
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 legislature finds that the protection of
2 the online accounts of current and prospective employees and
3 students from employers and educational institutions is a matter
4 of statewide concern.

5 The purpose of this Act is to establish a uniform law to
6 protect the online accounts of employees, prospective employees,
7 unpaid interns, applicants, students, prospective students, and
8 independent contractors from employers and educational
9 institutions.

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

13 **"CHAPTER**
14 **THE UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT**

15 § -1 **Short title.** This chapter may be cited as The
16 Uniform Employee and Student Online Privacy Protection Act.



1 § -2 Definitions. As used in this chapter:

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

5 "Educational institution" means a person that provides to
6 students an organized program of study or training that is
7 academic, technical, trade-oriented, or preparatory for gaining
8 employment and for which the person gives academic credit.

9 "Educational institution" includes:

- 10 (1) A public or private institution; and
- 11 (2) An agent or designee of the educational institution.

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

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

- 19 (1) A prospective employee who has:
 - 20 (A) Expressed to the employer an interest in being an
 - 21 employee; or



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

3 (2) An independent contractor.

4 "Employer" means a person that provides a salary, wages, or
5 the equivalent to an employee in exchange for services or labor
6 or engages the services or labor of an unpaid intern.

7 "Employer" includes an agent or designee of the employer.

8 "Login information" means a user name and password,
9 password, or other means or credentials of authentication
10 required to access or control:

11 (1) A protected personal online account; or

12 (2) An electronic communications device, which the
13 employee's employer or the student's educational
14 institution has not supplied or paid for in full, that
15 itself provides access to or control over the account.

16 "Login requirement" means a requirement that login
17 information be provided before a protected personal online
18 account or electronic communications device can be accessed or
19 controlled.

20 "Online" means accessible by means of a computer network or
21 the Internet.



1 "Person" means an individual; estate; business or nonprofit
2 entity; public corporation; government or governmental
3 subdivision, agency, or instrumentality; or other legal entity.

4 "Protected personal online account" means any online
5 account maintained by an employee or a student, including social
6 media or electronic mail accounts, that is protected by a login
7 requirement. "Protected personal online account" does not
8 include an account, or the discrete portion of an account, that
9 was:

- 10 (1) Opened at an employer's behest, or provided by an
11 employer and intended to be used solely or primarily
12 on behalf of or under the direction of the employer;
13 or
14 (2) Opened at an educational institution's behest, or
15 provided by an educational institution and intended to
16 be used solely or primarily on behalf of or under the
17 direction of the educational institution.

18 "Publicly available" means available to the general public.

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



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

5 "Student" means an individual who participates in an
6 educational institution's organized program of study or
7 training. "Student" includes:

8 (1) A prospective student who expresses to the institution
9 an interest in being admitted to, applies for
10 admission to, or is being recruited for admission by,
11 the educational institution; and

12 (2) A parent or legal guardian of a student under the age
13 of majority.

14 **§ -3 Protection of employee online accounts. (a)**

15 Subject to the exceptions in subsection (b), an employer shall
16 not:

17 (1) Require or coerce an employee to:

18 (A) Disclose the login information for a protected
19 personal online account;

20 (B) Disclose the content of the account, except that
21 an employer may request an employee to add the



1 employer to, or to not remove the employer from,
2 the set of persons to which the employee grants
3 access to the content;

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

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

11 (2) Take, or threaten to take, adverse action against an
12 employee for failure to comply with an employer's:

13 (A) Requirement, coercive action, or request that
14 violates paragraph (1); or

15 (B) Request under paragraph (1)(B) to add the
16 employer to, or to not remove the employer from,
17 the set of persons to which the employee grants
18 access to the content of a protected personal
19 online account.

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



- 1 (1) Accessing information about an employee that is
2 publicly available;
- 3 (2) Complying with a federal or state law, court order, or
4 rule of a self-regulatory organization established by
5 federal or state statute, including a self-regulatory
6 organization as defined in section 3(a)(26) of the
7 Securities Exchange Act of 1934, as amended, title 15
8 United States Code section 78c(a)(26);
- 9 (3) Implementing and enforcing a policy pertaining to the
10 use of an employer-issued electronic communications
11 device or the use of an employee-owned electronic
12 communications device that will be used for business
13 purposes; or
- 14 (4) Requiring or requesting, based upon specific facts
15 about the employee's protected personal online
16 account, access to the content of, but not the login
17 information for, the account in order to:
- 18 (A) Ensure compliance, or investigate noncompliance,
19 with:
- 20 (i) Federal or state law; or



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

7 (B) Protect against:

8 (i) A threat to safety;

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

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

16 (c) An employer that accesses employee content for a
17 purpose specified in subsection (b)(4) shall:

18 (1) Reasonably attempt to limit its access to content that
19 is relevant to the specified purpose;

20 (2) Use the content only for the specified purpose; and



1 (3) Not alter the content unless necessary to achieve the
2 specified purpose.

