



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON HIGHER EDUCATION

DATE: Thursday, February 2, 2017 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Doris Dvorch, Deputy Attorney General

Chairs Keith-Agaran and Kahele and Members of the Committees:

The Department of the Attorney General recognizes this is a uniform law and supports it, but provides these comments.

The purpose of this bill is to prohibit employers and educational institutions from requiring, coercing, or requesting an employee or student to provide access to his or her personal online accounts.

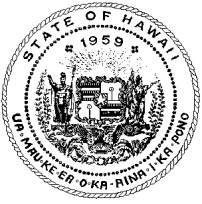
Section -5 of the new chapter added to the Hawaii Revised Statutes by section 1 of the bill on page 13, line 19, to page 14, line 18, permits the Attorney General, an employee, or a student to bring a civil action against an employer or educational institution for a violation of this bill's protections. Section -5(c) also permits the Attorney General and the employee or student to pursue parallel civil actions against an employer or educational institution.

It is unclear in which forum the Attorney General may bring a civil action against an employer or educational institution. We recommend the Attorney General be able to bring a civil action in district court against an employer or educational institution. As such, the following wording may be added to the current wording on page 13, line 19 to page 14, line 1:

(a) The attorney general may bring a civil action in district court against an employer or educational institution for a violation of this chapter.

It is also unclear what constitutes a “violation” on page 13, line 19, to page 14, line 1, and what constitutes “the same event” on page 14, lines 4 to 6. For example, if an employer requests an employee to disclose login information three times on separate days and threatens to take adverse action against that employee for failing to disclose login information two times, it is unclear if there would be five, separate violations necessitating five, separate civil penalties.

We respectfully request the Committees to consider our concerns.



HAWAI'I CIVIL RIGHTS COMMISSION

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

February 2, 2017
Rm. 224, 1:15 p.m.

To: The Honorable Gilbert Keith-Agaran, Chair
Members of the Senate Committee on Judiciary and Labor

The Honorable Kaiali'i Kahele, Chair
Members of the Senate Committee on Higher Education

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

Re: S.B. No. 429

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, 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, 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, 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.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committees on Judiciary and Labor & Higher Education
February 2, 2017 at 1:15 p.m.

By

Risa E. Dickson, Vice President for Academic Planning and Policy
University of Hawai'i System

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

Chairs Keith-Agaran and Kahele, Vice Chairs Rhoads and Kidani, and members of the committees:

The University of Hawai'i (UH) takes no position on SB 429 that proposes to adopt uniform laws on protecting the online accounts of employees and students from employers and educational institutions.

UH, however, would like to note an issue of concern. On page 3, lines 17-21, through page 4, lines 1-9, in reference to “protected personal online account,” the University’s interpretation of this language is that UH accounts and resources are exempted.

Thank you for the opportunity to provide this testimony.

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

ON S.B. NO. 429

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

**BEFORE THE SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON
HIGHER EDUCATION**

DATE: Thursday, February 2, 2017, at 1:15 p.m.
Conference Room 224, State Capitol

PERSON(S) TESTIFYING: PETER HAMASAKI
Commission to Promote Uniform Legislation

Chairs Keith-Agaran and Kahele, and Members of the Senate Committees on Judiciary and Labor, and on Higher Education:

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 testify in strong support of Senate Bill No. 429, 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), 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 number of important, narrowly-tailored exceptions. For example, an employer may need to access content in an employee's account in order to comply with a court order. This act would not prohibit this. The act contains other exceptions to its protections as well.

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 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 testify.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB429 on Feb 2, 2017 13:15PM*
Date: Wednesday, February 1, 2017 1:22:46 PM

SB429

Submitted on: 2/1/2017

Testimony for JDL/HRE on Feb 2, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Rodden	Graduate Student Organization	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Date: Thursday, February 2nd, 2017
Time: 1:15pm
Place: Conference Room 224

To: Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

Senate Committee on Higher Education
Senator Kaiali'i Kahele, Chair
Senator Michelle N. Kidani, Vice Chair

Re: Support for SB429 Relating to Collective Bargaining

Dear Chair Keith-Agaran, Vice Chair Rhoads, Chair Kahele, Vice Chair Kidani and Members of the Committee on Judiciary and Labor and Higher Education:

Thank you for the opportunity to provide testimony. My name is Hannah Liebreich, and I am a graduate student at the University of Hawai'i at Mānoa (UHM). I am writing in strong support of SB 429 to provide uniformed laws on protecting online accounts of employees and students at the University of Hawai'i (UH).

I personally support this measure as it is a way to ensure that email correspondence is consistently protected. This is particularly important to me as an instructor of undergraduate classes at UHM. Often I teach classes that handle sensitive material (such as gender violence) so privacy is of the utmost importance when I communicate with faculty, staff, and students in my field. For these reasons, I strongly urge you to support SB 429.

Respectfully submitted,

Hannah Liebreich

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB429 on Feb 2, 2017 13:15PM*
Date: Monday, January 30, 2017 2:41:20 PM

SB429

Submitted on: 1/30/2017

Testimony for JDL/HRE on Feb 2, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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