

JAN 25 2006

S .B. NO. 2209

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# A BILL FOR AN ACT

RELATING TO CONSUMER CREDIT REPORTING AGENCIES.

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

1           SECTION 1. This Act shall be known as the "Identity Theft  
2 Protection Act of 2006."

3           SECTION 2. The Federal Trade Commission recently  
4 determined that between October 1998 and September 2003, more  
5 than 27.3 million Americans have been victims of identity theft,  
6 resulting in billions of dollars of losses to consumers. This  
7 Act adds a new chapter to the Hawaii Revised Statutes designed  
8 to protect Hawaii consumers who are victims of identity theft by  
9 allowing them to place a security freeze on their credit  
10 reports. This security freeze will prohibit a credit reporting  
11 agency from releasing any information to unauthorized parties  
12 without the consumer's express consent and provide consumers  
13 more control over who has access to their credit report. This  
14 Act will effectively prevent identity thieves from continuing to  
15 secure credit in a victim's name.

16           SECTION 3. The Hawaii Revised Statutes is amended by  
17 adding to title 26 a new chapter to be appropriately designated  
18 and to read as follows:

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"CHAPTER

CONSUMER CREDIT REPORTING AGENCIES

§ -1 **Definitions.** When used in this chapter, unless the context otherwise requires:

"Credit report" means any written, oral, or other communication of any credit information by a credit reporting agency, as defined in the federal Fair Credit Reporting Act, which operates or maintains a database of consumer credit information bearing on a consumer's credit worthiness, credit standing, or credit capacity.

"Credit reporting agency" means any person who, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties, but does not include any governmental agency whose records are maintained primarily for law enforcement or licensing purposes.

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

1 "Security freeze" means a notice placed in a credit report,  
2 at the request of the consumer who is a victim of identity  
3 theft.

4 **§ -2 Security freeze by credit reporting agency.** (a) A  
5 consumer who has been the victim of identity theft may place a  
6 security freeze on the consumer's credit report by making a  
7 request in writing by certified mail to a credit reporting  
8 agency with a valid copy of a police report, investigative  
9 report, or complaint the consumer has filed with a law  
10 enforcement agency about unlawful use of the consumer's personal  
11 information by another person. A credit reporting agency shall  
12 not charge a fee for placing or removing a security freeze on a  
13 credit report. A security freeze shall prohibit the credit  
14 reporting agency from releasing the consumer's credit report or  
15 any information from it without the express authorization of the  
16 consumer. When a security freeze is in place, information from  
17 a consumer's credit report shall not be released to a third  
18 party without prior express authorization from the consumer.  
19 This subsection does not prevent a credit reporting agency from  
20 advising a third party that a security freeze is in effect with  
21 respect to the consumer's credit report.

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

4 (c) The credit reporting agency shall send a written  
5 confirmation of the security freeze to the consumer within ten  
6 business days of placing the security freeze and shall provide  
7 the consumer with a unique personal identification number or  
8 password, other than the consumer's social security number, to  
9 be used by the consumer when providing authorization for the  
10 release of the consumer's credit for a specific party, parties,  
11 or period of time.

12 (d) If the consumer wishes to allow access to the  
13 consumer's credit report for a specific party, parties, or  
14 period of time while a freeze is in place, the consumer shall  
15 contact the credit reporting agency, request that the freeze be  
16 temporarily lifted, and provide the following:

- 17 (1) Clear and proper identification;
- 18 (2) The unique personal identification number or password  
19 provided by the credit reporting agency; and
- 20 (3) Clear and proper information regarding the third  
21 party, parties, or time period for which the report  
22 shall be available to users of the credit report.

1 (e) A credit reporting agency may develop procedures  
2 involving the use of telephone, fax, the internet, or other  
3 electronic media to receive and process a request from a  
4 consumer to temporarily lift a freeze on a credit report in an  
5 expedited manner.

6 (f) A credit reporting agency that receives a request from  
7 a consumer to temporarily lift a freeze on a credit report shall  
8 comply with the request no later than three business days after  
9 receiving the request.

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

13 (1) Upon consumer request; or

14 (2) When the consumer's credit report was frozen due to a  
15 material misrepresentation of fact by the consumer.

16 If a credit reporting agency intends to remove a freeze upon a  
17 consumer's credit report pursuant to this subsection, the credit  
18 reporting agency shall notify the consumer in writing prior to  
19 removing the freeze on the consumer's credit report.

20 (h) If a third party requests access to a credit report on  
21 which a security freeze is in effect and this request is in  
22 connection with an application for credit or any other use and

1 the consumer does not allow the consumer's credit report to be  
2 accessed for that specific party or period of time, the third  
3 party may treat the application as incomplete.

4 (i) If a consumer requests a security freeze, the credit  
5 reporting agency shall disclose to the consumer the process of  
6 placing and temporarily lifting a security freeze and the  
7 process for allowing access to information from the consumer's  
8 credit report for a specific party, parties, or period of time  
9 while the security freeze is in place.

