

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 851

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

Finance

Judiciary

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

The 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. 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, password, or 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, password, or 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 the applicant's 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 municipal corporation 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 Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Harford and Talbot counties; Maryland Association of Counties; Maryland Municipal League; Alcohol and Tobacco Commission; Comptroller's Office; University System of Maryland; Morgan State University; Department of Budget and Management; Department of General Services; Maryland Department of Health; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2022
fnu2/mcr Third Reader - March 22, 2022
Revised - Amendment(s) - March 22, 2022

Analysis by: Heather N. MacDonagh

Direct Inquiries to:
(410) 946-5510
(301) 970-5510