



GOV. MSG. NO. 1139

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 7, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 7, 2021, the following bill was signed into law:

HB0125 HD2 SD2

RELATING TO THE UNIFORM EMPLOYEE AND
STUDENT ONLINE PRIVACY PROTECTION ACT.
ACT 039 (21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUN 07 2021

ORIGINAL

ACT 039

HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

H.B. NO. 125
H.D. 2
S.D. 2

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 considers this Act to be of
2 statewide concern.

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

6 "CHAPTER

7 UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT

8 § -1 Short title. This chapter shall be known and may
9 be cited as the Uniform Employee and Student Online Privacy
10 Protection Act.

11 § -2 Definitions. As used in this chapter:

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

15 "Educational institution" means a person that provides
16 students an organized program of study or training that is



1 academic, technical, trade-oriented, or preparatory for gaining
2 employment and for which the person gives academic credit.

3 "Educational institution" includes:

4 (1) A public or private institution; and

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

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

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

13 (1) A prospective employee who has:

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

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

19 (2) An independent contractor.

20 "Employer" means a person that provides salary, wages, or
21 the equivalent to an employee in exchange for services or labor



1 or engages the services or labor of an unpaid intern.

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

3 "Login information" means a username and password,
4 password, or other means or credentials of authentication
5 required to access or control:

6 (1) A protected personal online account; or

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

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

14 "Online" means accessible by means of a computer network or
15 the Internet.

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

19 "Protected personal online account" means any online
20 account maintained by an employee or a student, including social
21 media or electronic mail accounts, that is protected by a login



1 requirement. "Protected personal online account" does not
2 include an account, or the discrete portion of an account, that
3 was:

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

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

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

16 "Specifically identified content" means data or information
17 stored in a protected personal online account that is identified
18 with sufficient particularity to distinguish the discrete
19 individual pieces of content being sought from a substantial
20 percentage of other data or information stored in the account
21 with which it may share similar characteristics. The



1 identification may be based on identification or verification by
2 an individual creator, poster, sender, viewer or recipient of
3 characteristics of that content that in the aggregate allow the
4 employee or student requested to provide access to that content
5 to distinguish that content with reasonable certainty from any
6 other data or information stored in the account with which it
7 may share similar characteristics.

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

12 "Student" means an individual who participates in an
13 educational institution's organized program of study or
14 training. "Student" includes:

15 (1) A prospective student who expresses to the institution
16 an interest in being admitted to, applies for
17 admission to, or is being recruited for admission by,
18 the educational institution; and

19 (2) A parent or legal guardian of a student under the age
20 of eighteen years.



1 § -3 Protection of employee online account. (a)

2 Subject to the exceptions in subsection (b), an employer shall
3 not:

4 (1) Require, coerce, or request an employee to:

5 (A) Disclose the login information for a protected
6 personal online account;

7 (B) Disclose the content of the account, except that,
8 without coercion and pursuant to a clear
9 statement that acceptance is voluntary and not
10 required, an employer may request an employee to
11 add the employer to, or to not remove the
12 employer from, the set of persons to which the
13 employee grants access to the content;

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

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



- 1 (E) Turn over to the employer an unlocked personal
2 technological device for purposes of gaining
3 access to a protected personal online account; or
4 (2) Take, or threaten to take, adverse action against an
5 employee for failure to comply with an employer's:
6 (A) Requirement, coercive action, or request that
7 violates paragraph (1); or
8 (B) Request under paragraph (1)(B) to add the
9 employer to, or to not remove the employer from,
10 the set of persons to which the employee grants
11 access to the content of a protected personal
12 online account.
- 13 (b) Nothing in subsection (a) shall prevent an employer
14 from:
- 15 (1) Accessing information about an employee that is
16 publicly available;
- 17 (2) Complying with a federal or state law, court order, or
18 rule of a self-regulatory organization established by
19 federal or state statute, including a self-regulatory
20 organization as defined in section 3(a)(26) of the



1 Securities Exchange Act of 1934, title 15 United
2 States Code section 78c(a)(26);

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

8 (4) Without requesting or requiring an employee to provide
9 login information for or other means of authentication
10 that provides access to the employee's protected
11 personal online account, requesting or requiring an
12 employee to share specifically identified content for
13 the purpose of:

14 (A) Enabling an employer to comply with its own legal
15 and regulatory obligations;

16 (B) Investigating an allegation, based on specific
17 facts regarding specifically identified content,
18 of:

19 (i) Noncompliance with an employer prohibition
20 against work-related employee misconduct of
21 which the employee has reasonable notice, is



1 in a record, and was not created primarily
2 to gain access to a protected personal
3 online account; or
4 (ii) The disclosure of information in which the
5 employer has a proprietary interest or
6 information the employer has a legal
7 obligation to keep confidential; and
8 (C) Investigating threats to safety, including:
9 (i) Unlawful harassment or threats of violence
10 in the workplace;
11 (ii) Threats to employer information technology
12 or communications technology systems; or
13 (iii) Threats to employer property.
14 (c) An employer with whom content is shared by an employee
15 for a purpose specified in subsection (b) (4) shall:
16 (1) Not access or view unshared content;
17 (2) Use the shared content only for the specified purpose;
18 and
19 (3) Not alter the shared content.
20 (d) An employer that acquires the login information for an
21 employee's protected personal online account by means of



1 otherwise lawful technology that monitors the employer's
2 network, or employer-provided devices, for a network security,
3 data confidentiality, or system maintenance purpose:

4 (1) Shall not be held liable for violation of this chapter
5 on the sole basis of having the login information;

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

8 (3) Shall make reasonable effort to keep the login
9 information secure;

10 (4) Shall not share the login information with any other
11 person; and

12 (5) Shall dispose of the login information as soon as, as
13 securely as, and to the extent reasonably practicable;
14 provided that if the employer is retaining the login
15 information for use in:

16 (A) An ongoing investigation of an actual or
17 suspected breach of computer, network, or data
18 security; or

19 (B) A specific criminal complaint or civil action, or
20 the investigation thereof,



1 the employer shall make a reasonable effort to keep
2 the login information secure and dispose of it as soon
3 as, as securely as, and to the extent reasonably
4 practicable after completion of the investigation,
5 complaint, or action.

