A BILL FOR AN ACT

RELATING TO ONLINE ACCOUNT PRIVACY.

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   **PERSONAL ONLINE ACCOUNT PRIVACY ACT**

6   §   -1 **Short title.** This chapter may be cited as the

7 Personal Online Account Privacy Act.

8   §   -2 **Definitions.** As used in this chapter,

9 "Educational institution" means:

10   (1)   A private or public school, institution, or any

11   subdivision thereof, that offers students an organized

12   course of study or training that is academic,

13   trade-oriented, or preparatory for gainful employment,

14   as well as school employees and agents acting under

15   the authority or on behalf of an educational

16   institution; or

1   (2)   A state educational agency authorized to direct or

2   control an entity in paragraph (1).

3   "Employee" means an individual who provides services or

4   labor to an employer in exchange for salary, wages, or the

5   equivalent or, for an unpaid intern, academic credit or

6   occupational experience. "Employee" includes:

7   (1)   A prospective employee who has:

8   (A)   Expressed to the employer an interest in being an

9   employee; or

10   (B)   Applied for or is applying for employment by, or

11   is being recruited for employment by, the

12   employer; and

13   (2)   An independent contractor.

14   "Employer" means a person that provides salary, wages, or

15   the equivalent to an employee in exchange for services or labor

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

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

18   "One-to-one program" means any program authorized by an

19   employer or educational institution where a technological device

20   is provided to an employee or a student by or through an

1   employer or educational institution, respectively, for overnight

2   or at-home use.

3   "Personal online account" means any online account

4   maintained by an employee or student, including but not limited

5   to a social media or electronic mail account, that is protected

6   by a login requirement. "Personal online account" does not

7   include an account, or a discrete portion of an account, that

8   was either:

9   (1) Opened at an employer's behest, or provided by an

10   employer and intended to be used solely or primarily

11   on behalf of or under the direction of the employer;

12   or

13   (2) Opened at an educational institution's behest, or

14   provided by an educational institution and intended to

15   be used solely or primarily on behalf of or under the

16   direction of the educational institution.

17   "Personal technological device" means a technological

18 device owned, leased, or otherwise lawfully possessed by an

19 employee or a student that was not provided pursuant to a

20 one-to-one program.

1   "Student" means an individual who participates in an

2   educational institution's organized program of study or

3   training. "Student" includes:

4   (1) A prospective student who expresses to the educational

5   institution an interest in being admitted to, applies

6   for admission to, or is being recruited for admission

7   by, the educational institution; and

8   (2) A parent or legal guardian of a student under the age

9   of majority.

10   "Specifically identified content" means data or information

11   stored in a personal online account that is identified with

12   sufficient particularity to distinguish the discrete, individual

13   piece of content being sought from any other data or information

14   stored in the personal online account with which it may share

15   similar characteristics.

16   "Technological device" means any computer, cellular phone,

17   smartphone, digital camera, video camera, audio recording

18   device, or other electronic device that can be used for

19   creating, storing, or transmitting information in the form of

20   electronic data.

H.B. NO. 794

1   §   -3 **Employers.** An employer shall not:

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

3   (A)   Disclose the username, password, or any other

4   means of authentication, or provide access

5   through the username or password, to a personal

6   online account;

7   (B)   Disclose the non-public contents of a personal

8   online account;

9   (C)   Provide password or authentication information to

10   a personal technological device for purposes of

11   gaining access to a personal online account, or

12   turn over an unlocked personal technological

13   device for purposes of gaining access to a

14   personal online account;

15   (D)   Access a personal online account in the presence

16   of the employer in a manner that enables the

17   employer to observe the contents of the account;

18   or

19   (E)   Change the account settings of a personal online

20   account so as to increase third party access to

21   its contents;

1   (2) Require or coerce an employee to add anyone, including

2   the employer, to the list of contacts associated with

3   the employee's personal online account;

4   (3) Take any action or threaten to take any action to

5   discharge, discipline, or otherwise penalize an

6   employee in response to an employee's refusal to

7   disclose any information or take any action specified

8   in paragraphs (1) or (2); or

9   (4) Fail or refuse to hire any employee as a result of an

10   employee's refusal to disclose any information or take

11   any action specified in paragraphs (1) or (2).

12   §   -4 **Educational institutions.** An educational

13   institution shall not:

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

15   (A) Disclose the username, password, or any other

16   means of authentication, or provide access

17   through the username or password, to a personal

18   online account;

19   (B) Disclose the non-public contents of a personal

20   online account;

1   (C)   Provide password or authentication information to

2   a personal technological device for purposes of

3   gaining access to a personal online account, or

4   turn over an unlocked personal technological

5   device for purposes of gaining access to a

6   personal online account;

7   (D)   Access a personal online account in the presence

8   of an educational institution in a manner that

9   enables the educational institution to observe

10   the contents of the account; or

11   (E)   Change the account settings of a personal online

12   account so as to increase third party access to

13   its contents;

14   (2) Require or coerce a student to add anyone, including

15   the educational institution, to the list of contacts

16   associated with the student's personal online account;

17   (3) Take any action or threaten to take any action to

18   discharge, discipline, prohibit from participating in

19   curricular or extracurricular activities, or otherwise

20   penalize a student in response to a student's refusal

1   to disclose any information or take any action

2   specified in paragraphs (1) or (2); or

3   (4) Fail or refuse to admit any student as a result of the

4   student's refusal to disclose any information or take

5   any action specified in paragraphs (1) or (2).

