
A BILL FOR AN ACT

RELATING TO IDENTITY THEFT.

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

1 SECTION 1. The legislature finds that the privacy and
2 financial security of individuals is increasingly at risk due to
3 the widespread collection of personal information by both the
4 private and public sector. Credit card transactions, magazine
5 subscriptions, telephone numbers, real estate records,
6 automobile registrations, consumer surveys, warranty
7 registrations, credit reports, and internet web sites are all
8 sources of personal information and provide material for
9 identity thieves. As a result, identity theft is one of the
10 fastest growing crimes committed in Hawaii.

11 The legislature further finds that criminals who steal
12 personal information such as social security numbers use the
13 information to open credit card accounts, write bad checks, buy
14 cars, and commit other financial crimes with other peoples'
15 identities. Victims of identity theft must act quickly to
16 minimize the damage. Therefore, expeditious notification of
17 possible misuse of a person's personal information is
18 imperative. At the same time, prevention of identity theft



1 requires consumers to be vigilant in protecting their personal
2 information. Consumers must be provided with tools to safeguard
3 their personal information by limiting access to it.

4 The purpose of this Act is to require a state agency, or a
5 person or business that conducts business in Hawaii, that
6 possesses, owns, or licenses computerized data that includes
7 personal information to disclose any breach of the security of
8 the data to any resident of Hawaii whose unencrypted personal
9 information was, or is reasonably believed to have been,
10 acquired by an unauthorized person. This Act permits the
11 notifications required by its provisions to be delayed if a law
12 enforcement agency determines that it would impede a criminal
13 investigation.

14 This Act also permits consumers to place a security alert
15 on their credit report to warn those who legitimately request
16 credit information that the consumer's identity may have been
17 stolen. This Act also permits consumers to place a security
18 freeze on their credit report that prohibits release of any
19 information without their express authorization.

20 SECTION 2. The Hawaii Revised Statutes is amended by
21 adding a new chapter to be appropriately designated and to read
22 as follows:



1 "CHAPTER

2 INFORMATION SECURITY

3 § -1 Definitions. For purposes of this chapter:

4 "Breach of the security of the system" means unauthorized
5 acquisition of computerized data that compromises the security,
6 confidentiality, or integrity of personal information maintained
7 by the agency. Good faith acquisition of personal information
8 by an employee or agent of the agency for the purposes of the
9 agency is not a breach of the security of the system, provided
10 that the personal information is not used or subject to further
11 unauthorized disclosure.

12 "Extension of credit" does not include an increase in the
13 dollar limit of an existing open-end credit plan, as defined in
14 Regulation Z issued by the Board of Governors of the Federal
15 Reserve System (12 C.F.R. 226.2), or any change to, or review
16 of, an existing credit account.

17 "Personal information" has the same meaning as in section
18 708-800. "Personal information" does not include publicly
19 available information that is lawfully made available to the
20 general public from federal, state, or local government records.

21 "Security alert" means a notice placed in a consumer's
22 credit report, at the request of the consumer, that notifies a



1 recipient of the credit report that the consumer's identity may
2 have been used, without the consumer's consent, to fraudulently
3 obtain goods or services in the consumer's name.

4 "Security freeze" means a notice placed in a consumer's
5 credit report, at the request of the consumer and subject to
6 certain exceptions, that prohibits the consumer credit reporting
7 agency from releasing the consumer's credit report or any
8 information from it without the express authorization of the
9 consumer.

10 § -2 **Security of personal information held by**
11 **governmental agency.** (a) Any agency that owns or licenses
12 computerized data that includes personal information shall
13 disclose any breach of the security of the system following
14 discovery or notification of the breach to any resident of the
15 State whose unencrypted personal information was, or is
16 reasonably believed to have been, acquired by an unauthorized
17 person. The disclosure shall be made in the most expedient time
18 possible and without unreasonable delay, consistent with the
19 legitimate needs of law enforcement, as provided in subsection
20 (c), or any measures necessary to determine the scope of the
21 breach and restore the reasonable integrity of the data system.

22 (b) Any agency that maintains computerized data that



1 includes personal information that the agency does not own shall
2 notify the owner or licensee of the information of any breach of
3 the security of the system immediately following discovery, if
4 the personal information was, or is reasonably believed to have
5 been, acquired by an unauthorized person.

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

12 (d) For purposes of this section, "notice" may be provided
13 by one of the following methods:

14 (1) Written notice;

15 (2) Electronic notice, if the notice provided is
16 consistent with the provisions regarding electronic
17 records and signatures set forth in Section 7001 of
18 Title 15 of the United States Code; or

19 (3) Substitute notice, if the agency demonstrates that the
20 cost of providing notice would exceed \$250,000, or
21 that the affected class of subject persons to be
22 notified exceeds \$500,000, or the agency does not have



1 sufficient contact information. Substitute notice
2 shall consist of all of the following:

- 3 (A) E-mail notice when the agency has an e-mail
4 address for the subject persons;
- 5 (B) Conspicuous posting of the notice on the agency's
6 internet web site, if the agency maintains one;
7 and
- 8 (C) Notification to major statewide media.