6 (e) Nothing in subsection (a) shall be construed to
7 diminish the authority or obligation of an employer to
8 investigate complaints, allegations, or the occurrence of
9 prohibited discriminatory practices, including harassment, based
10 on race, sex, or other characteristics protected under part I of
11 chapter 378.

12 § -4 Protection of student online account. (a) Subject
13 to the exceptions in subsection (b), an educational institution
14 shall not:

15 (1) Require, coerce, or request a student to:

16 (A) Disclose the login information for a protected
17 personal online account;

18 (B) Disclose the content of the account, except that,
19 without coercion and pursuant to a clear
20 statement that acceptance is voluntary and not
21 required, an educational institution may request



- 1 a student to add the educational institution to,
2 or to not remove the educational institution
3 from, the set of persons to which the student
4 grants access to the content;
- 5 (C) Alter the settings of the account in a manner
6 that makes the login information for or content
7 of the account more accessible to others;
- 8 (D) Access the account in the presence of the
9 educational institution in a manner that enables
10 the educational institution to observe the login
11 information for or content of the account; or
- 12 (E) Turn over to the educational institution an
13 unlocked personal technological device for
14 purposes of gaining access to a personal online
15 account; or
- 16 (2) Take, or threaten to take, adverse action against a
17 student for failure to comply with an educational
18 institution's:
- 19 (A) Requirement, coercive action, or request that
20 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) Without requesting or requiring a student to provide
14 login information for or other means of authentication
15 that provides access to the student's protected
16 personal online account, requesting or requiring a
17 student to share specifically identified content for
18 the purpose of:

19 (A) Enabling an educational institution to comply
20 with its own legal and regulatory obligations;



1 (B) Investigating an allegation, based on specific
2 facts regarding specifically identified content,
3 of:

4 (i) Noncompliance with an educational
5 institution's prohibitions against
6 education-related student misconduct of
7 which the student has reasonable notice, is
8 in a record, and was not created primarily
9 to gain access to a protected personal
10 online account; or

11 (ii) The disclosure of any interest or
12 information the educational institution has
13 a legal obligation to keep confidential; and

14 (C) Investigating threats to safety, including:

15 (i) Unlawful harassment or threats of violence
16 at the educational institution;

17 (ii) Threats to the educational institution's
18 information technology or communications
19 technology systems; or

20 (iii) Threats to the educational institution's
21 property.



1 (c) An educational institution with whom content is shared
2 by a student for a purpose specified in subsection (b)(3) shall:

3 (1) Not access or view unshared content;

4 (2) Use the shared content only for the specified purpose;
5 and

6 (3) Not alter the shared content.

7 (d) An educational institution that acquires the login
8 information for a student's protected personal online account by
9 means of otherwise lawful technology that monitors the
10 educational institution's network, or educational institution-
11 provided devices, for a network security, data confidentiality,
12 or system maintenance purpose:

13 (1) Shall not be held liable for violation of this chapter
14 on the sole basis of having the login information;

15 (2) Shall not use the login information to access or
16 enable another person to access the account;

17 (3) Shall make reasonable effort to keep the login
18 information secure;

19 (4) Shall not share the login information with any other
20 person; and



(5) Shall dispose of the login information as soon as, as securely as, and to the extent reasonably practicable; provided that if the educational institution is retaining the login information for use in:

(A) An ongoing investigation of an actual or suspected breach of computer, network, or data security; or

(B) A specific criminal complaint or civil action, or the investigation thereof,

the educational institution shall 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 completion of the investigation, complaint, or action.

§ -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 employee's employer or student's educational institution for a violation of this chapter. A prevailing employee or student may obtain:

(1) Injunctive and other equitable relief;

(2) Actual and general 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 any law other than this chapter.

§ -6 Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, title 15 United States Code section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that Act, title 15 United States Code section 7001(c), or authorize



1 electronic delivery of any of the notices described in
2 section 103(b) of that Act, title 15 United States Code
3 section 7003(b).

4 § -7 Relation to other state laws. In case of any
5 conflict between any provision of this chapter and a provision
6 of any other chapter, this chapter shall control.

7 § -8 Severability. If any provision of this chapter or
8 its application to any person or circumstance is held invalid,
9 the invalidity does not affect other provisions or applications
10 of this chapter which can be given effect without the invalid
11 provision or application, and to this end the provisions of this
12 chapter are severable."

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

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

APPROVED this 07 day of JUN , 2021



GOVERNOR OF THE STATE OF HAWAII



HB No. 125, HD 2, SD 2

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 22, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives

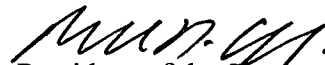


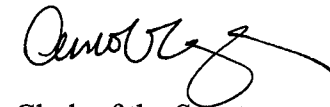
Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI‘I

Date: April 13, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate
of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2021.


President of the Senate


Clerk of the Senate