

JAN 19 2018

A BILL FOR AN ACT

RELATING TO THE UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY
PROTECTION ACT.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

" CHAPTER

5 THE UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT

6 § -1 Short title. This chapter may be cited as the
7 Uniform Employee and Student Online Privacy Protection Act.

8 § -2 Definitions. As used in this chapter:

9 "Content" means information, other than login information,
10 that is contained in a protected personal online account,
11 accessible to the account holder, and not publicly available.

12 "Educational institution" means a person that provides
13 students at the postsecondary level an organized program of
14 study or training that is academic, technical, trade-oriented,
15 or preparatory for gaining employment and for which the person
16 gives academic credit. The term includes:



(1) A public or private institution; and

(2) An agent or designee of the educational institution.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Employee" means an individual who provides services or labor to an employer in exchange for salary, wages, or the equivalent or, for an unpaid intern, academic credit or occupational experience. The term includes:

(1) A prospective employee who has:

(A) Expressed to the employer an interest in being an employee; or

(B) Applied or is applying for employment by, or is being recruited for employment by, the employer; and

(2) An independent contractor.

"Employer" means a person that provides salary, wages, or the equivalent to an employee in exchange for services or labor or engages the services or labor of an unpaid intern. The term includes an agent or designee of the employer.



1 "Login information" means a user name and password,
2 password, or other means or credentials of authentication
3 required to access or control:

4 (1) A protected personal online account; or

5 (2) An electronic device, which the employee's employer or
6 the student's educational institution has not supplied
7 or paid for in full, that itself provides access to or
8 control over the account.

9 "Login requirement" means a requirement that login
10 information shall be provided before a protected personal online
11 account or electronic device can be accessed or controlled.

12 "Online" means accessible by means of a computer network or
13 the Internet.

14 "Person" means an individual, estate, business or nonprofit
15 entity, public corporation, government or governmental
16 subdivision, agency, or instrumentality, or other legal entity.

17 "Protected personal online account" means an employee's or
18 student's online account that is protected by a login
19 requirement. The term does not include an online account or the
20 part of an online account:

21 (1) That is publicly available; or



(2) That the employer or educational institution has notified the employee or student might be subject to a request for login information or content, and that:

(A) The employer or educational institution supplies, pays for in full, or issues login information for under its domain name; or

(B) The employee or student creates, maintains, or uses primarily on behalf of or under the direction of the employer or educational institution in connection with the employee's employment or the student's education.

"Publicly available" means available to the general public.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"State" means a state of the United States, the District of Columbia, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.



1 "Student" means an individual who participates in an
2 educational institution's organized program of study or
3 training. The term includes:

- 4 (1) A prospective student who expresses to the institution
5 an interest in being admitted to, applies for
6 admission to, or is being recruited for admission by,
7 the educational institution; and
8 (2) A parent or legal guardian of a student under the age
9 of majority.

10 § -3 Protection of employee online account. (a)

11 Subject to the exceptions in subsection (b), an employer shall
12 not:

- 13 (1) Require or coerce an employee to:
14 (A) Disclose the login information for a protected
15 personal online account;
16 (B) Disclose the content of the account, except that
17 an employer may request an employee to add the
18 employer to, or not remove the employer from, the
19 set of persons to which the employee grants
20 access to the content;



(C) Alter the settings of the online account in a manner that makes the login information for or content of the account more accessible to others; or

(D) Access the account in the presence of the employer in a manner that enables the employer to observe the login information for or content of the account; or

(2) Take, or threaten to take, adverse action against an employee for failure to comply with:

(A) An employer requirement, coercive action, or request that violates paragraph (1); or

(B) An employer request under paragraph (1)(B) to add the employer to, or not remove the employer from, the set of persons to which the employee grants access to the content of a protected personal online account.

(b) Nothing in subsection (a) shall prevent an employer from:

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



(2) Complying with a federal or state law, court order, or rule of a self-regulatory organization established by federal or state statute, including a self-regulatory organization as defined in section 3(a)(26) of the Securities and Exchange Act of 1934, title 15 United States Code section 78c(a)(26); or

(3) Requiring or requesting, based on specific facts about the employee's protected personal online account, access to the content of, but not the login information for, the account in order to:

(A) Ensure compliance, or investigate non-compliance, with:

(i) Federal or state law; or

(ii) An employer prohibition against work-related employee misconduct of which the employee has reasonable notice, which is in a record, and that was not created primarily to gain access to a protected personal online account; or

(B) Protect against:

(i) A threat to safety;



(ii) A threat to employer information technology or communications technology systems or to employer property; or

(iii) Disclosure of information in which the employer has a proprietary interest or information the employer has a legal obligation to keep confidential.

(c) An employer that accesses employee content for a purpose specified in subsection (b)(3):

(1) Shall reasonably attempt to limit its access to content that is relevant to the specified purpose;

(2) Shall use the content only for the specified purpose; and

(3) Shall not alter the content unless necessary to achieve the specified purpose.

(d) An employer that acquires the login information for an employee's protected personal online account by means of otherwise lawful technology that monitors the employer's network, or employer-provided devices, for a network security, data confidentiality, or system maintenance purpose:



- (1) Shall not use the login information to access or enable another person to access the account;
- (2) Shall make a reasonable effort to keep the login information secure;
- (3) Unless otherwise provided in paragraph (4), shall dispose of the login information as soon as, as securely as, and to the extent reasonably practicable; and
- (4) Shall, if the employer retains the login information for use in an ongoing investigation of an actual or suspected breach of computer, network, or data security, make a reasonable effort to keep the login information secure and dispose of it as soon as, as securely as, and to the extent reasonably practicable after completing the investigation.

