



LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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04/28/2014 04:24 PM

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Senator Clemens moved the following:

Senate Amendment (with title amendment)

Before line 48

insert:

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) "Electronic communications device" means a device that uses electronic signals to create, transmit, or receive



12 information, including computers, telephones, personal digital
13 assistants, and other similar devices.

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

16 (c) "Social media account" means an interactive personal
17 account or profile that an individual establishes and uses
18 through an electronic application, service, or platform used to
19 generate or store content, including, but not limited to,
20 videos, still photographs, blogs, video blogs, instant messages,
21 audio recordings, or e-mail that is not available to the general
22 public.

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

24 (a) Request or require an employee or prospective employee
25 to disclose a username, password, or other means of accessing a
26 social media account through an electronic communications
27 device.

28 (b) Request or require an employee or prospective employee
29 to take an action that allows the employer to gain access to the
30 employee's or prospective employee's social media account if the
31 account's contents are not available to the general public.

32 (c) Take retaliatory personnel action against an employee
33 for refusing to give the employer access to the employee's
34 social media account.

35 (d) Fail or refuse to hire a prospective employee as a
36 result of the prospective employee's refusal to allow the
37 employer access to the prospective employee's social media
38 account.

39 (3) An employee or prospective employee may bring a civil
40 action against an employer who violates this section in a court



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41 located in the county in which the employee or prospective
42 employee resides or where the alleged violation occurred. Such
43 action must be brought within 2 years after the violation
44 occurred. The employee or prospective employee may seek
45 injunctive relief to restrain the employer from continuing to
46 act in violation of this section and may recover damages in an
47 amount equal to the actual damages arising from the violation or
48 \$500 per violation, whichever is greater. An employee or
49 prospective employee who prevails is entitled to recover court
50 costs and reasonable attorney fees.

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

55 (5) This section does not prohibit or restrict an employer
56 from complying with a duty to monitor or retain employee
57 communications which is established under state or federal law
58 or by a self-regulatory organization, as defined in the
59 Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(26), or
60 from screening a prospective employee who completes an
61 application for employment at a law enforcement agency or an
62 employee who is the subject of a conduct investigation performed
63 by a law enforcement agency.

64
65 ===== T I T L E A M E N D M E N T =====

66 And the title is amended as follows:

67 Delete line 2

68 and insert:

69 An act relating to computer offenses; creating s.



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70 448.077, F.S.; providing definitions; prohibiting an
71 employer from requesting or requiring access to a
72 social media account of an employee or prospective
73 employee; prohibiting an employer from taking
74 retaliatory personnel action for an employee's failure
75 to provide access to his or her social media account;
76 prohibiting an employer from failing or refusing to
77 hire a prospective employee who does not provide
78 access to his or her social media account; authorizing
79 civil actions for violations; providing for recovery
80 of damages, attorney fees, and court costs; specifying
81 that an employer is not prohibited from seeking access
82 to social media accounts under certain circumstances;
83 amending s.