

1 when personal information may be compromised, and (4) prohibit
2 companies from sharing or selling data without consumer consent.
3 This security freeze will prohibit a credit reporting agency
4 from releasing any information to unauthorized parties without
5 the consumer's expressed consent and provide consumers more
6 control over who has access to their credit report. Requiring
7 sensitive financial data to be encrypted and protected would
8 help reduce the incidence of data loss and the usefulness of
9 stolen or lost data. Prohibiting companies from sharing or
10 selling data without express consumer consent allows consumers
11 the choice to restrict the proliferation of their personal
12 information, reducing the chances for identity theft. This
13 chapter is designed to will effectively prevent identity thieves
14 from continuing to secure credit in a victim's name.

15 § -2 **Definitions.** When used in this chapter, unless the
16 context otherwise requires:

17 "Commercial institution" means any organization doing
18 business or having a nexus within the State of Hawaii, including
19 credit reporting agencies.

20 "Credit reporting agency" means any person who, for
21 monetary fees, dues, or on a cooperative nonprofit basis,
22 regularly engages in whole or in part in the practice of



1 assembling or evaluating consumer credit information or other
2 information on consumers for the purpose of furnishing consumer
3 credit reports to third parties, but does not include any
4 governmental agency whose records are maintained primarily for
5 law enforcement or licensing purposes.

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

11 "Customer information" means either of the following:

12 Any original or any copy of any records held by a financial
13 institution pertaining to a customer's relationship with the
14 financial institution.

15 Any information derived from a record described in this
16 definition.

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



1 "Governmental agency" means any agency or department of
2 this state, or any authorized officer, employee, or agent of an
3 agency or department of this state.

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

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

11 **PART I - PROTECTION OF PERSONAL AND CUSTOMER INFORMATION**

12 **§ -3 Protection of personal and customer information.**

13 A person or business that acquires, owns, licenses or possesses
14 personal or customer information about a Hawaii resident shall
15 implement and maintain reasonable security procedures and
16 practices appropriate to the nature of the information to
17 protect the personal and customer information from unauthorized
18 access, destruction, use, modification, or disclosure of
19 personal and customer information. Security procedures shall
20 include, but shall not be limited to, physical security, such as
21 locks or security guards, during both storage and transit and
22 electronically at all times by means including strong



1 encryption, firewalls, strictly limited access and the use of
2 hashed values instead of real data for personal identifiers; and
3 all other means that may become best practices within the data
4 processing industry.

5 **§ -4 Damages.** Any person or business that acquires,
6 owns or licenses personal or customer information shall be
7 strictly liable for damages a customer suffers as a result of a
8 violation of this part.

9 **PART II - NOTICE; DISCLOSURE OF INFORMATION**

10 **§ -5 Notice.** (a) Any person or business that
11 acquires, owns or licenses data that includes personal or
12 customer information shall disclose any breach of the security
13 of the system following discovery or notification of the breach
14 of the security of the system to any resident of Hawaii whose
15 unencrypted personal or customer information was, or is
16 reasonably believed to have been, acquired by an unauthorized
17 person.

18 (b) The disclosure shall be made in the most expedient
19 time and manner possible and without unreasonable delay,
20 consistent with the legitimate needs of law enforcement, as
21 provided in subsection (c) of this section, or any measures
22 necessary to determine the scope of the breach and restore the



1 reasonable integrity of the data system. Any person or business
2 that maintains data including personal information that the
3 person or business does not own shall notify the owner or
4 licensee of the information of any breach of the security of the
5 system immediately following discovery if the personal
6 information was, or is reasonably believed to have been,
7 acquired by an unauthorized person.

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

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

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

20 (1) Written notice;

21 (2) Electronic mail notice, if the notice provided is



1 consistent with the provisions regarding
2 electronic records and signatures set forth in 15
3 U.S.C. § 7001, as it existed on January 1, 2005;
4 or

5 (3) Substitute notice, if the person or business
6 demonstrates that:

7 (i) The cost of providing notice would exceed
8 two hundred fifty thousand dollars;

9 (ii) The affected class of persons to be notified
10 exceeds five hundred thousand; or

11 (iii) The person or business does not have
12 sufficient contact information.

