

HB2173 HD2

Measure Title: RELATING TO ONLINE ACCOUNT PRIVACY.
Report Title: Internet; Privacy; Employees; Students
Description: 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 HD2)
Companion:
Package: None
Current Referral: LBR/CPH, JDC
Introducer(s): LOPRESTI

<u>Sort by</u> <u>Date</u>	Status	Text
1/19/2018	H	Pending introduction.
1/22/2018	H	Introduced and Pass First Reading.
1/26/2018	H	Referred to LAB/HED, CPC, JUD, referral sheet 8
1/29/2018	H	Re-referred to LAB, CPC, JUD, referral sheet 11
2/1/2018	H	Bill scheduled to be heard by LAB on Tuesday, 02-06-18 10:30AM in House conference room 309.
2/6/2018	H	The committees on LAB recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 7 Ayes: Representative(s) Johanson, Holt, Evans, Ichiyama, Keohokalole, Yamashita, Matsumoto; Ayes with reservations: none; Noes: none; and Excused: none.
2/8/2018	H	Reported from LAB (Stand. Com. Rep. No. 170-18) as amended in HD 1, recommending passage on Second Reading and referral to CPC.
2/8/2018	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on CPC with none voting aye with reservations; none voting no (0) and Representative(s) Quinlan, Tupola excused (2).
2/9/2018	H	Bill scheduled to be heard by CPC on Tuesday, 02-13-18 2:00PM in House conference room 329.
2/13/2018	H	The committees on CPC recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 10 Ayes: Representative(s) Takumi, Ichiyama, Aquino, Ito, LoPresti, Mizuno, Say, Tokioka, Yamane, McDermott; Ayes with reservations: none; Noes: none; and 1 Excused: Representative(s) Johanson.
2/16/2018	H	Reported from CPC (Stand. Com. Rep. No. 701-18) as amended in HD 2, recommending referral to JUD.
2/16/2018	H	Report adopted. referred to the committee(s) on JUD as amended in HD 2 with none voting aye with reservations; none voting no (0) and Representative(s) DeCoite, Ing, Nakamura, Onishi, Woodson excused (5).
2/27/2018	H	Bill scheduled to be heard by JUD on Thursday, 03-01-18 2:00PM in House conference room 325.
3/1/2018	H	The committees on JUD recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 8 Ayes: Representative(s) Nishimoto, San Buenaventura, Brower, C. Lee, Morikawa, Takayama, McDermott, Thielen; Ayes with reservations: none; Noes: none; and Excused: none.
3/2/2018	H	Reported from JUD (Stand. Com. Rep. No. 1088-18), recommending passage on Third Reading.
3/6/2018	H	Passed Third Reading with none voting aye with reservations; none voting no (0) and Representative(s) Woodson excused (1). Transmitted to Senate.
3/8/2018	S	Received from House (Hse. Com. No. 316).
3/8/2018	S	Passed First Reading.
3/8/2018	S	Referred to LBR/HRE/CPH, JDC.
3/15/2018	S	Re-Referred to LBR/CPH, JDC.
3/15/2018	S	The committee(s) on LBR/CPH added the measure to the public hearing scheduled on 03-

21-18 9:00AM in conference room 229.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

HB2173 HD2



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

Date: 03/21/2018
Time: 09:00 AM
Location: 229
Committee: Senate Labor
Senate Commerce, Consumer Protection,
and Health

Department: Education

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

Title of Bill: HB 2173, HD2 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 HD2)

Department's Position:

The Department of Education supports HB2173, HD2 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
Senate Committees on Labor and
Commerce, Consumer Protection, and Health
March 21, 2018 at 9:00 a.m.

By

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

HB 2173 HD2 – RELATING TO ONLINE ACCOUNT PRIVACY

Chairs Tokuda and Baker, Vice Chair English, and members of the committees:

Thank you for the opportunity to present testimony regarding HB 2173 HD2 – 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 this measure, but 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.



LATE

HAWAI‘I CIVIL RIGHTS COMMISSION

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

March 21, 2018
Rm. 229, 9:00 a.m.

To: The Honorable Jill N. Tokuda, Chair
Members of the Senate Committee on Labor

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

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

Re: H.B. No. 2173, H.D. 2

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.

H.B. No. 2173, if enacted, will prohibit employers and educational institutions from requiring or requesting employees, students and potential employees to provide protected personal online account information.

The HCRC supports the intent of H.B. No. 2173, H.D. 2, with an amendment that expressly provides 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, ancestry, or other harassment prohibited under chapter 378, part I.

Section 4 of the bill states

(b) Nothing in this section shall prevent an employer from:

* * * * *

(3) Requiring or requesting, based on specific allegations about an employee’s or student’s

protected personal online account access to content but not login information of the account in order to:

(A) Ensure compliance or investigate noncompliance, with:

(i) federal or state law; or

(ii) an employer's or educational institution's prohibition against work-related employee or education-related student misconduct...

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 proposed paragraph 4 (a)(3) language above, states that nothing in the new section prevents an employer from requesting "content" relating to "employee or education-related student misconduct" which could be prohibited under chapter 378's prohibitions against discrimination or harassment, or federal law. That language does not address the HCRC's concern that nothing in the new law should diminish an employer's legal obligation to investigate and take corrective action on employee allegations of sexual or other prohibited harassment.

The HCRC requests that a new subsection be added, expressly providing:

Nothing in this section shall diminish the authority and obligation of an employer to investigate complaints, allegations, or the occurrence of sexual, racial, or other harassment prohibited under chapter 378.

The HCRC supports the intent of H.B. No. 2173, H.D. 2 with the requested amendment.



