

AMENDED IN SENATE AUGUST 21, 2014

AMENDED IN ASSEMBLY MAY 1, 2013

AMENDED IN ASSEMBLY MARCH 14, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 25

Introduced by Assembly Member Campos

December 3, 2012

An act to amend Section 980 of, *and to add Section 980.1 to*, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 25, as amended, Campos. Employment: social media.

Existing law prohibits a private employer from requiring or requesting an employee or applicant for employment to disclose a username or password for the purpose of accessing personal social media, to access personal social media in the presence of the employer, or to divulge any personal social media. Existing law prohibits a private employer from discharging, disciplining, threatening to discharge or discipline, or otherwise retaliating against an employee or applicant for not complying with a request or demand that violates these provisions.

This bill would apply the provisions described above to public employers, as defined. *Notwithstanding that, the bill would allow law enforcement agencies to access social media accounts of a new hire applicant or lateral transfer applicant, as defined, once during the background check for a position as a sworn peace officer, if specified requirements are met. The bill would provide that any information gathered or viewed about a new hire applicant or 3rd party shall only be used for screening purposes and shall not be used as the basis for*

any action against a new hire applicant or 3rd party, as specified. The bill would also specify that civil penalties are allowed against law enforcement agencies or their employees, agents, or assigns who violate these provisions regarding the use of social media information in hiring lateral transfer applicants. The bill would state that its provisions address a matter of statewide interest and apply to public employers generally, including charter cities and counties.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 980 of the Labor Code is amended to~~
2 ~~read:~~
3 ~~980. (a) As used in this chapter:~~
4 ~~(1) “Employer” means a private employer or a public employer.~~
5 ~~For purposes of this chapter, “public employer” means the state,~~
6 ~~a city, a county, a city and county, or a district.~~
7 ~~(2) “Social media” means an electronic service or account, or~~
8 ~~electronic content, including, but not limited to, videos, still~~
9 ~~photographs, blogs, video blogs, podcasts, instant and text~~
10 ~~messages, email, online services or accounts, or Internet Web site~~
11 ~~profiles or locations.~~
12 ~~(b) An employer shall not require or request an employee or~~
13 ~~applicant for employment to do any of the following:~~
14 ~~(1) Disclose a username or password for the purpose of~~
15 ~~accessing personal social media.~~
16 ~~(2) Access personal social media in the presence of the~~
17 ~~employer.~~
18 ~~(3) Divulge any personal social media, except as provided in~~
19 ~~subdivision (c).~~
20 ~~(c) Nothing in this section shall affect an employer’s existing~~
21 ~~rights and obligations to request an employee to divulge personal~~
22 ~~social media reasonably believed to be relevant to an investigation~~
23 ~~of allegations of employee misconduct or employee violation of~~
24 ~~applicable laws and regulations, provided that the social media is~~
25 ~~used solely for purposes of that investigation or a related~~
26 ~~proceeding.~~
27 ~~(d) Nothing in this section precludes an employer from requiring~~
28 ~~or requesting an employee to disclose a username, password, or~~

1 other method for the purpose of accessing an employer-issued
2 electronic device.

3 ~~(e) An employer shall not discharge, discipline, threaten to~~
4 ~~discharge or discipline, or otherwise retaliate against an employee~~
5 ~~or applicant for not complying with a request or demand by the~~
6 ~~employer that violates this section. However, this section does not~~
7 ~~prohibit an employer from terminating or otherwise taking an~~
8 ~~adverse action against an employee or applicant if otherwise~~
9 ~~permitted by law.~~

10 *SECTION 1. Section 980 of the Labor Code is amended to*
11 *read:*

12 980. (a) As used in this chapter, “social chapter:

13 (1) “Employer” means a private employer or a public employer.
14 For purposes of this chapter, “public employer” means the state,
15 a city, a county, a city and county, or a district.

16 (2) “Social media” means an electronic service or account, or
17 electronic content, including, but not limited to, videos, still
18 photographs, blogs, video blogs, podcasts, instant and text
19 messages, email, online services or accounts, or Internet Web site
20 profiles or locations.

21 (b) An employer shall not require or request an employee or
22 applicant for employment to do any of the following:

23 (1) Disclose a username or password for the purpose of
24 accessing personal social media.

25 (2) Access personal social media in the presence of the
26 employer.

27 (3) Divulge any personal social media, except as provided in
28 subdivision (c).

29 (c) Nothing in this section shall affect an employer’s existing
30 rights and obligations to request an employee to divulge personal
31 social media reasonably believed to be relevant to an investigation
32 of allegations of employee misconduct or employee violation of
33 applicable laws and regulations, provided that the social media is
34 used solely for purposes of that investigation or a related
35 proceeding.

