

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 767

(Senator Carter)(By Request - Baltimore City
Administration)

Judicial Proceedings and Finance

Labor and Employment - User Name and Password Privacy - Law Enforcement Agencies

This bill authorizes a law enforcement agency, during a background check, to require an applicant to open all of the applicant's social media accounts for review by an investigator. "Social media account" is not defined. The applicant must be present during the review, and an investigator may print selections from the applicant's social media accounts only if the selections do not contain a user name, a password, or any other means for accessing a personal account or service. The law enforcement agency may not keep or reserve the applicant's user name, password, or other means for accessing a personal account or service through an electronic communications device, nor may the law enforcement agency prohibit an applicant from changing a user name, a password, or any other means for accessing a personal account or service.

Fiscal Summary

State Effect: None. Although the bill enables law enforcement agencies to require an applicant to open social media accounts, the bill does not substantively change State activities or operations. State law enforcement agencies may elect not to require applicants to open all of their social media accounts.

Local Effect: None. The bill does not substantively change local governmental activities or operations.

Small Business Effect: None.

Analysis

Current Law: A “law enforcement agency” is a governmental police force, sheriff’s office, or security force or law enforcement organization of the State, a county, or a municipality that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State. It does not include specified members of the Maryland National Guard.

An employer, including the State and local governments, is prohibited from requesting or requiring an employee or applicant for employment to disclose a user name, password, or other means for accessing a personal account or service through an electronic communications device. An employer may not penalize or threaten to penalize an employee or applicant for employment for refusing to disclose this information.

An employer may require an employee to disclose a user name, password, or other means for accessing nonpersonal accounts or services that provide access to the employer’s internal computer or information systems.

An employee may not download the employer’s unauthorized proprietary or financial information to the employee’s personal website or other online site or account.

An employer is not prevented from conducting an investigation to ensure compliance with applicable securities or financial laws or regulations, if the employer receives information about the use of a personal account or website for business purposes. It also does not prevent an employer from investigating an employee’s actions if the employer receives information about the unauthorized downloading of proprietary information to a personal website or similar online site or account.

Whenever the Commissioner of Labor and Industry within the Maryland Department of Labor determines that these provisions of the law have been violated, the commissioner must try to resolve any issue informally by mediation or ask the Attorney General to bring an action on behalf of the applicant or employee. The Attorney General may bring an action in the county where the violation allegedly occurred for injunctive relief, damages, or other relief.

Additional Comments: The bill applies to all applicants for employment with law enforcement agencies undergoing a background check, *i.e.*, both sworn officers and civilian/non-sworn staff.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 851 of 2022.

Designated Cross File: HB 419 (Delegate Smith) - Economic Matters.

Information Source(s): Department of State Police; Department of Public Safety and Correctional Services; Alcohol and Tobacco Commission; Comptroller's Office; Department of General Services; Maryland Department of Labor; Department of Natural Resources; University System of Maryland; Morgan State University; Maryland Center for School Safety; Baltimore City and Harford County; Department of Legislative Services

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