



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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April 1, 2021

To: The Honorable Karl Rhoads, Chair,
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the Senate Committee on Judiciary

Date: Thursday, April 1, 2021
Time: 9:35 a.m.
Place: Via Videoconference, State Capitol

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

Re: H.B. No. 1253 H.D.3 S.D.1 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, including a prospective 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 as a condition of employment or continued employment; 2) terminating, discharging, or otherwise discriminating against an employee for: A) refusing to download or refusing to consent to download, a mobile application on the employee's personal communication device; or B) opposing any practice forbidden by this part or filing a complaint, testifying, or assisting in any proceeding concerning an unlawful practice prohibited under this part.

The unlawful practices do not apply if the employee consents to downloading the mobile application to the employee's personal communication device, or do not prohibit an employer from requiring an employee to carry or use an employer-owned communication device that enables the employee's location to be tracked.

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.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON JUDICIARY
HAWAII STATE CAPITOL, SENATE VIDEOCONFERENCE
THURSDAY, APRIL 1, 2021 AT 9:35 A.M.**

To The Honorable Karl Rhoads, Chair;
The Honorable Jarrett Keohokalole, Vice Chair; and
Members of the Committee on Judiciary,

OPPOSE HB1253 HD3 SD1 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 SD1.

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.

There are many other legitimate work-related apps used now and before the pandemic that are important for workplace efficiency, security and more. 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.



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

APRIL 1, 2021

Re: HB 1253 HD3 SD1 Relating to Employment Practices

Good morning Chair Rhoads and members of the Senate Committee on Judiciary. 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 SD1 Relating to Employment Practices. This measure prohibits 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; prohibits 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 practice forbidden by this Act or filing a complaint, testifying, or assisting in any proceeding concerning an unlawful practice prohibited under this Act; allows a person who alleges a violation of this Act to bring a civil action for injunctive relief, actual damages, or both; sets fines; 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 contact 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.

We humbly ask that you defer this measure.

Mahalo again for this opportunity to testify.

**Testimony to the Senate Committee Judiciary
Thursday, April 1, 2021 at 9:35 A.M.
Written Only**

RE: HB 1253, HD 3, SD 1, RELATING TO EMPLOYMENT PRACTICES

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 1253, HD 3, SD 1 which:

1. Prohibits 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. Prohibits 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 practice forbidden by this Act or filing a complaint, testifying, or assisting in any proceeding concerning an unlawful practice prohibited under this Act; and
3. Allows a person who alleges a violation of this Act to bring a civil action for injunctive relief, actual damages, or both.

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 proposed in this measure that would unnecessarily expose employers in situations when a mobile application is a necessity on employees' personal devices.



Even prior to the growth of remote work, employees have been checking into work digitally using personal devices. The use of digital time cards and daily check-ins have broad acceptance as an alternative to traditional punch time clock at work.

Additionally, there are many more legitimate reasons why a company would require a mobile application on personal devices and as technology continues to evolve and gain mainstream productivity acceptance, employers will need the flexibility.

Some businesses may require the employee to install:

1. Security applications when accessing sensitive work emails and company data;
2. Secure connectivity applications when connecting to the internet through its encrypted virtual private network (VPN) and to identify where they are accessing the data from;
3. Applications that allow for remotely wiping corporate data or enable a preventive lockdown to stop devices from turning into a compliance risk; or
4. Location history to audit or keep tabs on business transportation.

While we understand the intent of this measure, we question whether a law is warranted rather than first assessing employer environments of both small and large businesses. Unless there are voluminous complaints in the employer-employee industry related to mobile applications, we believe this bill is unnecessary and may cause more harm than good.

Thank you for this opportunity to provide testimony.



Senate Committee on Judiciary

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
Thursday, April 1, 2021 at 9:35 A.M.
Written Testimony

RE: HB 1253, HD 3, SD 1, RELATING TO EMPLOYMENT PRACTICES

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Society for Human Resource Management (SHRM) Hawaii offers comments and raises concerns on HB 1253, HD 3, SD 1.

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, SD 1 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.

For instance, there are many more legitimate reasons why a company would require a mobile application on personal devices and as technology continues to evolve and gain mainstream productivity acceptance, employers will need the flexibility. Additionally, as employers, a simple consent may not cover the broad range of topics including:

1. Which employees are permitted to use personal devices for work purposes;
2. Acceptable and unacceptable use of personal devices for work purposes;
3. Your ownership of and right of access to all employer data on employees' personal devices and employees' lack of privacy rights in that data;
4. Your security and data protection protocols;
5. Your employees' obligations with respect to maintaining the security of employer data (e.g., a provision requiring employees to protect all devices that contain employer data with a password or PIN);
6. A disclaimer that the employer is not responsible for the security of the employee's personal data; and
7. Rules and/or restrictions regarding work-related use of personal devices outside of working hours.

In closing, as business models and technologies continue to evolve, we question whether HB 1253, HD 3, SD 1 would do more harm than good and unnecessarily limit business productivity.

Thank you for this opportunity to provide testimony.

Kalani Morse
Legislative Affairs Committee Co-Chair

Dailyn Yanagida
Legislative Affairs Committee Co-Chair



HB-1253-SD-1

Submitted on: 3/26/2021 5:17:19 PM

Testimony for JDC on 4/1/2021 9:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

Stand in Support