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the Senate Committees on Labor and
Commerce, Consumer Protection and Health
Wednesday, March 21, 2018 at 9:00 A.M.
Conference Room 229, State Capitol**

RE: HOUSE BILL 2173 HD2 RELATING TO ONLINE ACCOUNT PRIVACY

Chairs Toduda and Baker, Vice Chair English, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") would like to **express concerns regarding** HB 2173 HD2, which prohibits employers and educational institutions from requiring employees, students, and prospective employees and students to provide protected 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.



Committee: Senate Committees on Government Operations and on Economic Development, Tourism, and Technology
Hearing Date/Time: Tuesday, March 20, 2018, 3 p.m.
Place: Conference Room 224
Re: *Testimony of the ACLU of Hawai'i in opposition to H.B. 2581, H.D. 2, Relating to Public-Private Partnerships*

Dear Chair Mercado Kim, Chair Wakai, and Committee Members:

The American Civil Liberties Union of Hawai'i writes in opposition to H.B. 2581, H.D. 2, which creates an Office of Public-Private Partnerships tasked with exploring, formulating, coordinating, and implementing plans for public-private partnerships in Hawai'i. The bill also gives state agencies the power to enter into arrangements with private partners to finance, design, build, operate, and maintain infrastructure facilities, including jails, prisons, and others building used for public safety services, without necessarily obtaining approval from the Legislature.

While public-private partnerships in of themselves do not raise civil rights concerns, such partnerships are particularly problematic in the context of law enforcement and corrections, areas which should remain free from for-profit motive, but which are explicitly contemplated as the subject of public-private partnerships under this bill.¹ The experience of Hawai'i and other states amply shows that handing over control of corrections to for-profit corporations is a recipe for civil liberties violations including abuse, neglect, and misconduct:

- In 2010, the Hawai'i State Auditor issued a scathing report, finding that the state's Department of Public Safety "repeatedly misled policymakers and the public by reporting inaccurate incarceration costs."² In justifying the decision to send prisoners to private prisons in Arizona, rather than publicly operated prisons in Hawai'i, the Department used a "flawed methodology," "provide[d] artificial inmate costs," and engaged in "skewed cost reporting."
- Private, for-profit prisons have little incentive to rehabilitate prisoners; in fact, crime is good for private, for-profit prisons because the more prisoners there are, the more money private prisons make. Unsurprisingly, private prisons often violate their government contracts, especially in areas of staffing and programming. For example, in 2010, the ACLU sued CCA/CoreCivic over the

¹ H.B., H.D. 2, § 3 ("Infrastructure facility" means a building, a structure, or networks of buildings, structures, pipes, controls, and equipment that provide . . . public safety services, including . . . jails; prisons; [etc.]").

² State of Hawai'i Auditor, *Management Audit of the Department of Public Safety's Contracting for Prison Beds and Services* (Dec. 2010), available at <http://files.hawaii.gov/auditor/Reports/2010/10-10.pdf>.

American Civil Liberties Union of Hawai'i
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Tuesday, March 20, 2018, 3 p.m.

H.B. 2581, H.D. 2

Page 2 of 2

extraordinary level of violence at its Idaho Correctional Center, which prisoners nicknamed “Gladiator School.”³ After a settlement that required CCA/CoreCivic to hire and maintain additional security staff, it became clear that company officials had falsified thousands of hours of records to look like they were actually staffing security posts that remained empty. In response, the federal court in Idaho sanctioned the company.

- CCA-CoreCivic admits that sentencing reform and immigration reform could harm them by reducing demand for prisons. In fact, many private prison contracts include occupancy guarantees, sometimes referred to as “lockup quotas.”⁴ These require the government to either provide a certain number of prisoners on a daily basis or pay as if the empty prison beds were filled. As a direct result, private prisons spend millions of dollars in influence-peddling to expand contracts and avoid accountability.⁵

Accordingly, the ACLU of Hawai‘i respectfully requests that your Committees defer H.B. 2581, H.D. 2. Alternatively, we ask that your Committee amended the bill to clarify that the Office of Public-Private Partnerships and other state agencies may not explore or enter into plans for public-private partnerships for corrections or law enforcement purposes in Hawai‘i. Such protection is particularly important, because under the bill, public-private partnerships can be entered without legislative and public input⁶ even though these arrangements could determine the future of criminal justice in Hawai‘i for the foreseeable future.

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.

³ ACLU of Idaho, *Kelly v. Wengler*, available at <https://www.acluidaho.org/en/cases/kelly-v-wengler>.

⁴ CoreCivic, Inc., *2016 Form 10-K*, available at <https://www.sec.gov/Archives/edgar/data/1070985/000119312517053982/d310578d10k.htm>.

⁵ Michael Cohen, *How for-profit prisons have become the biggest lobby no one is talking about*, Washington Post (Apr. 28, 2015), available at https://www.washingtonpost.com/posteverything/wp/2015/04/28/how-for-profit-prisons-have-become-the-biggest-lobby-no-one-is-talking-about/?utm_term=.a9936534d870.

⁶ Presently, the Department of Public Safety is required to “develop and implement a community partnering process to be incorporated into the request for proposal” for new prison facilities, including “a community hearing for the purpose of soliciting community input.” See H.R.S. § 353-16.37. This is not, however, a substitute for holding legislative hearing during the appropriations process necessary for building new correctional facilities.

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HB-2173-HD-2

Submitted on: 3/15/2018 9:29:01 PM

Testimony for LBR on 3/21/2018 9:00:00 AM

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

HB-2173-HD-2

Submitted on: 3/16/2018 8:07:08 AM

Testimony for LBR on 3/21/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Bickel	Individual	Support	No

Comments:

This bill would prohibit an invasion of privacy. Employers have no right to this personal information,