

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE **RN-JK**

February 6, 2013

The Honorable Roy M. Takumi, Chair
and Members
Committee on Education
The Honorable Faye P. Hanohano, Chair
and Members
Committee on Ocean, Marine Resources,
and Hawaiian Affairs
The Honorable Isaac W. Choy, Chair
and Members
Committee on Higher Education
State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Takumi, Hanohano, and Choy and Members:

Subject: House Bill No. 1023, Relating to Technology

I am Alan K. Bluemke, Major of the Human Resources Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes the passage of House Bill No. 1023, Relating to Technology. The HPD relies on many different sources to check the background and suitability of a recruit or civilian applicant, including social media on the Internet. Vital information regarding the ethical and moral character of an applicant can be found through the social media. The passing of this bill will not only delay the background check process, but it will limit the HPD's ability to thoroughly screen recruit and civilian applicants with the highest levels of integrity to serve the City and County of Honolulu.

The HPD urges you to oppose House Bill No. 1023.

The Honorable Roy M. Takumi, Chair and Members
The Honorable Faye P. Hanohano, Chair and Members
The Honorable Isaac W. Choy, Chair and Members
Page 2
February 6, 2013

Thank you for the opportunity to testify.

Sincerely,


ALAN K. BLUEMKE, Major
Human Resources Division

Approved:


LOUIS M. KEALOHA
Chief of Police

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN OPPOSITION TO HB 1023, RELATING TO TECHNOLOGY

February 6, 2013

Hon. Representative Roy M. Takumi, Chair
Committee on Education
Hon. Representative Isaac W. Choy, Chair
Committee on Higher Education
Hon. Representative Karl Rhoads, Chair
Committee on Judiciary
State House of Representatives
Hawaii State Capitol, Conference Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Takumi, Chair Choy, Chair Rhoads and Committee Members:

Thank you for the opportunity to testify in opposition to HB 1023, relating to technology.

Our firm represents the American Council of Life Insurers (“ACLI”), a Washington, D.C., based trade association with more than 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. Two hundred thirty-two (232) ACLI member companies currently do business in the State of Hawaii; and they represent 94% of the life insurance premiums and 92% of the annuity considerations in this State.

Today, many individuals use social media accounts and personal devices for both business and personal purposes.

ACLI and its member companies believe that an individual’s personal information should remain private and should not be subject to inspection by an employer or prospective employer.

However, legislation which seeks to protect strictly personal social media account information must simultaneously accommodate legal and regulatory requirements imposed upon life insurers that certain communications be reviewed and retained to comply with recordkeeping requirements.

Life insurance companies have legal obligations with respect to business communications made by their captive insurance producers and registered representatives of their affiliated broker-dealers or registered investment advisers (RIAs).

State insurance laws and regulations require insurers to supervise their captive producers’ communications with the public.

The National Association of Insurance Commissioners (NAIC) has issued a White Paper titled “The Use of Social Media in Insurance.” This Paper provides an overview of insurance regulatory and compliance issues associated with the use of social media, and guidance for addressing identified regulatory and compliance issues. Insurance regulators have emphasized the requirement that “[a]n insurer’s policies, procedures and controls relative to social media communications must comport with existing regulations, which include, but are not limited to, statutes and rules related to advertising and marketing, record retention, consumer privacy and consumer complaints.” To comply with these requirements, insurers must have the ability to properly supervise their producers’ social media communications, if such content is attributable to the insurer or the insurer’s products or services.

In addition, federal and state securities laws and regulations as well as self-regulatory organization rules require broker-dealers and RIAs to comply with specific requirements related to its communications with the public in order to protect investors and consumers. For example, the Financial Industry Regulatory Authority¹ (FINRA) rules require prior review of certain advertisements and other specified communications. In addition, strict recordkeeping requirements apply to business communications of registered representatives.

FINRA has also addressed social media through two regulatory notices:

1. Social Media Websites—Guidance on Blogs and Social Networking Web Sites (Regulatory Notice 10-06); and
2. Social Media Websites and the Use of Personal Devices for Business Communications—Guidance on Social Networking Websites and Business Communications (Regulatory Notice 11-39).