10 (j) A security freeze shall remain in place until the  
11 consumer requests that the security freeze be removed. A credit  
12 reporting agency shall remove a security freeze within three  
13 business days of receiving a request for removal from the  
14 consumer who provides both of the following:

- 15 (1) Clear and proper identification; and  
16 (2) The unique personal identification number or password  
17 provided by the credit reporting agency pursuant to  
18 subsection (c).

19 (k) A credit reporting agency shall require clear and  
20 proper identification of the person making a request to place or  
21 remove a security freeze.

1           (1) The provisions of this section, including the security  
2 freeze, do not apply to the use of a consumer report by the  
3 following:

4           (1) A person, or the person's subsidiary, affiliate,  
5 agent, or assignee with which the consumer has or,  
6 prior to assignment, had an account, contract, or  
7 debtor-creditor relationship for the purposes of  
8 reviewing the account or collecting the financial  
9 obligation owing for the account, contract, or debt,  
10 or extending credit to a consumer with a prior or  
11 existing account, contract, or debtor-creditor  
12 relationship. For purposes of this subsection,  
13 "reviewing the account" includes activities related to  
14 account maintenance, monitoring, credit line  
15 increases, and account upgrades and enhancements;

16           (2) A subsidiary, affiliate, agent, assignee, or  
17 prospective assignee of a person to whom access has  
18 been granted for purposes of facilitating the  
19 extension of credit or other permissible use;

20           (3) Any person acting pursuant to a court order, warrant,  
21 or subpoena;

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- 1           (4) A child support enforcement agency when investigating  
2           a child support case pursuant to Title IV-D of the  
3           Social Security Act (42 U.S.C. sections 651 to 669b)  
4           and section 4102 of Title 33;
- 5           (5) The department of the attorney general or county  
6           prosecuting attorneys or their agents or assignees  
7           acting to investigate medicaid fraud;
- 8           (6) The department of taxation, county taxing authorities,  
9           or any of their agents or assignees, acting to  
10          investigate or collect delinquent taxes or  
11          assessments, including interest and penalties, unpaid  
12          court orders, or to fulfill any of their other  
13          statutory or charter responsibilities;
- 14          (7) The use of credit information for the purposes of  
15          prescreening as provided by the federal Fair Credit  
16          Reporting Act (15 U.S.C. sections 1681 to 1681v);
- 17          (8) Any person for the sole purpose of providing a credit  
18          file monitoring subscription service to which the  
19          consumer has subscribed; and
- 20          (9) A credit reporting agency for the sole purpose of  
21          providing a consumer with a copy of the consumer's  
22          credit report upon the consumer's request.



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

14           **§     -4 Persons not required to place security freeze.**  
15 The requirement under this chapter to place a security freeze on  
16 a credit report does not apply to:

17           (1) A check services or fraud prevention services company  
18           that reports on incidents of fraud or issues  
19           authorizations for the purpose of approving or  
20           processing negotiable instruments, electronic fund  
21           transfers, or similar methods of payment;

1           (2) A deposit account information service company that  
2           issues reports regarding account closures due to  
3           fraud, substantial overdrafts, ATM abuse, or similar  
4           negative information regarding a consumer to inquiring  
5           banks or other financial institutions for use only in  
6           reviewing a consumer request for a deposit account at  
7           the inquiring bank or financial institution; and

8           (3) A credit reporting agency that:

9           (A) Acts only to resell credit information by  
10           assembling and merging information contained in a  
11           database of one or more credit reporting  
12           agencies; and

13           (B) Does not maintain a permanent database of credit  
14           information from which new credit reports are  
15           produced.

16           **§ -5 Violation, penalties.** Any person who violates any  
17           provision of this chapter shall be deemed to have engaged in an  
18           unfair or deceptive act or practice in the conduct of trade or  
19           commerce within the meaning of section 480-2."

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1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO CONSUMER CREDIT REPORTING AGENCIES.

PURPOSE: To protect Hawaii consumers who are victims of identity theft by allowing them to place a security freeze on their credit reports. The security freeze will prohibit a credit reporting agency from releasing any information to unauthorized parties without the consumer's express consent and provide consumers more control over who has access to their credit report.

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

JUSTIFICATION: This bill is designed to address one form of identity theft, when a person steals a person's identity and opens up new lines of credit in that person's name. It will help protect individuals whose identification has been stolen, by enabling them to "freeze" the release of their credit history by credit reporting agencies until the victim reauthorizes (unfreezes) the release of the credit history. Similar legislation has recently been enacted in twelve states, including California, Texas, Washington, Illinois, and Colorado.

Impact on the public: This measure allows a consumer to take a pro-active role in protecting the consumer's own credit and will provide an effective tool for victims to use in combating identity theft.

Impact on the department and other agencies: This bill will assist law enforcement in its battle against identity theft by preventing someone who has stolen a person's identity from

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continuing to abuse the victim's credit.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-110.

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

EFFECTIVE DATE: Upon approval.