



HAWAI‘I CIVIL RIGHTS COMMISSION

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February 9, 2021
Rm. 312, 9:30 a.m.
Videoconference

To: The Honorable Richard H.K. Onishi, Chair
The Honorable Jackson D. Sayama, Vice Chair
Members of the House Committee on Labor & Tourism

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

Re: H.B. No. 125

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, 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. 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 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.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION
ON H.B. NO. 125**

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

BEFORE THE HOUSE COMMITTEE ON LABOR AND TOURISM

DATE: Tuesday, February 9, 2021, at 9:30 a.m.
Conference Room 312, State Capitol
VIA VIDEO CONFERENCE

PERSON TESTIFYING: PETER HAMASAKI
Commission to Promote Uniform Legislation

Chair Onishi, Vice Chair Sayama, and Members of the House Committee on Labor and Tourism:

Thank you for this opportunity to submit this testimony on behalf of the Commission to Promote Uniform Legislation in strong **support** of House Bill No. 125, 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.¹ 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.

¹ 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, 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.

Thank you very much for this opportunity to testify on this measure.



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

Date: 02/09/2021

Time: 09:30 AM

Location: 312 Via Videoconference

Committee: House Labor & Tourism

Department: Education

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

Title of Bill: HB 0125 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 adopts uniform laws on protecting the online accounts of employees, prospective employees, unpaid interns, applicants, students, and prospective students from employers and educational institutions.

Department's Position:

The Hawaii State Department of Education (Department) supports HB 125 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.