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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 legislature considers this Act to be of  
2 statewide concern.

3           SECTION 2. The Hawaii Revised Statutes is amended by  
4 adding a new chapter to be appropriately designated and to read  
5 as follows:

6                                   **"CHAPTER**

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

8           § -1 **Short title.** This chapter may be cited as The  
9 Uniform Employee and Student Online Privacy Protection Act.

10          § -2 **Definitions.** As used in this chapter:

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

14           "Educational institution":

15           (1) Means a person that provides students an organized  
16 program of study or training that is academic,



1 technical, trade-oriented, or preparatory for gaining  
2 employment and for which the person gives academic  
3 credit; and

4 (2) Includes:

5 (A) A public or private institution; and

6 (B) An agent or designee of the educational  
7 institution.

8 "Electronic" means relating to technology having  
9 electrical, digital, magnetic, wireless, optical,  
10 electromagnetic, or similar capabilities.

11 "Employee":

12 (1) Means an individual who provides services or labor to  
13 an employer in exchange for salary, wages, or the  
14 equivalent or, for an unpaid intern, academic credit  
15 or occupational experience; and

16 (2) Includes:

17 (A) A prospective employee who has:

18 (i) Expressed to the employer an interest in  
19 being an employee; or



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

4                   (B) An independent contractor.

5                   "Employer":

6                   (1) Means a person that provides salary, wages, or the  
7                   equivalent to an employee in exchange for services or  
8                   labor or engages the services or labor of an unpaid  
9                   intern; and

10                  (2) Includes an agent or designee of the employer.

11                  >Login information" means a username and password,  
12 password, or other means or credentials of authentication  
13 required to access or control:

14                  (1) A protected personal online account; or

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

19                  >Login requirement" means a requirement that login  
20 information shall be provided before a protected personal online  
21 account or electronic device can be accessed or controlled.



1 "Online" means accessible by means of a computer network or  
2 the internet.

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

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

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

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

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



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

4 "Specifically identified content" means data or information  
5 stored in a protected personal online account that is identified  
6 with sufficient particularity to distinguish the discrete  
7 individual pieces of content being sought from a substantial  
8 percentage of other data or information stored in the account  
9 with which it may share similar characteristics. The  
10 identification may be based on identification or verification by  
11 an individual creator, poster, sender, viewer or recipient of  
12 characteristics of that content that in the aggregate allow the  
13 employee or student requested to provide access to that content  
14 to distinguish that content with reasonable certainty from any  
15 other data or information stored in the account with which it  
16 may share similar characteristics.

17 "State" means a state of the United States, the District of  
18 Columbia, the United States Virgin Islands, or any territory or  
19 insular possession subject to the jurisdiction of the United  
20 States.



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 institution  
5 an interest in being admitted to, applies for  
6 admission to, or is being recruited for admission by,  
7 the educational institution; and
- 8 (2) A parent or legal guardian of a student under the age  
9 of majority.

10 **§ -3 Protection of employee online account. (a)**

11 Subject to the exceptions in subsection (b), an employer shall  
12 not:

- 13 (1) Require or coerce an employee to:
  - 14 (A) Disclose the login information for a protected  
15 personal online account;
  - 16 (B) Disclose the content of the account, except that  
17 without coercion and pursuant to a clear  
18 statement that acceptance is voluntary and not  
19 required, an employer may request an employee to  
20 add the employer to, or to not remove the



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1            employer from, the set of persons to which the  
2            employee grants access to 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            employer in a manner that enables the employer to  
8            observe the login information for or content of  
9            the account or turn over an unlocked personal  
10           technological device for purposes of gaining  
11           access to a protected personal online account; or

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

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

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



1 (b) Nothing in subsection (a) shall prevent an employer  
2 from:

3 (1) Accessing information about an employee that is  
4 publicly available;

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

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

16 (4) Without requesting or requiring an employee to provide  
17 login information for or other means of authentication  
18 that provides access to the employee's protected  
19 personal online account, requesting or requiring an  
20 employee to share specifically identified content for  
21 the purpose of:





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- 1 (A) Enabling an employer to comply with its own legal
- 2 and regulatory obligations;
- 3 (B) Investigating an allegation, based on specific
- 4 facts regarding specifically identified content,
- 5 of:
- 6 (i) Noncompliance with an employer prohibition
- 7 against work-related employee misconduct of
- 8 which the employee has reasonable notice,
- 9 which is in a record, and that was not
- 10 created primarily to gain access to a
- 11 protected personal online account; or
- 12 (ii) The disclosure of information in which the
- 13 employer has a proprietary interest or
- 14 information the employer has a legal
- 15 obligation to keep confidential; and
- 16 (C) Investigating threats to safety, including:
- 17 (i) Unlawful harassment or threats of violence
- 18 in the workplace;
- 19 (ii) Threats to employer information technology
- 20 or communications technology systems; or
- 21 (iii) Threats to employer property.



1 (c) An employer with whom content is shared by an employee  
2 for a purpose specified in subsection (b)(4) shall:

- 3 (1) Not access or view unshared content;
- 4 (2) Use the shared content only for the specified purpose;
- 5 and
- 6 (3) Not alter the shared content.

