



**Testimony of Representative Garey Bies
Assembly Committee on Government Operations and State Licensing
Assembly Bill 218 –Access to Social Media Accounts**

Chairman August, committee members. Thank you for the opportunity to submit testimony on Assembly Bill 218 relating to access to an individual's social media accounts.

Everyday someone new registers a social media account. Earlier this year, Facebook had over 1 billion users. Twitter has over 500 million registered users and LinkedIn has over 225 users. And this is just a quick sampling of what we consider the more popular social media sites.

As more and more people rely on these sites as a means to connect with family, friends, and business associates, we need our current privacy laws to reflect the trends of today's modern society. Throughout the country we hear incidents of employers and educational institutions asking applicants and students to give their usernames and passwords to personal social media accounts. This is a clear violation of an individuals' right to privacy and the privacy of those they're "friends" with on these sites. If an employer/school/landlord has the ability to see an applicant's site, they also gain access to the private sites of individuals who haven't consented.

Six states have enacted legislation and more than 50 bills are pending in 28 states. This is clearly an issue states understand needs to be addressed to protect the rights of both parties involved.

We were careful to make certain exceptions in this bill to protect the rights of employers/schools/landlords because we understand there are situations that could open them up for liability. For instance, they are permitted to block access to certain sites and they can access and monitor data that is stored on an electronic device paid for in whole or part by the employer.

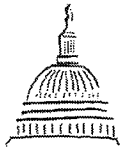
I'd like to add that I'm thankful to members of different industries within the business community that came to us with sensible and reasonable recommendations for changes. Their suggestions make this a stronger bill, which balance the rights of employees with the necessary protections for employers.

Once again thank you for the opportunity to testify on Assembly Bill 218. I am happy to answer any questions you may have.

First for Wisconsin!

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May 29th, 2013

Rep. Melissa Sargent's Testimony Regarding Assembly Bill 218

Thank you Mr. Chairman and committee members for allowing me to testify before you today.

AB 218 or 'The Social Media Protection Bill' is a bill that reflects the changing world we live in.

Increasing numbers of Americans use social media both on and off the job.

Recently, some employers have asked employees to turn over their usernames and passwords for their personal accounts. This same scenario has occurred on college campuses with athletic teams requiring students to turn over the passwords so that their accounts could be monitored.

Requiring access to personal, social media accounts is an invasion of privacy, yet as the bill states 'current law does not regulate employer access to, or observation of, the personal Internet accounts of employees and applicants for employment'.

Because it is still a relatively new communication source, social media websites and their use is largely unregulated by state or federal law. However, many states have already taken proactive steps to fix this. Legislation has been introduced or is pending in 36 states, and 11 states have passed laws similar to AB 218 which is before you today.

Social media legislation in other states has not known party lines. It has been passed in Republican leaning states like Utah and Arkansas, and Democratic states like Illinois.

The bill is fairly straight forward: AB 218 makes it illegal to require an employee, job applicant, student, prospective student, tenant or prospective tenant to turn over their username and password to any social media website. That's it. In the LRB's analysis there is an extensive list of what employers, universities, and landlords are still allowed to do.

- They can still monitor what is done on a company owned computer.
- They can still restrict what websites are visited on a company owned computer.
- They can monitor anything done publicly on a Facebook or Twitter page.
- They can conduct an investigation or require an employee to cooperate in an investigation of any alleged unauthorized transfer of confidential information via social media.

The list of allowed activity goes on and on in the bill draft.

This bill protects an individual's privacy while still giving employers the flexibility they need to run their business. It also gives employers and universities the clarity they need when deciding on a

cohesive social media policy. They will now know explicitly what they are allowed to do and what they are not allowed to do under the law.

A recent, troubling trend has emerged in which companies and universities have been hiring social media monitoring firms. Villanova University among others have required their student athletes to 'friend' a company called Varsity Monitor which watches every online move that these students make on their personal social media sites whether they are set to private or not.

Likewise, corporations have begun the practice of taking out 'cyber-insurance' to protect them from employee misbehavior.

This law may save Wisconsin employers tens of millions of dollars in potential costs associated with social media monitoring the personal digital accounts of employees and it will protect the personal privacy of employees. This includes the costs associated with hiring social media monitoring companies, increased cyber liability insurance costs, and legal fees and judgments inherent with negligent social media monitoring. These social media monitoring services are legal liability time bombs that could cost Wisconsin businesses dearly.

If a company or school is monitoring the personal social media content of their employees or students and misses an indication that there may be a crime committed it may cost the school millions of dollars. Does a business or university want to be on the hook in legal liability because it was utilizing a social media monitoring service to track personal social media accounts?

I believe that this bill is a good example of how we can work with one another in a bi-partisan manner. I reached out to Representative Bies after I read about Illinois and Michigan passing social media protection laws. He was interested in the concept and we have been able to forge a group of Democrats and Republicans to sign on as co-sponsors of this simple yet very necessary legislation.

Republicans and Democrats alike have shown support for this bill for various reasons. I have worked hard to gather a broad consensus by reaching out to consumer advocates, students, and employees as well as members of the business community. I believe that through this work, AB 218 respects the privacy rights of social media users with the needs of Wisconsin businesses.

WMC, an unlikely ally for me, has sent around a memo to our colleagues in the legislature stating "the authors (of AB218) have made a serious attempt to balance privacy concerns related to social media with the needs of employers."

We, as legislators, must keep up with the pace of technology. As times evolve, so must our laws.

It was not until the early 1900's that it was made illegal to open someone else's mail, or snail mail as we call it today.

It was not until 1986 that it was made illegal to look at another individual's email.

AB 218 is another step in a progression to protect an individual's privacy when a new means of breaching that privacy becomes available.

Thank you again Mr. Chairman.



WISCONSIN MANUFACTURERS & COMMERCE

To: Members of the State Legislature
From: Chris Reader, WMC Director of Health and Human Resources Policy
Date: May 23, 2013
Regarding: **LRB 1551/3, the Social Media Protection Bill**

Wisconsin Manufacturers & Commerce (WMC) would like to commend the authors of LRB 1551/3, the Social Media Protection Bill, for addressing initial concerns we raised with the first draft of the legislation.

We believe that the authors, Representatives Gary Bies and Melissa Sargent and Senators Glenn Grothman and John Lehman, have made a serious attempt to balance privacy concerns related to social media with the needs of employers to fulfill their obligations on monitoring an employee's work-related internet activity.

With social media now ubiquitous in daily life, for individuals and employers, we recognize the need to protect personal information from misuse and abuse. We also believe that, as personal social media usage blends with business purposes, the interests of employers must be preserved. For instance, it is important that an employer's ability to investigate employment-related misconduct is sustained, and proprietary information covered by a confidentiality agreement remain confidential even if housed or transmitted using a personal internet account.

Again, we would like to commend the authors for addressing the initial concerns raised by the business community and for incorporating suggested changes into LRB 1551/3. With the clarifications, we believe LRB 1551/3 is a serious attempt to balance individual privacy concerns with the needs of employers.

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Founded in 1911, Wisconsin Manufacturers & Commerce is the state's chamber of commerce and largest business trade association representing more than 3,500 employers of every size and from every sector of the economy.

