
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 legislature finds that the protection of
2 the online accounts of current and prospective employees and
3 students from employers and educational institutions is a matter
4 of statewide concern. The purpose of this measure is to
5 establish a uniform law to protect the online accounts of
6 employees, prospective employees, unpaid interns, applicants,
7 students, prospective students, and independent contractors from
8 employers and educational institutions.

9 SECTION 2. The Hawaii Revised Statutes is amended by
10 adding a new chapter to be appropriately designated and to read
11 as follows:

12 "CHAPTER

13 THE UNIFORM EMPLOYEE AND STUDENT ONLINE PRIVACY PROTECTION ACT

14 § -1 Short title. This chapter may be cited as The
15 Uniform Employee and Student Online Privacy Protection Act.

16 § -2 Definitions. As used in this chapter:



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

4 "Educational institution" means a person that provides to
5 students an organized program of study or training that is
6 academic, technical, trade-oriented, or preparatory for gaining
7 employment and for which the person gives academic credit.

8 "Educational institution" includes:

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

11 "Electronic" means relating to technology having
12 electrical, digital, magnetic, wireless, optical,
13 electromagnetic, or similar capabilities.

14 "Employee" means an individual who provides services or
15 labor to an employer in exchange for a salary, wages, or the
16 equivalent, or for an unpaid intern, in exchange for academic
17 credit or occupational experience. "Employee" includes:

- 18 (1) A prospective employee who has:
19 (A) Expressed to the employer an interest in being an
20 employee; or



1 (B) Applied for, or is applying or being recruited
2 for, employment by the employer; and

3 (2) An independent contractor.

4 "Employer" means a person that:

5 (1) Provides a salary, wages, or the equivalent to an
6 employee in exchange for services or labor;

7 (2) Engages the services or labor of an unpaid intern; or

8 (3) Engages the services or labor of an individual in
9 exchange for academic credit or occupational
10 experience.

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

12 "Login information" means a user name and password,
13 password, or other means or credentials of authentication
14 required to access or control:

15 (1) A protected personal online account; or

16 (2) An electronic communications device, which the
17 employee's employer or the student's educational
18 institution has not supplied or paid for in full, that
19 itself provides access to or control over the account.

20 "Login requirement" means a requirement that login
21 information be provided before a protected personal online



1 account or electronic communications device can be accessed or
2 controlled.

3 "Online" means accessible by means of a computer network or
4 the Internet.

5 "Person" means an individual; estate; business or nonprofit
6 entity; public corporation; government or governmental
7 subdivision, agency, or instrumentality; or other legal entity.

8 "Protected personal online account" means any online
9 account maintained by an employee or a student, including social
10 media or electronic mail accounts, that is protected by a login
11 requirement. "Protected personal online account" does not
12 include an account, or the discrete portion of an account, that
13 was:

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

18 (2) Opened at an educational institution's behest, or
19 provided by an educational institution and intended to
20 be used solely or primarily on behalf of or under the
21 direction of the educational institution.



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

2 "Record" means information that is inscribed on a tangible
3 medium or stored in an electronic or other medium and is
4 retrievable in perceivable form.

5 "State" means a state of the United States, the District of
6 Columbia, the United States Virgin Islands, or any territory or
7 insular possession subject to the jurisdiction of the United
8 States.

9 "Student" means an individual who participates in an
10 educational institution's organized program of study or
11 training. "Student" includes:

12 (1) A prospective student who expresses to the institution
13 an interest in being admitted to, applies for
14 admission to, or is being recruited for admission by
15 the educational institution; and

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

18 **§ -3 Protection of employee online accounts. (a)**

19 Subject to the exceptions in subsection (b), an employer shall
20 not:

21 (1) Require or coerce an employee to:



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



1 access to the content of a protected personal
2 online account.

3 (b) Nothing in subsection (a) shall prevent an employer
4 from:

5 (1) Accessing information about an employee that is
6 publicly available;

7 (2) Complying with a federal or state law, court order, or
8 rule of a self-regulatory organization established by
9 federal or state statute, including a self-regulatory
10 organization as defined in section 3(a)(26) of the
11 Securities Exchange Act of 1934, as amended, title 15
12 United States Code section 78c(a)(26);

13 (3) Implementing and enforcing a policy pertaining to the
14 use of an employer-issued electronic communications
15 device or the use of an employee-owned electronic
16 communications device that will be used for business
17 purposes; or

18 (4) Requiring or requesting, based upon specific facts
19 about the employee's protected personal online
20 account, access to the content of, but not the login
21 information for, the account in order to:



- 1 (A) Ensure compliance, or investigate noncompliance,
2 with:
3 (i) Federal or state law; or
4 (ii) An employer prohibition against work-related
5 employee misconduct of which the employee
6 has reasonable notice, which is in a record,
7 and that was not created primarily to gain
8 access to a protected personal online
9 account; or
10 (B) Protect against:
11 (i) A threat to safety;
12 (ii) A threat to the employer's information
13 technology or communications technology
14 systems or to employer property; or
15 (iii) Disclosure of information in which the
16 employer has a proprietary interest or
17 information that the employer has a legal
18 obligation to keep confidential.
19 (c) An employer that accesses employee content for a
20 purpose specified in subsection (b) (4) shall:



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

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

4 (3) Not alter the content unless necessary to achieve the
5 specified purpose.

