
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:

4 "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 to
13 students an organized program of study or training that is
14 academic, technical, trade-oriented, or preparatory for gaining
15 employment and for which the person gives academic credit. The
16 term includes:



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

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

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

- 10 (1) A prospective employee who has:
 - 11 (A) Expressed to the employer an interest in being an
 - 12 employee; or
 - 13 (B) Applied for or is applying for employment by, or
 - 14 is being recruited for employment by, the
 - 15 employer; and
- 16 (2) An independent contractor.

17 "Employer" means a person that provides salary, wages, or
18 the equivalent to an employee in exchange for services or labor
19 or engages the services or labor of an unpaid intern. The term
20 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 any online
18 account maintained by an employee or a student, including social
19 media or electronic mail accounts, that is protected by a login
20 requirement. The term does not include an account, or the
21 discrete portion of an account, that was:



1 (1) Opened at an employer's behest, or provided by an
2 employer and intended to be used solely or primarily
3 on behalf of or under the direction of the employer;
4 or

5 (2) Opened at an educational institution's behest, or
6 provided by an educational institution and intended to
7 be used solely or primarily on behalf of or under the
8 direction of the educational institution.

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

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

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

17 "Student" means an individual who participates in an
18 educational institution's organized program of study or
19 training. The term includes:

20 (1) A prospective student who expresses to the institution
21 an interest in being admitted to, applies for



1 admission to, or is being recruited for admission by,
2 the educational institution; and

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

5 § -3 Protection of employee online account. (a)

6 Subject to the exceptions in subsection (b), an employer shall
7 not:

8 (1) Require or coerce an employee to:

9 (A) Disclose the login information for a protected
10 personal online account;

11 (B) Disclose the content of the account, except that
12 an employer may request an employee to add the
13 employer to, or to not remove the employer from,
14 the set of persons to which the employee grants
15 access to the content;

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

19 (D) Access the account in the presence of the
20 employer in a manner that enables the employer to



1 observe the login information for or content of
2 the account; or

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

5 (A) Requirement, coercive action, or request that
6 violates paragraph (1); or

7 (B) Request under paragraph (1)(B) to add the
8 employer to, or to not remove the employer from,
9 the set of persons to which the employee grants
10 access to the content of a protected personal
11 online account.

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

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

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



1 (3) Implementing and enforcing a policy pertaining to the
2 use of employer-issued electronic communications
3 device or to the use of an employee-owned electronic
4 communications device that will be used for business
5 purposes; or

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

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

12 (i) Federal or state law; or

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

19 (B) Protect against:

20 (i) A threat to safety;



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

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

8 (c) An employer that accesses employee content for a
9 purpose specified in subsection (b)(4) 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 employer that acquires the login information for an
16 employee's protected personal online account by means of
17 otherwise lawful technology that monitors the employer's
18 network, or employer-provided devices, for a network security,
19 data confidentiality, or system maintenance purpose:

- 20 (1) Shall not use the login information to access or
- 21 enable another person to access the account;



- 1 (2) Shall make a reasonable effort to keep the login
2 information secure;
- 3 (3) Unless otherwise provided in paragraph (4), shall
4 dispose of the login information as soon as, as
5 securely as, and to the extent reasonably practicable;
6 and
- 7 (4) If the employer retains the login information for use
8 in an ongoing investigation of an actual or suspected
9 breach of computer, network, or data security, it
10 shall make a reasonable effort to keep the login
11 information secure and dispose of it as soon as, as
12 securely as, and to the extent reasonably practicable
13 after completing the investigation.
- 14 (e) Nothing in subsection (a) shall be construed to
15 diminish the authority and obligation of an employer to
16 investigate complaints, allegations, or the occurrence of
17 sexual, racial, or other prohibited harassment under part I of
18 chapter 378.
- 19 § -4 Protection of student online account. (a) Subject
20 to the exceptions in subsection (b), an educational institution
21 shall not:



- 1 (1) Require or coerce a student to:
 - 2 (A) Disclose the login information for a protected
 - 3 personal online account;
 - 4 (B) Disclose the content of the account, except that
 - 5 an educational institution may request a student
 - 6 to add the educational institution to, or to not
 - 7 remove the educational institution from, the set
 - 8 of persons to which the student grants access to
 - 9 the content;
 - 10 (C) Alter the settings of the account in a manner
 - 11 that makes the login information for or content
 - 12 of the account more accessible to others; or
 - 13 (D) Access the account in the presence of the
 - 14 educational institution in a manner that enables
 - 15 the educational institution to observe the login
 - 16 information for or content of the account; or
- 17 (2) Take, or threaten to take, adverse action against a
- 18 student for failure to comply with an educational
- 19 institution's:
 - 20 (A) Requirement, coercive action, or request, that
 - 21 violates paragraph (1); or



1 (B) Request under paragraph (1)(B) to add the
2 educational institution to, or to not remove the
3 educational institution from, the set of persons
4 to which the student grants access to the content
5 of a protected personal online account.

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

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

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

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

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

19 (i) Federal or state law; or

20 (ii) An educational institution prohibition

21 against education-related student misconduct



1 of which the student has reasonable notice,
2 which is in a record, and that was not
3 created primarily to gain access to a
4 protected personal online account; or

5 (B) Protect against:

6 (i) A threat to safety;

7 (ii) A threat to the educational institution's
8 information technology or communications
9 technology systems or to educational
10 institution property; or

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

16 (c) An educational institution that accesses student
17 content for a purpose specified in subsection (b)(3) 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 educational institution that acquires the login
4 information for a student's protected personal online account by
5 means of otherwise lawful technology that monitors the
6 educational institution's network, or educational institution-
7 provided devices, for a network security, data confidentiality,
8 or system maintenance 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 educational institution retains the login
18 information for use in an ongoing investigation of an
19 actual or suspected breach of computer, network, or
20 data security, it shall make a reasonable effort to
21 keep the login information secure and dispose of it as



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

3 § -5 Civil action. (a) The attorney general may bring
4 a civil action in district court against an employer or
5 educational institution for a violation of this chapter. A
6 prevailing attorney general may obtain:

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

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

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

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



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

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

7 § -7 **Relation to Electronic Signatures in Global and**
8 **National Commerce Act.** This chapter modifies, limits, or
9 supersedes the Electronic Signatures in Global and National
10 Commerce Act, title 15 United States Code section 7001 et seq.,
11 but does not modify, limit, or supersede section 101(c) of that
12 Act, title 15 United States Code section 7001(c), or authorize
13 electronic delivery of any of the notices described in section
14 103(b) of that Act, title 15 United States Code section 7003(b).

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

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



1 provision or application, and to this end the provisions of this
2 chapter are severable."

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

6 SECTION 3. This Act shall take effect on January 1, 2021.



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, and prospective students from employers and educational institutions. (SD1)

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