6   § -5 **Limitations.** (a) Nothing in this chapter shall

7 prevent an employer or educational institution from:

8   (1) Accessing information about an employee or student,

9   that is publicly available;

10   (2) Complying with state and federal laws, rules, and

11   regulations, and the rules of self-regulatory

12   organizations as defined in section 3(a)(26) of the

13   Securities and Exchange Act of 1934, title 15 United

14   States Code section 78c(a)(26), or other statute

15   governing self-regulatory organizations; or

16   (3) Prohibiting an employee or student from accessing or

17   operating a personal online account during business or

18   educational institution hours or while on business or

19   educational institution property.

20   (b) Nothing in this chapter shall prevent an employer,

21 without requesting or requiring an employee to provide a

1 username, password, or other means of authentication that

2 provides access to a personal online account, from requesting or

3 requiring an employee to share specifically identified content

4 that has been reported to the employer for the purposes of:

5   (1)   Enabling an employer to comply with its own legal and

6   regulatory obligations;

7   (2)   Investigating an allegation, based on the receipt of

8   information regarding specifically identified content,

9   of the unauthorized transfer of an employer's

10   proprietary or confidential information or financial

11   data to an employee's personal online account; or

12   (3)   Investigating an allegation, based on the receipt of

13   information regarding specifically identified content,

14   of unlawful harassment or threats of violence in the

15   workplace.

16   (c)   Nothing in this chapter shall prevent an educational

17 institution, without requesting or requiring a student to

18 provide a username, password, or other means of authentication

19 that provides access to a personal online account, from

20 requesting or requiring a student to share specifically

21 identified content that has been reported to the educational

1 institution for the purpose of complying with its own legal

2 obligations, subject to all legal and constitutional protections

3 that are applicable to the student; or

4   § -6 **Inadvertent receipt of password.** If an employer or

5 educational institution inadvertently receives the username,

6 password, or other means of authentication that provides access

7 to a personal online account of an employee or a student through

8 the use of an otherwise lawful technology that monitors the

9 employer's or educational institution's network or

10 employer-provided or educational institution-provided

11 technological devices for network security or data

12 confidentiality purposes, the employer or educational

13 institution:

14   (1) Shall not be liable for having the information;

15   (2) Shall not use the information to access the personal

16   online account of the employee or student;

17   (3) Shall not share the information with any other person

18   or entity; and

19   (4) Shall delete the information as soon as is reasonably

20   practicable, unless the information is being retained

21   by the employer or educational institution in

1   connection with the pursuit of a specific criminal

2   complaint or civil action, or the investigation

3   thereof.

4   § -7 **Enforcement.** (a) Any employer or educational

5 institution, including its employees or agents, who violates

6 this chapter shall be subject to legal action for damages or

7 equitable relief, to be brought by any person who claims a

8 violation of this chapter has injured the person or the person's

9 reputation. A person so injured shall be entitled to actual

10 damages, including pain and suffering and mental anguish endured

11 on account of the violation of this chapter, and reasonable

12 attorneys' fees and other costs of litigation.

13   (b) Any employee or agent of an educational institution

14 who violates this chapter shall be subject to disciplinary

15 proceedings and punishment. For educational institution

16 employees who are represented under the terms of a collective

17 bargaining agreement, this chapter prevails except where it

18 conflicts with the collective bargaining agreement, any

19 memorandum of agreement or understanding signed pursuant to the

20 collective bargaining agreement, or any recognized and

1   established practice relative to the members of the bargaining

2   unit.

3   §   -8 **Admissibility**. Except as proof of a violation of

4   this chapter, no data obtained, accessed, used, copied,

5   disclosed, or retained in violation of this chapter, nor any

6   evidence derived therefrom, shall be admissible in any criminal,

7   civil, administrative, or other proceeding."

8   SECTION 2. This Act does not affect rights and duties that

9   matured, penalties that were incurred, and proceedings that were

10   begun before its effective date.

11   SECTION 3. If any provision of this Act, or the

12   application thereof to any person or circumstance, is held

13   invalid, the invalidity does not affect other provisions or

14   applications of the Act that can be given effect without the

15   invalid provision or application, and to this end the provisions

16   of this Act are severable.

17   SECTION 4. This Act shall take effect on July 1, 2021.

18

                          INTRODUCED BY: _____

                                         JAN 2 5 2021

H.B. NO.794

Report Title:
Personal Online Account Privacy Act; Employers; Employees; Educational Institutions; Students

Description:
Prohibits employers and educational institutions from requiring employees or students to provide protected personal online account information. Authorizes private civil actions against violators.

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

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