§ -4 Protection of student online account. (a) Subject to the exceptions in subsection (b), an educational institution shall not:

- (1) Require or coerce a student to:
 - (A) Disclose the login information for a protected personal online account;



1 (B) Disclose the content of the account, except that
2 an educational institution may request a student
3 to add the educational institution to, or not
4 remove the educational institution from, the set
5 of persons to which the student grants access to
6 the content;

7 (C) Alter the settings of the account in a manner
8 that makes the login information for or content
9 of the account more accessible to others; or

10 (D) Access the account in the presence of the
11 educational institution in a manner that enables
12 the educational institution to observe the login
13 information for or content of the account; or

14 (2) Take, or threaten to take, adverse action against a
15 student for failure to comply with:

16 (A) An educational institution requirement, coercive
17 action, or request that violates paragraph (1);
18 or

19 (B) An educational institution request under
20 paragraph (1)(B) to add the educational
21 institution to, or not remove the educational



institution from, the set of persons to which the student grants access to the content of a protected personal online account.

(b) Nothing in subsection (a) shall prevent an educational institution from:

(1) Accessing information about a student that is publicly available;

(2) Complying with a federal or state law, court order, or rule of a self-regulatory organization established by federal or state statute; or

(3) Requiring or requesting, based upon specific facts about the student's protected personal online account, access to the content of, but not the login information for, the account in order to:

(A) Ensure compliance, or investigate non-compliance, with:

(i) Federal or state law; or

(ii) An educational institution prohibition against education-related student misconduct of which the student has reasonable notice, which is in a record, and that was not



1 created primarily to gain access to a
2 protected personal online account; or

3 (B) Protect against:

4 (i) A threat to safety;

5 (ii) A threat to educational institution
6 information technology or communications
7 technology systems or to educational
8 institution property; or

9 (iii) Disclosure of information in which the
10 educational institution has a proprietary
11 interest or information the educational
12 institution has a legal obligation to keep
13 confidential.

14 (c) An educational institution that accesses student
15 content for a purpose specified in subsection (b) (3):

16 (1) Shall reasonably attempt to limit its access to
17 content that is relevant to the specified purpose;

18 (2) Shall use the content only for the specified purpose;
19 and

20 (3) Shall not alter the content unless necessary to
21 achieve the specified purpose.



1 (d) An educational institution that acquires the login
2 information for a student's protected personal online account by
3 means of otherwise lawful technology that monitors the
4 educational institution's network, or educational institution-
5 provided devices, for a network security, data confidentiality,
6 or system maintenance purpose:

7 (1) Shall not use the login information to access or
8 enable another person to access the account;

9 (2) Shall make a reasonable effort to keep the login
10 information secure;

11 (3) Unless otherwise provided in paragraph (4), shall
12 dispose of the login information as soon as, as
13 securely as, and to the extent reasonably practicable;
14 and

15 (4) If the educational institution retains the login
16 information for use in an ongoing investigation of an
17 actual or suspected breach of computer, network, or
18 data security, shall make a reasonable effort to keep
19 the login information secure and dispose of it as soon
20 as, as securely as, and to the extent reasonably
21 practicable after completing the investigation.



§ -5 Civil action. (a) The attorney general may bring a civil action in district court against an employer or educational institution for a violation of this chapter. A prevailing attorney general may obtain:

- (1) Injunctive and other equitable relief; and
- (2) A civil penalty of up to \$1,000 for each violation, but not exceeding \$100,000 for all violations caused by the same event.

(b) An employee or student may bring a civil action against the individual's employer or educational institution for a violation of this chapter. A prevailing employee or student may obtain:

- (1) Injunctive and other equitable relief;
- (2) Actual damages; and
- (3) Costs and reasonable attorney's fees.

(c) An action under subsection (a) shall not preclude an action under subsection (b), and an action under subsection (b) shall not preclude an action under subsection (a).

(d) This chapter shall not affect a right or remedy available under law other than this chapter.



1 § -6 Uniformity of application and construction. In
2 applying and construing this chapter, consideration shall be
3 given to the need to promote uniformity of the law with respect
4 to its subject matter among states that enact it.

5 § -7 Relation to Electronic Signatures In Global And
6 National Commerce Act. This chapter modifies, limits, or
7 supersedes the Electronic Signatures in Global and National
8 Commerce Act, title 15 United States Code section 7001 et seq.,
9 but does not modify, limit, or supersede section 101(c) of that
10 Act, title 15 United States Code section 7001(c), or authorize
11 electronic delivery of any of the notices described in section
12 103(b) of that Act, title 15 United States Code section 7003(b).

13 § -8 Relation to other state laws. If any provision in
14 this chapter conflicts with a provision in any other chapter,
15 the provision in this chapter shall control.

16 § -9 Severability. If any provision of this chapter or
17 its application to any person or circumstance is held invalid,
18 the invalidity does not affect other provisions or applications
19 of this chapter that can be given effect without the invalid
20 provision or application, and to this end the provisions of this
21 chapter are severable."



S.B. NO. 2233

1 SECTION 2. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 3. This Act shall take effect upon its approval.

5

INTRODUCED BY:

R. J. J. J.



S.B. NO. 2233

Report Title:

Online Privacy; Employees; Applicants; Students; Prospective Students

Description:

Adopts uniform laws on protecting the online accounts of employees, unpaid interns, applicants, students, and prospective students from employers and educational institutions, respectively.

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

