

By the Committee on Commerce and Tourism; and Senator Clemens

577-00711-16

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A bill to be entitled

An act relating to social media privacy; creating s. 448.077, F.S.; defining terms; prohibiting an employer from requesting or requiring access to a social media account of an employee or prospective employee; prohibiting an employer from taking retaliatory personnel action against an employee as a result of the employee's refusal to allow access to his or her social media account; prohibiting an employer from failing or refusing to hire a prospective employee as a result of the prospective employee's refusal to allow access to his or her social media account; authorizing civil action for a violation; requiring that the civil action be brought within a specified timeframe; providing a penalty for a violation; providing for recovery of attorney fees and court costs; specifying that an employer is not prohibited from seeking access to social media accounts used primarily for the employer's business purposes; providing an effective date.

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

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

448.077 Employer access to employee social media accounts prohibited.-

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

(a) "Prosecutorial agency" means any local, state, or

577-00711-16

2016186c1

30 federal entity charged with the investigation and prosecution of  
31 violations of criminal law.

32 (b) "Retaliatory personnel action" has the same meaning as  
33 in s. 448.101.

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

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

41 (a) Request or require an employee or prospective employee  
42 to take an action that allows the employer to gain access to the  
43 employee's or prospective employee's social media account,  
44 including, but not limited to, requesting him or her to disclose  
45 the username, password, or other means of accessing his or her  
46 social media account if the social media account's contents are  
47 not available to the general public.

48 (b) Take retaliatory personnel action against an employee  
49 as a result of the employee's refusal to allow the employer  
50 access to the employee's social media account.

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

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

577-00711-16

2016186c1

59 action must be brought within 2 years after the violation  
60 occurred. The employee or prospective employee may seek  
61 injunctive relief to restrain the employer from continuing to  
62 act in violation of this section and may recover damages in an  
63 amount equal to the actual damages arising from the violation or  
64 \$500 per violation, whichever is greater. An employee or  
65 prospective employee who prevails is entitled to recover court  
66 costs and reasonable attorney fees.

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

71 (5) This section does not prohibit or restrict an employer  
72 from complying with a duty to monitor or retain employee  
73 communications which is established under state or federal law  
74 or by a self-regulatory organization as defined in s. 3(a)(26)  
75 of the Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(26),  
76 or from screening a prospective employee who completes an  
77 application for employment at a law enforcement or prosecutorial  
78 agency or an employee who is the subject of a conduct  
79 investigation performed by a law enforcement or prosecutorial  
80 agency.

81 Section 2. This act shall take effect October 1, 2016.  
82