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# A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

**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   **INTERNET PRIVACY PROTECTION ACT**

6           **§ -1 Title.** This chapter shall be known as the  
7 "Internet Privacy Protection Act".

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

9           "Access information" means user name, password, login  
10 information, or other security information that protects access  
11 to a personal internet account.

12           "Educational institution" means a public or private  
13 educational institution or a separate school or department of a  
14 public or private educational institution or school system,  
15 including a preschool; primary or secondary school;  
16 kindergarten; private trade, professional, vocational, or  
17 technical school; college or university; public or private  
18 educational testing service or administrator; or an agent of an



1 educational institution. "Educational institution" shall be  
2 construed broadly to include public and private institutions of  
3 higher education to the greatest extent consistent with  
4 constitutional limitations.

5 "Employer" means any individual, partnership, corporation,  
6 or association, including the State or any of its political  
7 subdivisions, employing or seeking to employ, any person for  
8 hire.

9 "Personal internet account" means an account created via a  
10 bounded system established by an internet-based service that  
11 requires a user to input or store access information via an  
12 electronic device to view, create, utilize, or edit the user's  
13 account information, profile, display, communications, or stored  
14 data.

15 **§ -3 Internet privacy; prohibited actions.** (a) An  
16 employer is prohibited from:

- 17 (1) Requesting an employee or an applicant for employment  
18 to grant access to, allow observation of, or disclose  
19 information that allows access to or observation of  
20 the employee's or applicant's personal internet  
21 account; and



1           (2) Discharging, disciplining, failing to hire, or  
2           otherwise penalizing an employee or applicant for  
3           employment for failure to grant access to, allow  
4           observation of, or disclose information that allows  
5           access to or observation of the employee's or  
6           applicant's personal internet account.

7           (b) An educational institution is prohibited from:

8           (1) Requesting a student or prospective student to grant  
9           access to, allow observation of, or disclose  
10          information that allows access to or observation of  
11          the student's or prospective student's personal  
12          internet account; and

13          (2) Expelling, disciplining, failing to admit, or  
14          otherwise penalizing a student or prospective student  
15          for failure to grant access to, allow observation of,  
16          or disclose information that allows access to or  
17          observation of the student's or prospective student's  
18          personal internet account.

19          § -4 Internet privacy; permissible actions. (a) An  
20          employer may:



- 1           (1) Request or require an employee to disclose access  
2           information to allow the employer to gain access to or  
3           operate:
  - 4           (A) An electronic communications device paid for in  
5           whole or in part by the employer; or
  - 6           (B) An account or service provided by the employer,  
7           obtained by virtue of the employee's employment  
8           relationship with the employer, or used for the  
9           employer's business purposes;
- 10          (2) Discipline or discharge an employee for transferring  
11          the employer's proprietary or confidential information  
12          or financial data to an employee's personal internet  
13          account without the employer's authorization;
- 14          (3) Conduct an investigation or require an employee to  
15          cooperate in an investigation if:
  - 16          (A) There is specific information about activity on  
17          the employee's personal internet account, for the  
18          purpose of ensuring compliance with applicable  
19          laws, regulatory requirements, or prohibitions  
20          against work-related employee misconduct; or
  - 21          (B) The employer has specific information about an  
22          unauthorized transfer of the employer's



1                   proprietary information, confidential  
2                   information, or financial data to an employee's  
3                   personal internet account;

4           (4) Restrict or prohibit an employee's access to certain  
5           websites while using an electronic communications  
6           device paid for in whole or in part by the employer or  
7           while using an employer's network or resources, in  
8           accordance with state and federal law; and

9           (5) Monitor, review, or access electronic data stored on  
10           an electronic communications device paid for in whole  
11           or in part by the employer, or traveling through or  
12           stored on an employer's network or resources, in  
13           accordance with state and federal law;

14 provided that this subsection shall not prohibit or restrict an  
15 employer from complying with a duty to screen employees or  
16 applicants prior to hiring or to monitor or retain employee  
17 communications that is established under federal law or by a  
18 self-regulatory organization, as defined in section 3(a)(26) of  
19 the federal Securities and Exchange Act of 1934, 15 United  
20 States Code 78c(a)(26); and provided further that this  
21 subsection shall not prohibit or restrict an employer from  
22 viewing, accessing, or utilizing information about an employee



1 or applicant that can be obtained without any required access  
2 information or that is available in the public domain.

