

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;
6 prohibiting an employer from taking retaliatory
7 personnel action against an employee as a result of
8 the employee's refusal to allow access to his or her
9 social media account; prohibiting an employer from
10 failing or refusing to hire a prospective employee as
11 a result of the prospective employee's refusal to
12 allow access to his or her social media account;
13 authorizing civil action for a violation; requiring
14 that the civil action be brought within a specified
15 timeframe; providing a penalty for a violation;
16 providing for recovery of attorney fees and court
17 costs; specifying that an employer is not prohibited
18 from seeking access to social media accounts used
19 primarily for the employer's business purposes;
20 providing an effective date.

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

23
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) "Retaliatory personnel action" has the same meaning as

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30 in s. 448.101.

31 (b) "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 to
34 generate or to store content, including, but not limited to,
35 videos, still photographs, blogs, video blogs, instant messages,
36 audio recordings, and e-mail.

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

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

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

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

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

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

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

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

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