

BILL ANALYSIS

C.S.H.B. 318
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the use of social media has increased substantially over the years and that some employers have requested employees and applicants for jobs to provide user names and passwords for personal social media accounts. Concerns have been raised that requiring such access is a violation of privacy and may lead to employment discrimination based on information discovered in a personal account, such as age, disability, national origin, and religion. C.S.H.B. 318 seeks to place conditions on employers requiring or requesting access to personal social media accounts.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 318 amends the Labor Code to prohibit an employer from requiring or requesting an employee or applicant for employment to disclose a user name, password, or other means for accessing a personal account of the employee or applicant through an electronic communication device. The bill defines "employer" to include an employer's agent, representative, or designee. The bill authorizes an employer to access a personal account of an employee if the employer holds a reasonable belief that the employee has violated state or federal law or an employment policy of the employer. The bill establishes as an unlawful employment practice an employer violating the bill's provisions.

C.S.H.B. 318 specifies that its provisions do not constitute a prohibition against an employer maintaining lawful workplace policies governing employee usage of employer-provided electronic communication devices or employee usage of personal electronic communication devices during work hours, monitoring employee usage of employer-provided electronic communication devices or e-mail accounts, or obtaining information about an employee or applicant for employment that is in the public domain or that is otherwise lawfully obtained.

C.S.H.B. 318 exempts from its provisions a state or local law enforcement agency, an employer engaged in financial services, and a personal social media account or an electronic communication device of a financial services employee who uses the account or device to conduct business of the employer that is subject to the content, supervision, and retention requirements imposed by federal securities laws and regulations or by a self-regulatory organization as defined by federal law. The bill defines "employer engaged in financial services" for purposes of the exemption.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 318 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter B, Chapter 21, Labor Code, is amended by adding Section 21.0605 to read as follows:

Sec. 21.0605. REQUIRING OR REQUESTING PERSONAL ACCOUNT ACCESS. (a) In this section, "electronic communication device" includes a computer, telephone, personal digital assistant, or similar device that uses electronic signals to create, transmit, and receive information.

(b) An employer commits an unlawful employment practice if the employer requires or requests that an employee or applicant for employment disclose a user name, password, or other means for accessing a personal account of the employee or applicant, including a personal e-mail account or a social networking website account or profile, through an electronic communication device.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 21, Labor Code, is amended by adding Section 21.0605 to read as follows:

Sec. 21.0605. PERSONAL ACCOUNT ACCESS. (a) In this section:

(1) "Electronic communication device" includes a computer, telephone, personal digital assistant, or similar device that uses electronic signals to create, transmit, and receive information.

(2) "Employer" includes an employer's agent, representative, or designee. The term does not include a state or local law enforcement agency.

(b) Except as provided by Subsection (c), an employer may not require or request that an employee or applicant for employment disclose a user name, password, or other means for accessing a personal account of the employee or applicant, including a personal e-mail account or a social networking website account or profile, through an electronic communication device.

(c) An employer may access a personal account of an employee if the employer holds a reasonable belief that the employee has violated:

(1) state or federal law, including a federal regulation or any regulatory policy or guidance issued by a federal agency; or

(2) an employment policy of the employer, including a policy governing:

(A) employee usage of an electronic communication device for work-related communications;

(B) the storage of potentially sensitive, nonpublic consumer information or of employer proprietary information;

(C) employee cooperation in a workplace investigation; or

(D) the safety and security of employees and customers of the employer.

No equivalent provision.

(c) This section does not prohibit an employer from:

(1) maintaining lawful workplace policies governing:

(A) employee usage of employer-provided electronic communication devices, including employee access to personal accounts on those devices; or

(B) employee usage of personal electronic communication devices during working hours;

(2) monitoring employee usage of employer-provided electronic communication devices or employer-provided e-mail accounts; or

(3) obtaining information about an employee or applicant for employment that is in the public domain or that is otherwise lawfully obtained.

No equivalent provision.

No equivalent provision.

SECTION 2. This Act takes effect immediately if it receives a vote of two-

(d) An employer who violates this section commits an unlawful employment practice.

(e) This section does not prohibit an employer from:

(1) maintaining lawful workplace policies governing:

(A) employee usage of employer-provided electronic communication devices, including employee access to personal accounts on those devices; or

(B) employee usage of personal electronic communication devices during working hours;

(2) monitoring employee usage of employer-provided electronic communication devices or employer-provided e-mail accounts consistent with the requirements of this section; or

(3) obtaining information about an employee or applicant for employment that is in the public domain or that is otherwise lawfully obtained.

(f) This section does not apply to an employer engaged in financial services. For purposes of this subsection, "employer engaged in financial services" means:

(1) a bank, savings and loan association or savings bank, credit union, or other depository institution or its subsidiaries or affiliates;

(2) a mortgage banker or residential mortgage loan company;

(3) a securities firm or registered financial advisory firm;

(4) a regulated loan company; or

(5) an insurance company or insurance agency.

(g) This section does not apply to a personal social media account or an electronic communication device of a financial services employee who uses the account or device to conduct business of the employer that is subject to the content, supervision, and retention requirements imposed by federal securities laws and regulations or by a self-regulatory organization, as defined by Section 3(a)(26), Securities Exchange Act of 1934 (15 U.S.C. Section 78c).

SECTION 2. Same as introduced version.

thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.