

1 seeks to protect the people of Hawaii by making such practices
2 unlawful.

3 **§ -2 Definitions.** As used in this chapter:

4 "Business" means a sole proprietorship, partnership,
5 corporation, association, or other group, however organized and
6 whether or not organized to operate at a profit. Except as
7 provided in section -3(e), the term includes a financial
8 institution organized, chartered, or holding a license or
9 authorization certificate under the laws of this State, any
10 other state, the United States, or any other country, or the
11 parent or the subsidiary of any such financial institution. The
12 term also includes an entity whose business is records
13 destruction. The term shall not include any government or
14 governmental subdivision or agency.

15 "Disposal" means the discarding or abandonment of records
16 containing personal information or the sale, donation,
17 discarding, or transfer of any medium, including computer
18 equipment or computer media, containing records of personal
19 information, or other nonpaper media upon which records of
20 personal information are stored, or other equipment for nonpaper
21 storage of information.

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

- 5 (1) Social security number;
- 6 (2) Driver's license number or Hawaii identification card
7 number; or
- 8 (3) Account number, credit or debit card number, access
9 code, or password that would permit access to an
10 individual's financial account.

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

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

18 **§ -3 Destruction of personal information records. (a)**

19 Any business that conducts business in Hawaii and any business
20 that maintains or otherwise possesses personal information of a
21 resident of Hawaii shall take reasonable measures to protect

1 against unauthorized access to or use of the information in
2 connection with or after its disposal.

3 (b) The reasonable measures shall include:

4 (1) Implementing and monitoring compliance with policies
5 and procedures that require the burning, pulverizing,
6 recycling, or shredding of papers containing personal
7 information so that information cannot be practicably
8 read or reconstructed;

9 (2) Implementing and monitoring compliance with policies
10 and procedures that require the destruction or erasure
11 of electronic media and other nonpaper media
12 containing personal information so that the
13 information cannot practicably be read or
14 reconstructed; and

15 (3) Describing procedures relating to the adequate
16 destruction or proper disposal of personal records as
17 official policy in the writings of the business
18 entity.

19 (c) A business may satisfy its obligation hereunder by
20 exercising due diligence and entering into a written contract
21 with, and thereafter monitoring compliance by, another party

1 engaged in the business of record destruction to destroy
2 personal information in a manner consistent with this section.
3 Due diligence should ordinarily include one or more of the
4 following:

5 (1) Reviewing an independent audit of the disposal
6 business's operations or its compliance with this
7 statute or its equivalent;

8 (2) Obtaining information about the disposal business from
9 several references or other reliable sources and
10 requiring that the disposal business be certified by a
11 recognized trade association or similar third party
12 with a reputation for high standards of quality
13 review; or

14 (3) Reviewing and evaluating the disposal business's
15 information security policies or procedures, or taking
16 other appropriate measures to determine the competency
17 and integrity of the disposal business.

18 (d) A disposal business that conducts business in Hawaii
19 or disposes of personal information of residents of Hawaii,
20 shall take reasonable measures to dispose of records containing
21 personal information by implementing and monitoring compliance

1 with policies and procedures that protect against unauthorized
2 access to, or use of, personal information during or after the
3 collection and transportation and disposing of such information.

4 (e) This chapter shall not apply to any of the following:

5 (1) Any bank or financial institution that is subject to
6 and in compliance with the privacy and security
7 provision of the federal Gramm Leach Bliley Act, 15
8 U.S.C. sections 6801 to 6809, as amended.

9 (2) Any health plan or healthcare provider that is subject
10 to and in compliance with the standards for privacy of
11 individually identifiable health information and the
12 security standards for the protection of electronic
13 health information of the Health Insurance Portability
14 and Accountability Act of 1996.

15 (3) Any consumer reporting agency that is subject to and
16 in compliance with the Fair Credit Reporting Act, 15
17 U.S.C. sections 1681 to 1681v.

18 (f) Any person who violates or attempts to violate any
19 provision of this chapter shall be deemed to have engaged in an
20 unfair or deceptive act or practice in the conduct of trade or
21 commerce within the meaning of section 480-2."

H . B . NO . 2329

1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

Calvin H. Bay

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BY REQUEST

JAN 23 2006

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO DESTRUCTION OF PERSONAL INFORMATION RECORDS.

PURPOSE: To require businesses that maintain or possess personal information of Hawaii residents to protect against unauthorized access to or use of the information after its disposal by destroying the personal information.

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

JUSTIFICATION: This bill is designed to protect confidential personal information from falling into the hands of identity thieves. A leading source of personal information for identity thieves is business records. Any entity that maintains personal customer information as part of business operations should establish security procedures to maintain the confidentiality and integrity of that data. A critical element of any security plan is the destruction of records containing personal information when they are being discarded. Nationwide there have been repeated instances of businesses simply dumping boxes containing scores of customers' personal information in dumpsters. This bill will make this practice unlawful.

Impact on the public: This measure will enhance personal privacy by prohibiting businesses from disposing of personal data in an improper manner.

Impact on the department and other agencies: This bill will assist law enforcement in its battle against identity theft by helping to prevent identity thieves from improperly accessing personal information.

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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.