

# SB429 SD1

Measure Title: RELATING TO THE UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT.

Report Title: Only Privacy; Employees; Students

Description: Adopts uniform laws on protecting the online accounts of employees and students from employers and educational institutions, respectively.

Companion: [HB814](#)

Package: None

Current Referral: JDL/HRE, CPH/WAM

Introducer(s): KEITH-AGARAN, K. RHOADS, Gabbard, K. Kahele, Kidani, Kim, Wakai



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
Senate Committees on Commerce, Consumer Protection and Health  
and  
Ways and Means  
February 28, 2017 at 9:30 a.m.  
by

Risa Dickson, Vice President for Academic Planning and Policy  
Garret Yoshimi, Vice President for Information Technology  
Carrie Okinaga, Vice President for Legal Affairs  
University of Hawai'i System

### SB 429 SD1 – RELATING TO THE UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT

Chairs Baker and Tokuda, Vice Chairs Nishihara and Dela Cruz, and Members of the  
Committees:

Thank you for the opportunity to present testimony regarding SB 429 SD1 – Relating to  
the Uniform Employee and Student Online Privacy Protection Act.

We support the intent of this bill in protecting employee and student privacy. That said,  
this uniform act was just newly approved in 2016 by the National Conference of  
Commissioners on Uniform State Laws, has not yet been adopted by any state to our  
knowledge, and needs to be amended to avoid unintended consequences. In short, the  
uniform act appears to contemplate a much more controlled and closed  
telecommunications and information technology system, i.e., for private institutions and  
employers, than the open architecture system afforded to University of Hawai'i  
employees and students. The following amendments are requested in this regard:

(1) Page 4, lines 4-5 in the definition of “Protected personal online account” should be  
revised to read:

(A) The employer or educational institution supplies, ~~or~~ pays for in full, or issues  
login information under its domain name;

The University owns, manages and controls the hawaii.edu domain name, but it is  
arguably Google that supplies the platform. This is a clarification, not an expansion, of  
the act.

(2) Page 5 line 10, and Page 9 line 17 should be revised to read:

(1) Require, or coerce ~~or request~~ a student to:

The purpose of the act is to prevent coercion of employees and students. As written,  
this bill would subject the University (and all employers and educational institutions) to  
penalties and civil liability for an innocent “request” for login information, no matter the

intent. A student or employee is leaving school/work for an extended vacation or emergency medical situation, and a caring adviser or supervisor instinctively requests login information to assist the person with monitoring email or coursework assignments, which is expressly prohibited under this bill and would subject the University to liability.

(3) Effective date: Currently, there is a January 7, 2059 effective date. If enacted, the University will need time to effect policies and training to ensure compliance with this act. We would respectfully request an effective date of 2020 to afford time for necessary consultations and implementation of said policies and training.

Based on the foregoing, the University supports SB 429 SD1 with amendment.

**COMMENTS OF THE  
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**ON S.B. NO. 429, S.D.1  
RELATING TO THE UNIFORM EMPLOYEE AND  
STUDENT ONLINE PRIVACY PROTECTION ACT.**

**BEFORE THE SENATE COMMITTEES ON COMMERCE, CONSUMER  
PROTECTION, AND HEALTH and WAYS AND MEANS**

**DATE:** Tuesday, February 28, 2017, at 9:30 a.m.  
Conference Room 229, State Capitol

**WRITTEN COMMENTS ONLY:** For more information, please contact PETER  
HAMASAKI, Commission to Promote Uniform Legislation, at 529-7300

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Chairs Baker and Tokuda, and Members of the Senate Committees on  
Commerce, Consumer Protection, and Health, and on Ways and Means:

My name is Peter Hamasaki, and I am a member of the State of Hawai'i  
Commission to Promote Uniform Legislation. Thank you for this opportunity to submit  
comments in strong **support** of Senate Bill No. 429, Senate Draft 1, which enacts the  
Uniform Employee and Student Online Privacy Protection Act (UESOPPA).

Ordinarily, individuals decide for themselves who will have access to information  
that is not otherwise publically available in their social media profiles and other online  
accounts. Employers and educational institutions, however, may have the power to  
coerce access to non-public information of students' and employees' personal online  
accounts. In recent years, there have been a number of reported incidents in which  
employers and schools have demanded, and received, such access.

This act, which was developed by the Uniform Law Commission (ULC) with input  
from employers, educational institutions, internet and other technology companies and  
privacy organizations, prevents employers and public and private post-secondary  
educational institutions from coercing access to such information from employees and  
students who will normally have less than equal bargaining power. Adoption of this  
uniform act will establish a set of rules that will help employers, educational institutions,

employees, students, technology service providers, practitioners, judges, and others to effectively apply, comply with, or enforce the law in a more consistent manner.

UESOPPA broadly protects all online accounts protected by a login requirement. This includes not just social media networking accounts, but also email, trading, banking, credit card, and other online accounts.

Stated simply, UESOPPA does *four* things to protect information in these types of online accounts.

**FIRST**, this act prohibits employers and schools from requiring, coercing, or requesting an employee or student to:

- (1) Disclose login information for a protected account;
- (2) Disclose non-publically available content of a protected account;
- (3) Alter the settings of the protected account to make the login information or non-publically available content more accessible to others;
- (4) Access the protected account in a way that allows another to observe the login information for, or non-publically available content of, the account; or
- (5) Take or threaten to take adverse action against the employee or student for failing to comply with conduct that violates these prohibitions.

**SECOND**, recognizing that there are some instances where employers and schools have a strong and justifiable interest in having the act's prohibitions lifted, the act contains a limited number of important but narrowly-tailored exceptions. The act does not prevent access to information that is publicly available or that is required to comply with federal or state law, a court order, or the rule of a self-regulatory organization established by federal or state statute. Additionally, only if the employer or school has **specific facts** about the protected account, the employer or school may seek access to content (but not login information) for the limited purposes of compliance with law, investigation of employee or student misconduct or a threat to the safety of persons or technology networks, or protection of confidential or proprietary information.

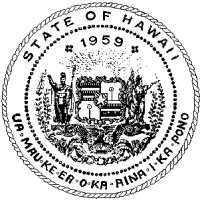
**THIRD**, if information is obtained for one of the purposes specified under one of the act's authorized exceptions, the act provides certain limits on how the information can be used.

**FOURTH**, the act provides for how login information, if lawfully obtained, can be used.

For violations, UESOPPA authorizes the state attorney general to bring a civil action for injunctive and other equitable relief and to obtain a civil penalty for each violation, with a cap for violations caused by the same action. An employee or student may also bring a civil action to obtain injunctive and other equitable relief, actual damages, and an award of costs and reasonable attorney's fees.

In conclusion, we urge your support for Senate Bill No. 429, Senate Draft 1, to adopt the Uniform Employee and Student Online Privacy Protection Act . Doing so will bolster individual choice by enabling employees and students to make decisions to maintain the privacy of their personal online accounts.

Thank you very much for this opportunity to submit comments.



# HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 28, 2017  
Rm. 229, 9:30 a.m.

To: The Honorable Rosalyn Baker, Chair  
Members of the Senate Committee on Commerce, Consumer Protection, and Health

The Honorable Jill Tokuda, Chair  
Members of the Senate Committee on Ways and Means

From: Linda Hamilton Krieger, Chair  
and Commissioners of the Hawai'i Civil Rights Commission

Re: S.B. No. 429, S.D.1

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai'i's laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai'i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

S.B. No. 429, S.D.1, if enacted, will add a new chapter to the Hawai'i Revised Statutes, prohibiting employers and educational institutions from requiring or requesting employees and potential employees and students to grant access to personal account login information or content.

**The HCRC supports the intent of S.B. No. 429, S.D.1, with a request for an amendment to add a new paragraph (4) in the new HRS § \_\_\_-3(b), expressly providing that nothing in the new section shall diminish the authority and obligation of an employer to investigate complaints, allegations, or the occurrence of sexual, racial, or other prohibited harassment under chapter 378, part I.**

Current state and federal fair employment law, HRS Chapter 378, Part I, and Title VII of the Civil Rights Act of 1964, require employers, once on notice of discriminatory harassment in the workplace, to promptly investigate and take effective corrective action. Failure to investigate and take effective corrective action is a violation of law. An employer investigation of sexual, racial, or other prohibited discrimination could involve allegations of harassment via social media.

The HCRC supports the intent of S.B. No. 429, S.D.1, with the requested amendment to expressly confirm that the newly created protections do not diminish the authority and obligation of an employer to investigate and take prompt corrective action when on notice of discriminatory harassment in the workplace.



Committees: Committee on Commerce, Consumer Protection and Health  
Committee on Ways and Means  
Hearing Date/Time: Tuesday, February 28, 2017, 9:30 a.m.  
Place: Room 211  
Re: Testimony of the ACLU of Hawaii with Comments regarding S.B. 429, S.D.1, Relating to The Uniform Employee and Student Online Privacy Protection Act

Dear Chair Baker, Chair Tokuda, and Committee Members:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes with comments regarding S.B. 429, S.D.1, which adopts uniform laws on protecting online accounts for students and employees, and urges the Committees to amend this bill by inserting the language of the more comprehensive Personal Online Account Privacy Act (“POAPA”), attached.

While we support the intent of the measure, the ACLU of Hawaii has concerns with the Uniform Law Commission’s Employee and Student Online Privacy Protection Act (“ULC bill”), and strongly prefers the alternative and more comprehensive reform measure, POAPA. POAPA covers more Hawaii students, creates stronger safeguards against abuse, and adds protections for Hawaii tenants.

The ULC bill does not cover most students. S.B. 429, S.D.1 defines educational institution as “a person that provides students at the postsecondary level an organized program of study or training which is academic, technical, trade-oriented, or preparatory for gaining employment and for which the person gives academic credit.” The term “postsecondary” refers only to the college level or above. This means that the majority of Hawaii students are left unprotected by this bill. POAPA, on the other hand, guarantees privacy in personal online accounts for all students, and not just those at the postsecondary level.

Unlike POAPA, the ULC bill leaves dangerous loopholes by allowing an employer or educational institution to view the entire content of an employee’s or student’s personal online account based solely on a general allegation of misconduct. POAPA’s protections are much stronger, requiring allegations of misconduct to point to specific content, and *only* allowing employers/educational institutions/landlords to access the content that has been specifically identified.

Finally, housing has become an increasingly concerning area of online privacy, with more and more stories emerging of landlords demanding access to tenants’ social media accounts. While POAPA protects tenants against unwarranted invasions of privacy from their landlords, the ULC bill simply fails to address this issue.



Chair Baker, Chair Tokuda, and Members of the Committees  
February 28, 2017  
Page 2 of 17

For these reasons, the ACLU of Hawaii respectfully requests the Committees to amend S.B. 429, S.D.1 by inserting the language of the Personal Online Account Privacy Act, attached.

Thank you for this opportunity to testify.

A handwritten signature in black ink that reads "Mandy Finlay". The signature is written in a cursive, flowing style.

Mandy Finlay  
Advocacy Coordinator  
ACLU of Hawaii

*The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.*

THE SENATE

**S.B. NO.** 429  
Proposed  
S.D.2

TWENTY-NINTH LEGISLATURE, 2017  
STATE OF HAWAII

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# A BILL FOR AN ACT

RELATING TO THE UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY  
PROTECTION ACT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4                                   **"CHAPTER**

5                                   **THE PERSONAL ONLINE ACCOUNT PRIVACY ACT**

6           §    -1   **Short title.**    This chapter may be cited as the  
7 personal online account privacy act.

8           §    -2   **Definitions.**    As used in this chapter:

9           (A) "Applicant" shall mean an Applicant for employment.

10          (B) "Employee" shall mean an individual who provides  
11 services or labor to an Employer in return for wages or other  
12 remuneration or compensation.

1 (C) "Employer" shall mean a person who is acting directly  
2 as an Employer, or acting under the authority or on behalf of an  
3 Employer, in relation to an Employee.

4 (D) "Educational Institution" shall mean:

5 (1) A private or public school, institution, or school  
6 district, or any subdivision thereof, that offers participants,  
7 Students, or trainees an organized course of study or training  
8 that is academic, trade-oriented, or preparatory for gainful  
9 employment, as well as school Employees and agents acting under  
10 the authority or on behalf of an Educational Institution; or

11 (2) A state or local educational agency authorized to  
12 direct or control an entity in Section 2(D)(1).

13 (E) "Personal Online Account" means any online account  
14 maintained by an Employee, Student, or Tenant, including but not  
15 limited to a social media or email account, that is protected by  
16 a login requirement. "Personal Online Account" does not include  
17 an account, or a discrete portion of an account, that was either  
18 (1) opened at an Employer's behest, or provided by an Employer  
19 and intended to be used solely or primarily on behalf of or  
20 under the direction of the Employer, or (2) opened at a school's

1 behest, or provided by a school and intended to be used solely  
2 or primarily on behalf of or under the direction of the school.

3 (F) "Prospective Student" shall mean an Applicant for  
4 admission to an Educational Institution.

5 (G) "Prospective Tenant" shall mean a person who inquires  
6 about or applies to rent real property from a Landlord for  
7 residential purposes.

8 (H) "Landlord" shall mean the owner or lawful possessor of  
9 real property who, in an exchange for rent, Leases it to another  
10 person or persons for residential purposes.

11 (I) "Lease" shall mean a legally binding agreement between  
12 a Landlord and a residential Tenant or Tenants for the rental of  
13 real property.

14 (J) "Specifically Identified Content" shall mean data or  
15 information on a Personal Online Account that is identified with  
16 sufficient particularity to:

17 (1) Demonstrate prior knowledge of the content's  
18 details; and

19 (2) Distinguish the content from other data or  
20 information on the account with which it may share  
21 similar characteristics.

1           (K) "Student" shall mean any full-time or part-time  
2 Student, participant, or trainee that is enrolled in a class or  
3 any other organized course of study at an Educational  
4 Institution.

5           (L) "Tenant" shall mean a person who Leases real property  
6 from a Landlord, in exchange for rent, for residential purposes.

7           §     -3     **Protection of employee online account.**     (a) an  
8 employer may not:

9           (1) Require, request, or coerce an Employee or Applicant to:

10           (A) Disclose the user name and password, password, or  
11 any other means of authentication, or to provide access  
12 through the user name or password, to a Personal Online  
13 Account;

14           (B) Disclose the non-public contents of a Personal  
15 Online Account;

16           (C) Provide password or authentication information to a  
17 personal technological device for purposes of gaining  
18 access to a Personal Online Account, or to turn over an  
19 unlocked personal technological device for purposes of  
20 gaining access to a personal online account;

1 (D) Access a Personal Online Account in the presence of  
2 the Employer in a manner that enables the Employer to  
3 observe the contents of such account; or

4 (E) Change the settings that affect a third party's  
5 ability to view the contents of a Personal Online  
6 Account;

7 (2) Require or coerce an Employee or Applicant to add anyone,  
8 including the Employer, to their list of contacts associated  
9 with a Personal Online Account;

10 (3) Take any action or threaten to take any action to  
11 discharge, discipline, or otherwise penalize an Employee in  
12 response to an Employee's refusal to disclose any information  
13 specified in Section 3(a)(1)(A)-(C) or refusal to take any  
14 action specified in Section 3(a)(1)(D)-(E) or (2); or

15 (4) Fail or refuse to hire any Applicant as a result of an  
16 Applicant's refusal to disclose any information specified in  
17 Section 3(a)(1)(A)-(C) or refusal to take any action specified  
18 in Section 3(a)(1)(D)-(E) or (2).

19 **§ -4 Protection of student online account.** (a) An  
20 educational institution shall not:

1 (1) Require, request, or coerce a Student or Prospective Student  
2 to:

3 (A) Disclose the user name and password, password, or any  
4 other means of authentication, or provide access through the  
5 user name or password, to a Personal Online Account;

6 (B) Disclose the non-public contents of a Personal Online  
7 Account;

8 (C) Provide password or authentication information to a  
9 personal technological device for purposes of gaining access  
10 to a Personal Online Account, or to turn over an unlocked  
11 personal technological device for purposes of gaining access  
12 to a personal online account;

13 (D) Access a Personal Online Account in the presence of an  
14 Educational Institution Employee or Educational Institution  
15 volunteer, including, but not limited to, a coach, teacher, or  
16 school administrator, in a manner that enables the Educational  
17 Institution Employee or Educational Institution volunteer to  
18 observe the contents of such account; or

19 (E) Change the settings that affect a third party's ability  
20 to view the contents of a Personal Online Account;

1 (2) Require or coerce a Student or Prospective Student to add  
2 anyone, including a coach, teacher, school administrator, or  
3 other Educational Institution Employee or Educational  
4 Institution volunteer, to their list of contacts associated with  
5 a Personal Online Account;

6 (3) Take any action or threaten to take any action to  
7 discharge, discipline, prohibit from participating in curricular  
8 or extracurricular activities, or otherwise penalize a Student  
9 in response to a Student's refusal to disclose any information  
10 specified in Section 4(a)(1)(A)-(C) or refusal to take any  
11 action specified in Section 4(a)(1)(D)-(E) or (2); or

12 (4) Fail or refuse to admit any Prospective Student as a result  
13 of the Prospective Student's refusal to disclose any information  
14 specified in Section 4(a)(1)(A)-(C) or refusal to take any  
15 action specified in Section 4(a)(1)(D)-(E) or (2).

16 § -5 **Protection of tenant online account.** (a) A  
17 landlord shall not:

18 (1) Require, request, or coerce a Tenant or Prospective Tenant  
19 to:



- 1 (A) Disclose the user name and password, password, or any  
2 other means of authentication, or to provide access through  
3 the user name or password, to a Personal Online Account;
- 4 (B) Disclose the non-public contents of a Personal Online  
5 Account;
- 6 (C) Provide password or authentication information to a  
7 personal technological device for purposes of gaining  
8 access to a Personal Online Account, or to turn over an  
9 unlocked personal technological device for purposes of  
10 gaining access to a personal online account;
- 11 (D) Access a Personal Online Account in the presence of  
12 the Employer in a manner that enables the Employer to  
13 observe the contents of such account; or
- 14 (E) Change the settings that affect a third party's  
15 ability to view the contents of a Personal Online Account;
- 16 (2) Require or coerce a Tenant or Prospective Tenant to add  
17 anyone, including the Employer, to their list of contacts  
18 associated with a Personal Online Account;
- 19 (3) Take any action or threaten to take any action to evict or  
20 otherwise penalize a Tenant in response to Tenant's refusal to  
21 disclose any information specified in Section 5(a)(1)(A)-(C) or

1 refusal to take any action specified in Section 5(a)(1)(D)-(E)

2 or (2);

3 (4) Fail or refuse to rent real property to, or otherwise

4 penalize any Prospective Tenant as a result of a Prospective

5 Tenant's refusal to disclose any information specified in

6 Section 5(a)(1)(A)-(C) or refusal to take any action specified

7 in Section 5(a)(1)(D)-(E) or (2); or

8 (5) Include any provisions in a new or renewal Lease, executed

9 after the date this Act takes effect, that conflict with Section

10 5 of this Act. Any such conflicting Lease provisions shall be

11 deemed void and legally unenforceable.

12       **§ -6 Limitations** (a) Nothing in this Act shall prevent

13 an Employer, Educational Institution, or Landlord from:

14 (1) Accessing information about an Applicant, Employee,

15 Student, Prospective Student, Tenant, or Prospective Tenant that

16 is publicly available;

17 (2) Complying with state and federal laws, rules, and

18 regulations, and the rules of self-regulatory organizations as

19 defined in section 3(a)(26) of the Securities and Exchange Act

20 of 1934, 15 USC 78c(a)(26), or another statute governing self-

21 regulatory organizations;

1 (3) For an Employer, without requesting or requiring an  
2 Employee or Applicant to provide a user name and password,  
3 password, or other means of authentication that provides access  
4 to a Personal Online Account, requesting or requiring an  
5 Employee or Applicant to share Specifically Identified Content  
6 that has been reported to the Employer for the purpose of:

7 (A) Enabling an Employer to comply with its own legal and  
8 regulatory obligations;

9 (B) Investigating an allegation, based on the receipt of  
10 information regarding Specifically Identified Content, of  
11 the unauthorized transfer of an Employer's proprietary or  
12 confidential information or financial data to an Employee  
13 or Applicant's Personal Online Account; or

14 (C) Investigating an allegation, based on the receipt of  
15 information regarding Specifically Identified Content, of  
16 unlawful harassment or threats of violence in the  
17 workplace;

18 (4) For an Educational Institution, without requesting or  
19 requiring a Student or Prospective Student to provide a user  
20 name and password, password, or other means of authentication  
21 that provides access to a Personal Online Account, requesting or  
22 requiring a Student or Prospective Student to share Specifically

1 Identified Content that has been reported to the Educational

2 Institution for the purpose of:

3 (A) Complying with its own legal obligations, subject to  
4 all legal and constitutional protections that are  
5 applicable to the Student or Prospective Student;

6 (5) For a Landlord, without requesting or requiring Tenant or  
7 Prospective Tenant to provide a user name and password,  
8 password, or other means of authentication that provides access  
9 to a Personal Online Account, requesting or requiring a Tenant  
10 or Prospective Tenant to share Specifically Identified Content  
11 that has been reported to the Landlord for the purpose of:

12 (A) Enabling a Landlord to comply with its own legal and  
13 regulatory obligations; or

14 (B) Investigating an allegation, based on the receipt of  
15 information regarding Specifically Identified Content, of a  
16 Lease violation by the Tenant where such a violation  
17 presents an imminent threat of harm to the health or safety  
18 of another Tenant or occupant of the real property or of  
19 damage to the real property;

1 (6) Prohibiting an Employee, Applicant, Student, or Prospective  
2 Student from using a Personal Online Account for business or  
3 Educational Institution purposes; or

4 (7) Prohibiting an Employee, Applicant, Student, or Prospective  
5 Student from accessing or operating a Personal Online Account  
6 during business or school hours or while on business or school  
7 property.

8 **§ -7 Inadvertent receipt of password.**

9 (A) If an Employer, Educational Institution, or Landlord  
10 inadvertently receives the user name and password, password, or  
11 other means of authentication that provides access to a Personal  
12 Online Account of an Employee, Applicant, Student, Prospective  
13 Student, Tenant, or Prospective Tenant through the use of an  
14 otherwise lawful technology that monitors the Employer's,  
15 Educational Institution's, or Landlord's network or Employer-  
16 provided, Educational Institution-provided, or Landlord-provided  
17 devices for network security or data confidentiality purposes,  
18 the Employer, Educational Institution, or Landlord:

19 (1) Is not liable for having the information;

20

1           (2) May not use the information to access the Personal  
2 Online Account of the Employee, Applicant, Student, Prospective  
3 Student, Tenant, or Prospective Tenant;

4           (3) May not share the information with any other person or  
5 entity; and

6           (4) Must delete the information as soon as is reasonably  
7 practicable, unless the information is being retained by the  
8 Employer, Educational Institution, or Landlord in connection  
9 with the pursuit of a specific criminal complaint or civil  
10 action, or the investigation thereof.

11           **§- 8 Enforcement.**

12 (A) Any Employer, Educational Institution, or Landlord,  
13 including its Employee or agents, who violates this Act shall be  
14 subject to legal action for damages and/or equitable relief, to  
15 be brought by any person claiming a violation of this Act has  
16 injured his or her person or reputation. A person so injured  
17 shall be entitled to actual damages, including mental pain and  
18 suffering endured on account of violation of the provisions of  
19 this Act, and reasonable attorneys' fees and other costs of  
20 litigation.

21 (B) Any Employee or agent of an Educational Institution who  
22 violates this Act may be subject to disciplinary proceedings and

1 punishment. For Educational Institution Employees who are  
2 represented under the terms of a collective bargaining  
3 agreement, this Act prevails except where it conflicts with the  
4 collective bargaining agreement, any memorandum of agreement or  
5 understanding signed pursuant to the collective bargaining  
6 agreement, or any recognized and established practice relative  
7 to the members of the bargaining unit.

8       **§- 9. Admissibility.**

9 Except as proof of a violation of this Act, no data obtained,  
10 accessed, used, copied, disclosed, or retained in violation of  
11 this Act, nor any evidence derived therefrom, shall be  
12 admissible in any criminal, civil, administrative, or other  
13 proceeding.

14       **§- 10. Severability.** The provisions in this Act are  
15 severable. If any part or provision of this Act, or the  
16 application of this Act to any person, entity, or circumstance,  
17 is held invalid, the remainder of this Act, including the  
18 application of such part or provision to other persons,  
19 entities, or circumstances, shall not be affected by such  
20 holding and shall continue to have force and effect.

21       SECTION 11. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.

**1** SECTION 12. This Act shall take effect on July 1, 2017.





Tammy Cota, Executive Director  
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February 27, 2017

Honorable Rosalyn Baker, Chair of Senate Commerce, Consumer Protection and Health Committee  
Honorable Jill Tokuda, Chair of Senate Ways and Means Committee  
Hawaii State Capitol  
415 South Beretania Street, Room 221  
Honolulu, HI 96813

**Re: Hawaii SB 429, Comments and Suggested Amendments Relating to Password Protection**

Dear Senator Baker and Senator Tokuda:

I am the executive director of the Internet Coalition (IC), a national trade association that represents members in state public policy discussions. The IC also serves as an informational resource, striving to protect and foster the Internet economy and the benefits it provides consumers.

I wish to express support for the proposed substitute model language being offered by the American Civil Liberties Union (ACLU), relating to password protection. The language the ACLU is proposing would define the rules governing employer, educational institutions, and landlords' access to employee, student, and tenants' personal online accounts. It represents a model social media privacy law, which IC members and other associations worked together to help write.

The ACLU language would prohibit employers, educational institutions, or landlords from *compelling* the individuals covered by the bill from adding them to a social media contact list, but would allow *requests* to do so. This is a valuable change in light of the way businesses communicate with employees, customers, and the general public today. Many businesses post updates and offers or specials on social media, for example, and it is reasonable that the employer would invite employees to add the employer to their list of contacts.

Second, employers, educational institutions, and landlords must be able to ensure compliance with all applicable laws and regulatory requirements, in addition to prohibitions against work-related employee misconduct. The bill, as amended, would allow for that. It would allow employers to request that an employee share specific content regarding a personal account for these limited purposes.

The ACLU model bill strikes an appropriate balance of protecting employee, student, and tenant privacy while leaving room for employer practices to protect employers' networks, systems, and proprietary information. It addresses a real – and not simply theoretical – harm, and it is imperative to enact these privacy protections now.

I thank you for addressing this important issue and urge you to support substituting SB 429 with the ACLU model bill.

Please feel free to contact me if you would like to discuss this issue further.

Sincerely,

Handwritten signature of Tammy Cota in black ink.  
Tammy Cota

cc: Senate Commerce, Consumer Protection and Health Committee members  
Senate Ways and Means Committee