

STAND. COM. REP. NO.

3204

Honolulu, Hawaii

MAR 23 2018

RE: H.B. No. 2173  
H.D. 2  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawaii

Sir:

Your Committees on Labor and Commerce, Consumer Protection, and Health, to which was referred H.B. No. 2173, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO ONLINE ACCOUNT PRIVACY,"

beg leave to report as follows:

The purpose and intent of this measure is to prohibit employers and educational institutions from requiring employees, students, and prospective employees and students to provide protected personal online account information.

Your Committees received testimony in support of this measure from the Department of Education, University of Hawai'i System, Hawai'i Civil Rights Commission, and two individuals. Your Committees received testimony in opposition to this measure from the American Civil Liberties Union of Hawai'i. Your Committees received comments on this measure from the Chamber of Commerce Hawaii.

Your Committees find that as more individuals subscribe to social media, privacy is a growing concern. Employers increasingly ask current and prospective employees to grant the employer access to social media accounts. Likewise, many educational institutions seek to examine the social media presence of current and prospective students. The Uniform Employee and Student Online Privacy Protection Act, completed by the Uniform



Law Commission in 2016, addresses restrictions on employers' access to employees or prospective employees' social media and other online accounts accessed via username and password or other credentials of authentication as well as post-secondary educational institutions' access to students' or prospective students' similar online accounts. Your Committees further find that this measure is based upon uniform legislation and seeks to provide privacy protections for employees and students in the State.

Your Committees received testimony expressing concern that this measure as currently drafted may not protect student and employee privacy in a meaningful way and may contain loopholes that may result in unintended consequences.

Accordingly, your Committees have amended this measure by:

- (1) Deleting its contents and replacing it with the American Civil Liberties Union's Personal Online Account Privacy Act, which:
  - (A) Prohibits employers and educational institutions from:
    - (i) Requiring, requesting, or coercing an employee or applicant, or student or prospective student, respectively, to disclose or provide access to a personal online account, the non-public contents of a personal online account, a technological device for purposes of gaining access to a personal online account, or account settings to increase third party access to the contents of a personal online account;
    - (ii) Requiring or coercing an employee or applicant, or student or prospective student, to add anyone, including the employer, to their list of contacts associated with a personal online account;
    - (iii) Taking any action or threatening to take any action to discharge, discipline, or penalize



an employee or student, respectively, in response to an employee's or student's refusal to disclose any information or take any action; and

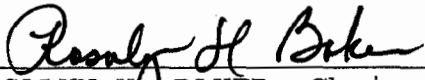
- (iv) Failing or refusing to hire any applicant or admit any prospective student as a result of an applicant's or prospective student's refusal to disclose any information or take any action;
  - (B) Provides circumstances in which employers and educational institutions may request or require access to certain information;
  - (C) Provides conditions under which the employers and educational institutions may prohibit the use of personal online accounts;
  - (D) Provides procedures for if an employer or educational institution inadvertently receives prohibited personal online account information;
  - (E) Allows for legal action to be taken against violators;
  - (F) Prohibits admission of data obtained, accessed, used, copied, disclosed, or retained in violation of this measure in any criminal, civil, administrative, or other proceeding; and
  - (G) Inserts a severability clause;
- (2) Inserting an effective date of January 1, 3000, to encourage further discussion; and
  - (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Labor and Commerce, Consumer Protection, and Health that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2173, H.D. 2, as amended



herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2173, H.D. 2, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committees on Labor and  
Commerce, Consumer Protection,  
and Health,



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ROSALYN H. BAKER, Chair



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JILL N. TOKUDA, Chair