3 (b) An educational institution may request or require a  
4 student to disclose access information to the educational  
5 institution to gain access to or operate:

6 (1) An electronic communications device paid for in whole  
7 or in part by the educational institution;

8 (2) An account or service provided by the educational  
9 institution that is either obtained by virtue of the  
10 student's admission to the educational institution or  
11 used by the student for educational purposes;

12 provided that this subsection shall not prohibit or restrict an  
13 educational institution from viewing, accessing, or utilizing  
14 information about a student or prospective student that can be  
15 obtained without any required access information or that is  
16 available in the public domain.

17 **§ -5 Liability.** (a) Nothing in this chapter shall be  
18 construed to create a duty for an employer or educational  
19 institution to search or monitor the activity of a personal  
20 internet account.

21 (b) An employer or educational institution shall not be  
22 liable under this chapter for failure to request or require that



1 an employee, a student, an applicant for employment, or a  
2 prospective student grant access to, allow observation of, or  
3 disclose information that allows access to or observation of the  
4 employee's, student's, applicant for employment's, or  
5 prospective student's personal internet account.

6       **§ -6 Penalties; enforcement.** (a) An employer or  
7 educational institution who violates this chapter shall be  
8 guilty of a misdemeanor punishable by a fine not exceeding  
9 \$1,000.

10       (b) An individual who is the subject of a violation of  
11 this chapter may bring a civil action to enjoin the violation  
12 and may recover not more than \$1,000 in damages plus reasonable  
13 attorney fees and court costs; provided that no later than sixty  
14 days before filing a civil action for damages or adding a claim  
15 for damages to an action seeking injunctive relief, the  
16 individual shall make a written demand of the alleged violator  
17 for not more than \$1,000 in damages. The written demand shall  
18 include reasonable documentation of the alleged violation. The  
19 written demand and documentation shall be either served in the  
20 manner provided by part III of chapter 634 or mailed by  
21 certified mail with sufficient postage affixed and addressed to



1 the alleged violator at the alleged violator's residence,  
2 principal office, or place of business.



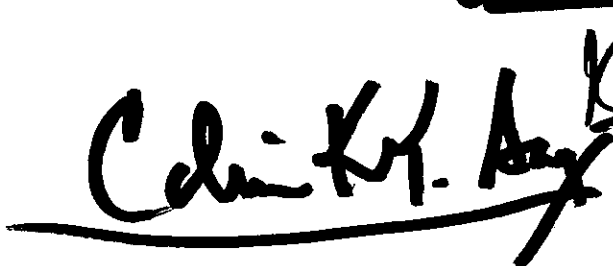
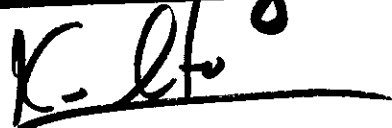
3 (c) An action under this section may be brought in the  
4 district court for the county where the alleged violation  
5 occurred or for the county where the person against whom the  
6 civil complaint is filed resides or has the person's principal  
7 place of business.

8 (d) It shall be an affirmative defense to an action under  
9 this chapter that the employer or educational institution acted  
10 to comply with requirements of a federal or state law."

11 SECTION 2. This Act shall take effect upon its approval.

12

INTRODUCED BY:

  
  
 Linda Chigeme  
  
 Colin K. Gray  


JAN 22 2013





# H.B. NO. 1023

**Report Title:**

Internet Privacy Protection Act

**Description:**

Prohibits educational institutions and employers from requesting a student, prospective student employee, or prospective employee to grant access to, allow observation of, or disclose information that allows access to or observation of personal internet accounts. Provides penalties.

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

