

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 462 entitled “An act relating to social media privacy
4 for employees” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 21 V.S.A. § 495k is added to read:

8 § 495k. SOCIAL MEDIA ACCOUNT PRIVACY; PROHIBITIONS

9 (a) As used in this section:

10 (1) “Social media account” means an account with an electronic
11 medium or service through which users create, share, and interact with content,
12 including videos, still photographs, blogs, video blogs, podcasts, instant or text
13 messages, e-mail, online services or accounts, or Internet website profiles or
14 locations. “Social media account” does not include an account provided by an
15 employer or intended to be used primarily on behalf of an employer.

16 (2) “Specifically identified content” means data, information, or other
17 content stored in a social media account that is identified with sufficient
18 particularity to distinguish the individual piece of content being sought from
19 any other data, information, or content stored in the account. “Specifically
20 identified content” shall not include a username, password, or other means of

1 authentication for the purpose of accessing an employee’s or applicant’s social
2 media account.

3 (b) An employer shall not require, request, or coerce an employee or
4 applicant to do any of the following:

5 (1) disclose a username, password, or other means of authentication, or
6 turn over an unlocked personal electronic device for the purpose of accessing
7 the employee’s or applicant’s social media account;

8 (2) access a social media account in the presence of the employer;

9 (3) divulge or present any content from the employee’s or applicant’s
10 social media account; or

11 (4) change the account or privacy settings of the employee’s or
12 applicant’s social media account to increase third-party access to its contents.

13 (c) An employer shall not require or coerce an employee or applicant to add
14 anyone, including the employer, to their list of contacts associated with a social
15 media account.

16 (d) No agreement by an employee to waive his or her rights under this
17 section shall be valid.

18 (e)(1) Nothing in this section shall preclude an employer from requesting
19 an employee to share specifically identified content for the purpose of:

20 (A) complying with the employer’s legal and regulatory obligations;

1 (B) investigating an allegation of the unauthorized transfer or
2 disclosure of an employer’s proprietary or confidential information or financial
3 data through an employee’s or an applicant’s social media account; or

4 (C) investigating an allegation of unlawful harassment, threats of
5 violence in the workplace, or discriminatory or disparaging content concerning
6 another employee.

7 (2) This section does not prohibit or restrict the Vermont State Police,
8 County sheriff’s departments, municipal police departments, or the Office of
9 the Attorney General from complying with a duty to screen employees or
10 applicants before hiring or to monitor or retain employee social media account
11 information or content during the hiring process for a law enforcement officer.

12 (2) This section does not restrict or otherwise prohibit a law
13 enforcement agency from requesting and requiring:

14 (A) applicants for a law enforcement officer position or other
15 sensitive position as determined by the law enforcement agency to provide
16 access to their social media account as part of its screening or fitness
17 determination of such applicants during the hiring process; or

18 (B) an employee holding a position as a law enforcement officer or
19 other sensitive position as determined by the law enforcement agency to
20 provide access to his or her social media account in relation to a continued

1 fitness determination or an allegation or investigation of employee misconduct,
2 a violation of policy, or a violation of law.

3 (3) This section does not restrict or otherwise prohibit a law
4 enforcement agency from retaining any social media account information
5 acquired pursuant to this subsection (e), provided that the information shall be
6 protected in accordance with law or agency policy.

7 (f) Nothing in this section shall preclude an employer from requesting a
8 username or password that is necessary to access an employer-issued
9 electronic device.

10 (g) An employer shall not discharge or in any other manner retaliate against
11 an employee who exercises or attempts to exercise his or her rights under this
12 section. The provisions against retaliation in subdivision 495(a)(8) of this title
13 and the penalty and enforcement provisions of section 495b of this title shall
14 apply to this section.

15 Sec. 2. EFFECTIVE DATE

16 This act shall take effect on January 1, 2018.

17 (Committee vote: _____)

18 _____

19 Representative _____

20 FOR THE COMMITTEE