

BILL ANALYSIS

C.S.H.B. 1777
By: Giddings
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The use of personal online accounts, including those within social media, has increased substantially over the past several years. Interested parties cite recent incidents in which employers have requested that employees and job applicants provide user names and passwords for personal online accounts and express concern that requiring such access is a violation of privacy that could lead to employment discrimination based on information discovered in a personal account, such as age, disability, national origin, and religion. The parties report that some job applicants have even been rejected for employment solely because of the content contained in their personal online account. The parties stress that access to an applicant's personal online accounts should not be a prerequisite for employment, as the right to privacy is a fundamental American principle guaranteed by the United States Constitution. C.S.H.B. 1777 seeks to address this concern and protect personal privacy in the workplace.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1777 amends the Labor Code to establish that 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 online account of the employee or applicant through an electronic communication device or otherwise uses an employee's or applicant's user name, password, or other means to access a personal online account of the employee or applicant through an electronic communication device. The bill sets out circumstances under which an employer does not commit an unlawful employment practice with respect to that information and specifies that the bill's provisions do not prohibit an employer from maintaining lawful workplace policies governing employee usage of employer-provided electronic communication devices or personal electronic communication devices during working or billable hours; monitoring, restricting, or prohibiting employee usage of employer-provided electronic communication devices or employer-provided e-mail accounts; obtaining information about an employee or applicant for employment that is in the public domain or that is otherwise lawfully obtained; or requesting an employee or applicant for employment to provide a personal e-mail address for the purpose of communicating with the employee or applicant.

C.S.H.B. 1777 does not apply to an employer engaged in financial services, as defined by the bill; to an employer who enters into a written agreement with an employee or applicant for

employment in which the employee or applicant consents to the disclosure of a user name, password, or other means for accessing a personal online account of the employee or applicant through an electronic communication device; 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 federal law; or to the law enforcement operations of a state or local agency that is responsible for the investigation, prosecution, or enforcement of criminal laws. The bill prohibits an employer from requiring an employee or applicant for employment to sign a written agreement consenting to the disclosure of the employee's or applicant's user name, password, or other means for accessing a personal online account as a condition of employment or of any term of employment.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1777 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted 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. PERSONAL ONLINE 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.

(3) "Personal online account" means an account, service, or profile on an Internet website that an individual uses for personal communication. The term:

(A) includes:

(i) a personal e-mail account;

(ii) an account or profile on a social networking website;

(iii) an electronic medium or service through which a user creates, shares, or views content, including e-mail, instant messages, text messages, blogs, podcasts, photographs, videos, and user-created profiles;

(iv) an account containing personal financial information; and

(v) an account containing confidential

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 ONLINE 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.

(3) "Personal online account" means an account, service, or profile on an Internet website that an individual uses for personal communication. The term:

(A) includes:

(i) a personal e-mail account;

(ii) an account or profile on a social networking website;

(iii) an electronic medium or service through which a user creates, shares, or views content, including e-mail, instant messages, text messages, blogs, podcasts, photographs, videos, and user-created profiles;

(iv) an account containing personal financial information; and

(v) an account containing confidential

medical information; and
(B) does not include an account or profile that an individual creates, services, maintains, uses, or accesses for:
(i) business communication; or
(ii) a business purpose of the employer.
(b) Except under a written agreement described by Subsection (g), an employer commits an unlawful employment practice if the employer:
(1) requires or requests that an employee or applicant for employment disclose a user name, password, or other means for accessing a personal online account of the employee or applicant through an electronic communication device; or
(2) otherwise uses an employee's or applicant's user name, password, or other means to access a personal online account of the employee or applicant through an electronic communication device.
(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 online accounts on those devices; or
(B) employee usage of personal electronic communication devices during working or billable hours;
(2) monitoring, restricting, or prohibiting employee usage of employer-provided electronic communication devices or employer-provided e-mail accounts;
(3) obtaining information about an employee or applicant for employment that is in the public domain or that is otherwise lawfully obtained; or
(4) requesting an employee or applicant for employment to provide a personal e-mail address for the purpose of communicating with the employee or applicant.
(d) An employer does not commit an unlawful employment practice if:
(1) by monitoring employee usage of employer-provided electronic communication devices or employer-provided e-mail accounts, the employer inadvertently obtains a user name, password, or other means for accessing a personal online account of an employee; and
(2) the employer does not use that means of access to access a personal online account of the employee.

medical information; and
(B) does not include an account or profile that an individual creates, services, maintains, uses, or accesses for:
(i) business communication; or
(ii) a business purpose of the employer.
(b) Except under a written agreement described by Subsection (g), an employer commits an unlawful employment practice if the employer:
(1) requires or requests that an employee or applicant for employment disclose a user name, password, or other means for accessing a personal online account of the employee or applicant through an electronic communication device; or
(2) otherwise uses an employee's or applicant's user name, password, or other means to access a personal online account of the employee or applicant through an electronic communication device.
(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 online accounts on those devices; or
(B) employee usage of personal electronic communication devices during working or billable hours;
(2) monitoring, restricting, or prohibiting employee usage of employer-provided electronic communication devices or employer-provided e-mail accounts;
(3) obtaining information about an employee or applicant for employment that is in the public domain or that is otherwise lawfully obtained; or
(4) requesting an employee or applicant for employment to provide a personal e-mail address for the purpose of communicating with the employee or applicant.
(d) An employer does not commit an unlawful employment practice if:
(1) by monitoring employee usage of employer-provided electronic communication devices or employer-provided e-mail accounts, the employer inadvertently obtains a user name, password, or other means for accessing a personal online account of an employee; and
(2) the employer does not use that means of access to access a personal online account of the employee.

(e) 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.

(f) 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).

(g) This section does not apply to an employer who enters into a written agreement with an employee or applicant for employment in which the employee or applicant consents to the disclosure of a user name, password, or other means for accessing a personal online account of the employee or applicant through an electronic communication device. An employer may not require an employee or applicant for employment to sign a written agreement under this subsection as a condition of employment or of any term of employment.

SECTION 2. This Act takes effect immediately if it receives a vote of two-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, 2015.

(e) 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.

(f) 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).

(g) This section does not apply to an employer who enters into a written agreement with an employee or applicant for employment in which the employee or applicant consents to the disclosure of a user name, password, or other means for accessing a personal online account of the employee or applicant through an electronic communication device. An employer may not require an employee or applicant for employment to sign a written agreement under this subsection as a condition of employment or of any term of employment.

(h) This section does not apply to the law enforcement operations of a state or local agency that is responsible for the investigation, prosecution, or enforcement of criminal laws.

SECTION 2. Same as introduced version.