9 (e) Notwithstanding subsection (d), an agency that
10 maintains its own notification procedures as part of an
11 information security policy for the treatment of personal
12 information and is otherwise consistent with the timing
13 requirements of this chapter shall be deemed to be in compliance
14 with the notification requirements of this section if it
15 notifies subject persons in accordance with its policies in the
16 event of a breach of security of the system.

17 **§ -3 Security of personal information held by private**

18 **business person or entity.** (a) Any person or business that
19 conducts business in the State, and that owns or licenses
20 computerized data that includes personal information, shall
21 disclose any breach of the security of the system following
22 discovery or notification of the breach to any resident of the



1 State whose unencrypted personal information was, or is
2 reasonably believed to have been, acquired by an unauthorized
3 person. The disclosure shall be made in the most expedient time
4 possible and without unreasonable delay, consistent with the
5 legitimate needs of law enforcement, as provided in subsection
6 (c), or any measures necessary to determine the scope of the
7 breach and restore the reasonable integrity of the data system.

8 (b) Any person or business that maintains computerized
9 data that includes personal information that the person or
10 business does not own shall notify the owner or licensee of the
11 information of any breach of the security of the system
12 immediately following discovery, if the personal information
13 was, or is reasonably believed to have been, acquired by an
14 unauthorized person.

15 (c) The notification required by this section may be
16 delayed if a law enforcement agency determines that the
17 notification will impede a criminal investigation. The
18 notification required by this section shall be made after the
19 law enforcement agency determines that it will not compromise
20 the investigation.

21 (d) For purposes of this section, "notice" may be provided
22 by one of the following methods:



- 1 (1) Written notice;
- 2 (2) Electronic notice, if the notice provided is
- 3 consistent with the provisions regarding electronic
- 4 records and signatures set forth in Section 7001 of
- 5 Title 15 of the United States Code; or
- 6 (3) Substitute notice, if the person or business
- 7 demonstrates that the cost of providing notice would
- 8 exceed \$250,000, or that the affected class of subject
- 9 persons to be notified exceeds \$500,000, or the person
- 10 or business does not have sufficient contact
- 11 information. Substitute notice shall consist of all
- 12 of the following:
- 13 (A) E-mail notice when the person or business has an
- 14 e-mail address for the subject persons;
- 15 (B) Conspicuous posting of the notice on the web site
- 16 page of the person or business, if the person or
- 17 business maintains one; and
- 18 (C) Notification to major statewide media.
- 19 (e) Notwithstanding subsection (d), a person or business
- 20 that maintains its own notification procedures as part of an
- 21 information security policy for the treatment of personal
- 22 information and is otherwise consistent with the timing



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

5 § -4 **Security alert.** (a) A consumer may elect to place
6 a security alert in the consumer's credit report by making a
7 request in writing or by telephone to a consumer credit
8 reporting agency.

9 (b) A consumer credit reporting agency shall notify each
10 person requesting consumer credit information with respect to a
11 consumer of the existence of a security alert in the credit
12 report of that consumer, regardless of whether a full credit
13 report, credit score, or summary report is requested.

14 (c) Each consumer credit reporting agency shall maintain a
15 toll-free telephone number to accept security alert requests
16 from consumers twenty-four hours a day, seven days a week.

17 (d) The toll-free telephone number shall be included in
18 any written disclosure by a consumer credit reporting agency to
19 any consumer and shall be printed in a clear and conspicuous
20 manner.



1 (e) A consumer credit reporting agency shall place a
2 security alert on a consumer's credit report no later than five
3 business days after receiving a request from the consumer.

4 (f) The security alert shall remain in place for at least
5 ninety days, and a consumer shall have the right to request a
6 renewal of the security alert.

7 (g) Any person who uses a consumer credit report in
8 connection with the approval of credit based upon an application
9 for an extension of credit, or with the purchase, lease, or
10 rental of goods or non-credit-related services, and who receives
11 notification of a security alert pursuant to subsection (a) may
12 not lend money, extend credit, or complete the purchase, lease,
13 or rental of goods or non-credit-related services without taking
14 reasonable steps to verify the consumer's identity, in order to
15 ensure that the application for an extension of credit or for
16 the purchase, lease, or rental of goods or non-credit-related
17 services is not the result of identity theft. If the consumer
18 has placed a statement with the security alert in the consumer's
19 file requesting that identity be verified by calling a specified
20 telephone number, any person who receives that statement with
21 the security alert in a consumer's file pursuant to subsection
22 (a) shall take reasonable steps to verify the identity of the



1 consumer by contacting the consumer, using the specified
2 telephone number, prior to lending money, extending credit, or
3 completing the purchase, lease, or rental of goods or non-
4 credit-related services. If a person uses a consumer credit
5 report to facilitate the extension of credit or for another
6 permissible purpose on behalf of a subsidiary, affiliate, agent,
7 assignee, or prospective assignee, that person may verify a
8 consumer's identity under this section in lieu of the
9 subsidiary, affiliate, agent, assignee, or prospective assignee.

