

By the Committees on Governmental Oversight and Accountability;
and Commerce and Tourism; and Senators Clemens and Latvala

585-02539-14

2014198c2

1 A bill to be entitled
2 An act relating to social media privacy; creating s.
3 448.077, F.S.; providing definitions; prohibiting an
4 employer from requesting or requiring access to a
5 social media account of an employee or prospective
6 employee; prohibiting an employer from taking
7 retaliatory personnel action for an employee's failure
8 to provide access to his or her social media account;
9 prohibiting an employer from failing or refusing to
10 hire a prospective employee who does not provide
11 access to his or her social media account; authorizing
12 civil actions for violations; providing for recovery
13 of attorney fees and court costs; specifying that an
14 employer is not prohibited from seeking access to
15 social media accounts under certain circumstances;
16 providing an effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Section 448.077, Florida Statutes, is created to
21 read:

22 448.077 Employer access to employee social media accounts
23 prohibited.—

24 (1) As used in this section, the term:

25 (a) "Electronic communications device" means a device that
26 uses electronic signals to create, transmit, or receive
27 information, including computers, telephones, personal digital
28 assistants, and other similar devices.

29 (b) "Retaliatory personnel action" has the same meaning as

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30 in s. 448.101.

31 (c) "Social media account" means an interactive personal
32 account or profile that an individual establishes and uses
33 through an electronic application, service, or platform used to
34 generate or store content, including, but not limited to,
35 videos, still photographs, blogs, video blogs, instant messages,
36 audio recordings, or e-mail that is not available to the general
37 public.

38 (2) An employer may not do any of the following:

39 (a) Request or require an employee or prospective employee
40 to disclose a username, password, or other means of accessing a
41 social media account through an electronic communications
42 device.

43 (b) Request or require an employee or prospective employee
44 to take an action that allows the employer to gain access to the
45 employee's or prospective employee's social media account if the
46 account's contents are not available to the general public.

47 (c) Take retaliatory personnel action against an employee
48 for refusing to give the employer access to the employee's
49 social media account.

50 (d) Fail or refuse to hire a prospective employee as a
51 result of the prospective employee's refusal to allow the
52 employer access to the prospective employee's social media
53 account.

54 (3) An employee or prospective employee may bring a civil
55 action against an employer who violates this section in a court
56 located in the county in which the employee or prospective
57 employee resides or where the alleged violation occurred. Such
58 action must be brought within 2 years after the violation

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59 occurred. The employee or prospective employee may seek
60 injunctive relief to restrain the employer from continuing to
61 act in violation of this section and may recover damages in an
62 amount equal to the actual damages arising from the violation or
63 \$500 per violation, whichever is greater. An employee or
64 prospective employee who prevails is entitled to recover court
65 costs and reasonable attorney fees.

66 (4) This section does not prevent an employer from
67 requesting or requiring an employee to disclose a username,
68 password, or other means of accessing a social media account
69 used for business purposes.

70 (5) This section does not prohibit or restrict an employer
71 from complying with a duty to monitor or retain employee
72 communications which is established under state or federal law
73 or by a self-regulatory organization, as defined in the
74 Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(26), or
75 from screening a prospective employee who completes an
76 application for employment at a law enforcement agency or an
77 employee who is the subject of a conduct investigation performed
78 by a law enforcement agency.

79 Section 2. This act shall take effect October 1, 2014.