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## A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In response to the COVID-19 pandemic,  
2 applications for mobile phones have been promoted as a means to  
3 track the whereabouts of individuals who may have been exposed  
4 to someone testing positive for the virus, prompting privacy  
5 concerns and anxiety over potential misuse of the location  
6 information. While cellphone users may voluntarily agree to be  
7 tracked, the legislature finds that privacy concerns dictate  
8 against making this requirement a condition of employment.

9           The purpose of this Act is to prohibit an employer from:

10           (1) Requiring an employee to download a mobile application  
11           to the employee's personal communication device that  
12           enables the employee's location to be tracked or their  
13           personal information revealed;

14           (2) Terminating or otherwise discriminating against an  
15           employee for refusing to download a mobile application  
16           to the employee's personal communication device; or



1 (3) Discharging or otherwise discriminating against an  
2 employee for filing a complaint, testifying, or  
3 assisting in any proceeding concerning these unlawful  
4 practices.

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

8 **"PART . MOBILE APPLICATIONS**

9 **§378- Definitions.** As used in this part:

10 "Department" means the department of labor and industrial  
11 relations.

12 "Employee" means an individual who performs a service for  
13 wages or other remuneration under a contract for hire, written  
14 or oral, or expressed or implied. "Employee" includes an  
15 individual employed by the State or a political subdivision of  
16 the State.

17 "Employer" means a person who has one or more employees.

18 "Employer" includes an agent of an employer or of the State or a  
19 political subdivision thereof, but does not include the United  
20 States.



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1 "Personal communication device" means a device allowing for  
2 electric communications, such as a mobile phone or tablet, that  
3 is not owned, or the cost of which is not reimbursed, by the  
4 employer.

5 **§378- Unlawful practices.** It shall be unlawful for any  
6 employer to:

7 (1) Require an employee to download a mobile application  
8 to the employee's personal communication device that  
9 enables the employee's location to be tracked or their  
10 personal information revealed;

11 (2) Terminate or otherwise discriminate against an  
12 employee for refusing to download a mobile application  
13 to the employee's personal communication device that  
14 enables the employee's location to be tracked or their  
15 personal information revealed; or

16 (3) Discharge or otherwise discriminate against an  
17 employee because the employee has filed a complaint,  
18 testified, or assisted in any proceeding concerning  
19 the unlawful practices prohibited under this part.

20 **§378- Exception.** Nothing in this part shall be deemed  
21 to:



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- 1 (1) Repeal or affect any law or ordinance or government
- 2 rule or regulation having the force and effect of law;
- 3 (2) Apply to the United States and any subdivision
- 4 thereof; or
- 5 (3) Conflict with or affect the application of security
- 6 regulations in employment established by the United
- 7 States or the State.

8 **§378- Enforcement jurisdiction; complaint against**  
9 **unlawful practice.** (a) The department shall have jurisdiction  
10 over practices made unlawful by this part. Any employee  
11 claiming to be aggrieved by an unlawful practice may file with  
12 the department a verified complaint in writing which shall state  
13 the name and address of the employer alleged to have committed  
14 the unlawful practice complained of and which shall set forth  
15 the particulars thereof and contain such other information as  
16 may be required by the department. The attorney general, or the  
17 department upon its own initiative, in like manner, may make and  
18 file such a complaint.

19 (b) A complaint may be filed on behalf of a class by the  
20 attorney general or the department, and a complaint so filed may



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1 be investigated, conciliated, and litigated on a class action  
2 basis.

3 (c) No complaint shall be filed after the expiration of  
4 thirty days after the date upon which the alleged unlawful  
5 practice occurred or is discovered to have occurred, whichever  
6 is later."

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

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INTRODUCED BY:



JAN 27 2021



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**Report Title:**

Employment Practices; Mobile Applications; Prohibition; DLIR

**Description:**

Prohibits an employer from: (1) requiring an employee to download a mobile application to the employee's personal communication device that enables the employee's location to be tracked or their personal information revealed; (2) terminating or otherwise discriminating against an employee for refusing to download a mobile application on their personal device; or (3) discharging or discriminating against an employee for filing a complaint concerning these unlawful practices.

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