

By Senator Clemens

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1 A bill to be entitled
2 An act relating to social media privacy; creating s.
3 448.077, F.S.; defining terms; prohibiting an employer
4 from requesting or requiring access to a social media
5 account of an employee or prospective employee under
6 certain circumstances; prohibiting an employer from
7 taking retaliatory personnel action for an employee's
8 refusal to allow access to his or her social media
9 account; prohibiting an employer from failing or
10 refusing to hire a prospective employee as a result of
11 the prospective employee's refusal to allow access to
12 his or her social media account; authorizing civil
13 action for a violation; requiring that the civil
14 action be brought within a specified timeframe;
15 providing a penalty for a violation; providing for
16 recovery of attorney fees and court costs; specifying
17 that an employer is not prohibited from seeking access
18 to social media accounts used primarily for the
19 employer's business purposes; providing an effective
20 date.

21
22 Be It Enacted by the Legislature of the State of Florida:

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

26 448.077 Employer access to employee social media accounts
27 prohibited.-

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

29 (a) "Electronic communications device" means a device that

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30 uses electronic signals to create, transmit, or receive
31 information, including computers, telephones, personal digital
32 assistants, and other similar devices.

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

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

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

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

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

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

56 (3) An employee or prospective employee may bring a civil
57 action against an employer who violates this section in a court
58 located in the county in which the employee or prospective

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

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

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

82 Section 2. This act shall take effect October 1, 2015.