HOUSE OF REPRESENTATIVES
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

H.B. NO. 6
H.D. 3
S.D. 1

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

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:

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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.

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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 employer-issued electronic communications

3   device or to 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;

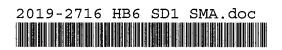1   (ii)   A threat to employer information technology

2   or communications technology systems or to

3   employer property; or

4   (iii) Disclosure of information in which the

5   employer has a proprietary interest or

6   information 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:

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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 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 which can be given effect without the invalid

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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. (SD1)

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