

By: Giddings

H.B. No. 318

Substitute the following for H.B. No. 318:

By: Rodriguez of Travis

C.S.H.B. No. 318

A BILL TO BE ENTITLED

1 AN ACT
2 relating to employer access to the personal accounts of certain
3 employees and job applicants through electronic communication
4 devices; establishing an unlawful employment practice.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

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

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

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

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

1 violated:

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

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

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

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

12 (C) employee cooperation in a workplace
13 investigation; or

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

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

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

19 (1) maintaining lawful workplace policies governing:

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

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

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

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

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

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

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

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

14 (4) a regulated loan company; or

15 (5) an insurance company or insurance agency.

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

24 SECTION 2. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2013.