3 (d) An employer that acquires the login information for an
4 employee's protected personal online account by means of
5 otherwise lawful technology that monitors the employer's network
6 or employer-issued electronic communications devices, for a
7 network security, data confidentiality, or system maintenance
8 purpose:

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

11 (2) Shall make a reasonable effort to keep the login
12 information secure;

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

17 (4) If the employer retains the login information for use
18 in an ongoing investigation of an actual or suspected
19 breach of computer, network, or data security, it
20 shall make a reasonable effort to keep the login
21 information secure and dispose of it as soon as, as



1 securely as, and to the extent reasonably practicable
2 after completing the investigation.

3 (e) Nothing in subsection (a) shall be construed to
4 diminish the authority and obligation of an employer to
5 investigate complaints, allegations, or the occurrence of
6 sexual, racial, or other prohibited harassment under part I of
7 chapter 378.

8 § -4 Protection of student online accounts. (a)
9 Subject to the exceptions in subsection (b), an educational
10 institution shall not:

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

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

4 (D) Access the account in the presence of the
5 educational institution in a manner that enables
6 the educational institution to observe the login
7 information for or content of the account; or

8 (2) Take, or threaten to take, adverse action against a
9 student for failure to comply with an educational
10 institution's:

11 (A) Requirement, coercive action, or request that
12 violates paragraph (1); or

13 (B) Request under paragraph (1)(B) to add the
14 educational institution to, or to not remove the
15 educational institution from, the set of persons
16 to which the student grants access to the content
17 of a protected personal online account.

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

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



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

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

8 (A) Ensure compliance, or investigate noncompliance,
9 with:

10 (i) Federal or state law; or

11 (ii) An educational institution prohibition
12 against education-related student misconduct
13 of which the student has reasonable notice,
14 which is in a record, and that was not
15 created primarily to gain access to a
16 protected personal online account; or

17 (B) Protect against:

18 (i) A threat to safety;

19 (ii) A threat to the educational institution's
20 information technology or communications



1 technology systems or to educational
2 institution property; or
3 (iii) Disclosure of information in which the
4 educational institution has a proprietary
5 interest or information that the educational
6 institution has a legal obligation to keep
7 confidential.

8 (c) An educational institution that accesses student
9 content for a purpose specified in subsection (b)(3) shall:

- 10 (1) Reasonably attempt to limit its access to content that
11 is relevant to the specified purpose;
12 (2) Use the content only for the specified purpose; and
13 (3) Not alter the content unless necessary to achieve the
14 specified purpose.

15 (d) An educational institution that acquires the login
16 information for a student's protected personal online account by
17 means of otherwise lawful technology that monitors the
18 educational institution's network or educational institution-
19 issued electronic communications devices for a network security,
20 data confidentiality, or system maintenance purpose:



- 1 (1) Shall not use the login information to access or
2 enable another person to access the account;
- 3 (2) Shall make a reasonable effort to keep the login
4 information secure;
- 5 (3) Unless otherwise provided in paragraph (4), shall
6 dispose of the login information as soon as, as
7 securely as, and to the extent reasonably practicable;
8 and
- 9 (4) If the educational institution retains the login
10 information for use in an ongoing investigation of an
11 actual or suspected breach of computer, network, or
12 data security, it shall make a reasonable effort to
13 keep the login information secure and dispose of it as
14 soon as, as securely as, and to the extent reasonably
15 practicable after completing the investigation.

16 § -5 Civil action. (a) The attorney general may bring
17 a civil action in district court against an employer or
18 educational institution for a violation of this chapter. A
19 prevailing attorney general may obtain:

- 20 (1) Injunctive and other equitable relief; and



1 (2) A civil penalty of up to \$1,000 for each violation,
2 but not exceeding \$100,000 for all violations caused
3 by the same event.

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

8 (1) Injunctive and other equitable relief;

9 (2) Actual damages; and

10 (3) Costs and reasonable attorney's fees.

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

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

16 § -6 Uniformity of application and construction. In
17 applying and construing this chapter, consideration shall be
18 given to the need to promote uniformity of the law with respect
19 to its subject matter among states that enact it.

20 § -7 Relation to the Electronic Signatures in Global and
21 National Commerce Act. This chapter modifies, limits, or



1 supersedes the Electronic Signatures in Global and National
2 Commerce Act, title 15 United States Code section 7001 et seq.,
3 but does not modify, limit, or supersede section 101(c) of that
4 Act, title 15 United States Code section 7001(c), or authorize
5 electronic delivery of any of the notices described in section
6 103(b) of that Act, title 15 United States Code section 7003(b).

7 **§ -8 Relation to other state laws.** If any provision in
8 this chapter conflicts with a provision in any other chapter,
9 the provision in this chapter shall control.

10 **§ -9 Severability.** If any provision of this chapter or
11 its application to any person or circumstance is held invalid,
12 the invalidity does not affect other provisions or applications
13 of this chapter that can be given effect without the invalid
14 provision or application, and to this end the provisions of this
15 chapter are severable."

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

19 SECTION 4. This Act shall take effect on January 1, 2050.



Report Title:

Online Privacy; Employees; Students

Description:

Establishes The Uniform Employee and Student Online Privacy Protection Act that adopts uniform laws on protecting the online accounts of employees, prospective employees, unpaid interns, applicants, students, prospective students, and independent contractors from employers and educational institutions.
Effective 1/1/2050. (HD1)

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