

Honolulu, Hawaii

APR 06 2015

RE: H.B. No. 561
H.D. 1
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 561, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO SOCIAL MEDIA,"

begs leave to report as follows:

The purpose and intent of this measure is to amend part I of
chapter 378, Hawaii Revised Statutes (HRS), to prohibit employers
from requiring or requesting employees and potential employees to
grant access to personal account usernames and passwords.

Your Committee received testimony in support of this measure
from the Hawaii Civil Rights Commission, Americans for Democratic
Action Hawaii, and American Civil Liberties Union of Hawaii. Your
Committee received testimony in opposition to this measure from
the Chamber of Commerce Hawaii and one individual.

Your Committee finds that a growing number of employers are
demanding that job applicants and employees give employers
passwords to the employees' private social networking accounts,
such as Facebook. This practice could potentially constitute an
unnecessary invasion of privacy. Accessing a potential employee's
social media account by using the applicant's password may expose
information about the applicant, such as age, religion, ethnicity,
or pregnancy, which an employer is forbidden to ask about. This
measure updates the State's employment discrimination laws to keep
pace with technology.



Your Committee notes that the Hawaii Civil Rights Commission suggested that the new protection created under this measure be placed in a new part of chapter 378, HRS, rather than under part I of that chapter because the privacy rights protected under this measure are different from the protected bases that fall under the jurisdiction of the Hawaii Civil Rights Commission. Your Committee further notes that employment discrimination based on information obtained online is already prohibited under part I of chapter 378, HRS.

Accordingly, your Committee has amended this measure by:

- (1) Adopting the suggestion made by the Hawaii Civil Rights Commission to insert the language that prohibits employers from requiring or requesting employees and potential employees to grant access to personal account usernames and passwords under a new part under chapter 378, HRS;
- (2) Deleting the language that would not hold an employer liable for failure to request or require that an employee or potential employee grant access to a personal account;
- (3) Providing civil penalties for any violation to be deposited into the general fund and allowing a person who alleges a violation to bring a civil action for appropriate injunctive relief or actual damages, or both;
- (4) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (5) 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. 561, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 561, H.D. 1, 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



The Senate
Twenty-Eighth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* HB561 HD1	Committee Referral: JDL	Date: 3/30/15		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
ESPERO, Will	✓			
GABBARD, Mike				✓
IHARA, Jr., Les	✓			
THIELEN, Laura H.	✓			
SLOM, Sam	✓			
TOTAL	6			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes