



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/13/2018

Time: 02:00 PM

Location: 329

Committee: House Consumer Protection and
Commerce

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: HB 2173, HD1 RELATING TO ONLINE ACCOUNT PRIVACY.

Purpose of Bill: Prohibits employers and educational institutions from requiring employees, students, and prospective employees and students to provide protected personal online account information. Authorizes private civil actions against violators. (HB2173 HD1)

Department's Position:

The Department of Education supports HB2173, HD1 which is in line with protecting employee and student online accounts, while ensuring that employers and educational institutions are able to address non-compliance with laws and regulations that directly impact the employer or educational institution.

The Department suggests removing "post-secondary level" references within the measure if the intent of the bill can apply to all students within the State of Hawaii. In addition, with the creation of educational collaborations and initiatives between the Department and Hawaii's higher-education institutions, K-12 students are now attending both high school and college concurrently. Thus, this bill may encompass students who span both the K-12 and higher education sectors simultaneously.

The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Consumer Protection & Commerce
February 13, 2018 at 2:00 p.m.

By

Donald O. Straney, Vice President for Academic Planning and Policy
University of Hawai'i System

HB 2173 HD1 – RELATING TO ONLINE ACCOUNT PRIVACY

Chair Takumi, Vice Chair Ichiyama, and members of the committee:

Thank you for the opportunity to present testimony regarding HB 2713 HD1– Relating to Online Account Privacy that prohibits employers and educational institutions from requiring employees, students, and prospective employees and students to provide protected personal online account information, and authorizes private civil actions against violators.

The University of Hawai'i supports the intent of this bill in protecting employee and student privacy, and requests the following amendments:

- Page 2, line 13, should be revised to read:
 - “An agent, excluding independent contractors, or a designee of the educational institution.”
- Page 3, lines 11-13, should be revised to read:
 - “The term includes an agent, excluding independent contractors, or designee of an employer, but does not include the United States or any federal branch, department, or agency thereof.”
- Page 6, line 17, should be revised to read:
 - “Require, [~~request,~~] or coerce ...”

The purpose of the bill is to prevent coercion of employees and students. As written, this bill would subject the University (and all employers and educational institutions) to potential liability for an innocent “request” for login information, no matter the intent. Therefore, if 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 for a covered account to assist the person with monitoring email or coursework assignments, that would be expressly prohibited under this bill and would subject the University to liability and individual employees or agents of the educational institution to discipline.

- Page 6, line 20, to page 7, line 6, would be clearer if revised to read as follows:
 - “(B) Disclose the content of or provide access to a protected personal online account; provided that an employer or educational institution may request that an employee or student [tø] add or not remove any person, including the employer or educational institution, to[,;] or [~~not remove any person~~] from[,;] the set of persons to which the employee or student grants access to the content;”
- Page 8, line 8, should be revised to read as follows, consistent with our prior comment regarding the language on page 6, line 17, of the bill:
 - “... requirement[~~;~~request,] or coercive action....”
- Page 8, between lines 15 and 16: add the following:
 - "This subsection shall not prohibit an employer or educational institution from taking or threatening to take adverse action against an employee or student for failure or refusal to comply with requirements or requests made pursuant to section ___-4."
- Page 9, line 2, should be revised to read as follows:
 - “...court of competent jurisdiction, court or administrative agency subpoena, or rule of a self-”
- Page 9, line 7, should be revised to read as follows:
 - “(3) Requiring or requesting, based on specific [~~facts~~] allegations about ...”
- Page 9, lines 17-19, would be clearer if the word “which” is added:
 - “... provided that the employee or student has reasonable notice, which is documented, of the prohibition and the prohibition was not ...”
- Page 10, lines 7-10, would be clearer if amended to read as follows:
 - “A threat to the employer’s or educational institution’s information technology [;] or communications technology systems, or property; or”
- Page 10, lines 11-13 should be revised to read:
 - “ (iii) Disclosure of the [~~employer~~] employer’s or educational institution’s nonpublic financial information, information in which the ...”
- Page 12, lines 8-9, should be revised to read:
 - “(4) If the employer or educational institution retains the login information for use in an anticipated or ongoing civil action or an ongoing investigation...”

The University would respectfully request a delay in the enactment date to July 1, 2021 to give sufficient time to create policy and training as well as go through consultations and implementation of this measure.

Thank you for your consideration on this bill and based on the foregoing, the University can support HB 2173 HD1 with the suggested amendments.



Committee: House Committee on Consumer Protection & Commerce
Hearing Date/Time: Tuesday, February 13, 2018, 2 p.m.
Place: Conference Room 429
Re: Testimony of the ACLU of Hawai'i with Comments on H.B. 2173, H.D. 1
Relating to Online Account Privacy

Dear Chair Takumi, Vice Chair Ichiyama, and Committee Members:

The American Civil Liberties Union of Hawai'i ("**ACLU of Hawai'i**") testifies **with comments and serious concerns** on H.B. 2173, H.D. 1, which seeks to prohibit employers and institutions of post-secondary educations from demanding access to the social media accounts, such as Facebook, Snapchat, and Instagram, of both current and prospective employees and students.

Social media has become one of the most important platforms for free and self expression of the 21st century. Unfortunately, social media's own popularity has attracted the interest of others in seeing, and sometimes monitoring, what we post. That interest is not limited to acquaintances, friends, and family. Increasingly, job applicants and employees are being forced to provide employers with access to their social media accounts and students are being forced to do the same by their schools, sometimes as a condition of participating on sports teams, extra-curricular activity, or potentially, admissions.

Meaningful social media privacy must by necessity include the right to control who has access to the content of one's online accounts. Indeed, allowing access to our social media lives to those with the leverage to demand access inevitably leads to discrimination, self-censorship, and the chilling of the free expression of ideas.

While the ACLU of Hawai'i supports the intent behind H.B. 2173, H.D. 1, we have several serious concerns about the scope and limits of the protections afforded to social media users.

First, H.B. 2173, H.D. 1, leaves most Hawai'i students vulnerable to unwarranted invasions of privacy by their educational institutions. The bill only applies to "postsecondary" students, which refers to the college level or above, leaving our keiki completely unprotected from unwarranted and unwanted monitoring by their schools and teachers.

Second, in what appears to be a big loophole, the bill does not prevent employers or educational institutions from requiring or coercing an employee or student to add anyone, including the employer or educational institution, to their list of contacts associated with a social media account. Instead, H.B. 2173, H.D. 1, Section 3(1)(B) allows as much.

Third, H.B. 2173 would allow employers and educational institutions to access the entire content of an employee or student personal social media account based on, potentially, unsubstantiated allegations of misconduct tenuously linked to the account. Students and employees in Hawai'i deserve better legal protections.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: (808) 522-5900
F: (808) 522-5909
E: office@acluhawaii.org
www.acluhawaii.org

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For the reasons articulated above, we believe H.B. 2173, H.D. 1, requires extensive amendments to address these and other issues, which we will be happy to work with your committee to address.

Thank you for the opportunity to testify.

Sincerely,



Mateo Caballero

Legal Director

ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i 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 Hawai'i has been serving Hawai'i for 50 years.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluhawaii.org
www.acluhawaii.org



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Consumer Protection & Commerce
Tuesday, February 13, 2018 at 2:00 P.M.
Conference Room 329, State Capitol**

RE: HOUSE BILL 2173 RELATING TO ONLINE ACCOUNT PRIVACY

Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") would like to **express concerns regarding** HB 2173, which prohibits employers and educational institutions from requiring employees, students, and prospective employees and students to provide personal online account information. It also authorizes private civil actions against violators.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

While we understand the reasoning behind the proposed bill, we have also seen instances where unnecessary laws create unintended consequences. The Chamber hasn't seen any empirical evidence that private employers routinely request access to applicant and employee personal social media.

There are legitimate exceptions at times to request and receive access to employees' personal social media pages. For example, law enforcement agencies have a public safety need to know who their representatives or potential employees are affiliating themselves with. And, private companies may need to be able to investigate inter-office harassment claims that may stem from social media conversations. So, in terms of best practices, maybe a broad exception for workplace investigations to provide content in a personal account that is relevant to that investigation.

Thank you for the opportunity to testify.

HB-2173-HD-1

Submitted on: 2/10/2018 8:47:54 PM

Testimony for CPC on 2/13/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments:

I am in full support of this much needed bill. Persons' online accounts should be private, with no one forced to turn over information.

lynne matusow