



GOV. MSG. NO. 1334

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 6, 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 July 6, 2021, the following bill was signed into law:

HB1253 HD3 SD1 CD1

RELATING TO EMPLOYMENT PRACTICES
ACT 206 (21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on JUL 06 2021

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

ACT 206
H.B. NO.

1253
H.D. 3
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

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

1 SECTION 1. The legislature finds that in response to the
2 coronavirus disease 2019 (COVID-19) pandemic, applications for
3 mobile phones have been promoted as a means to track the
4 whereabouts of individuals who may have been exposed to someone
5 testing positive for the virus, prompting privacy concerns and
6 anxiety over potential misuse of the location information.
7 While mobile phone users may voluntarily agree to be tracked,
8 the legislature finds that privacy concerns dictate against
9 making the downloading of mobile applications to an employee's
10 personal mobile phones a condition of employment.

11 The purpose of this Act is to prohibit an employer, with
12 certain exemptions, from:

- 13 (1) Requiring an employee or prospective employee to
14 download a mobile application to the employee's
15 personal communication device that enables the
16 employee's location to be tracked or the employee's



1 personal information to be revealed as a condition of
2 employment or continued employment; or

3 (2) Terminating, discharging, or otherwise discriminating
4 against an employee for:

5 (A) Refusing to download or refusing to consent to
6 download to the employee's personal communication
7 device, a mobile application that enables the
8 employee's location to be tracked or the
9 employee's personal information to be revealed;
10 or

11 (B) Opposing any practice forbidden by this Act or
12 filing a complaint, testifying, or assisting in
13 any proceeding concerning an unlawful practice
14 prohibited under this Act.

15 SECTION 2. Chapter 378, Hawaii Revised Statutes, is
16 amended by adding a new part to be appropriately designated and
17 to read as follows:

18 "PART . MOBILE APPLICATIONS

19 §378- Definitions. As used in this part:



1 "Employee" means an individual who performs a service for
2 wages or other remuneration under a contract for hire, written
3 or oral, or expressed or implied. "Employee" includes:

4 (1) A prospective employee who has applied for or
5 otherwise actively expressed interest in employment
6 with an employer; and

7 (2) An individual employed by the State or a political
8 subdivision of the State.

9 "Employer" means a person who has one or more employees.

10 "Employer" includes an agent of an employer or of the State or a
11 political subdivision thereof but does not include the United
12 States.

13 "Employer-owned communication device" means a device
14 allowing for electronic communications, such as a mobile phone
15 or tablet, that is owned or whose cost is reimbursed by the
16 employer.

17 "Mobile application" means a type of application software
18 designed to run on a mobile electronic device, such as a
19 smartphone or tablet computer.

20 "Personal communication device" means a device allowing for
21 electronic communication, including a mobile phone and tablet,



1 that is not owned, or the cost of which is not reimbursed, by
2 the employer.

3 **§378- Unlawful practices.** It shall be unlawful for any
4 employer to:

5 (1) Require an employee to download a mobile application
6 to the employee's personal communication device that
7 enables the employee's location to be tracked or the
8 employee's personal information to be revealed as a
9 condition of employment or continued employment; or

10 (2) Terminate, discharge, or otherwise discriminate
11 against an employee for:

12 (A) Refusing to download or refusing to consent to
13 download to the employee's personal communication
14 device, a mobile application that enables the
15 employee's location to be tracked or the
16 employee's personal information to be revealed;
17 or

18 (B) Opposing any practice forbidden by this part or
19 filing a complaint, testifying, or assisting in
20 any proceeding concerning an unlawful practice
21 prohibited under this part.



1 **§378- Exception.** Nothing in this part shall be deemed
2 to:

- 3 (1) Repeal or affect any law, ordinance, rule, or
4 regulation having the force and effect of law;
- 5 (2) Apply to the United States government;
- 6 (3) Conflict with or affect the application of security
7 regulations in employment established by the United
8 States or the State;
- 9 (4) Apply if the employee consents to downloading the
10 mobile application to the employee's personal
11 communication device that enables the employee's
12 location to be tracked or the employee's personal
13 information to be revealed; or
- 14 (5) Prohibit an employer from requiring an employee to
15 carry or use an employer-owned communication device
16 that enables the employee's location to be tracked.

17 **§378- Civil actions for injunctive relief or damages.**

18 (a) A person who alleges a violation of this part may bring a
19 civil action for appropriate injunctive relief, actual damages,
20 or both within two years after the occurrence of the alleged
21 violation.



1 (b) A cause of action pursuant to subsection (a) may be
2 brought in the appropriate court in the circuit where the
3 alleged violation occurred, where the plaintiff resides, or
4 where the defendant resides or has a principal place of
5 business.

6 (c) A defendant who violates this part shall be fined \$500
7 for each violation. A civil fine that is ordered pursuant to
8 this section shall be deposited with the director of finance to
9 the credit of the general fund.

10 (d) For purposes of this section, "damages" means damages
11 for injury or loss caused by each violation of this part,
12 including reasonable attorney's fees."

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

APPROVED this 06 day of JUL , 2021



GOVERNOR OF THE STATE OF HAWAII



HB No. 1253, HD 3, SD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 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 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final 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