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February 26, 2021

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Scot Z. Matayoshi, Vice Chair, and
Members of the House Committee on Judiciary and Hawaiian Affairs

Date: Friday, February 26, 2021

Time: 2:00 p.m.

Place: Via Videoconference, Conference Room 325, State Capitol

From: Anne Perreira-Eustaquio, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 1253 H.D.2 RELATING TO THE EMPLOYMENT PRACTICES

I. OVERVIEW OF PROPOSED LEGISLATION

This measure adds a new part to Chapter 378, Hawaii Revised Statutes (HRS), Employment Practices, to prohibit an employer from: 1) requiring an employee to download a mobile application to the employee's personal communication device 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 on their personal device; or 3) discharging or discriminating against an employee for filing a complaint, testifying or assisting in any proceeding concerning these unlawful practices.

The DLIR supports this proposal.

II. CURRENT LAW

There is no provision in Hawaii's Labor Laws that prohibits an employer from requiring an employee to download a mobile application to the employee's personal communication device that enables the employee's location to be tracked or their personal information revealed.

III. COMMENTS ON THE HOUSE BILL

The DLIR is supportive of legislation that protects employees' privacy and the private right of action this bill makes available for violation of this measure.



**Testimony to the House Committee on Judiciary & Hawaiian Affairs
Friday, February 26, 2021 at 2:00 P.M.
Via Videoconference**

RE: HB 1253, HD 1, RELATING TO EMPLOYMENT SECURITY

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 1253, HD 1 which prohibits an employer from:

- 1) Requiring an employee to download a mobile application to the employee's personal communication device 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 on their personal device; or
- 3) Discharging or discriminating against an employee for filing a complaint concerning these unlawful practices.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 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.

We appreciate the intent of this measure in protecting the privacy of employees. However, The Chamber does not support this measure on the basis that in employment settings where a work-issued phone is not viable, employers reimburse employees for data usage related to job-related applications on employees' personal devices. Mobile applications on personal devices are used to monitor service jobs, fulfill customer requests, or complete quotas in their lines of business, particularly in service-driven occupations where employees drive from one customer to another.

This measure would unnecessarily expose employers to a private right of action where a mobile application is a necessity on employees' personal devices, even if employees voluntarily agree.



Chamber of Commerce HAWAII

The Voice of Business

Additionally, given our uncertain COVID environment, employees have been encouraged to work remotely and while not new, digital time cards have been used on communications devices for quite some time. From construction and sales to warehouses, employers have utilized time card applications as flexible as the modern workforce.

For these reasons, The Chamber believes this bill is not necessary. However, if the Committee is inclined to pass this measure, we respectfully ask that consideration be given to exclude employers where an application is necessary in their line of business or in cases where the employee consents to the mobile application on their personal devices.

Thank you for this opportunity to provide testimony.



House Committee on Judiciary & Hawaiian Affairs

**Representative Mark M. Nakashima
Representative Scot Z. Matayoshi
Friday, February 26, 2021 at 2:00 P.M.
Via Videoconference**

RE: HB 1253, HD 2, RELATING TO EMPLOYMENT PRACTICES

Chair Nakashima, Vice Chair Matayoshi and Members of the Committee:

The Society for Human Resource Management (SHRM) Hawaii opposes HB 1253, HD 2.

SHRM Hawaii serves and represents nearly 600 members and employers' statewide and human resource management is a critical component to the success and survival of the many businesses that make up our local economy. HR professionals are responsible for evaluating and balancing the needs of both the employers and employees and caring for businesses' most valuable asset: the working people of our state.

HB 1253, HD 2 seeks to prohibit an employer from requiring an employee to download a mobile application to the employee's personal communication device that enables the employee's location to be tracked or their personal information revealed, terminating or discriminating against an employee for refusing to download a mobile application on their personal device, or discharging or discriminating against an employee for filing a complaint concerning these unlawful practices.

While SHRM understands the intent of this measure, as it is currently drafted, employers could be in violation even when businesses require the use of mobile applications for strict business purposes. HB 1253, HD 2 would also prohibit the use of mobile application on employee devices even when employees consent to the use and installation of a mobile application. Even prior to COVID pandemic or the ubiquitous use of mobile devices, employers have been using devices such as a vehicle GPS to help with fulfill work orders and better servicing customers.



To illustrate, in industries such as plumbing, electrical, or other trades, employers need to identify when employees are ready to accept new service jobs. The mobile application would allow for employees to receive, accept, or defer service jobs based on when they fulfilled the last job, their location, and when they are willing and able to accept the next service job. In other cases, the application serves as payroll or timecard when employees are ready for work or get off work.

