



GOV. MSG. NO. 1332

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 11, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,
Speaker
and Members of the House
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

I am transmitting herewith HB1739 HD2 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB1739 HD2 SD1 CD1

RELATING TO EMPLOYMENT

Sincerely,

DAVID Y. IGE
Governor, State of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 11, 2016

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1739

Honorable Members
Twenty-Eighth Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, House Bill No. 1739, entitled "A Bill for an Act Relating to Employment."

The purpose of this bill is to prohibit employers from requiring, requesting, or coercing employees or potential employees to provide access to their personal social media accounts, subject to certain exemptions.

While the intent of this bill is laudable, it is nonetheless objectionable because it contains no provisions for enforcement authority or due process. The bill simply states, in section 1 subsection (f), that "an employer found in violation of this part shall be subject to a fine of not less than \$25 and not more than \$100, to be collected by the director of labor and industrial relations; and the fine shall not be suspended."

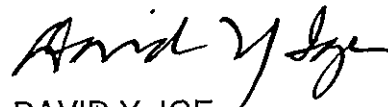
Though the Department of Labor and Industrial Relations is the department best suited to administer this measure, the Department, its divisions or attached agencies do not currently have the staff, resources, or expertise to administer this measure including, but not limited to: intake of complaints, determination of violations, education of rights, determination and collection of fines, and administrative review. The Department has no data as to the number of cases occurring currently or in the past and is struggling with case backlogs in other areas without taking on the enactment and enforcement of this measure.

Additionally, the Legislature has provided for no funding, either in this bill, nor the budget, to determine standards and methods of administration of the bill, for staff positions or administrative costs that would be required to implement the provisions of this measure.

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 1739
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For the foregoing reasons, I am returning House Bill No. 1739 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large, sweeping flourish at the end.

DAVID Y. IGE
Governor of Hawai'i

ORIGINAL

VETO

HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

H.B. NO.

1739
H.D. 2
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 378, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART EMPLOYEE PERSONAL SOCIAL MEDIA

5 §378- Employer access to employee or potential employee
6 personal accounts prohibited. (a) An employer shall not:

- 7 (1) Require, request, or coerce an employee or potential
8 employee to disclose the username, password, or any
9 other information for the purpose of accessing the
10 employee's or potential employee's personal account;
- 11 (2) Require, request, or coerce an employee or potential
12 employee to provide access to the employee's or
13 potential employee's personal account in the presence
14 of the employer; or
- 15 (3) Coerce or compel an employee or potential employee to
16 add anyone, including the employer, to the employee's
17 or potential employee's list of contacts associated
18 with a personal account.



1 (b) Nothing in this section shall prevent an employer
2 from:

3 (1) Accessing information about an employee or potential
4 employee that is publicly available;

5 (2) Complying with applicable laws, rules, or regulations;

6 (3) Requiring an employee to disclose a username or
7 password or similar authentication information for the
8 purpose of accessing:

9 (A) An employer-issued electronic device; or

10 (B) An account or service provided by the employer,
11 obtained by virtue of the employee's employment
12 relationship with the employer, or used for the
13 employer's business purposes;

14 (4) Conducting an investigation or requiring an employee
15 to cooperate in an investigation, including by
16 requiring an employee to share the content that has
17 been reported to make a factual determination, if the
18 employer has specific information about an
19 unauthorized transfer of the employer's proprietary
20 information, confidential information, or financial
21 data, to an employee's personal account;



1 (5) Prohibiting an employee or potential employee from
2 using a personal account during employment hours,
3 while on employer time, or for business purposes; or

4 (6) Requesting or requiring an employee to share content
5 regarding a personal account necessary to ensure
6 compliance with applicable laws, regulatory
7 requirements, or prohibitions against work-related
8 employee misconduct.

9 (c) If an employer inadvertently receives the username,
10 password, or any other information that would enable the
11 employer to gain access to the employee's or potential
12 employee's personal account through the use of lawful technology
13 that monitors the employer's network or employer-provided
14 devices for network security or data confidentiality purposes,
15 then the employer is not liable for having that information;
16 provided that the employer:

17 (1) Does not share that information with a person who uses
18 that information to access the employee's or potential
19 employee's personal account; and



1 (2) Does not use that information, or enable a third party
2 to use that information, to access the employee's or
3 potential employee's personal account.

4 (d) Nothing in this section shall diminish the authority
5 and obligation of an employer to investigate complaints,
6 allegations, or the occurrence of sexual, racial, or other
7 harassment as provided under this chapter.

8 (e) As used in this section, "personal account" means an
9 account, service, or profile on a social networking website that
10 is used by an employee or potential employee exclusively for
11 personal communications unrelated to any business purposes of
12 the employer.

13 (f) An employer found in violation of this part shall be
14 subject to a fine of not less than \$25 and not more than \$100,
15 to be collected by the director of labor and industrial
16 relations; and the fine shall not be suspended."

17 SECTION 2. This Act shall take effect upon its approval.

APPROVED this day of , 2016

GOVERNOR OF THE STATE OF HAWAII

