



1 security numbers, use the information to open credit card  
2 accounts, write bad checks, buy cars, and commit other financial  
3 crimes with other people's identities.

4 The purpose of this chapter is to alleviate the growing  
5 plague of identity theft by requiring businesses that maintain  
6 records containing resident individuals' personal information,  
7 and to notify an individual, whenever the individual's personal  
8 information has been compromised by unauthorized disclosure.

9 § -2 **Definitions.** As used in this chapter:

10 "Business" means a sole proprietorship, partnership,  
11 corporation, association, or other group, however organized and  
12 whether or not organized to operate at a profit. The term  
13 includes a financial institution organized, chartered, or  
14 holding a license or authorization certificate under the laws of  
15 this State, any other state, the United States, or any other  
16 country, or the parent or the subsidiary of any such financial  
17 institution. The term also includes an entity whose business is  
18 records destruction. The term shall not include any government  
19 or governmental subdivision or agency.

20 "Encryption" means the use of an algorithmic process to  
21 transform data into a form in which the data is rendered

1 unreadable or unusable without use of a confidential process or  
2 key.

3 "Personal information" means an individual's first name or  
4 first initial and last name in combination with any one or more  
5 of the following data elements, when either the name or the data  
6 elements are not encrypted:

7 (1) Social security number.

8 (2) Driver's license number or Hawaii identification card  
9 number.

10 (3) Account number, credit or debit card number, access  
11 code, or password that would permit access to an  
12 individual's financial account.

13 For purposes of this section, "personal information" shall  
14 not include publicly available information that is lawfully made  
15 available to the general public from federal, state, or local  
16 government records.

17 "Records" means any material on which written, drawn,  
18 spoken, visual, or electromagnetic information is recorded or  
19 preserved, regardless of physical form or characteristics.

20 "Security breach" means an incident of unauthorized access  
21 to and acquisition of unencrypted and unredacted records or data

1 containing personal information where illegal use of the  
2 personal information has occurred or is reasonably likely to  
3 occur or that creates a material risk of harm to a person. Any  
4 incident of unauthorized access to and acquisition of encrypted  
5 records or data containing personal information along with the  
6 confidential process or key shall constitute a security breach.  
7 Good faith acquisition of personal information by an employee or  
8 agent of the business for a legitimate purpose is not a security  
9 breach, provided that the personal information is not used for a  
10 purpose other than a lawful purpose of the business and is not  
11 subject to further unauthorized disclosure.

12       **§ -3 Protection from security breaches.** (a) Any  
13 business that owns or licenses personal information of residents  
14 of Hawaii or any business that conducts business in Hawaii that  
15 owns or licenses personal information in any form (whether  
16 computerized, paper, or otherwise) shall provide notice to the  
17 affected person that there has been a security breach following  
18 discovery or notification of the breach. The disclosure  
19 notification shall be made without unreasonable delay,  
20 consistent with the legitimate needs of law enforcement, as  
21 provided in subsection (c) of this section, and consistent with

1 any measures necessary to determine sufficient contact  
2 information, determine the scope of the breach, and restore the  
3 reasonable integrity, security, and confidentiality of the data  
4 system.

5 (b) Any business that maintains or possesses records or  
6 data containing personal information of residents of Hawaii that  
7 the business does not own or license, or any business that  
8 conducts business in Hawaii that maintains or possesses records  
9 or data containing personal information that the business does  
10 not own or license shall notify the owner or licensee of the  
11 information of any security breach immediately following  
12 discovery of the breach, consistent with the legitimate needs of  
13 law enforcement as provided in subsection (c).

14 (c) The notice required by this chapter shall be delayed  
15 if a law enforcement agency informs the business that  
16 notification may impede a criminal investigation or jeopardize  
17 national security, provided that such request is made in writing  
18 or the business documents such request contemporaneously in  
19 writing, including the name of the law enforcement officer  
20 making the request and the officer's law enforcement agency  
21 engaged in the investigation. The notice required by this

1 section shall be provided without unreasonable delay after the  
2 law enforcement agency communicates to the business its  
3 determination that notice will no longer impede the  
4 investigation or jeopardize national security.

