



**Testimony to the Senate Committee on Labor, Culture, and the Arts
Wednesday, March 17, 2021 at 3:30 P.M.
Written Only**

RE: HB 1253, HD 3, RELATING TO EMPLOYMENT SECURITY

Chair Taniguchi, Vice Chair Ihara, Jr., and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 1253, HD 3 which prohibits employers, with certain exemptions, from requiring employees to download mobile applications to the employees' personal communication devices, terminating or otherwise discriminating against employees for refusing to download mobile applications, or discharging or discriminating against employees for filing complaints 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 the ability for a private right of action as proposed in this measure under page 4, §378- Civil actions for injunctive relief or damages and would unnecessarily expose employers in situations when a mobile application is a necessity on employees' personal devices, even if employees voluntarily agree.

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.

While we understand the intent of this measure, we question whether a law is warranted rather than an employer education seminar. Unless there are voluminous complaints, we believe this bill is unnecessary.

Thank you for this opportunity to provide testimony.



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
www.labor.hawaii.gov

March 17, 2021

To: The Honorable Brian T. Taniguchi, Chair,
The Honorable Les Ihara, Jr., Vice Chair, and
Members of the Senate Committee on Labor, Culture and the Arts

Date: Wednesday, March 17, 2021

Time: 3:30 p.m.

Place: Conference Room 225 and Videoconference, State Capitol

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

Re: H.B. No. 1253 H.D.3 RELATING TO 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 unlawful practices do not apply if the employee consents to downloading the mobile application to the employee's personal communication device, or if the mobile application is required as a condition of employment and related to the functions of the employment position.

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.



Senate Committee on Labor, Culture, and the Arts

Senator Brian T. Taniguchi
Wednesday, March 17, 2021 at 3:30 P.M.
Via Videoconference

RE: HB 1253, HD 3, RELATING TO EMPLOYMENT PRACTICES

Chair Taniguchi, Vice Chair Les Ihara, Jr., and Members of the Committee:

The Society for Human Resource Management (SHRM) Hawaii offers concerns on HB 1253, HD 3.

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 3 seeks to prohibit employers, with certain exemptions, from requiring employees to download mobile applications to the employees' personal communication devices, terminating or otherwise discriminating against employees for refusing to download mobile applications, or discharging or discriminating against employees for filing complaints concerning these unlawful practices.

SHRM Hawaii appreciates the intent of this measure. Even prior to COVID or the ubiquitous use of communications devices and applications, employers have been using job-driven tracking devices and technologies such as GPS, to help drive efficiency, accountability, safety, and productivity, all of which helps increase service to Hawai'i customers. In the current COVID environment, remote working and advanced applications have had broader acceptance and the advances in technology continue to evolve for the benefit of employers, employees, and customers.



Additionally, we question whether there are substantiated complaints that this legislation is attempting to correct. The broader and unforeseen business impact could be of greater importance especially as business models continue to evolve and pivot.

Thank you for this opportunity to provide testimony.

Kalani Morse
Legislative Affairs Committee Co-Chair

Dailyn Yanagida
Legislative Affairs Committee Co-Chair



SHRM Hawaii, P. O. Box 3175, Honolulu, Hawaii (808) 447-1840



TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL March 17, 2021
Re: HB 1253 HD3 Relating to Employment Practices

Good afternoon Chair Taniguchi and members of the Senate Committee on Labor Culture and the Arts. 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 HD3 Relating to Employment Practices. This measure prohibits employers, with certain exemptions, from requiring employees to download mobile applications to the employees' personal communication devices, terminating or otherwise discriminating against employees for refusing to download mobile applications, or discharging or discriminating against employees for filing complaints 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 SENATE COMMITTEE ON
LABOR, CULTURE & THE ARTS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 225
WEDNESDAY, MARCH 17, 2021 AT 3:30 P.M.**

To The Honorable Brian T. Taniguchi, Chair;
The Honorable Les Ihara, Jr., Vice Chair; and
Members of the Committee on Labor, Culture, and the Arts,

OPPOSE HB1253 HD3 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 HD3.

The Maui Chamber of Commerce understands the intent of this bill and appreciates the changes made in HD3 but, 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. Given this, we ask that the Committee defer this measure.

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

Sincerely,

Pamela Tumpap

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.