

STAND. COM. REP. NO.

869

Honolulu, Hawaii

MAR 05 , 2021

RE: H.B. No. 1253  
H.D. 3

Honorable Scott K. Saiki  
Speaker, House of Representatives  
Thirty-First State Legislature  
Regular Session of 2021  
State of Hawaii

Sir:

Your Committee on Judiciary & Hawaiian Affairs, to which was referred H.B. No. 1253, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT PRACTICES,"

begs leave to report as follows:

The purpose of this measure is to prohibit an employer, with certain exemptions, from:

- (1) Requiring an employee to download a mobile application to the employee's personal communication device that enables the employee's location to be tracked or their personal information revealed;
- (2) Terminating or otherwise discriminating against an employee for refusing to download a mobile application to the employee's personal communication device; or
- (3) Discharging or otherwise discriminating against an employee for filing a complaint, testifying, or assisting in any proceeding concerning these unlawful practices.

Your Committee received testimony in support of this measure from the Department of Labor and Industrial Relations and one individual. Your Committee received testimony in opposition to

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this measure from the Chamber of Commerce Hawaii, Society for Human Resource Management Hawaii, Retail Merchants of Hawaii, and Maui Chamber of Commerce.

Your Committee finds that the COVID-19 pandemic placed greater emphasis on the need for new public health tools to mitigate the spread of the virus. Mobile phone applications leveraged the capabilities of existing technology to assist public health officials in tracking the spread of the virus and warning persons that may have been potentially exposed. The new mobile applications, upon the voluntary acceptance by a mobile phone user, track devices nearby and notify the user if the user was near a person who tested positive for the virus.

Your Committee further finds that these applications have raised privacy concerns and anxiety over the potential misuse of the tracking information. This measure will prohibit an employer from requiring an employee to or taking adverse action against an employee who refuses to download a mobile application to the employee's personal communication device. However, your Committee recognizes that there may be situations where an employee consents to downloading the mobile application or the mobile application is required as a condition of employment and related to the functions of the employment position. Your Committee believes that these situations should not be prohibited under law.

Accordingly, your Committee has amended this measure by:

- (1) Providing that the prohibition against unlawful practices by the employer does not apply if:
  - (A) The employee consents to downloading the mobile application to the employee's personal communication device; or
  - (B) The mobile application is required as a condition of employment and related to the functions of the employment position; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.



As affirmed by the record of votes of the members of your Committee on Judiciary & Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1253, H.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1253, H.D. 3.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary &  
Hawaiian Affairs,

A handwritten signature in black ink, appearing to read "Mark M. Nakashima", written over a horizontal line.

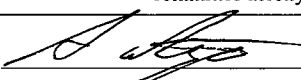
MARK M. NAKASHIMA, Chair



State of Hawaii  
House of Representatives  
The Thirty-first Legislature

HSCR 869

Record of Votes of the Committee on Judiciary & Hawaiian Affairs

Bill/Resolution No.: <b>HB 1253, HD 2</b>	Committee Referral: <b>LAT, CPC, JHA</b>	Date: <b>3-2-21</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
JHA Members	Ayes	Ayes (WR)	Nays	Excused
1. NAKASHIMA, Mark M. (C)	✓			
2. MATAYOSHI, Scot Z. (VC)	✓			
3. ICHIYAMA, Linda	✓			
4. KOBAYASHI, Dale T.	✓			
5. LoPRESTI, Matthew S.	✓			
6. LOWEN, Nicole E.				✓
7. McKELVEY, Angus L.K.	✓			
8. NAKAMURA, Nadine K.	✓			
9. TAKUMI, Roy M.	✓			
10. TODD, Chris				✓
11. TOKIOKA, James Kunane	✓			
12. WARD, Gene	✓			
TOTAL (12)	10	0	0	2
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: 				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				