13 (f) Substitute notice shall consist of all of the
14 following:

15 (1) Electronic mail notice when the person or
16 business has an electronic mail address for the
17 subject persons;

18 (2) Conspicuous posting of the notice on the website
19 of the person or business, if the person or
20 business maintains a website; and

21 (3) Notification by statewide media.



1 (g) Notwithstanding subsection (e) of this section, a
2 person or business that maintains its own notification
3 procedures as part of an information security policy for the
4 treatment of personal information and is otherwise consistent
5 with the timing requirements of this section, shall be deemed to
6 be in compliance with the notification requirements of this
7 section if the person or business notifies affected persons in
8 accordance with its policies in the event of a breach of the
9 security of the system.

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

16 (b) Compliance with the state or federal law shall be
17 deemed compliance with this part with regard to the subjects
18 covered by this part.

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



1 § -7 **Waiver.** Any waiver of a provision of this
2 subchapter is contrary to public policy, void, and
3 unenforceable.

4 § -8 **Penalty.** A violation of this part constitutes an
5 unfair and deceptive trade practice.

6 **PART III - RETAINED INFORMATION; LIMITS**

7 § -9 **Limitations.** A person or business may retain
8 personal or customer information for business use. The
9 information retained shall be only that which is absolutely
10 necessary for the purposes of the business.

11 § -10 **Damages.** Any person or business that retains
12 personal or customer information shall be strictly liable for
13 damages a customer suffers as a result of a violation of this
14 part."

15 SECTION 2. Section 706-606.5, Hawaii Revised Statutes, is
16 amended by amending subsection (1) to read as follows:

17 "§706-606.5 **Sentencing of repeat offenders.** (1)
18 Notwithstanding section 706-669 and any other law to the
19 contrary, any person convicted of murder in the second degree,
20 any class A felony, any class B felony, or any of the following
21 class C felonies: section 188-23 relating to possession or use
22 of explosives, electrofishing devices, and poisonous substances



1 in state waters; section 707-703 relating to negligent homicide
2 in the first degree; section 707-711 relating to assault in the
3 second degree; section 707-713 relating to reckless endangering
4 in the first degree; section 707-716 relating to terroristic
5 threatening in the first degree; section 707-721 relating to
6 unlawful imprisonment in the first degree; section 707-732
7 relating to sexual assault or rape in the third degree; section
8 707-735 relating to sodomy in the third degree; section 707-736
9 relating to sexual abuse in the first degree; section 707-751
10 relating to promoting child abuse in the second degree; section
11 707-766 relating to extortion in the second degree; section 708-
12 811 relating to burglary in the second degree; section 708-821
13 relating to criminal property damage in the second degree;
14 section 708-831 relating to theft in the first degree as amended
15 by Act 68, Session Laws of Hawaii 1981; section 708-831 relating
16 to theft in the second degree; section 708-835.5 relating to
17 theft of livestock; section 708-836 relating to unauthorized
18 control of propelled vehicle; section 708-839.6 relating to
19 identity theft in the first degree; section 708-839.7 relating
20 to identity theft in the second degree; section 708-839.8
21 relating to identity theft in the third degree; section 708-852
22 relating to forgery in the second degree; section 708-854



1 relating to criminal possession of a forgery device; section
2 708-875 relating to trademark counterfeiting; section 710-1071
3 relating to intimidating a witness; section 711-1103 relating to
4 riot; section 712-1203 relating to promoting prostitution in the
5 second degree; section 712-1221 relating to gambling in the
6 first degree; section 712-1224 relating to possession of
7 gambling records in the first degree; section 712-1243 relating
8 to promoting a dangerous drug in the third degree; section 712-
9 1247 relating to promoting a detrimental drug in the first
10 degree; section 134-7 relating to ownership or possession of
11 firearms or ammunition by persons convicted of certain crimes;
12 section 134-8 relating to ownership, etc., of prohibited
13 weapons; section 134-9 relating to permits to carry, or who is
14 convicted of attempting to commit murder in the second degree,
15 any class A felony, any class B felony, or any of the class C
16 felony offenses enumerated above and who has a prior conviction
17 or prior convictions for the following felonies, including an
18 attempt to commit the same: murder, murder in the first or
19 second degree, a class A felony, a class B felony, any of the
20 class C felony offenses enumerated above, or any felony
21 conviction of another jurisdiction shall be sentenced to a



