

STAND. COM. REP. NO.

1262

Honolulu, Hawaii

MAR 25 2021

RE: H.B. No. 1253
H.D. 3
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committee on Labor, Culture and the Arts, to which was referred H.B. No. 1253, H.D. 3, entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT PRACTICES,"

begs leave to report as follows:

The purpose and intent of this measure is to prohibit employers, with certain exemptions, from:

- (1) Requiring an employee to download a mobile application to the employee's personal communication devices that enables the employee's location to be tracked or their personal information revealed;
- (2) Terminating or otherwise discriminating against an employee for refusing to download a mobile application to the employee's personal communication device; or
- (3) Discharging or otherwise discriminating against an employee for filing a complaint, testifying, or assisting in any proceeding concerning these unlawful practices.

Your Committee received testimony in support of this measure from the Department of Labor and Industrial Relations. Your Committee received testimony in opposition to this measure from



the Chamber of Commerce of Hawaii; Maui Chamber of Commerce; and Retail Merchants of Hawaii, Inc. Your Committee received comments on this measure from Society for Human Resource Management Hawaii.

Your Committee finds that the high rate of transmission of the coronavirus disease 2019 has necessitated the development of new public health tools to mitigate the spread of the virus. These tools include job-driven tracking devices and technologies such as the Global Positioning System (GPS). While mobile phone users may voluntarily agree to be tracked, your Committee finds that such applications have raised privacy concerns and anxiety over potential misuse of the tracking information, and therefore, the mandatory downloading and use of such applications should not be a condition of employment. This measure will prohibit an employer, with certain exemptions, from requiring employees to download the mobile application to their personal communication devices, and taking adverse action against an employee who refused to do so or against an employee for filing a complaint, testifying, or assisting in any proceeding regarding violations of provisions in this measure.

Your Committee notes testimony regarding the existing use of tracking devices and technologies by employers for purposes of efficiency, accountability, safety, and productivity to increase service to customers in Hawaii. Your Committee finds that use of tracking devices and technologies for such purposes may be justified, provided that the devices are owned by the employer or the employee's cost of using the device is reimbursed by the employer.

Your Committee has amended this measure by:

- (1) Amending the definition of employee to include a prospective employee who has applied for or otherwise actively expressed interest in employment with an employer;
- (2) Adding definitions of "employer-owned communication device" and "mobile application";
- (3) Clarifying that it is unlawful for an employer to require, as a condition of employment or continued employment, an employee to download to their personal



communication device, a mobile application that enables the employee's location to be tracked or the employee's personal information to be revealed;

- (4) Clarifying that it is unlawful for an employer to terminate, discharge, or otherwise discriminate against an employee who has refused to consent to downloading to their personal communication device, a mobile application that enables the employee's location to be tracked or the employee's personal information to be revealed;
- (5) Deleting the exemption for mobile applications that are required as a condition of employment and related to the functions of the employment position;
- (6) Allowing an employer to require an employee to carry or use a communication device that enables the employee's location to be tracked if the device is owned or whose cost is reimbursed by the employer;
- (7) Clarifying that a person, not limited to an employee, can commence a civil action; and
- (8) 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 Labor, Culture and the Arts that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1253, H.D. 3, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1253, H.D. 3, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Labor, Culture and
the Arts,


BRIAN T. TANIGUCHI, Chair



