

---

# 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.



**Report Title:**

Employment Practices; Mobile Applications; Prohibition

**Description:**

Prohibits employers, with certain exemptions, from requiring employees and prospective employees to download to their personal communication device, a mobile application that enables the employee's location to be tracked or the employee's personal information to be revealed, as a condition of employment or continued employment. Prohibits employers from terminating, discharging, or otherwise discriminating against an employee for refusing to download or refusing to consent to download the mobile application to the employee's personal communication device; or opposing any practice forbidden by this Act or filing a complaint, testifying, or assisting in any proceeding concerning an unlawful practice prohibited under this Act. Allows a person who alleges a violation of this Act to bring a civil action for injunctive relief, actual damages, or both. Sets fines. (CD1)

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

