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March 20, 2015

Chair Keith-Agaran and Senate Judiciary and Labor Committee

Re: HB 561 HD1 Relating to Social Media
Hearing on March 23, 2105

Dear Senator Keith-Agaran and Members of the Committee:

Americans for Democratic Action is an organization devoted to the promotion of progressive public policies including the protection of civil liberties.

We support HB 561 HD 1 which prohibits employers from requiring or requesting employees and potential employees to grant access to personal account usernames and passwords. Employers should have the right to information about the accounts they use or have their employees use but not the personal accounts of social media of employees. The right of privacy is not just a right from government intrusion. The right should also protect the rights of employees.

Thank you for your consideration.

Sincerely,

John Bickel
President



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Monday, March 23, 2015, 9:35 a.m.
Place: Conference Room 016
Re: Testimony from the ACLU of Hawaii **in Support of H.B. 561 H.D. 1,**
Relating to Social Media

Dear Chair Keith-Agaran and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B. 561 H.D. 1, which prohibits employers from demanding access to employees’/applicants’ private messages, photos, and other communications.

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 an unnecessary invasion of privacy. 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 not only violates the employee’s/applicant’s privacy, but also the privacy of everyone with whom the individual has communicated.

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 Hawaii
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Chair Keith-Agaran and Members of the Committee
March 23, 2015
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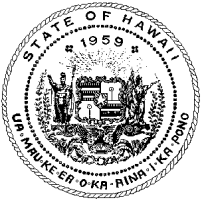
H.B. 561, H.D. 1 merely updates current law to keep pace with technology. This legislation does not change current law regarding background checks. Prospective employers, including law enforcement officials, can still use the Internet to access public profiles of job candidates; this law merely prohibits access to private materials and communications.

Thank you for this opportunity to testify.

Lois K. Perrin
Of Counsel
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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HAWAI‘I CIVIL RIGHTS COMMISSION

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March 23, 2015
Rm. 016, 9:35 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 Hawai‘i Civil Rights Commission

Re: H.B. No. 561, H.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. 561, H.D.1, if enacted, will prohibit employers from requiring or requesting employees and potential employees to grant access to personal account usernames and passwords.

Given the intent and purpose of H.B. No. 561, the protection of privacy interests of employees in their personal social media accounts, the exceptions provided in the new HRS §378-__(c) and (e), found on pages 3 and 4 of the bill, may be overly broad and should be narrowed to effect the protective purpose of the bill. While the exceptions can be narrowed, the H.D.1 makes it expressly clear that nothing in this bill diminishes the authority and obligation of employers to investigate complaints of sexual, racial, or other prohibited harassment in the workplace under HRS chapter 378, part I.

The HCRC supports the intent of H.B. No. 561, with the H.D.1 amendment that provides, in a new HRS subsection 378-__(g), that nothing in the new section shall diminish the authority and obligation of an employer to investigate complaints, allegation or the occurrence of prohibited harassment under chapter 378, part I.

The HCRC requests that this new protection be placed in a new part of chapter 378, rather than in part I of chapter 378, because 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. Employment discrimination based on information obtained online (e.g., an applicant's or employee's race, ancestry, religion, familial status) is already prohibited under chapter 378, part I.



**Testimony to the Senate Committee on Judiciary and Labor
Monday, March 23, 2015 at 9:35 A.M.
Conference Room 016, State Capitol**

RE: HOUSE BILL 561 HD1 RELATING TO SOCIAL MEDIA

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

The Chamber of Commerce of Hawaii ("The Chamber") would like to **express concerns regarding** HB 561 HD1, which prohibits employers from requiring or requesting employees and potential employees to grant access to personal account usernames and passwords.

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.

Thank you for the opportunity to testify.

To: Senator Gilbert S.C Keith-Agaran, Chair of the Judiciary and Labor committee
From: Jalkennen Joseph MD candidate, class of 2018 at John A. Burns School of Medicine

Written Testimony in Support of HB561 HD1

My name is Jalkennen Joseph and I am a first year medical student at John A. Burns School of Medicine (JABSOM) at the University of Hawaii at Manoa. As a nontraditional student, I am a husband, father of three and a military veteran who served two tours in Iraq during Operation Iraqi Freedom. After serving 10 years in the military, I have learned not to get involved in politics but I also learned to stand up and fight for a worthy cause which is why I am joining my peers in offering my strongest support for HB561 HD1 relating to social media which prohibits employer from requiring employee or potential employee to give access to their personal username and password on social media. This is a no brainer because it is an invasion of privacy by employers. Employers should not be granted legal measures to discriminate against employee who are not using company computers to conduct their social media activity. It is a violation of our first amendment or freedom of speech. It is an infringement of personal right to press and freedom of speech. I am writing this letter in support of HB561 HD1 which prohibits employers from requiring access to their employee personal social media account. As a veteran, it is something that is worth fighting for because surrendering our rights to employers should not be tolerated in a freedom loving country like the United States of America.

Mahalo

Jalkennen Joseph MD candidate class of 2018
John A. Burns School of Medicine

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB561 on Mar 23, 2015 09:35AM
Date: Thursday, March 19, 2015 6:41:51 PM

HB561

Submitted on: 3/19/2015

Testimony for JDL on Mar 23, 2015 09:35AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------|--------------|--------------------|--------------------|
| Peter Thoenen | Individual | Oppose | No |

Comments: I see no reason to constrain an employer from requesting this information. Employment, outside of contractual agreements such as collective bargaining, is at will on both parties parts. If an employee does not wish to provide this information they can quit or be fired in the same way they can quit or be fired for dressing inappropriately, embarrassing the company outside work, or for no reason. The free market can adequately address what this law is attempting to control as employers who respect their employee's privacy will have access to better and more motivated employee's. This is just needless regulatory bloat and I oppose it, let free markets work.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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