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

- 12 (1) Is not liable for having the information;
- 13 (2) Shall not use the login information to access or  
14 enable another person to access the account;
- 15 (3) Shall make reasonable effort to keep the login  
16 information secure;
- 17 (4) Unless otherwise provided in paragraph (5), shall  
18 dispose of the login information as soon as, as  
19 securely as, and to the extent reasonably, practicable  
20 and



1 (5) Shall delete the login information as soon as is  
2 reasonably practicable; provided that if the employer  
3 is retaining the login information for use in:

4 (A) An ongoing investigation of an actual or  
5 suspected breach of computer, network, or data  
6 security; or

7 (B) A specific criminal complaint or civil action or  
8 the investigation thereof,

9 The employer shall make a reasonable effort to keep  
10 the login information secure and dispose of it as soon  
11 as, as securely as, and to the extent reasonably  
12 practicable after completing the investigation,  
13 complaint, or action.

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                           without coercion and pursuant to a clear
  - 6                           statement that acceptance is voluntary and not
  - 7                           required, an educational institution may request
  - 8                           a student to add the educational institution to,
  - 9                           or to not remove the educational institution
  - 10                          from, the set of persons to which the student
  - 11                          grants access to the content;
  - 12                   (C) Alter the settings of the account in a manner
  - 13                          that makes the login information for or content
  - 14                          of the account more accessible to others; or
  - 15                   (D) Access the account in the presence of the
  - 16                          educational institution in a manner that enables
  - 17                          the educational institution to observe the login
  - 18                          information for or content of the account, or
  - 19                          turn over an unlocked personal technological
  - 20                          device for purposes of gaining access to a
  - 21                          personal online account; or



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

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

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

11          (b) Nothing in subsection (a) shall prevent an educational  
12 institution from:

13          (1) Accessing information about a student that is publicly  
14          available;

15          (2) Complying with a federal or state law, court order, or  
16          rule of a self-regulatory organization established by  
17          federal or state statute; or

18          (3) Without requesting or requiring a student to provide  
19          login information for or other means of authentication  
20          that provides access to the student's protected  
21          personal online account, requesting or requiring a



1 student to share specifically identified content for  
2 the purpose of:

3 (A) Enabling an educational institution to comply  
4 with its own legal and regulatory obligations;

5 (B) Investigating an allegation, based on specific  
6 facts regarding specifically identified content,  
7 of:

8 (i) Noncompliance with an educational  
9 institution's prohibitions against  
10 education-related student misconduct of  
11 which the student has reasonable notice,  
12 which is in a record, and that was not  
13 created primarily to gain access to a  
14 protected personal online account; or

15 (ii) The disclosure of any interest or  
16 information the educational institution has  
17 a legal obligation to keep confidential; and

18 (C) Investigating threats to safety including:

19 (i) Unlawful harassment or threats of violence  
20 at the educational institution;



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1                   (ii) Threats to the educational institution's  
2                   information technology or communications  
3                   technology systems; or

4                   (iii) Threats to the educational institution's  
5                   property.

6           (c) An educational institution with whom content is shared  
7 by a student for a purpose specified in subsection (b) (3) shall:

- 8           (1) Not access or view unshared content;
- 9           (2) Use the shared content only for the specified purpose;
- 10           and
- 11           (3) Not alter the shared content.

12           (d) An educational institution that acquires the login  
13 information for a student's protected personal online account by  
14 means of otherwise lawful technology that monitors the  
15 educational institution's network, or educational institution-  
16 provided devices, for a network security, data confidentiality,  
17 or system maintenance purpose:

- 18           (1) Is not liable for having the information;
- 19           (2) Shall not use the login information to access or  
20           enable another person to access the account;



- 1           (3) Shall make reasonable effort to keep the login  
2           information secure;
  - 3           (4) Shall not share the login information with any other  
4           person or entity; and
  - 5           (5) Shall dispose of the login information as soon as, as  
6           securely as, and to the extent reasonably practicable;  
7           provided that if the educational institution is  
8           retaining the login information for use in:
    - 9           (A) An ongoing investigation of an actual or  
10           suspected breach of computer, network, or data  
11           security; or
    - 12           (B) A specific criminal complaint or civil action, or  
13           the investigation thereof;
- 14           The educational institution shall make a reasonable  
15           effort to keep the login information secure and  
16           dispose of it as soon as, as securely as, and to the  
17           extent reasonably practicable after completing the  
18           investigation, complaint, or action.

19           § -5 **Civil action.** (a) The attorney general may bring  
20 a civil action in district court against an employer or





1 educational institution for a violation of this chapter. A  
2 prevailing attorney general may obtain:

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

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

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

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

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

19 **§ -6 Relation to Electronic Signatures in Global and**  
20 **National Commerce Act.** This chapter modifies, limits, or  
21 supersedes the Electronic Signatures in Global and National



1 Commerce Act, title 15 United States Code section 7001 et seq.,  
2 but does not modify, limit, or supersede section 101(c) of that  
3 Act, title 15 United States Code section 7001(c), or authorize  
4 electronic delivery of any of the notices described in section  
5 103(b) of that Act, title 15 United States Code section 7003(b).

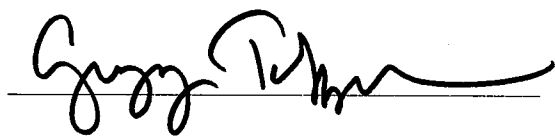
6 § -7 **Relation to other state laws.** If any provision in  
7 this chapter conflicts with a provision in any other chapter,  
8 the provision in this chapter shall control.

9 § -8 **Severability.** If any provision of this chapter or  
10 its application to any person or circumstance is held invalid,  
11 the invalidity does not affect other provisions or applications  
12 of this chapter which can be given effect without the invalid  
13 provision or application, and to this end the provisions of this  
14 chapter are severable."

15 SECTION 3. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

18 SECTION 4. This Act shall take effect upon its approval.

19

INTRODUCED BY:   
JAN 21 2021

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**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.

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

