



# To protect privacy, states must keep pace with technology

Wisconsin laws provide new safeguards for users of social media, cell phones

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I was running for election to the Wisconsin State Assembly in the fall of 2012 when I unknowingly knocked on the door of a woman who would give me the idea for my first bill.

She said she had been applying for jobs and had recently filled out several applications. On one application in particular, she said, she had been asked to provide her Facebook login information.

"Is that right?" she asked.

Without a doubt, I knew that it certainly didn't feel or sound right, but whether it was legal or not, I didn't know.

As it turned out, it was perfectly within the law for employers or landlords — even teachers — to ask for another person's social-media login information, and in the case of employees or tenants, forfeiture of their logins could be used as a condition of employment or housing.

This discovery made me uneasy. It seemed to me that if someone were to demand my Facebook password, I would feel extremely uncomfortable, even violated. What's more, I was equally unsettled by the fact that had I refused, someone could have denied me an employment opportunity or even basic housing.

## Changes demand innovative laws

It was those feelings of unease and discomfort that made me want to push for change.

My social-media bill, which restricted employers, teachers and landlords from requiring access to personal Internet accounts or discriminating against anyone for refusing access to personal Internet information, was passed in 2013 (Wisconsin Act 208).

Act 208 challenged my perceptions about the laws we create, and it changed who I wanted to be

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as a legislator. Because of that bill, I work every day to find ways to make innovative laws that reflect our society and the ways that we are perceiving issues such as privacy.

As technology and the Internet grow and change, our laws must continue to adapt to and incorporate those changes and our shifting perspectives.

Such constant change demands that we be ever vigilant in ensuring that our laws are still relevant in protecting our people, and that they cover new, sophisticated technologies and modern uses.

While technological developments and progress yield endless advantages, not the least of



which is our access to unlimited information, the other side to the coin is that it provides ample opportunity for some people to misuse or abuse the power of technology in ways that are detrimental to our people and our privacy.

Prior to 2014 in Wisconsin, for example, law enforcement officials were allowed to track the location of a person's cell phone without obtaining consent or a warrant. Law enforcement officers could have gone to my cell phone provider at any time without probable cause and asked for any or all of my recent locations.

The problem with using technology in this way, however, is that most citizens in Wisconsin were unfortunately unaware that anyone could be

tracking their movements via their cell phones — and more important, were probably unaware that their phones even had that capability.

This is a prime example of technology outgrowing and outpacing our laws — they had no specific consideration for cell phones being tracked, nor did they even account for the majority of people who carry cell phones today.

Thus, I passed legislation to update Wisconsin's laws, which now require a warrant for tracking a person's cell phone and location (2013 Wisconsin Act 375).

In continuing to advocate for laws that address

modern technology, this session I introduced a bill to create an offense punishing the crime of upskirting (AB 8). Upskirting — as the word implies — is the act of using a camera or video recording device to take photos or videos up a person's skirt or, more broadly, the use of any device to record under the outer clothing of a person without their consent.

Similar legislation has been taking the country by storm since the high court in Massachusetts found a legislative loophole allowing upskirting offenders to go unpunished.

Wisconsin has a similar loophole in its statutes, and depending upon the type or presence of an undergarment that is worn when the photo is taken, the photo could be perfectly legal in the state. Multiple upskirting offenders have been caught in Wisconsin and charged only with disorderly conduct — far less of a punishment than the crime itself deserves.

## States at forefront of protecting privacy

A decade ago, things like upskirting or cell phone tracking would not have been a concern, or even possible, really. The ways that technology is being used in our society are (or should be) changing the way we approach lawmaking and protecting the people in our state.

We are seeing and defining issues such as privacy through entirely different lenses than we did even a mere five years ago, and technology is requiring us to shift our perspectives.

Wisconsin, as well as other states, for example, is looking at how we preserve and manage digital assets for the deceased. Other states, such as California, are looking at how schools are using biometric information of their students and how they are storing that data. Many states have or are working toward introducing similar upskirting bills.

Measures like these are crucial, and we should continue to take proactive approaches to technology and privacy. Technology is being used in our society for great purposes, expanding learning opportunities and often making lives more convenient, but we must take care not to forget that our laws should reflect all of these changes. ★

Rep. Melissa Sargent, a Democrat from Madison, was first elected to the Wisconsin State Assembly in 2012.

## Submissions welcome

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