

Honolulu, Hawaii  
March 4, 2016

RE: H.B. No. 1739  
H.D. 2

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

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1739, H.D. 1, 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 and potential employees to provide access to account usernames and passwords for personal social media accounts, except where such information is:

- (1) Publicly available;
- (2) Required to comply with other applicable laws;
- (3) Necessary to access an account or service provided by or through the employee's relationship with the employer;  
or
- (4) Necessary for investigations of misconduct related to discriminatory employment practices, fair employment requirements, or an unauthorized transfer of confidential information to the employee's personal account.

Hawaii Civil Rights Commission, LGBT Caucus of the Democratic Party of Hawaii, High Technology Development Corporation, American Civil Liberties Union of Hawaii and a concerned individual testified in support of the measure. The American Council of Life

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Insurers testified in opposition. Facebook; State Privacy and Security Coalition, Inc.; Chamber of Commerce Hawaii; and Hawaiian Electric Company provided comments.

Your Committee notes that amendments made to this measure help to clarify employer liability regarding the disclosure of personal account information inadvertently captured in the course of the employer's network security plan. Specifically, your Committee recognizes that network security plans often involve consultants and other third parties, which may act as agents, or persons authorized by the employer to act, in the establishment, monitoring, or audit of an employer's security network. The intent of this Committee, in the adoption of amendments addressing the allowable use and disclosure of such personal account information by third parties, is to establish a balance between granting employers flexibility in their network security plans, while also providing adequate privacy protections for employees.

Your Committee has amended this measure by:

- (1) Specifying that an employer may request an employee to divulge personal social media reasonably believed to be relevant to investigations of:
  - (A) Employee misconduct; or
  - (B) Violations of applicable laws and regulations;
- (2) Clarifying the allowable technology and security practices, including restrictions on the disclosure of protected information to or use of information by third parties, that may be utilized by an employer regarding the inadvertent capture of personal account information;
- (3) Removing provisions requiring an employer to delete inadvertently captured personal account data as soon as reasonably practicable; 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 Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1739, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1739, H.D. 2.



Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,

*Karl Rhoads*

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KARL RHOADS, Chair



