

STAND. COM. REP. NO. 1616

Honolulu, Hawaii

APR 09 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 Judiciary, to which was referred H.B. No. 1253, H.D. 3, S.D. 1, 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:

- (1) Prohibit employers, with certain exemptions, from requiring employees and prospective employees 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, as a condition of employment or continued employment;
- (2) Prohibit employers from terminating, discharging, or otherwise discriminating against an employee for refusing to download or refusing to consent to download the mobile application to the employee's personal communication device; or opposing any forbidden practice or filing a complaint, testifying, or assisting in any proceeding concerning an unlawful practice;



- (3) Allow a person who alleges a violation to bring a civil action for injunctive relief, actual damages, or both; and
- (4) Set fines.

Your Committee received testimony in support of this measure from the Department of Labor and Industrial Relations and one individual. Your Committee received testimony in opposition to this measure from the Maui Chamber of Commerce, Retail Merchants of Hawai'i, and Chamber of Commerce Hawai'i. Your Committee received comments on this measure from the Society for Human Resource Management.

Your Committee finds that in response to the coronavirus disease 2019 (COVID-19) pandemic, applications for mobile phones have been promoted as a means to track the whereabouts of individuals who may have been exposed to someone testing positive for the virus. Your Committee further finds that although tracking individuals who may have been exposed to COVID-19 can be a very effective tool in fighting the spread of the virus, the capabilities of these applications prompt privacy concerns and anxiety over potential misuse of the location information. Your Committee additionally finds that while mobile phone users may voluntarily agree to be tracked, the privacy concerns dictate against making the downloading of mobile applications to an employee's personal mobile phones a condition of employment.

Your Committee notes that further consideration may be necessary regarding whether employee consent to downloading a mobile application to the employee's personal device should be given in writing and whether the employee should be able to rescind consent, as well as whether a requirement is needed that the employer have a written policy on how the information that is tracked or saved by the application will be used by the employer and how the information will be protected from unauthorized disclosure or hacking.

Consideration may also be necessary regarding whether the Attorney General should be authorized to bring a lawsuit on its initiative to enforce the requirements of this measure, including through a class action if necessary.



Consideration may also be merited on the question of how information regarding the requirements of this measure should best be communicated to employers and other members of the public, and whether the Department of Labor and Industrial Relations should post that information on its website.

Your Committee further notes concern about whether the fine that may be imposed on an employer pursuant to this measure should be deposited into the general fund.

Your Committee finds that these considerations and concerns may merit further discussion as this measure proceeds through the legislative process or in future legislative sessions.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1253, H.D. 3, S.D. 1, and recommends that it pass Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



