HAWAIʻI CIVIL RIGHTS COMMISSION

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

March 23, 2016
Rm. 016, 9:00 a.m.

To: The Honorable Gilbert Keith-Agaran, Chair
Members of the Senate Committee on Judiciary and Labor

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawaiʻi Civil Rights Commission

Re: H.B. No. 1739, H.D.2

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

H.B. No. 1739, H.D.2, if enacted, will prohibit employers from requiring or requesting employees and potential employees to grant access to personal account usernames and passwords.

The HCRC supports the intent of H.B. No. 1739, with the H.D.2 language that provides, in a new HRS subsection 378-__(d), that nothing in the new section 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.

The HCRC strongly recommends that enforcement of the new statutory protection established by H.B. No. 1739, H.D.2, be placed in the new part of chapter 378 created by the bill, rather than being incorporated by reference into chapter 378, part I, which falls under HCRC jurisdiction. The HCRC recommends an amendment to add a section to the new part of chapter 478, providing for both civil penalties for violations and a direct civil cause of action for injunctive relief and damages.

The privacy rights protected by the new statute are different in kind from the protected bases (race, sex, ancestry, religion, sexual orientation, etc.) that fall under HCRC jurisdiction. Adding this new kind of statutory protection to part I of chapter 378 and the HCRC's jurisdiction would further tax our limited enforcement resources.

Employment discrimination based on information obtained online (e.g., an applicant's or employee's race, ancestry, religion, marital status) is already prohibited under chapter 378, part I.

Senate Committee on Judiciary and Labor
Hawaii State Capitol, Room 016
March 23, 2016; 9:00 AM
415 South Beretania St.
Honolulu, HI 96813

Written Testimony of Jim Halpert

on behalf of the

State Privacy and Security Coalition, Inc.

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

Thank you very much for the opportunity to testify on House Bill 1739 HD2, Relating to Employment.

The State Privacy & Security Coalition is comprised of 25 major technology and media companies and 6 trade associations representing companies in the technology, media and advetising sectors.

Our coalition is recommending the attached amendments to HB 1739 HD2, which would clearly define the rules governing employer access to employee or potential employee personal accounts. The amendments are based on a model social media privacy law, which our Coalition developed with the national ACLU.

HB 1739 HD2, as amended, would prohibit employers from *compelling* employees or applicants to add the employer to a social media contact list, but would allow *requests* to do so. This is a valuable change in light of the way businesses communicate with employees, customers, and the general public today. Many businesses post updates and offers or specials on social media, for example, and it is reasonable that the employer would invite employees to add the employer to their list of contacts. Our coalition supports this change.

Second, in addition to requiring employees to disclose a username and password to access an employer-issued electronic device (or account or service provided by the employer), as amended the bill would allow employers to require disclosure of "any other authentication information" that allows access to the employee or potential employee's personal account. In many circumstances a username and password are not the only means of accessing a device, account, or service. The amendment would allow employers to obtain alternatives when necessary to access their own devices and networks.

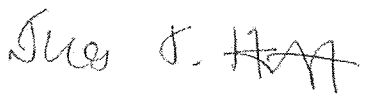
Moreover, employers must be able to ensure compliance with all applicable laws and regulatory requirements, in addition to prohibitions against work-related employee misconduct. The bill, as amended, would allow for that. It would allow employers to request that an employee share specific content regarding a personal account for these purposes.

Finally, the bill as amended would allow "the use of technology that monitors the employer's network or employer provided devices for service quality or security purposes," subject to the conditions already in the bill on the use of the technology. This amendment is an improvement over the previous version of the bill, which limited the network monitoring to an overly specific "monitoring tool or firewall." It would allow employers to retain critical information needed to investigate a suspected breach without an invasion of privacy.

These changes are important to help this bill strike the appropriate balance of protecting employee privacy while leaving room for employer practices to protect employers' networks, systems, and proprietary information.

We thank you for addressing this important issue and urge you to pass HB 1739 HD2 with our requested amendments.