6 (d) An employer that acquires the login information for an
7 employee's protected personal online account by means of
8 otherwise lawful technology that monitors the employer's network
9 or employer-issued electronic communications devices, for a
10 network security, data confidentiality, or system maintenance
11 purpose:

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

14 (2) Shall make a reasonable effort to keep the login
15 information secure;

16 (3) Unless otherwise provided in paragraph (4), shall
17 dispose of the login information as soon as, as
18 securely as, and to the extent reasonably practicable;
19 and

20 (4) If the employer retains the login information for use
21 in an ongoing investigation of an actual or suspected



1 breach of computer, network, or data security, it
2 shall make a reasonable effort to keep the login
3 information secure and dispose of it as soon as, as
4 securely as, and to the extent reasonably practicable
5 after completing the investigation.

6 (e) Nothing in subsection (a) shall be construed to
7 diminish the authority or obligation of an employer to
8 investigate complaints, allegations, or the occurrence of
9 sexual, racial, or other prohibited harassment under part I of
10 chapter 378.

11 **§ -4 Protection of student online accounts. (a)**

12 Subject to the exceptions in subsection (b), an educational
13 institution shall not:

14 (1) Require or coerce a student to:

15 (A) Disclose the login information for a protected
16 personal online account;

17 (B) Disclose the content of the account, except that
18 an educational institution may request a student
19 to add the educational institution to, or to not
20 remove the educational institution from, the set



1 of persons to which the student grants access to
2 the content;

3 (C) Alter the settings of the account in a manner
4 that makes the login information for or content
5 of the account more accessible to others; or

6 (D) Access the account in the presence of the
7 educational institution in a manner that enables
8 the educational institution to observe the login
9 information for or content of the account; or

10 (2) Take, or threaten to take, adverse action against a
11 student for failure to comply with an educational
12 institution's:

13 (A) Requirement, coercive action, or request that
14 violates paragraph (1); or

15 (B) Request under paragraph (1)(B) to add the
16 educational institution to, or to not remove the
17 educational institution from, the set of persons
18 to which the student grants access to the content
19 of a protected personal online account.

20 (b) Nothing in subsection (a) shall prevent an educational
21 institution from:



- 1 (1) Accessing information about a student that is publicly
2 available;
- 3 (2) Complying with a federal or state law, court order, or
4 rule of a self-regulatory organization established by
5 federal or state statute; or
- 6 (3) Requiring or requesting, based upon specific facts
7 about the student's protected personal online account,
8 access to the content of, but not the login
9 information for, the account in order to:
- 10 (A) Ensure compliance, or investigate noncompliance,
11 with:
- 12 (i) Federal or state law; or
13 (ii) An educational institution prohibition
14 against education-related student misconduct
15 of which the student has reasonable notice,
16 which is in a record, and that was not
17 created primarily to gain access to a
18 protected personal online account; or
- 19 (B) Protect against:
- 20 (i) A threat to safety;



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

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

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

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

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

15 (3) Not alter the content unless necessary to achieve the
16 specified purpose.

17 (d) An educational institution that acquires the login
18 information for a student's protected personal online account by
19 means of otherwise lawful technology that monitors the
20 educational institution's network or educational
21 institution-issued electronic communications devices for a



1 network security, data confidentiality, or system maintenance
2 purpose:

- 3 (1) Shall not use the login information to access or
4 enable another person to access the account;
- 5 (2) Shall make a reasonable effort to keep the login
6 information secure;
- 7 (3) Unless otherwise provided in paragraph (4), shall
8 dispose of the login information as soon as, as
9 securely as, and to the extent reasonably practicable;
10 and
- 11 (4) If the educational institution retains the login
12 information for use in an ongoing investigation of an
13 actual or suspected breach of computer, network, or
14 data security, it shall make a reasonable effort to
15 keep the login information secure and dispose of it as
16 soon as, as securely as, and to the extent reasonably
17 practicable after completing the investigation.

18 § -5 Civil action. (a) The attorney general may bring
19 a civil action in district court against an employer or
20 educational institution for a violation of this chapter. A
21 prevailing attorney general may obtain:



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

5 (b) An employee or student may bring a civil action
6 against the employee's employer or student's educational
7 institution for a violation of this chapter. A prevailing
8 employee or student may obtain:

- 9 (1) Injunctive and other equitable relief;
10 (2) Actual damages; and
11 (3) Costs and reasonable attorney's fees.

12 (c) An action under subsection (a) shall not preclude an
13 action under subsection (b), and an action under subsection (b)
14 shall not preclude an action under subsection (a).

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

17 § -6 **Uniformity of application and construction.** In
18 applying and construing this chapter, consideration shall be
19 given to the need to promote uniformity of the law with respect
20 to its subject matter among states that enact it.



1 § -7 Relation to the Electronic Signatures in Global and
2 National Commerce Act. This chapter modifies, limits, or
3 supersedes the Electronic Signatures in Global and National
4 Commerce Act, title 15 United States Code section 7001 et seq.,
5 but does not modify, limit, or supersede section 101(c) of that
6 Act, title 15 United States Code section 7001(c), or authorize
7 electronic delivery of any of the notices described in section
8 103(b) of that Act, title 15 United States Code section 7003(b).

9 § -8 Relation to other state laws. If any provision in
10 this chapter conflicts with a provision in any other chapter,
11 the provision in this chapter shall control.

12 § -9 Severability. If any provision of this chapter or
13 its application to any person or circumstance is held invalid,
14 the invalidity does not affect other provisions or applications
15 of this chapter that can be given effect without the invalid
16 provision or application, and to this end the provisions of this
17 chapter are severable."

18 SECTION 3. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.

21 SECTION 4. 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. (HD2)

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

