

JAN 25 2006

A BILL FOR AN ACT

RELATING TO PROTECTION FROM SECURITY BREACHES.

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

1 SECTION 1. This Act shall be known as the "Security Breach
2 Notification Act of 2006."

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding to title 26 a new chapter to be appropriately designated
5 and to read as follows:

6 **"CHAPTER**

7 **PROTECTION FROM SECURITY BREACHES**

8 § -1 **Purpose.** The privacy and financial security of
9 individuals is increasingly at risk due to the widespread
10 collection of personal information by the private sector.
11 Credit card transactions, magazine subscriptions, telephone
12 numbers, real estate records, automobile registrations, consumer
13 surveys, warranty registrations, credit reports, and Internet
14 websites are all sources of personal information and form the
15 source material for identity thieves.

16 Identity theft is one of the fastest growing crimes
17 committed throughout the United States, including Hawaii.
18 Criminals who steal personal information, such as social

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

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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.

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

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

6
7 INTRODUCED BY:  _____

8 BY REQUEST

9

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.