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# 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 Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4                                   **"CHAPTER**

5           **THE UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT**

6           § -1 **Short title.** This chapter may be cited as The  
7 Uniform Employee and Student Online Privacy Protection Act.

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

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

12           "Educational institution" means a person that provides to  
13 students an organized program of study or training that is  
14 academic, technical, trade-oriented, or preparatory for gaining  
15 employment and for which the person gives academic credit. The  
16 term includes:



- 1 (1) A public or private institution; and
- 2 (2) An agent or designee of the educational institution.

3 "Electronic" means relating to technology having  
4 electrical, digital, magnetic, wireless, optical,  
5 electromagnetic, or similar capabilities.

6 "Employee" means an individual who provides services or  
7 labor to an employer in exchange for salary, wages, or the  
8 equivalent, or for an unpaid intern, academic credit or  
9 occupational experience. The term includes:

- 10 (1) A prospective employee who has:
  - 11 (A) Expressed to the employer an interest in being an
  - 12 employee; or
  - 13 (B) Applied for or is applying for employment by, or
  - 14 is being recruited for employment by, the
  - 15 employer; and
- 16 (2) An independent contractor.

17 "Employer" means a person that provides salary, wages, or  
18 the equivalent to an employee in exchange for services or labor  
19 or engages the services or labor of an unpaid intern. The term  
20 includes an agent or designee of the employer.



1 "Login information" means a user name and password,  
2 password, or other means or credentials of authentication  
3 required to access or control:

- 4 (1) A protected personal online account; or
- 5 (2) An electronic device, which the employee's employer or  
6 the student's educational institution has not supplied  
7 or paid for in full; that itself provides access to or  
8 control over the account.

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

12 "Online" means accessible by means of a computer network or  
13 the Internet.

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

17 "Protected personal online account" means any online  
18 account maintained by an employee or a student, including social  
19 media or electronic mail accounts, that is protected by a login  
20 requirement. The term does not include an account, or the  
21 discrete portion of an account, that was:



1 (1) Opened at an employer's behest, or provided by an  
2 employer and intended to be used solely or primarily  
3 on behalf of or under the direction of the employer;  
4 or

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

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

10 "Record" means information that is inscribed on a tangible  
11 medium or that is stored in an electronic or other medium and is  
12 retrievable in perceivable form.

13 "State" means a state of the United States, the District of  
14 Columbia, the United States Virgin Islands, or any territory or  
15 insular possession subject to the jurisdiction of the United  
16 States.

17 "Student" means an individual who participates in an  
18 educational institution's organized program of study or  
19 training. The term includes:

20 (1) A prospective student who expresses to the institution  
21 an interest in being admitted to, applies for



1 admission to, or is being recruited for admission by,  
2 the educational institution; and

3 (2) A parent or legal guardian of a student under the age  
4 of majority.

5 § -3 Protection of employee online account. (a)

6 Subject to the exceptions in subsection (b), an employer shall  
7 not:

8 (1) Require or coerce an employee to:

9 (A) Disclose the login information for a protected  
10 personal online account;

11 (B) Disclose the content of the account, except that  
12 an employer may request an employee to add the  
13 employer to, or to not remove the employer from,  
14 the set of persons to which the employee grants  
15 access to the content;

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

19 (D) Access the account in the presence of the  
20 employer in a manner that enables the employer to



1                   observe the login information for or content of  
2                   the account; or

3           (2) Take, or threaten to take, adverse action against an  
4           employee for failure to comply with an employer's:

5           (A) Requirement, coercive action, or request that  
6           violates paragraph (1); or

7           (B) Request under paragraph (1)(B) to add the  
8           employer to, or to not remove the employer from,  
9           the set of persons to which the employee grants  
10           access to the content of a protected personal  
11           online account.

