

Honolulu, Hawaii  
**February 8**, 2016

RE: H.B. No. 1739  
H.D. 1

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred H.B. No. 1739 entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT,"

begs leave to report as follows:

The purpose of this measure is to prohibit employers from requiring, requesting, or coercing employees or potential employees to provide access to their personal social media accounts, except where such information is:

- (1) Publically available;
- (2) Required to comply with other applicable laws; or
- (3) Necessary for investigations of misconduct related to discriminatory employment practices and fair employment requirements.

The High Technology Development Corporation; American Civil Liberties Union of Hawaii; ILWU Local 142; UNITE HERE Local 5; and two individuals testified in support of this measure. The Hawaii Civil Rights Commission; Hawaiian Electric Company, Inc.; State Privacy and Security Coalition, Inc.; and Chamber of Commerce Hawaii provided comments.

Your Committee has incorporated amendments recommended by the State Privacy and Security Coalition, Inc., which is comprised of

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twenty-five major technology and media companies and six trade associations representing companies in the technology, media, and advertising sectors. Your Committee has also incorporated amendments suggested by the Hawaii Civil Rights Commission aimed at the preservation of statutory protections for employees provided under Chapter 378, Hawaii Revised Statutes.

Your Committee notes that the Hawaiian Electric Company, Inc. requested additional amendments regarding information captured by industry standard cyber-security tools that are utilized to protect the companies' networks from cyber-attack. Specifically, the proposed amendments sought to address the application of this measure in instances where:

- (1) Usernames and passwords may be captured inadvertently in the due course of carrying out the companies' cyber-security plan; and
- (2) Protected information, inadvertently captured, may need to be kept for longer periods of time to prevent the alteration of computer log files needed for cyber-security analysis.

Given the opportunities for abuse on the employee privacy and employer security sides, should the Committee on Judiciary further deliberate this measure, your Committee respectfully requests that the Hawaiian Electric Company, Inc.'s concerns be further examined.

Your Committee has amended this measure by:

- (1) Specifying that employers may require an employee to disclose a username or password for the purpose of accessing an account or service provided by or through the employee's relationship with the employer;
- (2) Authorizing employers to conduct investigations, require employee cooperation, and require sharing of certain information where the employer has specific information about employee misconduct regarding the transfer of privileged or confidential information to the employee's personal account;



- (3) Clarifying that the established privacy protections for personal accounts shall not diminish the authority and obligation of an employer to investigate complaints or violations of employee protections under the State's workplace discrimination laws; and
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor & Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1739, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1739, H.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committee on Labor & Public  
Employment,



MARK M. NAKASHIMA, Chair



