

1 sensitive financial data to be encrypted would help reduce the
2 usefulness of stolen or lost data. Prohibiting companies from
3 sharing or selling data without express consumer consent allows
4 consumers the choice to restrict the proliferation of their
5 personal information, reducing the chances for identity theft.
6 This chapter will effectively prevent identity thieves from
7 continuing to secure credit in a victim's name.

8 **§ -2 Definitions.** When used in this chapter, unless the
9 context otherwise requires:

10 "Credit report" means any written, oral, or other
11 communication of any credit information by a credit reporting
12 agency, as defined in the federal Fair Credit Reporting Act,
13 which operates or maintains a database of consumer credit
14 information bearing on a consumer's credit worthiness, credit
15 standing, or credit capacity.

16 "Credit reporting agency" means any person who, for
17 monetary fees, dues, or on a cooperative nonprofit basis,
18 regularly engages in whole or in part in the practice of
19 assembling or evaluating consumer credit information or other
20 information on consumers for the purpose of furnishing consumer
21 credit reports to third parties, but does not include any



1 governmental agency whose records are maintained primarily for
2 law enforcement or licensing purposes.

3 "Customer" means any person that is a resident of or is
4 domiciled in this state and which has transacted or is
5 transacting business with or has used or is using the services
6 of a financial institution, or for which a financial institution
7 has acted as a fiduciary with respect to trust property.

8 "Customer information" means either of the following:

9 Any original or any copy of any records held by a financial
10 institution pertaining to a customer's relationship with the
11 financial institution.

12 Any information derived from a record described in this
13 definition.

14 "Federal institution regulatory agency" means any of the
15 following: the federal deposit insurance corporation, the
16 federal savings and loan insurance corporation, the national
17 credit union administration, the federal reserve board, the
18 United States comptroller of the currency, the federal home loan
19 bank board, and the department of commerce and consumer affairs.

20 "Governmental agency" means any agency or department of
21 this state, or any authorized officer, employee, or agent of an
22 agency or department of this state.



1 "Identity theft" means the unauthorized use of another
2 person's identifying information to obtain credit, goods,
3 services, money, or property.

4 "Law enforcement agency" means any agency or department of
5 this state or of any political subdivision of this state
6 authorized by law to enforce the law and to conduct or engage in
7 investigations or prosecutions for violations of law.

8 "Security freeze" means a notice placed in a credit report,
9 at the request of the consumer who is a victim of identity
10 theft.

11 **PART I - CONSUMER CREDIT REPORTING AGENCIES**

12 **§ -3 Security freeze by credit reporting agency.** (a) A
13 consumer who has been the victim of identity theft may place a
14 security freeze on the consumer's credit report by making a
15 request in writing by certified mail to a credit reporting
16 agency with a valid copy of a police report, investigative
17 report, or complaint the consumer has filed with a law
18 enforcement agency about the unlawful use of the consumer's
19 personal information by another person. A credit reporting
20 agency shall not charge a fee for placing or removing a security
21 freeze on a credit report. A security freeze shall prohibit the
22 credit reporting agency from releasing the consumer's credit



1 report or any information from it without the express
2 authorization of the consumer. When a security freeze is in
3 place, information from a consumer's credit report shall not be
4 released to a third party without prior express authorization
5 from the consumer. This subsection does not prevent a credit
6 reporting agency from advising a third party that a security
7 freeze is in effect with respect to the consumer's credit
8 report.

9 (b) A credit reporting agency shall place a security
10 freeze on a consumer's credit report no later than five business
11 days after receiving a written request from the consumer.

12 (c) The credit reporting agency shall send a written
13 confirmation of the security freeze to the consumer within ten
14 business days of placing the security freeze and shall provide
15 the consumer with a unique personal identification number or
16 password, other than the consumer's social security number, to
17 be used by the consumer when providing authorization for the
18 release of the consumer's credit to a specific party or parties,
19 or for a specific period of time.