Respectfully submitted,



James J. Halpert
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HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

H.B. NO. 1739 H.D.2

A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

SECTION 1. Chapter 37 8, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"**PART . EMPLOYEE PERSONAL SOCIAL MEDIA**

§37 8- **Employer access to employee or potential employee personal accounts prohibited.** (a) An employer shall not ~~require, request, or coerce an employee or potential employee to~~ do any of the following:

(1) Request, require, or coerce an employee or an applicant for employment to ~~D~~disclose ~~a~~the username and password, password, or any other authentication information that allows access to~~for the purpose of accessing~~ the employee or potential employee's personal account;

(2) Request, require, or coerce an employee or an applicant for employment to ~~A~~access the employee or applicant's~~potential employee's~~ personal

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account in the presence of the employer; or

(3) Compel an employee or applicant for employment to a~~A~~dd ~~anyone, including~~ the employer or an employment agency~~,~~ to their list of contacts that enable the contacts to access ~~associated with~~ a personal account.

(b) Nothing in this section shall prevent an employer from;

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

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

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

(A) An employer-issued electronic device; or

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

(4) Conducting an investigation or requiring an employee to cooperate in an investigation, including by requiring an employee to share the content that has been reported to make a factual determination, if the employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information, or financial

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data, to an employee's personal account;

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

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(6) Requesting an employee to share specific content regarding a personal account for the purposes of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct. ~~divulge personal social media reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations, provided that the social media is used solely for purposes of that investigation or a related proceeding~~.

(c) If an employer inadvertently receives the username, password, or any other information that would enable the employer to gain access to the employee or potential employee's personal account through the use of an otherwise lawful technology ~~network monitoring tool or firewall~~ that monitors the employer's network or employer-provided devices for network security or data confidentiality purposes, then the employer is not liable for having that information, unless the employer:

~~(1) Shares that information with anyone who uses that information to access the employee or potential employee's personal account; or~~

(12) Uses that information, or enables a third party to use that information, to access the employee or potential

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employee's personal account.

(2) After the employer becomes aware that information was received, does not delete the information as soon as it is reasonably practicable, unless that information is being retained by the employer in connection with an ongoing investigation of an actual or suspected breach of computer, network, or data security. Where an employer knows or, through reasonable efforts, should be aware that its network monitoring technology is likely inadvertently to receive such information, the employer shall make reasonable efforts to secure that information.

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

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

SECTION 2. Section 3 78-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be an unlawful discriminatory practice:

(1) Because of race, sex including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status:

(A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise

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to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;

(B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;

(C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, that expresses, directly or indirectly, any limitation, specification, or discrimination;

(D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or

(E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no

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apprentice shall be younger than sixteen years of age;

(2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;

(3) For any person, whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;

(4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard;

(5) For any employer to refuse to hire or employ or to bar or discharge from employment any individual because of assignment of income for the purpose of satisfying the individual's child support obligations as provided for under section 571-52;

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(6) For any employer, labor organization, or employment agency to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(7) For any employer or labor organization to refuse to hire or employ, bar or discharge from employment, withhold pay from, demote, or penalize a lactating employee because the employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph, the term "breastfeeds" means the feeding of a child directly from the breast;

(8) For any employer to refuse to hire or employ, bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment of any individual because of the individual's credit history or credit report, unless the information in the individual's credit history or credit report

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directly relates to a bona fide occupational qualification under section 378-3(2);

(9) For any employer to discriminate against any individual employed as a domestic, in compensation or in terms, conditions, or privileges of employment because of the individual's race, sex including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, or marital status; or

(10) For any employer to refuse to hire or employ, bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment of any individual because of the individual's refusal to disclose any information regarding a personal account according to section 378- ."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

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

H.B. NO. 1739 H.D.2

Report Title:
Personal Account; Privacy; Employment

Description:

Prohibits, subject to certain exemptions, employers from requiring, requesting, or coercing employees or potential employees to provide access to their personal social media accounts. (HB173 9 HD2)

The summary description of legislation appearing on this page is for informational purposes only and not legislation or evidence of legislative intent.

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LGBT CAUCUS

FORMED IN 2001

THE FIRST CAUCUS OF THE
DEMOCRATIC PARTY
OF HAWAI'I

March 20, 2016

Senate's Committee on Judiciary and Labor
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, HI 96813

Hearing: Wednesday, March 23, 2016 – 9:00 a.m.

