



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committee on Judiciary  
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by

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### SB 429 SD2 HD1 – RELATING TO THE UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

Thank you for the opportunity to present testimony regarding SB 429 SD2 HD1 –  
Relating to the Uniform Employee and Student Online Privacy Protection Act.

We support the intent of this bill in protecting employee and student privacy. That said, this uniform act was just newly approved in 2016 by the National Conference of Commissioners on Uniform State Laws, has not yet been adopted by any state to our knowledge, and needs to be amended to avoid unintended consequences. In that regard, the University recommended certain amendments to the related measure, HB 814, and these were incorporated into HB 814 HD2, which we support and believe merits consideration.

With regard to SB 429 SD2 HD1, the following amendments are requested in keeping with our prior testimony on the related measure and our concerns regarding this bill:

(1) Page 4, line 4, and Page 9, line 4, should be revised to read:

(1) Require, or ~~coerce or request~~ ... :

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 penalties and civil 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.

(2) Page 6, lines 19 to 22, should be revised to read:

(C) Investigating an allegation, based on the receipt of information regarding specifically identified content, of work-related employee misconduct, or unlawful harassment or threats of violence in the workplace; or

HB 814 HD2 provided at proposed HRS section \_\_\_-3(b)(3)(A)(ii) for access to an employee's protected personal online account to ensure compliance, or to investigate non-compliance with work-related employee misconduct. A similar provision should be included in SB 429 SD2 HD1.

(3) Page 8, lines 12 to 14, should be revised to read:

(5) Shall, if the employer retains the information for use in connection with the pursuit of an ongoing investigation of actual or suspected breach of computer, network, or data security, or a specific criminal complaint or civil action ...”

HB 814 HD2 provided at proposed HRS section \_\_\_-3(d)(4) for limited retention of login information for investigation of computer, network or data security breaches. SB 429 SD2 HD1 replaces that with reference instead to a specific criminal complaint or civil action. Respectfully, both situations merit inclusion in the bill.

(4) Page 14, lines 10 to 12, should be revised to read:

(5) Shall, if the educational institution retains the information for use in connection with the pursuit of an ongoing investigation of actual or suspected breach of computer, network, or data security, or a specific criminal complaint or civil action ...”

HB 814 HD2 provided at proposed HRS section \_\_\_-4(d)(4) for limited retention of login information for investigation of computer, network or data security breaches. SB 429 SD2 HD1 replaces that with reference instead to a specific criminal complaint or civil action. Respectfully, both situations merit inclusion in the bill.

(5) Effective date: Currently, there is a January 7, 2059 effective date. If enacted, the University will need time to effect policies and training to ensure compliance with this act. We would respectfully request an effective date of 2020 to afford time for necessary consultations and implementation of said policies and training.

Based on the foregoing, the University supports SB 429 SD2 HD1, with amendment.