20 (d) If the consumer wishes to allow access to the
21 consumer's credit report by a specific party or parties, or for
22 a specific period of time while the freeze is in place, the



1 consumer shall contact the credit reporting agency, request that
2 the freeze be temporarily lifted, and provide the following:

- 3 (1) Clear and proper identification;
- 4 (2) The unique personal identification number or password
5 provided by the credit reporting agency; and
- 6 (3) Clear and proper information regarding the third party
7 or parties who shall be permitted access, or the
8 specific time period during which the report shall be
9 available to users of the credit report.

10 (e) A credit reporting agency may develop procedures
11 involving the use of telephone, facsimile, the internet, or
12 other electronic media to receive and process a request from a
13 consumer to temporarily lift a freeze on a credit report in an
14 expedited manner.

15 (f) A credit reporting agency that receives a request from
16 a consumer to temporarily lift a freeze on a credit report shall
17 comply with the request no later than three business days after
18 receiving the request.

19 (g) A credit reporting agency shall remove or temporarily
20 lift a freeze placed on a consumer's credit report only in the
21 following cases:

- 22 (1) Upon consumer request; or



1 (2) When the consumer's credit report was frozen due to a
2 material misrepresentation of fact by the consumer.
3 If a credit reporting agency intends to remove a freeze upon a
4 consumer's credit report pursuant to this subsection, the credit
5 reporting agency shall notify the consumer in writing prior to
6 removing the freeze.

7 (h) If a third party requests access to a credit report
8 for which a security freeze is in effect and this request is in
9 connection with an application for credit or any other use and
10 the consumer does not allow the consumer's credit report to be
11 accessed by that specific party or for that period of time, the
12 third party may treat the application as incomplete.

13 (i) If a consumer requests a security freeze, the credit
14 reporting agency shall disclose to the consumer the process of
15 placing and temporarily lifting a security freeze and the
16 process for allowing access to information from the consumer's
17 credit report by a specific party or parties, or for a specific
18 period of time while the security freeze is in place.

19 (j) A security freeze shall remain in place until the
20 consumer requests that the security freeze be removed. A credit
21 reporting agency shall remove a security freeze within three



1 business days of receiving a request for removal from the
2 consumer who provides both of the following:

- 3 (1) Clear and proper identification; and
- 4 (2) The unique personal identification number or password
5 provided by the credit reporting agency pursuant to
6 subsection (c).

7 (k) A credit reporting agency shall require clear and
8 proper identification of the person making a request to place or
9 remove a security freeze.

10 (1) This section, including the security freeze, shall not
11 apply to the use of a consumer report by the following:

- 12 (1) A person, or the person's subsidiary, affiliate,
13 agent, or assignee with which the consumer has or,
14 prior to assignment, had an account, contract, or
15 debtor-creditor relationship for the purposes of
16 reviewing the account or collecting the financial
17 obligation owing for the account, contract, or debt,
18 or extending credit to a consumer with a prior or
19 existing account, contract, or debtor-creditor
20 relationship. For purposes of this paragraph,
21 "reviewing the account" includes activities related to



- 1 account maintenance, monitoring, credit line
2 increases, and account upgrades and enhancements;
- 3 (2) A subsidiary, affiliate, agent, assignee, or
4 prospective assignee of a person to whom access has
5 been granted for purposes of facilitating the
6 extension of credit or other permissible use;
- 7 (3) Any person acting pursuant to a court order, warrant,
8 or subpoena;
- 9 (4) A child support enforcement agency when investigating
10 a child support case pursuant to Title IV-D of the
11 Social Security Act (42 U.S.C. 651-679) and chapter
12 576D;
- 13 (5) The department of the attorney general or county
14 prosecuting attorneys or their agents or assignees
15 acting to investigate medicaid fraud;
- 16 (6) The department of taxation, county taxing authorities,
17 or any of their agents or assignees, acting to
18 investigate or collect delinquent taxes or
19 assessments, including interest and penalties, unpaid
20 court orders, or to fulfill any of their other
21 statutory or charter responsibilities;



1 (7) The use of credit information for the purposes of
2 prescreening as provided by the federal Fair Credit
3 Reporting Act (15 U.S.C. 1681-1681u);

4 (8) Any person for the sole purpose of providing a credit
5 file monitoring subscription service to which the
6 consumer has subscribed; and

7 (9) A credit reporting agency for the sole purpose of
8 providing a consumer with a copy of the consumer's
9 credit report upon the consumer's request.