10 (h) If reasonable steps are taken to verify the identity
11 of the consumer, those steps constitute compliance with the
12 requirements of this section, provided that if a consumer has
13 placed a statement including a telephone number with the
14 security alert in the consumer's file, the consumer's identity
15 shall be verified by contacting the consumer using that
16 telephone number as specified pursuant to subsection (g).

17 (i) A consumer credit reporting agency shall notify each
18 consumer who has requested that a security alert be placed on
19 the consumer's consumer credit report of the expiration date of
20 the alert.

21 § -5 **Security freeze.** (a) A consumer may elect to
22 place a security freeze on the consumer's credit report by



1 making a request in writing by certified mail to a consumer
2 credit reporting agency.

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

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

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

19 (d) If the consumer wishes to allow the consumer's credit
20 report to be accessed for a specific party or period of time
21 while a freeze is in place, the consumer shall contact the



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

- 3 (1) Proper identification;
- 4 (2) The unique personal identification number or password
5 provided by the credit reporting agency pursuant to
6 subsection (c); and
- 7 (3) The proper information regarding the third party who
8 is to receive the credit report or the time period for
9 which the report shall be available to users of the
10 credit report.

11 (e) A consumer credit reporting agency that receives a
12 request from a consumer to temporarily lift a freeze on a credit
13 report, pursuant to subsection (d), shall comply with the
14 request no later than three business days after receiving the
15 request.

16 (f) A consumer credit reporting agency may develop
17 procedures involving the use of telephone, fax, the internet, or
18 other electronic media to receive and process a request from a
19 consumer to temporarily lift a freeze on a credit report,
20 pursuant to subsection (d), in an expedited manner.



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

4 (1) Upon consumer request, pursuant to subsection (d) or
5 (j); or

6 (2) If the consumer's credit report was frozen due to a
7 material misrepresentation of fact by the consumer.

8 If a consumer credit reporting agency intends to remove a freeze
9 upon a consumer's credit report pursuant to this subsection, the
10 consumer credit reporting agency shall notify the consumer in
11 writing prior to removing the freeze on the consumer's credit
12 report.

13 (h) If a third party requests access to a consumer credit
14 report on which a security freeze is in effect, and this request
15 is in connection with an application for credit or any other
16 use, and the consumer does not allow the consumer's credit
17 report to be accessed for that specific party or period of time,
18 the third party may treat the application as incomplete.

19 (i) If a consumer requests a security freeze, the consumer
20 credit reporting agency shall disclose the process of placing
21 and temporarily lifting a freeze, and the process for allowing



1 access to information from the consumer's credit report for a
2 specific party or period of time while the freeze is in place.

3 (j) A security freeze shall remain in place until the
4 consumer requests that the security freeze be removed. A
5 consumer credit reporting agency shall remove a security freeze
6 within three business days of receiving a request for removal
7 from a consumer who provides both of the following:

8 (1) Proper identification; and

9 (2) The unique personal identification number or password
10 provided by the credit reporting agency pursuant to
11 subsection (c).

12 (k) A consumer credit reporting agency shall require
13 proper identification of the person making a request to place or
14 remove a security freeze.

15 (l) The provisions of this section do not apply to the use
16 of a consumer credit report by any of the following:

17 (1) A person or entity, or a subsidiary, affiliate, or
18 agent of that person or entity, or an assignee of a
19 financial obligation owing by the consumer to that
20 person or entity, or a prospective assignee of a
21 financial obligation owing by the consumer to that
22 person or entity in conjunction with the proposed



1 purchase of the financial obligation, with which the
2 consumer has or had prior to assignment an account or
3 contract, including a demand deposit account, or to
4 whom the consumer issued a negotiable instrument, for
5 the purposes of reviewing the account or collecting
6 the financial obligation owing for the account,
7 contract, or negotiable instrument. For purposes of
8 this paragraph, "reviewing the account" includes
9 activities related to account maintenance, monitoring,
10 credit line increases, and account upgrades and
11 enhancements;

12 (2) A subsidiary, affiliate, agent, assignee, or
13 prospective assignee of a person to whom access has
14 been granted for purposes of facilitating the
15 extension of credit or other permissible use;

16 (3) Any state or local agency, law enforcement agency,
17 trial court, or private collection agency acting
18 pursuant to a court order, warrant, or subpoena;