RE: **STRONG SUPPORT for House Bill 1739 HD 2** – RELATING TO EMPLOYMENT

Aloha Chairperson Keith-Agaran, Vice Chair Shimabukuro and fellow committee members,

I am writing in STRONG SUPPORT to House Bill 1739 HD 2 on behalf of the LGBT Caucus of the Democratic Party of Hawai'i. HB 1739 HD 2 will prohibit, subject to certain exemptions, employers from requiring, requesting, or coercing employees or potential employees to provide access to their personal social media accounts.

The right to keep one's personal and professional life separate is necessity for any civilized society. This is especially true for members of the LGBT community that may have decided for a variety of reasons to not come out at work. The decision to come out is a personal one and should not be a requirement for employment. Without this bill LGBT citizens have the fear of being outed by their employer since they would have full access to all their emails as well as their social media life that they may have only shared with their selected friends.

The reason the LGBT Caucus finds this bill and imperative is because of the fact that 90% of transgender employees and 35% of lesbian, gay and bisexual report experiencing harassment and/or discrimination by their employer and/or fellow employees. To force LGBT citizens to face this kind of harassment by giving their employer unfettered access to their email and social media accounts is unacceptable.

We ask that you support this bill to help protect all workers from unnecessary search and seizure by their employer.

Mahalo nui loa,

Michael Golojuch, Jr.
Chair

Written Statement of
Robbie Melton
Executive Director & CEO
High Technology Development Corporation
before the
Senate Committee on Judiciary and Labor
Wednesday, March 23, 2016
9:00 a.m.
State Capitol, Conference Room 016

In consideration of
HB1739 HD2
RELATING TO EMPLOYMENT.

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee on the Judiciary and Labor.

The High Technology Development Corporation (HTDC) **supports the intent of** HB1739 HD2 which relates to employment. This bill clarifies that personal online accounts used exclusively for personal communications unrelated to any business purposes of the employer should remain private. With the ubiquitousness of online accounts, adding some privacy guidelines is very appropriate.

Thank you for the opportunity to offer these comments.

2800 Woodlawn Drive, Suite 100, Honolulu, HI 96822 | Ph: (808)539-3806 | Fax (808)539-3795 | info@htdc.org | www.htdc.org

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN OPPPSITION TO HOUSE BILL HB 1739, HD 2, RELATING TO EMPLOYMENT

March 23, 2016

Via e mail: capitol.hawaii.gov/submittestimony.aspx

Honorable Senator Gilbert S, C. Keith-Agaran, Chair
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol, Conference Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Committee Members:

Thank you for the opportunity to testify in opposition to HB 1739, HD 2, relating to Employment.

Our firm represents the American Council of Life Insurers ("ACLI"), a Washington, D.C., based trade association with approximately 300member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. Two hundred sixteen (216) ACLI member companies currently do business in the State of Hawaii; and they represent 93% of the life insurance premiums and 88% of the annuity considerations in this State.

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

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.

Federal and state securities laws and regulations as well as self-regulatory organization rules require broker-dealers and Registered Investment Advisors (RIAs) to comply with specific requirements related to its communications with the public in order to protect investors and

consumers. For example, the Financial Industry Regulatory Authority[1] (FINRA) rules require prior review of certain advertisements and other specified communications. In addition, strict recordkeeping requirements apply to business communications of registered representatives.

Further, the Securities Exchange Commission has issued a National Examination Risk Alert which details regulatory requirements related to the use of social media by RIAs and their investment advisory representatives (IARs). As part of an effective compliance program, the SEC staff stressed a firm's obligation to maintain an effective compliance program to ensure compliance with securities laws and rules related to their use of social media. Key components of an effective compliance program includes policies and procedures which establish usage guidelines, content standards, sufficient monitoring, approval of content, training, and recordkeeping responsibilities.

Life insurers want to accommodate the use of new technologies by their representatives to the extent practical. At the same time, companies must have in place compliance procedures that ensure compliance with federal and state laws and regulations as well as FINRA rules and guidance.

ACLI submits that to enable a life insurer to more effectively monitor and supervise its captive producers' in their communications with the public as required by law but at the same time protect the legitimate privacy of its captive producers and representatives in their personal communications more clarity in the language of the bill is required.

