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Senate of Pennsylvania

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FINANCE COMMITTEE

DATE: March 26, 2012
TO: All Members
FROM: Senator Bob Mensch *RBM*
SUBJECT: Co-Sponsorship #12 - Personal User Name and Password Privacy Protection

MAR 26 2012

I am introducing legislation to prohibit employers from requesting or requiring that an employee or job applicant disclose any user name, password, or other means for accessing a personal account on a social networking site.

There have been numerous national and local news stories of late regarding employers requesting job applicants to give interviewers their Facebook user names and passwords in order to access the applicant's Facebook account. Employers from public agencies to law enforcement to Sears have stated that they have asked for and gained access to applicants' Facebook accounts. This means the employer logs in as the applicant, giving them access to view information that only the applicant could otherwise see. It also gives the employer the ability to make changes to an applicant's personal Facebook profile or post as the individual. Employers have also required applicants to "friend" someone within the employer's human relations department in order to view posts and pictures on an individual's Facebook profile.

It is a violation of Facebook's terms of service for a user to give someone else his or her Facebook login information. This holds the individual responsible and it does not prohibit an employer from requesting or requiring access as a condition of employment or consideration of employment. It is also considered a federal crime, yet recent testimony before a congressional committee indicates such violations are not prosecuted. An applicant or employee could easily feel intimidated in the workplace enough to violate a social networking site's terms of service.

If an employer or potential employer uses third-party screening companies to monitor and report on a potential employee's social networking activity, the information accessed is much more limited than if an employer logs in as the individual. Also, these companies are subject to the federal Fair Credit Reporting Act, which provides an employee or job applicant certain rights as a consumer if information is gained through them. The same is not true if an employer gains access to a social networking profile directly through an individual's user name and password.

Employers have well-defined and limited legal rights in conducting background checks, credit reports, and requesting references. It is not reasonable for them to have access to what is considered a personal Facebook profile, one that an individual using Facebook can choose who can see it and who cannot through privacy settings. While everyone who uses any social networking site should be aware that information posted on it can be viewed by others unknown to them such as the employees of social

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networking sites, there is still an expectation of privacy. What someone has on their FB page would provide an employer or potential employer with a significant amount of information that is unrelated to job performance and would otherwise, be inappropriate or illegal to ask in a job interview (i.e. age).

If you would like to join me in sponsoring this legislation, please call my office at 787-3110 or email Geri Sarfert at gsarfert@pasen.gov.