1 mandatory minimum period of imprisonment without possibility of
2 parole during such period as follows:

3 (a) One prior felony conviction:

4 (i) Where the instant conviction is for murder in the
5 second degree or attempted murder in the second
6 degree--ten years;

7 (ii) Where the instant conviction is for a class A
8 felony--six years, eight months;

9 (iii) Where the instant conviction is for a class B
10 felony--three years, four months;

11 (iv) Where the instant conviction is for a class C
12 felony offense enumerated above--one year, eight
13 months;

14 (b) Two prior felony convictions:

15 (i) Where the instant conviction is for murder in the
16 second degree or attempted murder in the second
17 degree--twenty years;

18 (ii) Where the instant conviction is for a class A
19 felony--thirteen years, four months;

20 (iii) Where the instant conviction is for a class B
21 felony--six years, eight months;



1 (iv) Where the instant conviction is for a class C
2 felony offense enumerated above--three years,
3 four months;

4 (c) Three or more prior felony convictions:

5 (i) Where the instant conviction is for murder in the
6 second degree or attempted murder in the second
7 degree--thirty years;

8 (ii) Where the instant conviction is for a class A
9 felony--twenty years;

10 (iii) Where the instant conviction is for a class B
11 felony--ten years;

12 (iv) Where the instant conviction is for a class C
13 felony offense enumerated above--five years."

14 SECTION 3. Section 708-800, Hawaii Revised Statutes, is
15 amended by adding a new definition to be appropriately inserted
16 and to read as follows:

17 "Confidential personal information" means information
18 associated with an actual person or a fictitious person that is
19 a driver's license number, a social security number, a state
20 identification number, an employee identification number, a
21 mother's maiden name, an identifying number of a depository
22 account, a bank account number, a password, or a personal



1 identification number (PIN) or code used for accessing loan,
2 credit, or banking information."

3 SECTION 4. Section 708-839.8, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[§708-839.8] **Identity theft in the third degree.** (1) A
6 person commits the offense of identity theft in the third degree
7 if that person [makes]:

8 (a) Makes or causes to be made, either directly or
9 indirectly, a transmission of any personal
10 information of another by any oral statement, any
11 written statement, or any statement conveyed by
12 any electronic means, with the intent to commit
13 the offense of theft in the third or fourth
14 degree from any person or entity[-] ; or

15 (b) Intentionally or knowingly possesses, without
16 authorization, any confidential personal
17 information of another in any form, including,
18 but not limited to, mail, physical documents,
19 identification cards, or information stored in
20 digital form.

21 (2) It is an affirmative defense that the person who
22 possessed the confidential personal information of another



1 did so under the reasonable belief that the person was
 2 authorized to possess the confidential personal information
 3 of another by the other person.

4 [~~2~~] (3) Identity theft in the third degree is a class C
 5 felony. "

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

12 SECTION 6. This Act does not affect rights and duties that
 13 matured, penalties that were incurred, and proceedings that were
 14 begun, before its effective date.

15 SECTION 7. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect on October 1, 2006.

18
 19

INTRODUCED BY:

Mark Moran

Guthrie Thelen

Bill Stonebraker



Carlton Meyer
Z. R.
Elizabeth
Cianci

Annegan
Ann V. St.
Sabara Maramoto

JAN 20 2006



HB 2011

Report Title:

Crime; identity theft

Description:

Implements measures to assist in the prevention of identity theft.