ACLI suggests that Paragraph (b)(2) of the new Section of the proposed new Part to be included in Chapter 378, which is in Section 1 of the Bill (beginning at line 3, page 2 of the bill) be amended as set forth below:

> (b) Nothing in this Section shall prevent an employer from:
>
> . . .
>
> (2) Complying with ~~applicable laws, rules, or regulations~~ the requirements of State or federal statutes, rules or regulations, case law or rules of self-regulatory organizations;

In addition, as HB 1739, HD 2, as currently drafted does not affirmatively authorize a life insurer to adopt policies and procedures that will enable the insurer to comply with these legal and regulatory requirements ACLI respectfully requests that HB 1739, HD 2, be amended to include the following new provision:

> Nothing in this Part shall prevent an employer from implementing and enforcing a policy pertaining to the use of employer issued electronic communications device or to the use of an employee-owned electronic communications device that will be used for business purposes.

[1] "The Financial Industry Regulatory Authority (FINRA) is the largest independent regulator for all securities firms doing business in the US. Its mission is to protect America's investors by making sure the securities industry operates fairly and honestly." FINR website – "About FINRA".

Again, thank you for the opportunity to testify in opposition to HB 1739, HD 2, relating to Employment.

LAW OFFICES OF
OREN T. CHIKAMOTO
A Limited Liability Law Company

Oren T. Chikamoto
1001 Bishop Street, Suite 1750
Honolulu, Hawaii 96813
Telephone: (808) 531-1500
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Testimony to the Senate Committee on Judiciary and Labor
March 22, 2016 at 9:00 a.m.
State Capitol - Conference Room 16

RE: HB 1739, HD2, Relating to Employment

Aloha members of the committee:

I am John Knorek, the Legislative Committee chair for the Society for Human Resource Management – Hawaii Chapter ("SHRM Hawaii"). SHRM Hawaii represents more than 800 human resource professionals in the State of Hawaii.

We are writing to comment on HB 1739, HD2. This bill prohibits, subject to certain exemptions, employers from requiring, requesting, or coercing employees or potential employees to provide access to their personal social media accounts. The prohibition on an employer's "request" to be added to an employee's list of contacts associated with their personal account is overly broad. We are also concerned that requiring the disclosure of information prohibited in this bill may be necessary for certain employers involved in highly sensitive, dangerous, security-related or other fields.

Human resource professionals are attuned to the needs of employers and employees. We are the frontline professionals responsible for businesses' most valuable asset: human capital. We truly have our employers' and employees' interests at heart. We will continue to review this bill and, if it advances, request to be a part of the dialogue concerning it.

Thank you for the opportunity to testify.

KOBAYASHI SUGITA & GODA, LLP
Attorneys at Law

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March 22, 2016

Honorable Gilbert S.C. Keith-Agaran
Chair
Members of the Committee on Judiciary and Labor
Senate
State Capitol Building, Room 221
Honolulu, Hawaii 96813

Re: House Bill 1739, HD 2
Requesting Amendment

Dear Chair Keith-Agaran and Members of the Committee:

Thank you for the opportunity to testify regarding House Bill 1739 HD 2. Our office represents Facebook. While our client supports the general intent of House Bill 1739, HD 2, we have some concerns with some of the proposed language used and therefore request that clarifying amendments be made as noted in Exhibit "A" attached.

Our first concern, is that while the intent is to prevent coercion of employees by "employers," as currently drafted this bill casts too wide of a net and may apply to people in the employer organization, not intended to be covered by this bill. The language of the bill prohibits an employer from "requesting" an "employee or potential employee" to be added to their list of contacts associated with a personal account. Unfortunately the definition section of Section 378-1 H.R.S. provides that "Employer" means **any person**, including the State or any of its political subdivisions **and any agent** of such person, having one or more employees, but shall not include the United States." While an "agent" is not defined in the statute, it could mean a co-employee or other person acting on behalf of the employer. It could mean a "line-supervisor" or other intermediate supervisor, who is closer to being a fellow employee with all other employees, and yet, under the broad definition currently in place, these employees with supervisory control can be construed as "agents" of the employer. The mere fact that these two essentially co-employees use social media to communicate, may unintentionally trigger "employer" liability, when the event would have been entirely innocent and even unknown to the "employer."

