

CHAPTER 354
FORMERLY
HOUSE BILL NO. 309
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, social networking is illustrative of our new technologically advanced community;

WHEREAS, 75% of American online adults ages 18 to 24 and 56% of American online adults ages 25 to 34 have a profile on a social network site;

WHEREAS, personal uses of social networking applications by young Americans for maintaining community contacts and content sharing are currently more prevalent than professional uses;

WHEREAS, the current trend for young Americans toward using social networks as a primary vehicle for effecting positive social and political change establishes social networks as the new digital age “public square” for important discourse;

WHEREAS, permitting public and nonpublic institutions of higher learning to demand that students and applicants provide access to their social networking site profiles and accounts could substantially chill the important discourse occurring on social networking sites;

WHEREAS, internet users have a reasonable expectation of privacy in their social networking site communications and affairs;

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 14 of the Delaware Code by adding a new Chapter 94 by underlining as follows:

Chapter 94. Education Privacy Act.

§ 9401. Short title.

This enactment may be known and cited as the “Education Privacy Act.”

§ 9402. Definitions.

(1) “Academic institution” means public or nonpublic institution of higher education or institution of postsecondary education.

(2) “Applicant” means a prospective student applying for admission into the subject academic institution.

(3) “Electronic communication device” means a cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device whether mobile or desktop, 2-way messaging device, electronic game, or portable computing device.

(4) “Social networking site” means an internet-based, personalized, privacy-protected website or application whether free or commercial that allows users to construct a private or semi-private profile site within a bounded system, create a list of other system users who are granted reciprocal access to the individual’s profile site, send and receive email, and share personal content, communications, and contacts.

(5) “Student” means a person which at all relevant times is admitted into the academic institution.

§ 9403. Academic institution; prohibited acts.

(a) An academic institution shall not request or require that a student or applicant disclose any password or other related account information in order to gain access to the student’s or applicant’s social networking site profile or account by way of an electronic communication device.

(b) An academic institution shall not require or request that a student or applicant log onto a social networking site, mail account, or any other internet site or application by way of an electronic communication device in the presence of an agent of the institution so as to provide the institution access.

(c) No public or nonpublic academic institution shall monitor or track a student’s or applicant’s personal electronic communication device by installation of software upon the device, or by remotely tracking the device by using intercept technology.

(d) An academic institution shall not request or require a student or applicant to add the employer or its representative to their personal social networking site profile or account.

(e) An academic institution is prohibited from accessing a student's or applicant's social networking site profile or account indirectly through any other person who is a social networking contact of the student or applicant.

§ 9404. Academic institution; wrongful dismissal or refusal to admit.

(a) An academic institution may not discipline, dismiss or otherwise penalize or threaten to discipline, dismiss or otherwise penalize a student for refusing to disclose any information specified in subsection (a) or (b) of § 9403. It shall also be unlawful for a public or nonpublic academic institution to fail or refuse to admit any applicant as a result of the applicant's refusal to disclose any information specified in subsection (a) or (b) of § 9403.

Section 2. This Act shall be effective 30 days after its enactment into law.

§ 9405. Health and Safety exceptions.

This Act shall not apply to investigations conducted by an academic institution's public safety department or police agency who have a reasonable articulable suspicion of criminal activity, or to an investigation, inquiry or determination conducted pursuant to an academic institution's threat assessment policy or protocol.

Approved July 20, 2012