Further, the Securities Exchange Commission issued National Examination Risk Alert earlier this year which details regulatory requirements related to the use of social media by RIAs and their investment advisory representatives (IARs). As part of an effective compliance program, the SEC staff stressed a firm’s obligation to maintain an effective compliance program to ensure compliance with securities laws and rules related to their use of social media. Key components of an effective compliance program includes policies and procedures which establish usage guidelines, content standards, sufficient monitoring, approval of content, training, and recordkeeping responsibilities.

In large part these regulatory notices and guidelines affirm that existing approval, supervision, and recordkeeping requirements are applicable regardless of the delivery mechanism. Supervising employers have an obligation to monitor personal social media accounts utilized for business purposes, and must have in place mechanisms to capture and store relevant communications.

HB 1023 would prevent a life insurer from accessing the “personal internet account” of its captive insurance producers, RIAs and their IARs to insure their compliance with all legal and regulatory requirements imposed by law.

¹ “The Financial Industry Regulatory Authority (FINRA) is the largest independent regulator for all securities firms doing business in the US. Its mission is to protect America’s investors by making sure the securities industry operates fairly and honestly.” FINR website – “About FINRA”.

“Personal internet account” is defined in the bill to mean “. . . an account created via a bounded system established by an internet-based service that requires a user to input or store access information via an electronic device to view, create, utilize, or edit the user’s account information, profile, display, communications, or stored data.”

HB 1023 (on page 2, at lines 15 to 21, and on page 3, at lines 1 to 6) in relevant part provides:

An employer is prohibited from:

- (1) Requesting an employee . . . to grant access to, allow observation of, or disclose information that allows access to or observation of the employee’s . . . personal internet account . . . ; and
- (2) Discharging, disciplining . . . or otherwise penalizing an employee . . . for failure to grant access to, allow observation of, or disclose information that allows access to or observation of the employee’s personal internet account.

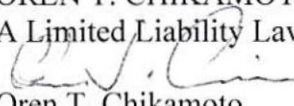
While § -4(a) in Section 1 of the bill (at page 5, lines 14 to 20, provides an exemption that would allow an employer to monitor an employee’s communications using her/his personal internet account, this exemption applies only where the employer is obligated to monitor an employee’s communications “under federal law or by a self-regulatory organization, as defined in section 3(a)(27) of the federal Securities and Exchange Act of 1934, 15 United States Code 78c(a)(26)” It does not permit a life insurer to monitor the communications of its captive producers which it is obligated to do under Hawaii’s laws, regulations and rules.

HB 1023 would, therefore, criminalize a life insurer’s obligations to monitor the communications of its captive producers under State law.

Accordingly, ACLI requests that § -4(a) in Section 1 of the bill (at page 5, lines 14 to 20, be amended as follows:

Provided that this subsection shall not prohibit or restrict an employer from complying with ~~a duty to screen employees or applicants prior to hiring or to monitor or retain employee communications that is established under federal law or by a self-regulatory organization, as defined in section 3(a)(27) of the federal Securities and Exchange Act of 1934, 15 United States Code 78c(a)(26) the requirements of State or federal statutes, rules or regulations, case law or rules of self-regulatory organizations~~,

Again, thank you for the opportunity to testify in opposition to HB 1023, relating to technology.

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**Testimony to the House Committees on Education and Higher Education
Wednesday, February 6, 2013 at 2:10 P.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 1023 RELATING TO TECHNOLOGY

Chairs Takumi and Choy, Vice Chairs Ohno and Ichiyama, and Members of the Committees:

The Chamber of Commerce of Hawaii ("The Chamber") **has serious concerns on HB 1023 Relating to Technology.**

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber appreciates the intent of the bill, however we have serious concerns on the portions of the bill that affect business. We understand that several high profile cases that happened on the mainland brought this issue forward. However, we do not believe that this is a prevalent problem in Hawaii.

We appreciate the intent of the bill but we believe that it needs more discussion before moving forward.

Thank you for this opportunity to express our views.