



STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**Date:** 04/01/2021

**Time:** 09:35 AM

**Location:** Via Videoconference

**Committee:** Senate Judiciary

**Department:** Education

**Person Testifying:** Dr. Christina M. Kishimoto, Superintendent of Education

**Title of Bill:** HB 0125, HD2, SD1 RELATING TO THE UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT.

**Purpose of Bill:** Establishes the Uniform Employee and Student Online Privacy Protection Act that protects from employers and educational institutions, online accounts maintained by employees, unpaid interns, independent contractors, prospective employees, students, prospective students, and parents or legal guardians of students under the age of eighteen years. Effective 12/25/2040. (SD1)

**Department's Position:**

The Hawaii State Department of Education supports HB 125, HD2, SD1, which is in line with protecting employee and student online accounts while ensuring that employers and educational institutions are able to address non-compliance with laws and regulations that directly impact the employer or educational institution.

Thank you for the opportunity to provide testimony on this measure.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at [www.hawaiipublicschools.org](http://www.hawaiipublicschools.org).



# HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, KOOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

April 1, 2021, 9:35 a.m.  
via Videoconference

To: Hon. Karl Rhoads, Chair  
Hon. Jarrett Keohokalole, Vice Chair  
Members of the Senate Committee on Judiciary

From: Liann Ebesugawa, Chair  
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 125, H.D.2, S.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

H.B. No. 125, H.D.2, S.D.1, if enacted, will add a new chapter to the Hawai‘i Revised Statutes, protecting the online accounts of employees, prospective employees, interns, applicants, students and prospective students.

**The HCRC supports H.B. No. 125, H.D.2, S.D.1.** In previous years, HCRC has supported similar bills, with a requested amendment providing that nothing in the new law shall diminish the authority and obligation of an employer to investigate complaints, allegations, or the occurrence of sexual, racial, or other prohibited harassment under chapter 378, part I. This requested provision is included on page 11 of H.B. No. 125, H.D.2, S.D.1, in § \_\_\_-3 (4)(e).

Current state and federal fair employment law, HRS chapter 378, part I, and Title VII of the Civil Rights Act of 1964, require employers, once on notice of discriminatory harassment in the workplace, to promptly investigate and take effective corrective action. Failure to investigate and take effective corrective action is a violation of law. An employer investigation of sexual,

racial, or other prohibited discrimination could involve allegations of harassment via social media.

The HCRC supports H.B. No. 125, H.D.2, S.D.1.

**COMMENTS OF THE  
COMMISSION TO PROMOTE UNIFORM LEGISLATION  
ON H.B. NO. 125, H.D.2, S.D.1**

**RELATING TO THE UNIFORM EMPLOYEE AND  
STUDENT ONLINE PRIVACY PROTECTION ACT.**

**BEFORE THE SENATE COMMITTEE ON JUDICIARY**

**DATE:** Thursday, April 1, 2021, at 9:35 a.m.  
VIA VIDEO CONFERENCE

**FROM:** PETER J. HAMASAKI  
Commission to Promote Uniform Legislation

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Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary:

Thank you for this opportunity to submit these comments on behalf of the Commission to Promote Uniform Legislation in strong **support** of House Bill No. 125, House Draft 2, Senate Draft 1, which enacts the Uniform Employee and Student Online Privacy Protection Act (UESOPPA). House Bill No. 125 includes provisions that have been discussed in prior legislative sessions with other stakeholders.

Ordinarily, individuals decide for themselves who will have access to information that is not otherwise publicly available in their social media profiles and other online accounts. Employers and educational institutions, however, may have the power to coerce access to non-public information of students' and employees' personal online accounts. In recent years, there have been a number of reported incidents in which employers and schools have demanded, and received, such access.

This act, which was developed by the Uniform Law Commission (ULC)

with input from employers, educational institutions, internet and other technology companies and privacy organizations, prevents employers and public and private educational institutions from coercing access to such information from employees and students who will normally have less than equal bargaining power. Adoption of this uniform act will establish a set of rules that will help employers, educational institutions, employees, students, technology service providers, practitioners, judges, and others to effectively apply, comply with, or enforce the law in a more consistent manner.

UESOPPA broadly protects all online accounts protected by a login requirement.<sup>1</sup> This includes not just social media networking accounts, but also email, trading, banking, credit card, and other online accounts.

Stated simply, UESOPPA does *four* things to protect information in these types of online accounts.

**FIRST**, this act prohibits employers and schools from requiring, coercing, or requesting an employee or student to:

- (1) Disclose login information for a protected account;
- (2) Disclose non-publicly available content of a protected account;
- (3) Alter the settings of the protected account to make the login information or non-publicly available content more accessible to others;
- (4) Access the protected account in a way that allows another to observe the login information for, or non-publicly available content of, the account; or
- (5) Take or threaten to take adverse action against the employee or student for failing to comply with conduct that violates these prohibitions.