10 § -4 **Credit reporting agency duties if security freeze**
11 **in place.** If a security freeze is in place, a credit reporting
12 agency shall not change any of the following official
13 information in a credit report without sending a written
14 confirmation of the change to the consumer within thirty days of
15 the change being posted to the consumer's file: name, date of
16 birth, social security number, and address. Written
17 confirmation is not required for technical modifications of a
18 consumer's official information, including name and street
19 abbreviations, complete spellings, or transposition of numbers
20 or letters. In the case of an address change, the written
21 confirmation shall be sent to both the new address and the
22 former address.



1 § -5 Persons not required to place security freeze. The
2 requirement under this chapter to place a security freeze on a
3 credit report does not apply to:

4 (1) A check services or fraud prevention services company
5 that reports on incidents of fraud or issues
6 authorizations for the purpose of approving or
7 processing negotiable instruments, electronic fund
8 transfers, or similar methods of payment;

9 (2) A deposit account information service company that
10 issues reports regarding account closures due to
11 fraud, substantial overdrafts, automated teller
12 machine abuse, or similar negative information
13 regarding a consumer to inquiring banks or other
14 financial institutions for use only in reviewing a
15 consumer request for a deposit account at the
16 inquiring bank or financial institution; and

17 (3) A credit reporting agency that:
18 (A) Acts only to resell credit information by
19 assembling and merging information contained in a
20 database of one or more credit reporting
21 agencies; and



1 (B) Does not maintain a permanent database of credit
2 information from which new credit reports are
3 produced.

4 PART II - DISCLOSURE OF CUSTOMER INFORMATION

5 § -6 Duty of confidentiality. (a) A financial
6 institution may not disclose customer information to any person,
7 governmental agency, or law enforcement agency unless the
8 disclosure is made in accordance with any of the following:

- 9 (1) Pursuant to consent granted by the customer in
10 accordance with this chapter;
- 11 (2) To a person other than a governmental agency or
12 law enforcement agency pursuant to a valid legal
13 process;
- 14 (3) To a governmental agency or law enforcement
15 agency pursuant to valid legal process in
16 accordance with this chapter; or
- 17 (4) For the purpose of reporting a suspected
18 violation of the law in accordance with this
19 chapter.

20 § -7 Consent. (a) No consent or waiver shall be
21 required as a condition of doing business with any financial
22 institution, and any consent or waiver obtained from a customer



1 as a condition of doing business with a financial institution
2 shall not be deemed a consent of the customer for purposes of
3 this chapter.

4 (b) A valid consent must be in writing and signed by the
5 customer. In consenting to disclosure of customer information,
6 a customer may specify any of the following:

- 7 (1) The time during which such consent will operate;
8 (2) The customer information to be disclosed; and
9 (3) The persons, governmental agencies, or law
10 enforcement agencies to which disclosure may be
11 made.

12 § -8 **Government access.** (a) A governmental agency or
13 law enforcement agency may obtain customer information from a
14 financial institution pursuant to either of the following:

- 15 (1) The consent of the customer, in accordance with
16 this chapter; or
17 (2) Valid legal process, in accordance with this
18 section.

19 (b) A governmental agency or law enforcement agency may
20 obtain customer information from a financial institution
21 pursuant to a judicial or administrative subpoena duces tecum
22 served on the financial institution, if there is no reason to



1 believe the customer information sought is relevant to a proper
2 law enforcement objective or is otherwise authorized by law.

3 (c) A governmental agency or law enforcement agency may
4 obtain customer information from a financial institution
5 pursuant to a search warrant if it obtains the search warrant
6 pursuant to the rules of criminal procedure of this state.
7 Examination of the customer information may occur as soon as it
8 is reasonably practicable after the warrant is served on the
9 financial institution.

