

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 746
Appropriations

(Delegate Tarrant, *et al.*)

**Institutions of Postsecondary Education - Electronic Account, Service, and
Communications Device Privacy Protection**

This bill prohibits an institution of postsecondary education from requiring a student or an applicant for admission to (1) provide the institution with access to the student's or applicant's personal Internet site or personal electronic account through an electronic device; (2) disclose any user name, password, or other means for accessing a personal Internet site or personal electronic account through an electronic device; or (3) install on a student or applicant's personal electronic communications device software that monitors or tracks the content of the device.

The bill also prohibits an institution of postsecondary education from disciplining or otherwise penalizing a student or applicant because of their refusal to comply with a request by the institution for access, disclosure, or specified software installation.

Fiscal Summary

State Effect: None. Meeting the requirements of the bill does not impact public four-year institutions of higher education or Baltimore City Community College finances.

Local Effect: Meeting the requirements of the bill does not impact community college finances.

Small Business Effect: Minimal.

Analysis

Current Law: State law does not specifically address privacy issues related to a student's, or an applicant's, personal user name and password information.

An "institution of postsecondary education" is defined as a school or other institution that offers an educational program in the State for individuals who are at least 16 years old and who have graduated from or left elementary or secondary school.

Background: In 2011 the University of North Carolina (UNC) updated its Department of Athletics Policy on Student-Athlete Social Networking and Media Use. The policy requires each team to "identify at least one coach or administrator who is responsible for having access to and regularly monitoring the content of team members' social networking sites and postings." The policy was apparently in response to a National Collegiate Athletic Association (NCAA) Notice of Allegation (NOA) that alleged among other things that the institution failed to "monitor social networking activity that visibly illustrated potential amateurism violations within the football program, which delayed the institution's discovery and compounded the provision of impermissible benefits..." The NCAA investigation was apparently triggered by the "Tweets" from a former UNC football star.

Despite the NOA, NCAA reports it does not require its members to monitor the social media activity of its members; however, it does encourage institutions to do so. A few entrepreneurs have seen this as a business opportunity, but some legal experts warn that monitoring student-athletes' accounts could expose the schools to litigation.

There are now a few companies that will monitor the Twitter, Facebook, and other social media accounts of student-athletes for a fee. In general, the companies monitor the social media activity by installing monitoring software on student-athletes electronic devices. More than two dozen institutions, including the University of Louisville, Louisiana State University, and Texas A&M, have signed up with a social media monitoring company. According to the *Washington Post*, monitoring companies have approached several Maryland institutions, although none has signed up with a company yet.

Some legal experts say that monitoring student-athletes' social media activity at public institutions could violate the Fourth Amendment of the U.S. Constitution that protects students from unreasonable searches and seizures. Other legal experts warn if a university athletic department does choose to actively monitor its students' social media accounts and fails to recognize or act on information that could have predicted or prevented property damage, personal injury, or death, then the school could be sued for negligence or dereliction of duty. On the other hand, acting too quickly on such information could result in a student filing a claim against the school for reputational

damage or lost future financial benefits. Finally, an institution could be accused of discrimination or violating a student's Fourteenth Amendment right of equal protection based on how it determines which students to monitor.

In October 2011, the University of Maryland, College Park issued social media guidelines for its more than 700 student-athletes. The guidelines remind student-athletes to think before using slurs about race, religion, or sexual orientation, to follow NCAA rules, and to monitor comments for offensive language.

Additional Information

Prior Introductions: None.

Cross File: SB 434 (Senator Young, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Morgan State University, University System of Maryland, Maryland Higher Education Commission, Maryland Independent College and University Association, *The Washington Post*, *Carolina March*, *Fox Sports*, Department of Legislative Services

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Analysis by: Caroline L. Boice

Direct Inquiries to:
(410) 946-5510
(301) 970-5510