19 (4) A child support agency acting pursuant to chapter 576D
20 or Title IV-D of the Social Security Act (42 U.S.C. et
21 seq.);



- 1 (5) The department of the attorney general or its agents
2 or assigns acting to investigate medicaid fraud;
- 3 (6) The department of taxation or its agents or assigns
4 acting to investigate or collect delinquent taxes or
5 unpaid court orders or to fulfill any of its other
6 statutory responsibilities;
- 7 (7) The use of credit information for the purposes of
8 prescreening as provided for by the federal Fair
9 Credit Reporting Act;
- 10 (8) Any person or entity administering a credit file
11 monitoring subscription service to which the consumer
12 has subscribed; or
- 13 (9) Any person or entity for the purpose of providing a
14 consumer with a copy of the consumer's credit report
15 upon the consumer's request.
- 16 (m) This section does not prevent a consumer credit
17 reporting agency from charging a fee of no more than \$10 to a
18 consumer for each freeze, removal of the freeze, or temporary
19 lift of the freeze for a period of time, or a fee of no more
20 than \$12 for a temporary lift of a freeze for a specific party,
21 regarding access to a consumer credit report.

1 **§ -6 Duties of credit reporting agency.** (a) If a
2 security freeze is in place, a consumer credit reporting agency
3 shall not change any of the following official information in a
4 consumer credit report without sending a written confirmation of
5 the change to the consumer within thirty days of the change
6 being posted to the consumer's file: name, date of birth,
7 social security number, and address. Written confirmation is
8 not required for technical modifications of a consumer's
9 official information, including name and street abbreviations,
10 complete spellings, or transposition of numbers or letters. In
11 the case of an address change, the written confirmation shall be
12 sent to both the new address and to the former address.

13 (b) If a consumer has placed a security alert, a consumer
14 credit reporting agency shall provide the consumer, upon
15 request, with a free copy of the consumer's credit report at the
16 time the ninety-day security alert period expires.

17 **§ -7 Certain consumer credit reporting agencies exempt.**
18 The provisions of this chapter do not apply to a consumer credit
19 reporting agency that acts only as a reseller of credit
20 information, by assembling and merging information contained in
21 the data base of another consumer credit reporting agency or
22 multiple consumer credit reporting agencies, and does not



1 maintain a permanent data base of credit information from which
2 new consumer credit reports are produced. However, a consumer
3 credit reporting agency shall honor any security freeze placed
4 on a consumer credit report by another consumer credit reporting
5 agency.

6 **§ -8 Certain entities exempt from credit alert or freeze**
7 **requirement.** The following entities are not required to place
8 in a credit report either a security alert, pursuant to section
9 -4, or a security freeze, pursuant to section -5:

- 10 (1) A check services or fraud prevention services company,
11 which issues reports on incidents of fraud or
12 authorizations for the purpose of approving or
13 processing negotiable instruments, electronic funds
14 transfers, or similar methods of payments; or
- 15 (2) A deposit account information service company, which
16 issues reports regarding account closures due to
17 fraud, substantial overdrafts, ATM abuse, or similar
18 negative information regarding a consumer, to
19 inquiring banks or other financial institutions for
20 use only in reviewing a consumer request for a deposit
21 account at the inquiring bank or financial
22 institution.



1 § **-9 Removal from credit card solicitation list.** A
2 consumer may elect to have the consumer's name removed from any
3 list that a consumer credit reporting agency furnishes for
4 credit card solicitations, by notifying the consumer credit
5 reporting agency, by telephone or in writing, pursuant to the
6 notification system maintained by the consumer credit reporting
7 agency pursuant to section -3. The election shall be
8 effective for a minimum of two years, unless otherwise specified
9 by the consumer.

10 § **-10 Government access.** Notwithstanding any other
11 provision to the contrary in this chapter, a consumer credit
12 reporting agency may furnish to a governmental agency a
13 consumer's name, address, former address, places of employment,
14 or former places of employment.

15 § **-11 Civil remedies.** (a) Any consumer injured by a
16 violation of this chapter may institute a civil action to
17 recover damages.

18 (b) Any business that violates, proposes to violate, or
19 has violated this title may be enjoined.

20 (c) Any agency, business, or person that intentionally,
21 knowingly, or recklessly violates this chapter shall be fined up
22 to \$2,500 for each violation.



1 (d) The rights and remedies available under this section
 2 are cumulative to each other and to any other rights and
 3 remedies available under law."

4 SECTION 3. This Act shall take effect on July 1, 2006.

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SB2220

Report Title:

Identity Theft; Privacy

Description:

Requires government agencies and private businesses that maintain personal information to inform the subject of the information if the security of the information is breached. Permits consumer to place "security alert" and "credit freeze" on credit report to warn of possible identity theft and to prevent release of information without express authorization. Provides civil remedies.

