

Honolulu, Hawaii

APR 04 2016

RE: H.B. No. 1739
H.D. 2
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 1739, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit employers from requiring, requesting, or coercing employees or potential employees to provide access to account usernames, passwords, or any other information for personal social media accounts, except where the information is publicly available, required to comply with applicable laws or rules, necessary to access an employer-issued electronic device or an account or service provided by or through the employee's employment relationship with the employer, or necessary for investigations of employee misconduct or employee violation of applicable laws and regulations;
- (2) Limit the liability of employers who inadvertently receive the username, password, or any other information that would enable the employer to gain access to the employee or potential employee's personal account through the use of a lawful network monitoring tool or firewall that monitors the employer's network or employer-provided devices for network security or data confidentiality, except in certain situations; and



- (3) Prohibit employers from refusing to hire or employ, bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment of any individual because of the individual's refusal to disclose any information regarding a personal account.

Your Committee received testimony in support of this measure from the Hawai'i Civil Rights Commission; State Privacy and Security Coalition, Inc.; LGBT Caucus of the Democratic Party of Hawai'i; High Technology Development Corporation; Facebook; American Civil Liberties Union of Hawai'i; ILWU Local 142; and four individuals. Your Committee received testimony in opposition to this measure from the American Council of Life Insurers. Your Committee received comments on this measure from the Society for Human Resource Management, Hawaii Chapter; and Chamber of Commerce Hawaii.

Your Committee finds that with the prevalence of social media accounts, there is a need for privacy guidelines pertaining to employees and employers. A growing number of employers are asking potential employees and existing employees for passwords or information pertaining to social media accounts. Implementation of this measure will balance employee privacy and the protection of employers' networks, systems, and proprietary information.

Your Committee has amended this measure by:

- (1) Clarifying that an employer may request, but not coerce or compel, an employee or potential employee to add anyone, including the employer, to a list of contacts associated with a personal account;
- (2) Clarifying that an employer may require an employee to disclose authentication information similar to a username or password, in addition to a username or password, for the purpose of accessing an employer-issued electronic device or an account or service provided by or through the employee's employment relationship with the employer;
- (3) Clarifying that an employer may request that an employee share specific content regarding a personal account to ensure compliance with applicable laws, regulatory



requirements, or prohibitions against work-related employee misconduct, rather than for investigations of employee misconduct or violations;

- (4) Requiring employers to delete a username, password, or any other information that is inadvertently received as soon as reasonably practicable after becoming aware that the information was received, and make reasonable efforts to ensure the security and deletion of other information that may be similarly inadvertently received in the future;
- (5) Establishing a fine of not less than \$25 and not more than \$100, to be collected by the Director of Labor and Industrial Relations for a violation by an employer;
- (6) Deleting language prohibiting employers from discriminating against any individual because of the individual's refusal to disclose any information regarding a personal account; and
- (7) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1739, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1739, H.D. 2, S.D. 1, and be placed on the calendar for Third Reading.

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


GILBERT S.C. KEITH-AGARAN, Chair