10 § -9 Suspicion of unlawful conduct. (a) Nothing
11 in this chapter precludes a financial institution from
12 initiating contact with, and thereafter communicating with and
13 disclosing customer information to, a law enforcement agency
14 when the financial institution reasonably believes that the
15 customer about whom such information pertains:

16 (1) Is engaged in unlawful activity; or,

17 (2) Is defrauding the financial institution.

18 (b) Conviction of the customer or admission by the
19 customer shall be conclusive of the reasonableness of the
20 disclosure for purposes of this section.



1 (c) The burden is on the financial institution to show
2 that at the time the disclosure was made, the disclosure was
3 reasonable for the purposes of this section.

4 § -10 **Cost reimbursement.** Any governmental agency, law
5 enforcement agency, or person requiring or requesting access to
6 customer information shall pay to the financial institution that
7 assembles or provides the customer information a fee for
8 reimbursement of reasonable necessary costs which have been
9 directly incurred by the financial institution. A financial
10 institution must deliver the customer information as soon as
11 reasonably possible notwithstanding any dispute concerning the
12 amount of reimbursement due under this section. A separate
13 action may be maintained by the financial institution against
14 the governmental agency, law enforcement agency, or person
15 requiring or requesting access for recovery of reasonable
16 reimbursement. The financial institution may not charge the
17 legislative auditor for customer information requested when
18 performing an audit; however, the financial institution may
19 charge the entity being audited by the legislative auditor for
20 the information required.

21 § -11 **Joint marketing agreements - consent.** A
22 financial institution must have a customer's consent before the



1 financial institution may disclose the customer's information to
2 a nonaffiliated third party under a joint marketing agreement as
3 provided under section 502(b)(2) of the federal Financial
4 Services Modernization Act of 1999.

5 § -12 **Exemptions.** This part does not apply to any of
6 the following:

7 (a) The disclosure of necessary customer information in
8 the preparation, examination, handling, or maintenance of any
9 customer information by any officer, employee, or agent of a
10 financial institution having custody of such information or in
11 the examination of such necessary information by an accountant
12 engaged by the financial institution to perform an audit.

13 (b) The disclosure of necessary customer information in
14 the examination of any customer information by or the furnishing
15 of customer information to any officer, employee, or agent of a
16 financial institution regulatory agency solely for use in the
17 exercise of that person's duties.

18 (c) The publication of data derived from customer
19 information if the data cannot be identified to any particular
20 customer or account.

21 (d) Any acts required of the financial institution by the
22 Internal Revenue Code.



1 (e) Disclosures permitted under the Uniform Commercial
2 Code concerning the dishonor of any negotiable instrument.

3 (f) The exchange in the regular course of business of
4 necessary customer credit information between a financial
5 institution and other financial institutions or commercial
6 entities, directly or indirectly through a customer reporting
7 agency.

8 (g) The disclosure of customer information in the
9 examination, handling, or maintenance of any customer
10 information by any governmental agency or law enforcement agency
11 for purposes of verifying information necessary in the licensing
12 process, provided prior consent is obtained from the licensee
13 and customer.

14 (h) The disclosure of customer information to a law
15 enforcement agency or governmental agency pursuant to a search
16 warrant or subpoena duces tecum issued in accordance with
17 applicable statutes or court rules.

18 **PART III - PROTECTION OF PERSONAL AND CUSTOMER INFORMATION**

19 **§ -13 Protection of personal and customer information.**

20 A person or business that acquires, owns, or licenses personal
21 or customer information about a Hawaii resident shall implement
22 and maintain reasonable security procedures and practices



1 appropriate to the nature of the information to protect the
2 personal and customer information from unauthorized access,
3 destruction, use, modification, or disclosure, including, but
4 not limited to encryption of personal and customer information
5 stored electronically or on magnetic media.