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<sup>1</sup> The act does not apply to accounts opened at the direction or behest of an employer or educational institution, and that are intended to be used solely or primarily on behalf of or under the direction of the employer or educational institution.

**SECOND**, recognizing that there are some instances where employers and schools have a strong and justifiable interest in having the act's prohibitions lifted, the act contains a limited number of important but narrowly-tailored exceptions. The act does not prevent access to information that is publicly available or that is required to comply with federal or state law, a court order, or the rule of a self-regulatory organization established by federal or state statute. Additionally, only if the employer or school has **specific facts** about the protected account, the employer or school may seek access to content (but not login information) for the limited purposes of compliance with law, investigation of employee or student misconduct, or a threat to the safety of persons or technology networks, or protection of confidential or proprietary information.

**THIRD**, if information is obtained for one of the purposes specified under one of the act's authorized exceptions, the act provides certain limits on how the information can be used.

**FOURTH**, the act provides for how login information, if lawfully obtained, can be used.

For violations, UESOPPA authorizes the state attorney general to bring a civil action for injunctive and other equitable relief and to obtain a civil penalty for each violation, with a cap for violations caused by the same action. An employee or student may also bring a civil action to obtain injunctive and other equitable relief, actual damages, and an award of costs and reasonable attorney's fees.

In conclusion, we urge your support for House Bill No. 125, House Draft 2, Senate Draft 1, to adopt the Uniform Employee and Student Online Privacy Protection Act. Doing so will bolster individual choice by enabling employees and students to make decisions to maintain the privacy of their personal online accounts.

We request that the defective effective date in Senate Draft 1 be replaced with an effective date of July 1, 2021.

Thank you very much for this opportunity to submit comments on this measure.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
IN OPPOSITION IN PART TO HB 125, HD 2, SD 1, RELATING TO THE UNIFORM  
EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT

April 1, 2021

Honorable Senator Karl Rhoads, Chair  
Honorable Jarret Keohokalole, Vice Chair  
Committee on Judiciary  
State Senate  
Via Videoconference  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Rhoads, Vice Chair Keohokalole and members of the Committee:

Thank you for the opportunity to testify in opposition in part to HB 125, HD 2, SD 1, relating to the Uniform Employee and Student Online Privacy Protection Act.

Our firm represents the American Council of Life Insurers (“ACLI”). The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94% of the industry assets in the United States. Two hundred eighteen (218) ACLI member companies currently do business in the State of Hawaii; and they represent 94% of the life insurance premiums and 99% of the annuity considerations in this State.

Today, many individuals use social media accounts and personal devices for both business and personal purposes.

HB 125, HD 2, SD 1, adopts the Uniform Employee and Student Online Privacy Protection Act. The Commentary of the Committee on Uniform Law Commission states that the purpose of the Act is to protect employee and student privacy with respect to their personal online accounts.

ACLI and its member companies believe that an individual’s personal information should remain private and should not be subject to inspection by an employer or prospective employer.

However, legislation which seeks to protect strictly personal social media account information must simultaneously accommodate legal and regulatory requirements imposed upon life insurers that certain communications be reviewed and retained to comply with recordkeeping requirements. In addition, the legislation must recognize that employers sometimes require access to social media accounts that are used in any part for a business purpose.

As currently drafted § – 5(b), on page 17, at line 9 of HB 125, HD 2, SD 1, deviates from the provisions of the Uniform Act by providing that for violation of its provisions an employee or

student may bring a civil action against the employee’s employer or student’s educational institution for not only actual but also “general damages”. The term “general damages” allow for damages that cannot be easily given a monetary value, such as pain and suffering, loss of consortium and emotional distress. The inclusion of “general damages” may, therefore, easily lead to unwarranted or frivolous lawsuits being pursued. The State’s Attorney General has ample authority to pursue any violations should they occur. Any private right of action should be limited in scope to those few instances where actual, measurable harm is proven to have taken place.

For the foregoing reasons, ACLI respectfully requests that § – 5(b), on page 17 of the bill, at lines 4 – 9 of the bill be amended by limiting the damages that may be awarded to the employee or student to her or his actual damages, as set forth below:

(b) An employee or student may bring a civil action against the employee’s employer or student’s education institution for a violation of this chapter. A prevailing employee or student may obtain:

...

(2) Actual ~~and general~~ damages; and

....

Again, thank you for the opportunity to testify in opposition in part to HB125, HD 2, SD1.

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