More importantly, in today's world, the use of "social media" is not just about people communicating and connecting with other people. Many business and

commercial ventures have social media pages to inform customers, to advertise, to market new products. In fact many of these business, have sections within their company, which deal with the company's (i.e. the employer) presence on the internet. Many of these companies, and even state legislators maintain Facebook and other social media websites, and have ongoing relationships and contacts with employees for a variety of legitimate reasons. By the same token employees of that employer may be on the same social media site on which the employer maintains a presence. Again, the mere communication between someone employed by the "employer" with another co-employee, asking about the co-employee's social site, would constitute a violation and trigger liability for "employers," even when there is no hint of an intent or act to coerce that employee.

The intent of the bill to prevent coercion of employees by "employers" is an important and legitimate concern. However, the mere fact that a "request" may have been made, without any underlying malice or intent to coerce or intrude on the employee's social media presence, should not automatically trigger liability.

There are many reasons why an employer, acting through other employees, might innocently and with good motive make a Facebook "friend" request to an employee or seek a LinkedIn contact with an employee. Perhaps a supervisory employee or similar employee in a company has an ongoing social relationship with another employee and follows existing social media practices and sends a "friend" request. That would trigger a violation.

We are concerned that such innocent requests, which have no element of coercion or compelled action, would now be prohibited under the current language of the bill. If the requested employee does not want to acknowledge the "friend" request, they can decline or refuse, and there are laws, currently in place intended to protect employees against workplace intimidation, if the evidence of such circumstances exist.

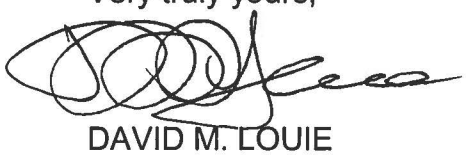
We certainly would support the prohibition upon coercing or compelling any such requests. Attached as **Exhibit "A"** is a proposed amendment to the current version of HB 1739, HD 2, reflecting a proposed amendment intended to address this concern. We would respectfully request that this section be amended or modified as reflected in the attached Exhibit "A".

We believe that such a change would eliminate the possible prohibition and establishment of penalties for innocent behavior in simply making a "friend" request.

We also understand that the State Privacy and Security Coalition has submitted proposed amendments to HB 1739 HD 2. We are in support of those amendments as well, in that they also clarify the language of the bill so that simple "requests" for contact are not prohibited actions.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



DAVID M. LOUIE
for
KOBAYASHI, SUGITA & GODA

Enclosure: Exhibit "A": Proposed Amendment to HB 1739, HD2

EXHIBIT "A"

PROPOSED AMENDMENT TO HOUSE BILL 1739, HD 2

Section 378-_____ Employer access to employee or potential employee personal accounts prohibited. (a) An employer shall not [~~require, request, or coerce an employee or potential employee to do any of the following~~]:

(1) Require, request, or coerce an employee or potential employee to [~~D~~]disclose the username, password, or any other information for the purpose of accessing the employee or potential employee's personal account;

(2) Require, request or coerce an employee or potential employee to [~~A~~]access the employee or potential employee's personal account in the presence of the employer; or

(3) Compel or coerce an employee or potential employee to [~~A~~]add anyone, including the employer, to their list of contacts associated with a personal account.

Committee:	Committee on Judiciary and Labor
Hearing Date/Time:	Wednesday, March 23, 2016, 9:00 a.m.
Place:	Conference Room 016
Re:	*Testimony from the ACLU of Hawaii in Support of H.B. 1739, H.D.2, Relating to Employment*

Dear Chair Keith-Agaran and Members of the Committee:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of, with suggested amendments to H.B. 1739, H.D.2, which prohibits employers from demanding access to employees'/applicants' personal social media accounts (such as Facebook and Instagram).

A growing number of employers are demanding that job applicants and employees give employers their passwords to their private social networking accounts such as Facebook. This practice constitutes a significant invasion of privacy and may have a chilling effect on free expression. Social networking sites like Facebook allow for private messages between individuals; just as an employer should never be permitted to go to an employee's house and look through her personal letters, diary, and/or photographs, employers have no legitimate business interest in accessing an individual's communications sent electronically. Such a practice violates the employee's/applicant's privacy and the privacy of everyone with whom the individual has communicated, and chills the free expression of ideas.