Despite the current COVID environment where remote working is highly encouraged, employers have utilized advanced business-driven applications for the benefit of employers, employees, and customers.

For these reasons, we ask the Committee to defer this measure to allow for further consideration on whether legislative correction is necessary and to assess business impact.

If the Committee is inclined to pass this measure, we respectfully ask that consideration be given to offer exceptions for employers especially where a mobile application is necessary.

By adding new language under **§378-Unlawful practices** on page 3:

- (4) Notwithstanding the above, it shall not be unlawful for an employer to:
- i) require an employee to carry and use an employer-owned communication device that enables the employee's location to be tracked or their personal information revealed; or
 - ii) allow an employee to choose to download a mobile application to the employee's personal communication device that enables the employee's location to be tracked or their personal information revealed, in lieu of carrying and using an employer-owned communication device that performs the same or similar functions.

Thank you for this opportunity to provide testimony.

Kalani Morse
Legislative Affairs Committee Co-Chair

Dailyn Yanagida
Legislative Affairs Committee Co-Chair





**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII**

February 26, 2021

Re: HB 1253 HD2 Relating to Employment Practices

Good afternoon Chairperson Nakashima and members of the House Committee on Judiciary & Hawaiian Affairs. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership represents small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains, and everyone in between.

While we understand the concerns for employees' rights to privacy, RMH OPPOSES HB 1253 HD2 Relating to Employment Practices. This measure prohibits an employer from: requiring an employee to download a mobile application to the employee's personal communication device that enables the employee's location to be tracked or their personal information revealed; terminating or otherwise discriminating against an employee for refusing to download a mobile application on their personal device; or discharging or discriminating against an employee for filing a complaint concerning these unlawful practices; and is effective 12/25/2040.

Hawaii like the rest of the world is trying to navigate and survive through this pandemic. Retailers like many other businesses want to ensure that they can provide a safe environment to work and shop in. Many companies have smart phone apps that employees use to do wellness checks prior to coming to work. This information can also be used in contract tracing to ensure minimal exposure to others or to create an outbreak cluster.

We would also like to point out that many businesses use scheduling apps to let employees know what shifts they will be working and where employees can request days off. With online sales climbing, many delivery people use company apps to find the customers drop off location. In addition apps like Hawaii Safe Travel and other pandemic health screening apps used by employees are some of the most comprehensive measures being used to ensure that as Hawaii opens to travel and tourism and that we are providing a safe environment for our employees to work in and our customers to shop in. Furthermore, many companies reimburse their employees monthly either in full or partial for their personal cellphones.

We are currently in unprecedented times. We need to continue to ensure that our workers and community are safe. We humbly ask that you defer this measure.

Mahalo again for this opportunity to testify.



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON
JUDICIARY & HAWAIIAN AFFAIRS
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 325
FRIDAY, FEBRUARY 26, 2021 AT 2:00 P.M.**

To The Honorable Mark M. Nakashima, Chair;
The Honorable Scot Z. Matayoshi, Vice Chair; and
Members of the Committee on Judiciary & Hawaiian Affairs,

OPPOSE HB1253 HD2 RELATING TO EMPLOYMENT PRACTICES

Aloha, my name is Pamela Tumpap. I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment. I am writing share our opposition to HB1253 HD2.

The Maui Chamber of Commerce understands the intent of this bill and, as noted in our previous comments, ultimately feels this is unnecessary. We encourage the public, business members and their employees to use the AlohaSafe Alert app as it has broad acceptance and has demonstrated it will help prevent the spread of COVID-19.

We are concerned that this bill will have negative unintended consequences on employers and impact other commonly used applications. This bill seems to prohibit the use of certain mobile applications on an employee's personal device, even if the employee consents and businesses should not be penalized for this. Further, we recognize that the bill would also include other types of mobile applications, such as mileage and time trackers, that are commonly used by businesses. These types of apps have become increasingly common while many are working from home. Given these issues, we ask that the Committee defer this measure. However, if the Committee prefers to pass this bill to continue conversation, we ask that you consider an amendment and defer to the language provided by SHRM Hawaii.

Mahalo for your consideration of our testimony and ask that you please defer this bill.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

HB-1253-HD-2

Submitted on: 2/24/2021 8:09:10 PM

Testimony for JHA on 2/26/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Keawe	Individual	Support	No

Comments:

I support hb1253 hd2