



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Labor & Public Employment
February 6, 2018 at 10:30 a.m.

By

Donald O. Straney, Vice President for Academic Planning and Policy
University of Hawai'i System

HB 2173 – RELATING TO ONLINE ACCOUNT PRIVACY

Chair Johanson, Vice Chair Holt, and members of the committee:

Thank you for the opportunity to present testimony regarding HB 2713 – Relating to Online Account Privacy that prohibits employers and educational institutions from requiring employees, students, and prospective employees and students to provide protected personal online account information, and authorizes private civil actions against violators.

The University of Hawai'i supports the intent of this bill in protecting employee and student privacy, and requests the following amendments:

- Page 2, line 13, should be revised to read:
 - “An agent, excluding independent contractors, or a designee of the educational institution.”
- Page 3, lines 11-13, should be revised to read:
 - “The term includes an agent, excluding independent contractors, or designee of an employer, but does not include the United States or any federal branch, department, or agency thereof.”
- Page 6, line 17, should be revised to read:
 - “Require, [~~request,~~] or coerce ...”

The purpose of the bill is to prevent coercion of employees and students. As written, this bill would subject the University (and all employers and educational institutions) to potential liability for an innocent “request” for login information, no matter the intent. Therefore, if a student or employee is leaving school/work for an extended vacation or emergency medical situation, and a caring adviser or supervisor instinctively requests login information for a covered account to assist the person with monitoring email or coursework assignments, that would be expressly prohibited under this bill and would subject the University to liability and individual employees or agents of the educational institution to discipline.

- Page 6, line 20, to page 7, line 6, would be clearer if revised to read as follows:
 - “(B) Disclose the content of or provide access to a protected personal online account; provided that an employer or educational institution may request that

an employee or student [to] add or not remove any person, including the employer or educational institution, to[,] or [not remove any person] from[,] the set of persons to which the employee or student grants access to the content;"

- Page 8, line 8, should be revised to read as follows, consistent with our prior comment regarding the language on page 6, line 17, of the bill:
 - "... requirement [~~request,~~] or coercive action...."
- Page 8, between lines 15 and 16: add the following:
 - "This subsection shall not prohibit an employer or educational institution from taking or threatening to take adverse action against an employee or student for failure or refusal to comply with requirements or requests made pursuant to section __-4."
- Page 9, line 2, should be revised to read as follows:
 - "...court of competent jurisdiction, court or administrative agency subpoena, or rule of a self-"
- Page 9, line 7, should be revised to read as follows:
 - "(3) Requiring or requesting, based on specific [facts] allegations about ..."
- Page 9, lines 17-19, would be clearer if the word "which" is added:
 - "... provided that the employee or student has reasonable notice, which is documented, of the prohibition and the prohibition was not ..."
- Page 10, lines 7-10, would be clearer if amended to read as follows:
 - "A threat to the employer's or educational institution's information technology [~~]~~ or communications technology systems, or property; or"
- Page 10, lines 11-13 should be revised to read:
 - "(iii) Disclosure of the employer's or educational institution's nonpublic ~~financial~~ information, information in which the ..."
- Page 12, lines 8-9, should be revised to read:
 - "(4) If the employer or educational institution retains the login information for use in an anticipated or ongoing civil action or an ongoing investigation..."
- Page 13, line 15, effective date, "...upon its approval."
 - If HB 2173 is enacted, the University would need time to effect policies and training to ensure compliance with this act. We would respectfully request an effective date of 2021 to afford time for necessary consultations and implementation of said policies and training.

Thank you for your consideration on this bill and based on the foregoing, the University can support HB 2173 with the suggested amendments.