

ACT 206

H.B. NO. 1253

A Bill for an Act Relating to Employment Practices.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

- (1) Requiring an employee or prospective employee to download a mobile application to the employee's personal communication device 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; or
- (2) Terminating, discharging, or otherwise discriminating against an employee for:
 - (A) Refusing to download or refusing to consent to download to the employee's personal communication device, a mobile application that enables the employee's location to be tracked or the employee's personal information to be revealed; or
 - (B) 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.

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

“PART . MOBILE APPLICATIONS

§378- Definitions. As used in this part:

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

- (1) A prospective employee who has applied for or otherwise actively expressed interest in employment with an employer; and
- (2) An individual employed by the State or a political subdivision of the State.

“Employer” means a person who has one or more employees. “Employer” includes an agent of an employer or of the State or a political subdivision thereof but does not include the United States.

“Employer-owned communication device” means a device allowing for electronic communications, such as a mobile phone or tablet, that is owned or whose cost is reimbursed by the employer.

“Mobile application” means a type of application software designed to run on a mobile electronic device, such as a smartphone or tablet computer.

“Personal communication device” means a device allowing for electronic communication, including a mobile phone and tablet, that is not owned, or the cost of which is not reimbursed, by the employer.

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

- (1) Require an employee to download a mobile application to the employee’s personal communication device 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; or
- (2) Terminate, discharge, or otherwise discriminate against an employee for:
 - (A) Refusing to download or refusing to consent to download to the employee’s personal communication device, a mobile application that enables the employee’s location to be tracked or the employee’s personal information to be revealed; or
 - (B) Opposing any practice forbidden by this part or filing a complaint, testifying, or assisting in any proceeding concerning an unlawful practice prohibited under this part.

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

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

§378- Civil actions for injunctive relief or damages. (a) A person who alleges a violation of this part may bring a civil action for appropriate injunctive relief, actual damages, or both within two years after the occurrence of the alleged violation.

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

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

(d) For purposes of this section, “damages” means damages for injury or loss caused by each violation of this part, including reasonable attorney’s fees.”

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

(Approved July 6, 2021.)