12           (b) Nothing in subsection (a) shall prevent an employer  
13 from:

14           (1) Accessing information about an employee that is  
15           publicly available;

16           (2) Complying with a federal or state law, court order, or  
17           rule of a self-regulatory organization established by  
18           federal or state statute, including a self-regulatory  
19           organization as defined in section 3(a)(26) of the  
20           Securities Exchange Act of 1934, title 15 United  
21           States Code section 78c(a)(26);



- 1           (3) Implementing and enforcing a policy pertaining to the  
2           use of an employer-issued electronic communications  
3           device or the use of an employee-owned electronic  
4           communications device that will be used for business  
5           purposes; or
- 6           (4) Requiring or requesting, based upon specific facts  
7           about the employee's protected personal online  
8           account, access to the content of, but not the login  
9           information for, the account in order to:
- 10           (A) Ensure compliance, or investigate non-compliance,  
11           with:
- 12                 (i) Federal or state law; or
- 13                 (ii) An employer prohibition against work-related  
14                 employee misconduct of which the employee  
15                 has reasonable notice, which is in a record,  
16                 and that was not created primarily to gain  
17                 access to a protected personal online  
18                 account; or
- 19           (B) Protect against:
- 20                 (i) A threat to safety;



1                   (ii) A threat to the employer's information  
2                   technology or communications technology  
3                   systems or to employer property; or

4                   (iii) Disclosure of information in which the  
5                   employer has a proprietary interest or  
6                   information that the employer has a legal  
7                   obligation to keep confidential.

8           (c) An employer that accesses employee content for a  
9 purpose specified in subsection (b) (4) shall:

10           (1) Reasonably attempt to limit its access to content that  
11           is relevant to the specified purpose;

12           (2) Use the content only for the specified purpose; and

13           (3) Not alter the content unless necessary to achieve the  
14           specified purpose.

15           (d) An employer that acquires the login information for an  
16 employee's protected personal online account by means of  
17 otherwise lawful technology that monitors the employer's  
18 network, or employer-provided devices, for a network security,  
19 data confidentiality, or system maintenance purpose:

20           (1) Shall not use the login information to access or  
21           enable another person to access the account;





- 1           (2) Shall make a reasonable effort to keep the login  
2           information secure;
- 3           (3) Unless otherwise provided in paragraph (4), shall  
4           dispose of the login information as soon as, as  
5           securely as, and to the extent reasonably practicable;  
6           and
- 7           (4) If the employer retains the login information for use  
8           in an ongoing investigation of an actual or suspected  
9           breach of computer, network, or data security, it  
10          shall make a reasonable effort to keep the login  
11          information secure and dispose of it as soon as, as  
12          securely as, and to the extent reasonably practicable  
13          after completing the investigation.
- 14          (e) Nothing in subsection (a) shall be construed to  
15          diminish the authority or obligation of an employer to  
16          investigate complaints, allegations, or the occurrence of  
17          sexual, racial, or other prohibited harassment under part I of  
18          chapter 378.
- 19          §   -4   **Protection of student online account.** (a) Subject  
20          to the exceptions in subsection (b), an educational institution  
21          shall not:



- 1           (1) Require or coerce a student to:
- 2           (A) Disclose the login information for a protected
- 3           personal online account;
- 4           (B) Disclose the content of the account, except that
- 5           an educational institution may request a student
- 6           to add the educational institution to, or to not
- 7           remove the educational institution from, the set
- 8           of persons to which the student grants access to
- 9           the content;
- 10          (C) Alter the settings of the account in a manner
- 11          that makes the login information for or content
- 12          of the account more accessible to others; or
- 13          (D) Access the account in the presence of the
- 14          educational institution in a manner that enables
- 15          the educational institution to observe the login
- 16          information for or content of the account; or
- 17          (2) Take, or threaten to take, adverse action against a
- 18          student for failure to comply with an educational
- 19          institution's:
- 20          (A) Requirement, coercive action, or request, that
- 21          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) Requiring or requesting, based upon specific facts  
14 about the student's protected personal online account,  
15 access to the content of, but not the login  
16 information for, the account in order to:

17 (A) Ensure compliance, or investigate non-compliance,  
18 with:

19 (i) Federal or state law; or

20 (ii) An educational institution prohibition

21 against education-related student misconduct



1 of which the student has reasonable notice,  
2 which is in a record, and that was not  
3 created primarily to gain access to a  
4 protected personal online account; or

5 (B) Protect against:

6 (i) A threat to safety;

7 (ii) A threat to the educational institution's  
8 information technology or communications  
9 technology systems or to educational  
10 institution property; or

11 (iii) Disclosure of information in which the  
12 educational institution has a proprietary  
13 interest or information that the educational  
14 institution has a legal obligation to keep  
15 confidential.