36 (d) Nothing in this section precludes an employer from requiring
37 or requesting an employee to disclose a username, password, or
38 other method for the purpose of accessing an employer-issued
39 electronic device.

(e) An employer shall not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or applicant for not complying with a request or demand by the employer that violates this section. However, this section does not prohibit an employer from terminating or otherwise taking an adverse action against an employee or applicant if otherwise permitted by law.

SEC. 2. Section 980.1 is added to the Labor Code, to read:

980.1. (a) The Legislature, in enacting this section, finds and declares all of the following:

(1) Sworn peace officers occupy a unique position in society as protectors of public trust and guardians of our safety.

(2) These positions can result in the officers exercising their lawful powers of detainment, arrest, custody and, if necessary, force, up to and including the use of deadly force.

(3) Given these powers, extraordinary diligence must be exercised in screening new hire applicants and lateral transfer applicants for sworn peace officer positions to ensure that they meet the highest possible standards, including viewing the applicants' social media accounts.

(b) Notwithstanding Section 980, a law enforcement agency may access the social media accounts of the new hire applicant or lateral transfer applicant during an interview or background investigation of that new hire applicant or lateral transfer applicant for a position as a sworn peace officer if all of the following conditions are met:

(1) The law enforcement agency has adopted and complied with a written policy, consistent with this chapter, that controls the manner in which it obtains social media information from new and lateral transfer hires.

(2) The law enforcement agency provides prior notice to the new hire applicant or lateral transfer applicant regarding the investigation of his or her social media accounts and the reasons therefor, including the applicant's rights as set forth in this section, and secures the prior written consent of the applicant.

(3) The law enforcement agency shall not ask the new hire applicant or lateral transfer applicant to disclose the password to his or her social networking site or to retain the password if it is disclosed.

1 (4) *The law enforcement agency may only request once during*
2 *the background process that the new hire applicant or lateral*
3 *transfer applicant access his or her social media accounts in the*
4 *law enforcement agency's presence. Nothing in this section shall*
5 *allow the law enforcement agency any additional access to the*
6 *applicant's social media information or access to an applicant's*
7 *email, instant messaging, text messaging, or other communications*
8 *transmitted bidirectionally between two or more parties that are*
9 *intended to be private conversation, or to gain further access to*
10 *an applicant's account. Nothing in this section shall allow the law*
11 *enforcement agency to utilize an applicant's social media pages*
12 *to view third-party personal information posted on social media*
13 *accounts that belong to persons other than the applicant. Nothing*
14 *in this section shall allow the law enforcement agency to utilize*
15 *social media information in connection with internal promotions*
16 *of sworn peace officers.*

17 (5) *The social networking sites shall be accessed and viewed*
18 *only in the presence of the new hire applicant or lateral transfer*
19 *applicant, who shall be permitted to comment or explain the*
20 *content or context of any part of his or her social networking*
21 *account.*

22 (6) *The law enforcement agency shall not view, access, or record*
23 *information from emails, text messages, instant messages, or other*
24 *private electronic communications.*

25 (7) *A law enforcement agency accessing the new hire applicant's*
26 *or lateral transfer applicant's information shall not access, retain,*
27 *or act upon information posted by a third party.*

28 (8) *For purposes of this section, "new hire applicant" means*
29 *any person who has been admitted for training as a sworn peace*
30 *officer but has not yet received a basic POST or CPOST certificate,*
31 *pursuant to a program described in Section 13510.1 or 13601 of*
32 *the Penal Code, or who has received a basic POST or CPOST*
33 *certificate but has never been hired by a law enforcement agency.*

34 (9) *For purposes of this section, "lateral transfer applicant"*
35 *means any person who has been hired as a sworn peace officer*
36 *by a law enforcement agency other than the one the applicant is*
37 *applying to.*

38 (c) *Information gathered or viewed, intentionally or*
39 *unintentionally, about a new hire applicant or third party, by a*
40 *law enforcement agency or its employee, agent, or assign, shall*

1 *only be used for the purpose of screening potential new hire*
2 *applicants and lateral transfer applicants, pursuant to this section.*
3 *In no event shall that information be used as a basis for any action*
4 *against a new hire applicant or third party, including, but not*
5 *limited to, administrative, civil, or criminal action.*

6 *(d) A lateral transfer applicant shall be entitled to the same*
7 *remedies available to a public safety officer under subdivision (e)*
8 *of Section 3309.5 of the Government Code for any violation of this*
9 *section by a law enforcement agency, its employee, agent, or*
10 *assign.*

11 ~~SEC. 2.~~

12 *SEC. 3.* Because of the crucial privacy rights at issue and the
13 growing abuse of those rights, the Legislature finds and declares
14 that this act addresses a matter of statewide interest and applies to
15 public employers generally, including, but not limited to, charter
16 cities and counties.