

Md. becomes first to OK password protection bill

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FILE -In this Friday, March 16, 2012 file photo, Robert Collins of Baltimore poses for a photo at Cylburn Arboretum in Baltimore. Maryland is poised to become the first state that bans employers from demanding applicants or workers hand over their log-in information for social media sites like Facebook. Collins, a former corrections officer in Maryland, says he was asked for his Facebook account information in 2011 while being recertified for his job following a leave of absence.(AP Photo/Steve Ruark, File)

(AP) -- Maryland is poised to become the first state to ban employers from demanding applicants or workers hand over their log-in information for social media sites like Facebook.

The measure, which handily passed the legislature earlier this month, keeps managers from snooping on password-protected content, a practice advocates of the bill say violates privacy and intimidates [job seekers](#) and employees.

Robert Collins, a former corrections officer in

Maryland, said he was asked for his Facebook account information while being recertified for his job following a leave of absence.

Collins, who lives in Baltimore, complied with the request, but said he felt embarrassed and violated as an [interviewer](#) roamed his private messages, pictures and posts.

"It almost seemed that my compliance was compulsory," Collins said.

The voluntary social media screening for correctional officers, not all employees, is a natural extension of an already "inherently intrusive" background check for people working in law enforcement, said Rick Binetti, executive director of communications for the Maryland Department of Public Safety and Correctional Services.

The practice was used to screen people who would be working in jails for possible [illegal activity](#) and gang affiliations.

"I'm sure if you asked a correctional officer if they were working alongside someone who was known to show gang signs on their social media, that would create an uncomfortable working situation for them," Binetti said.

A review by the corrections department last year assessed 2,689 applications, showing that seven candidates were rejected in part because of information found on their social media profiles.

Another candidate was rejected for the job solely because of content on a social media profile.

That candidate, along with others, used social media profiles that contained images of them showing known gang signs, according to the review.

In April 2011, a few months after the American Civil

Liberties Union complained on behalf of Collins, the department issued a revised policy that asked job candidates to voluntarily participate in the review of social media use during their interview. The new policy stops short of asking for log-in or password information.

It is impossible to know exactly how often employers ask to tap into prospective workers' accounts, but Bradley Shear, a Bethesda, Md.-based social media attorney, said he believes it is happening more and more frequently.

Only a handful of clients have contacted him because an employer asked to test drive their accounts, but Shear said many more cases of social media snooping exist. Those asked to turn over their information are just afraid to come forward.

"If you're not willing to go public, the problem persists," he said. "If you're not willing to be a whistleblower, if you're not going to come forward, it's not going to stop."

Collins, who no longer works for the Department of Corrections and is pursuing a degree in nursing, said he has talked to other people who have also been required to hand over their account information, but "they didn't think anything of it."

While the Maryland legislation is the first of its kind, lawmakers in at least seven other states have introduced legislation to limit employer access to social media user names and passwords, according to the National Conference of State Legislatures.

It is unclear if the measure will become law because Democratic Gov. Martin O'Malley is still reviewing which legislation he will sign, a spokeswoman for the governor's office said.

A companion bill that would have kept colleges and universities from requiring that students disclose account information passed the Maryland Senate, but saw no movement in the House of Delegates.

Democratic U.S. Sens. Chuck Schumer of New York and Richard Blumenthal of Connecticut have

also asked Attorney General Eric Holder to investigate whether asking for log-in information during job interviews violates federal law.

Allie Bohm, an advocacy and policy strategist for the ACLU, says the practice of asking to surf someone's [social media](#) profile is akin to asking for the key to their house and going through their mail.

"We don't want to create a situation where employers think it's appropriate just because it's online," Bohm said.

Shear, who pushed for the Maryland legislation, said giving employers access to password-protected information not only violates people's privacy, but hampers technology development, which relies on users to trust the security of the websites.

"There's a whole generation of future leaders where they're going to be our elected leaders, our judges, our lawyers, our business people," Shear said. "Do we really want all those people to think it's OK for the government to see our private content without any warrant or subpoena or anything like that?"

Facebook director for state public policy Will Castleberry applauded the bill.

"Asking employees or job applicants for their passwords is wrong," he said in a statement.

Business representatives, including the Maryland Chamber of Commerce, argue that the bill is bad for business and that requests for log information are very rare.

While media have reported a few handful of instances around the country of employers asking for passwords, using third-party software to spy on profiles and requesting that applicants "friend" managers in order to vet their accounts, the practice is not widespread, said Elizabeth Torphy-Donzella, a labor and employment attorney with Baltimore-based Shawe Rosenthal LLP.

"I do not have one client that to my knowledge asked someone for their Facebook page and most of my clients would not even think of that," she said.

Torphy-Donzella, who worked with the Maryland Chamber of Commerce to oppose the bill, said it takes away important access for employers who need to investigate harassment claims and other misconduct.

"It was drafted in a manner that didn't take account of legitimate employer needs to request access to employee Facebook pages," she said.

But Shear argues that the legislation is good for businesses because it prevents them from being liable for information, such as criminal or harassing behavior, that they could discover when reviewing employee profiles.

"There's no good reason to do this," Shear said. "If you're in HR and you're doing it, you're creating tremendous legal liability for your company."

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