5 (d) The notice shall be clear and conspicuous. The notice  
6 shall include a description of the following:

7 (1) The incident in general terms;

8 (2) The type of personal information that was subject to  
9 the unauthorized access and acquisition;

10 (3) The general acts of the business to protect the  
11 personal information from further unauthorized access;

12 (4) A telephone number that the person may call for  
13 further information and assistance, if one exists; and

14 (5) Advice that directs the person to remain vigilant by  
15 reviewing account statements and monitoring free  
16 credit reports.

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

19 (1) Written notice;

20 (2) Electronic notice, for those persons for whom it has a  
21 valid email address and who have agreed to receive

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1           communications electronically if the notice provided  
2           is consistent with the provisions regarding electronic  
3           records and signatures for notices legally required to  
4           be in writing set forth in 15 U.S.C. section 7001;

5           (3) Telephonic notice provided that contact is made  
6           directly with the affected persons; and

7           (4) Substitute notice, if the business demonstrates that  
8           the cost of providing notice would exceed \$250,000 or  
9           that the affected class of subject persons to be  
10          notified exceeds 500,000, or if the business does not  
11          have sufficient contact information or consent to  
12          satisfy paragraph (1), (2), or (3), for only those  
13          affected persons without sufficient contact  
14          information or consent, or if the business is unable  
15          to identify particular affected persons, for only  
16          those unidentifiable affected persons. Substitute  
17          notice shall consist of all the following:

18          (A) Email notice when the business has an electronic  
19          mail address for the subject persons;

20          (B) Conspicuous posting of the notice on the website  
21          page of the business, if one is maintained; and

1 (C) Notification to major statewide media.

2 (f) In the event a business provides notice to more than  
3 1,000 persons at one time pursuant to this section, the business  
4 shall notify, without unreasonable delay, the State of Hawaii's  
5 office of consumer protection and all consumer reporting  
6 agencies that compile and maintain files on consumers on a  
7 nationwide basis, as defined in 15 U.S.C. section 1681a(p), of  
8 the timing, distribution, and content of the notice.

9 (g) Any waiver of the provisions of this chapter is  
10 contrary to public policy and is void and unenforceable.

11 (h) A financial institution that is subject to and in  
12 compliance with the Federal Interagency Guidance Response  
13 Programs for Unauthorized Access to Consumer Information and  
14 Customer Notice, issued on March 7, 2005, by the Board of  
15 Governors of the Federal Reserve System, the Federal Deposit  
16 Insurance Corporation, the Office of the Comptroller of the  
17 Currency, and the Office of Thrift Supervision, and any  
18 revisions, additions, or substitutions relating to said  
19 interagency guidance, shall be deemed to be in compliance with  
20 this chapter.



JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO PROTECTION FROM SECURITY BREACHES.

PURPOSE: To require businesses that experience a security breach to notify affected people of the breach.

MEANS: Add a new chapter to title 26 of the Hawaii Revised Statutes.

JUSTIFICATION: This bill requires that any business that possesses certain forms of personal information of Hawaii residents and that has experienced a security breach that reasonably might affect the integrity of that information notify the affected people of that breach. In the four months between mid-February and mid-June 2005, the personal information of approximately 50 million Americans was compromised in 45 separate reported security breaches. This represents one of every six Americans. Notice of a breach is necessary for consumers so they can prevent or quickly remedy any problem arising from the breach. Similar legislation has recently been enacted in twenty-one states, including California, Florida, Illinois, New York, Texas, and Washington.

Impact on the public: This measure will enhance personal privacy by obligating businesses to notify consumers when it appears that personal information may have been inappropriately accessed by unauthorized individuals.

Impact on the department and other agencies: This bill will assist law enforcement in its battle against identity theft by obligating a business to inform law enforcement and affected consumers when the security of private information has been breached.

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GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-110.

OTHER AFFECTED  
AGENCIES: Federal Trade Commission; County Police  
Departments.

EFFECTIVE DATE: Upon approval.