

By: Giddings

H.B. No. 1777

Substitute the following for H.B. No. 1777:

By: Oliveira

C.S.H.B. No. 1777

A BILL TO BE ENTITLED

1 AN ACT

2 relating to prohibiting an employer from accessing the personal
3 online accounts of employees and job applicants through electronic
4 communication devices; establishing an unlawful employment
5 practice.

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

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

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

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

15 (2) "Employer" includes an employer's agent,
16 representative, or designee.

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

20 (A) includes:

21 (i) a personal e-mail account;

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

24 (iii) an electronic medium or service

1 through which a user creates, shares, or views content, including
2 e-mail, instant messages, text messages, blogs, podcasts,
3 photographs, videos, and user-created profiles;

4 (iv) an account containing personal
5 financial information; and

6 (v) an account containing confidential
7 medical information; and

8 (B) does not include an account or profile that
9 an individual creates, services, maintains, uses, or accesses for:

10 (i) business communication; or

11 (ii) a business purpose of the employer.

12 (b) Except under a written agreement described by
13 Subsection (g), an employer commits an unlawful employment practice
14 if the employer:

15 (1) requires or requests that an employee or applicant
16 for employment disclose a user name, password, or other means for
17 accessing a personal online account of the employee or applicant
18 through an electronic communication device; or

19 (2) otherwise uses an employee's or applicant's user
20 name, password, or other means to access a personal online account
21 of the employee or applicant through an electronic communication
22 device.

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

24 (1) maintaining lawful workplace policies governing:

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

1 (B) employee usage of personal electronic
2 communication devices during working or billable hours;

3 (2) monitoring, restricting, or prohibiting employee
4 usage of employer-provided electronic communication devices or
5 employer-provided e-mail accounts;

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

9 (4) requesting an employee or applicant for employment
10 to provide a personal e-mail address for the purpose of
11 communicating with the employee or applicant.

12 (d) An employer does not commit an unlawful employment
13 practice if:

14 (1) by monitoring employee usage of employer-provided
15 electronic communication devices or employer-provided e-mail
16 accounts, the employer inadvertently obtains a user name, password,
17 or other means for accessing a personal online account of an
18 employee; and

19 (2) the employer does not use that means of access to
20 access a personal online account of the employee.

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

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

27 (2) a mortgage banker or residential mortgage loan

1 company;

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

4 (4) a regulated loan company; or

5 (5) an insurance company or insurance agency.

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

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

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

26 SECTION 2. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2015.