

By: Giddings

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. The term does not include a state or
17 local law enforcement agency.

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

21 (A) includes:

22 (i) a personal e-mail account;

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

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

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

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

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

11 (i) business communication; or

12 (ii) a business purpose of the employer.

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

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

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

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

25 (1) maintaining lawful workplace policies governing:

26 (A) employee usage of employer-provided
27 electronic communication devices, including employee access to

1 personal online accounts on those devices; or

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

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

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

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

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

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

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

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

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

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

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

5 (4) a regulated loan company; or

6 (5) an insurance company or insurance agency.

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

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

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, 2015.