16 (c) An educational institution that accesses student  
17 content for a purpose specified in subsection (b) (3) shall:

18 (1) Reasonably attempt to limit its access to content that  
19 is relevant to the specified purpose;

20 (2) Use the content only for the specified purpose; and



- 1           (3) Not alter the content unless necessary to achieve the  
2           specified purpose.
- 3           (d) An educational institution that acquires the login  
4 information for a student's protected personal online account by  
5 means of otherwise lawful technology that monitors the  
6 educational institution's network, or educational institution-  
7 provided devices, for a network security, data confidentiality,  
8 or system maintenance purpose:
- 9           (1) Shall not use the login information to access or  
10           enable another person to access the account;
- 11           (2) Shall make a reasonable effort to keep the login  
12           information secure;
- 13           (3) Unless otherwise provided in paragraph (4), shall  
14           dispose of the login information as soon as, as  
15           securely as, and to the extent reasonably practicable;  
16           and
- 17           (4) If the educational institution retains the login  
18           information for use in an ongoing investigation of an  
19           actual or suspected breach of computer, network, or  
20           data security, it shall make a reasonable effort to  
21           keep the login information secure and dispose of it as



1           soon as, as securely as, and to the extent reasonably  
2           practicable after completing the investigation.

3           § -5 Civil action. (a) The attorney general may bring  
4 a civil action in district court against an employer or  
5 educational institution for a violation of this chapter. A  
6 prevailing attorney general may obtain:

7           (1) Injunctive and other equitable relief; and  
8           (2) A civil penalty of up to \$1,000 for each violation,  
9           but not exceeding \$100,000 for all violations caused  
10          by the same event.

11          (b) An employee or student may bring a civil action  
12 against the employee's employer or student's educational  
13 institution for a violation of this chapter. A prevailing  
14 employee or student may obtain:

15          (1) Injunctive and other equitable relief;  
16          (2) Actual damages; and  
17          (3) Costs and reasonable attorney's fees.

18          (c) An action under subsection (a) shall not preclude an  
19 action under subsection (b), and an action under subsection (b)  
20 shall not preclude an action under subsection (a).



1 (d) This chapter shall not affect a right or remedy  
2 available under any law other than this chapter.

3 § -6 Uniformity of application and construction. In  
4 applying and construing this chapter, consideration shall be  
5 given to the need to promote uniformity of the law with respect  
6 to its subject matter among states that enact it.

7 § -7 Relation to Electronic Signatures in Global and  
8 National Commerce Act. This chapter modifies, limits, or  
9 supersedes the Electronic Signatures in Global and National  
10 Commerce Act, title 15 United States Code section 7001 et seq.,  
11 but does not modify, limit, or supersede section 101(c) of that  
12 Act, title 15 United States Code section 7001(c), or authorize  
13 electronic delivery of any of the notices described in section  
14 103(b) of that Act, title 15 United States Code section 7003(b).

15 § -8 Relation to other state laws. If any provision in  
16 this chapter conflicts with a provision in any other chapter,  
17 the provision in this chapter shall control.

18 § -9 Severability. If any provision of this chapter or  
19 its application to any person or circumstance is held invalid,  
20 the invalidity does not affect other provisions or applications  
21 of this chapter that can be given effect without the invalid



1 provision or application, and to this end the provisions of this  
2 chapter are severable."

3 SECTION 2. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6 SECTION 3. This Act shall take effect on January 1, 2050.





**Report Title:**

Online Privacy; Employees; Students

**Description:**

Establishes The Uniform Employee and Student Online Privacy Protection Act that adopts uniform laws on protecting the online accounts of employees, prospective employees, unpaid interns, applicants, students, and prospective students from employers and educational institutions. Takes effect 1/1/2050. (HD1)

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