
A BILL FOR AN ACT

RELATING TO IDENTITY THEFT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 481B, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . BREACH OF SECURITY OF PERSONAL INFORMATION**

5 **§481B-A Definitions.** As used in this part:

6 "Consumer" means an individual who is a resident of this
7 State.

8 "Consumer reporting agency" has the meaning ascribed to it
9 in 15 U.S.C. Sec. 1681a(f).

10 "Notice" means:

11 (1) Written notice;

12 (2) Electronic notice, if the notice provided is
13 consistent with the provisions regarding electronic
14 records and signatures set forth in §7001 of Title 15
15 of the United States Code; or

16 (3) Substitute notice, if the individual or the commercial
17 entity required to provide notice demonstrates that
18 the cost of providing notice will exceed \$100,000; the



1 affected class of residents of this State to be
2 notified exceeds five thousand residents; or the
3 individual or the commercial entity does not have
4 sufficient contact information to provide notice.

5 "Person" means any individual, partnership, corporation,
6 trust, estate, cooperative, association, government, or the
7 State, any political subdivision of the State, or any board,
8 agency, instrumentality, public corporation, or other
9 governmental organization of the State or of any political
10 subdivision of the State or other entity.

11 "Personal information" means a consumer's first name or
12 first initial and last name linked to any one or more of the
13 following data elements that relate to the resident, when the
14 data elements are neither encrypted nor redacted:

- 15 (1) Social Security number;
- 16 (2) Driver's license number or state identification card
17 number;
- 18 (3) Account number, or credit or debit card number, alone
19 or in combination with any required security code,
20 access code, or password that would permit access to a
21 residents financial account;



1 The term "personal information" does not include publicly
2 available information that is lawfully made available to the
3 general public from federal, state, or local government records.

4 "Security breach":

5 (1) Means the unauthorized access and acquisition of
6 unencrypted or unredacted computerized data that
7 compromises the security, confidentiality, or
8 integrity of personal information maintained by an
9 individual or a commercial entity and that causes or
10 the person reasonably believes has caused or will
11 cause identity theft or other fraud to any resident of
12 this State; and

13 (2) Does not include good faith acquisition of personal
14 information by an employee or agent of an individual
15 or a commercial entity for the purposes of the
16 individual or the commercial entity, provided that the
17 personal information is not used for or is not subject
18 to further unauthorized disclosure.

19 "Substitute notice" includes all of the following:

20 (1) E-mail notice if the individual or the commercial
21 entity has e-mail addresses for the members of the
22 affected class of state residents;

1 (2) Conspicuous posting of the notice on the web site page
2 of the individual or the commercial entity if the
3 individual or the commercial entity maintains one; and

4 (3) Notification to major statewide media.

5 **§481B-B Security breach notification.** (a) A person that
6 conducts business in this State, or a government, governmental
7 subdivision, agency, or entity that owns or licenses
8 computerized data that includes personal information shall give
9 notice to a resident of this State of any breach of the security
10 of the system immediately following the discovery of a breach in
11 the security of personal information of the consumer whose
12 unencrypted or unredacted personal information was, or is
13 reasonably believed to have been, accessed and acquired by an
14 unauthorized person and that causes, or the person reasonably
15 believes has caused or will cause, identity theft or other fraud
16 to any resident of this State. Notification shall be made in
17 good faith, in the most expedient time possible and without
18 unreasonable delay, consistent with the legitimate needs of law
19 enforcement as provided in subsection (c) and consistent with
20 any measures necessary to determine the scope of the breach and
21 to restore the reasonable integrity of the computerized data
22 system.

1 (b) A person or a commercial entity that maintains
2 computerized data that includes personal information that the
3 person or the commercial entity does not own or license shall
4 give notice to the owner or licensee of the information of any
5 breach of the security of the data following discovery of a
6 breach, if the personal information was, or is reasonably
7 believed to have been, access and acquired by an unauthorized
8 person.

9 (c) Notice required by this subchapter may be delayed if a
10 law enforcement agency determines that the notice will impede a
11 criminal investigation. Notice required by this part shall be
12 made in good faith, without unreasonable delay, and as soon as
13 possible after the law enforcement agency determines that
14 notification will no longer impede the investigation.

15 (d) Notwithstanding any other provision in this part, a
16 person or a commercial entity that maintains its own
17 notification procedures as part of an information security
18 policy for the treatment of personal information, and whose
19 procedures are otherwise consistent with the timing requirements
20 of this part, is deemed to be in compliance with the notice
21 requirements of this part if the person or the commercial entity



1 notifies affected residents of this State in accordance with its
2 policies in the event of a breach of security of the system.

3 (e) If a person or a commercial entity that is regulated
4 by state or federal law provides greater protection to personal
5 information than that provided by this part in regard to the
6 subjects addressed by this part, compliance with that state or
7 federal law is deemed compliance with this part with regard to
8 those subjects. This section does not relieve an individual or
9 a commercial entity from a duty to comply with other
10 requirements of state and federal law regarding the protection
11 and privacy of personal information.

12 (f) In the event that a person discovers circumstances
13 requiring notification pursuant to this part of more than one
14 thousand persons at one time, the person shall also notify,
15 without unreasonable delay, all consumer reporting agencies that
16 compile and maintain files on consumers on a nationwide basis,
17 as defined by 15 U.S.C. §1681a(p), of the timing, distribution,
18 and content of the notices.

19 **§481B-C Violations; remedies.** The attorney general is
20 empowered to bring an action in law or equity to address any
21 violation of this part and for other relief that may be
22 appropriate. The provisions of this part are not exclusive and



H.B. NO. 3243

Report Title:

Identity Theft; Notice of Breach

Description:

Requires persons, business, or government agencies who maintain personal information in computerized form to notify persons to whom the information relates of a breach of the security of the information. Authorizes attorney general to take legal action to enforce notice requirement.