Accessing an applicant's social media account using the applicant's password – rather than merely collecting publicly available information – may expose information about a job applicant (such as age, religion, ethnicity, or pregnancy) which an employer is forbidden to ask about. That can expose an applicant to unlawful discrimination and can subject an employer to lawsuits from rejected job candidates claiming such discrimination.

These types of practices also violate Facebook's own policies. Facebook's Statement of Rights and Responsibilities states under the "Registration and Account Security" section that Facebook users must make ten commitments to the company relating to the registration and maintenance of the security of the account. The Eighth Commitment states "You will not share your password, (or in the case of developers, your secret key), let anyone else access your account, or do anything else that might jeopardize the security of your account." https://www.facebook.com/terms#!/legal/terms. Thus, sharing one's password or access to one's account with potential or current employers violates these terms of agreement.

American Civil Liberties Union of Hawai'i
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While the ACLU of Hawaii supports this bill, we respectfully suggest that this Committee adopt the amendments proposed by the State Privacy and Security Coalition. Prohibiting employers from requesting an employee to "add" them on a social network may unnecessarily restrict free association. Prohibiting an employer from *requiring* an employee to add them as a contact, but allowing a *request* to do so, is in line with practice in other states and still adequately protects employees' privacy.

H.B. 1739, H.D.2 does not change current law regarding background checks: prospective employers, including law enforcement officials, can still use the Internet to access public profiles of job candidates; this law merely prohibits access to private materials and communications.

Thank you for this opportunity to testify.

Mandy Finlay
Advocacy Coordinator
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

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The Twenty-Eighth Legislature
Regular Session of 2016

THE SENATE
Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
State Capitol, Conference Room 016
Wednesday, March 23, 2016; 9:00 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1739, HD2
RELATING TO EMPLOYMENT

The ILWU Local 142 **supports** H.B. 1739, HD2, which prohibits, subject to certain exemptions, employers from requiring, requesting, or coercing employees or potential employees to provide access to their personal social media accounts.

In this age of social media, there is much concern about what an individual posts on social networking websites. Some of the postings may be inappropriate, causing an employer to have concerns about an employee's judgment. However, the law should not allow employers to require access to employee's personal social media accounts without sufficient cause. What an employee does in his or her personal communications should be unrelated to business purposes and should not be required to be disclosed to the employer.

The ILWU urges passage of H.B. 1739, HD2. Thank you for the opportunity to provide testimony on this matter.

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the Senate Committee on Judiciary & Labor
Wednesday, March 23, 2016 at 9:00 A.M.
Conference Room 016, State Capitol

RE: HOUSE BILL 1739 HD 2 RELATING TO EMPLOYMENT

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") would like to **express concerns regarding** HB 1739 HD 2, which prohibits, subject to certain exemptions, employers from requiring, requesting, or coercing employees or potential employees to provide access to their personal social media accounts.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 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.

While we understand the reasoning behind the proposed bill, we have also seen instances where unnecessary laws create unintended consequences. The Chamber hasn't seen any empirical evidence that private employers routinely request access to applicant and employee personal social media.

There are legitimate exceptions at times to request and receive access to employees' personal social media pages. For example, law enforcement agencies have a public safety need to know who their representatives or potential employees are affiliating themselves with. And private companies may need to be able to investigate inter-office harassment claims that may stem from social media conversations. So, in terms of best practices, maybe a broad exception for workplace investigations to provide content in a personal account that is relevant to that investigation.

We would also like the committee to consider amendments made by many of the tech and tech related companies, especially on issues regarding network security, which help safeguard employee and consumer information, as well as the operations of many organizations.

Thank you for the opportunity to testify.

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HB1739
Submitted on: 3/21/2016
Testimony for JDL on Mar 23, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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HB1739
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Testimony for JDL on Mar 23, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kerri Marks	Individual	Support	No

Comments: strong support

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HB1739
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Testimony for JDL on Mar 23, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Lynn Onderko	Individual	Support	No

Comments:

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