6 **PART IV - NOTICE; DISCLOSURE OF INFORMATION**

7 **§ -14 Notice.** (a) Any person or business that
8 acquires, owns or licenses computerized data that includes
9 personal or customer information shall disclose any breach of
10 the security of the system following discovery or notification
11 of the breach of the security of the system to any resident of
12 Hawaii whose unencrypted personal information was, or is
13 reasonably believed to have been, acquired by an unauthorized
14 person.

15 (b) The disclosure shall be made in the most expedient
16 time and manner possible and without unreasonable delay,
17 consistent with the legitimate needs of law enforcement, as
18 provided in subsection (c) of this section, or any measures
19 necessary to determine the scope of the breach and restore the
20 reasonable integrity of the data system. Any person or business
21 that maintains computerized data that includes personal
22 information that the person or business does not own shall



1 notify the owner or licensee of the information of any breach of
2 the security of the system immediately following discovery if
3 the personal information was, or is reasonably believed to have
4 been, acquired by an unauthorized person.

5 (c) The notification required by this section may be
6 delayed if a law enforcement agency determines that the
7 notification will impede a criminal investigation. The
8 notification required by this section shall be made after the
9 law enforcement agency determines that it will not compromise
10 the investigation.

11 (d) Notification under this section is not required if
12 after a reasonable investigation the person or business
13 determines that there is no reasonable likelihood of harm to
14 customers.

15 (e) For purposes of this section, notice may be provided
16 by one of the following methods:

- 17 (1) Written notice;
- 18 (2) Electronic mail notice, if the notice provided is
19 consistent with the provisions regarding
20 electronic records and signatures set forth in 15
21 U.S.C. § 7001, as it existed on January 1, 2005;
22 or



- 1 (3) Substitute notice, if the person or business
2 demonstrates that:
- 3 (i) The cost of providing notice would exceed
4 two hundred fifty thousand dollars;
- 5 (ii) The affected class of persons to be notified
6 exceeds five hundred thousand; or
- 7 (iii) The person or business does not have
8 sufficient contact information.

9 (f) Substitute notice shall consist of all of the
10 following:

- 11 (1) Electronic mail notice when the person or
12 business has an electronic mail address for the
13 subject persons;
- 14 (2) Conspicuous posting of the notice on the website
15 of the person or business, if the person or
16 business maintains a website; and
- 17 (3) Notification by statewide media.

18 (g) Notwithstanding subsection (e) of this section, a
19 person or business that maintains its own notification
20 procedures as part of an information security policy for the
21 treatment of personal information and is otherwise consistent
22 with the timing requirements of this section, shall be deemed to



1 be in compliance with the notification requirements of this
2 section if the person or business notifies affected persons in
3 accordance with its policies in the event of a breach of the
4 security of the system.

5 **§ -15 Exemptions.** (a) The provisions of this part
6 do not apply to a person or business that is regulated by a
7 state or federal law that provides greater protection to
8 personal information and at least as thorough disclosure
9 requirements for breaches of the security of personal
10 information than that provided by this part.

11 (b) Compliance with the state or federal law shall be
12 deemed compliance with this part with regard to the subjects
13 covered by this part.

14 (c) This section does not relieve a person or business
15 from a duty to comply with any other requirements of other state
16 and federal law regarding the protection and privacy of personal
17 information.

18 **§ -16 Waiver.** Any waiver of a provision of this
19 subchapter is contrary to public policy, void, and
20 unenforceable.

21 **§ -17 Violation; penalties.** Any person who violates
22 any provision of this chapter shall be deemed to have engaged in



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1 an unfair or deceptive act or practice in the conduct of trade
2 or commerce within the meaning of section 480-2."

3 SECTION 2. If any provision of this Act, or the
4 application thereof to any person or circumstance is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act, which can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 3. This Act shall take effect on October 1, 2006.

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12

INTRODUCED BY: *Barbara Marumoto*

JAN 11 2006



HB 1803

Report Title:

Crime; identity theft

Description:

Implements measures to assist in the prevention of identity theft.

