A. DiSilvestro, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2013 9:29:31 AM
Roll Call Committee Registers
Report

2013 SESSION

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: 379 Title: employer from requiring an employee a prospective employee
PH Date: 2/12/13 to disband his other social media class work Exec Session Date: 3/15/13
Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
White, Andrew A, Chairman	Y	
Kelly, Sally H, V Chairman	Y	
Weed, Charles F	Y	
Rice, Chip L	Y	
Coulombe, Gary M	Y	
Andrews, Christopher R	Y	
Cahill, Michael D	Y	
DiSilvestro, Linda A, Clerk	Y	
Ley, Douglas A	Y	
Schmidt, Janice E	Y	
Tanner, Linda L	Y	
Daniels, Gary L,	Y	
Infantine, William J,	Y	
Richardson, Herbert D	Y	
Pellegrino, Tony J	Y	
Sedensky, John B,	Y	
Flanagan, Jack B	Y	
Burchell, Richard B	Y	
Emerick, J. Tracy	Y	
St.James, Kevin P	Y	
TOTAL VOTE:		

20

Committee Report

CONSENT CALENDAR

March 6, 2013

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on LABOR, INDUSTRIAL AND
REHABILITATIVE SERVICES to which was referred
HB379,**

**AN ACT prohibiting an employer from requiring an
employee or prospective employee to disclose his or her
social media passwords. Having considered the same,
report the same with the following Resolution:**

RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Gary M Coulombe

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES
Bill Number:	HB379
Title:	prohibiting an employer from requiring an employee or prospective employee to disclose his or her social media passwords.
Date:	March 6, 2013
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

There were two bills submitted this session dealing with the same issue: HB 379 and HB 414. The committee chose to use HB 414 as a vehicle to move the issue forward, thus the committee voted to recommend ITL for HB 379.

Vote 20-0.

Rep. Gary M Coulombe
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

HB379, prohibiting an employer from requiring an employee or prospective employee to disclose his or her social media passwords. **INEXPEDIENT TO LEGISLATE.**

Rep. Gary M Coulombe for LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES. There were two bills submitted this session dealing with the same issue: HB 379 and HB 414. The committee chose to use HB 414 as a vehicle to move the issue forward, thus the committee voted to recommend ITL for HB 379. **Vote 20-0.**

HB 379

ITL

There were two bills submitted this session dealing with the same issue: HB 379 and HB 414. The committee chose to use HB 414 as a vehicle to move the issue forward, thus the committee voted to recommend ITL for HB 379.

Gary Coulombe

COMMITTEE REPORT

COMMITTEE: Labor

BILL NUMBER: HB 379

TITLE: Prohibiting an employer from requiring an employee to disclose his or her social media

DATE: 3-5-13 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

 There were two bills submitted this session dealing with the same issue: HB 379 and HB 414. The committee choose to use HB 414 as a vehicle to move the issue forward, thus the committee voted to recommend ITL for HB 379.

COMMITTEE VOTE: 20-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Gary Coulambe
For the Committee
 Gary Coulambe