

PROPOSED

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1 agencies that maintain records containing resident individuals'
2 personal information to notify an individual whenever the
3 individual's personal information has been compromised by
4 unauthorized disclosure.

5 § -2 **Definitions.** As used in this chapter:

6 "Business" means a sole proprietorship, partnership,
7 corporation, association, or other group, however organized and
8 whether or not organized to operate at a profit. The term
9 includes a financial institution organized, chartered, or
10 holding a license or authorization certificate under the laws of
11 this State, any other state, the United States, or any other
12 country, or the parent or the subsidiary of any such financial
13 institution. The term also includes an entity whose business is
14 records destruction.

15 "Government agency" means any department, division, board,
16 commission, public corporation, or other agency or
17 instrumentality of the State or of any county.

18 "Encryption" means the use of an algorithmic process to
19 transform data into a form in which the data is rendered
20 unreadable or unusable without use of a confidential process or
21 key.

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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 "Redacted" means the rendering of data so that it is
19 unreadable or is truncated so that no more than the last four
20 digits of the identification number are accessible as part of
21 the data.

1 "Security breach" means an incident of unauthorized access
 2 to and acquisition of unencrypted or unredacted records or data
 3 containing personal information where illegal use of the
 4 personal information has occurred or is reasonably likely to
 5 occur or that creates a material risk of harm to a person. Any
 6 incident of unauthorized access to and acquisition of encrypted
 7 records or data containing personal information along with the
 8 confidential process or key shall constitute a security breach.
 9 Good faith acquisition of personal information by an employee or
 10 agent of the business for a legitimate purpose is not a security
 11 breach, provided that the personal information is not used for a
 12 purpose other than a lawful purpose of the business and is not
 13 subject to further unauthorized disclosure.

14 § -3 **Protection from security breaches.** (a) Any
 15 business that owns or licenses personal information of residents
 16 of Hawaii, any business that conducts business in Hawaii that
 17 owns or licenses personal information in any form (whether
 18 computerized, paper, or otherwise), or any government agency
 19 that collects personal information for specific government
 20 purposes shall provide notice to the affected person that there
 21 has been a security breach following discovery or notification
 22 of the breach. The disclosure notification shall be made

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1 including the name of the law enforcement officer making the
 2 request and the officer's law enforcement agency engaged in the
 3 investigation. The notice required by this chapter shall be
 4 provided without unreasonable delay after the law enforcement
 5 agency communicates to the business or government agency its
 6 determination that notice will no longer impede the
 7 investigation or jeopardize national security.

8 (d) The notice shall be clear and conspicuous. The notice
 9 shall include a description of the following:

- 10 (1) The incident in general terms;
- 11 (2) The type of personal information that was subject to
 12 the unauthorized access and acquisition;
- 13 (3) The general acts of the business or government agency
 14 to protect the personal information from further
 15 unauthorized access;
- 16 (4) A telephone number that the person may call for
 17 further information and assistance, if one exists; and
- 18 (5) Advice that directs the person to remain vigilant by
 19 reviewing account statements and monitoring free
 20 credit reports.

21 (e) For purposes of this section, notice to affected
 22 persons may be provided by one of the following methods:

- 1 (1) Written notice to the last available address the
- 2 business or government agency has on record;
- 3 (2) Electronic notice, for those persons for whom a
- 4 business or government agency has a valid email
- 5 address and who have agreed to receive communications
- 6 electronically if the notice provided is consistent
- 7 with the provisions regarding electronic records and
- 8 signatures for notices legally required to be in
- 9 writing set forth in 15 U.S.C. section 7001;
- 10 (3) Telephonic notice provided that contact is made
- 11 directly with the affected persons; and
- 12 (4) Substitute notice, if the business or government
- 13 agency demonstrates that the cost of providing notice
- 14 would exceed \$250,000 or that the affected class of
- 15 subject persons to be notified exceeds 500,000, or if
- 16 the business or government agency does not have
- 17 sufficient contact information or consent to satisfy
- 18 paragraph (1), (2), or (3), for only those affected
- 19 persons without sufficient contact information or
- 20 consent, or if the business or government agency is
- 21 unable to identify particular affected persons, for

1 Unauthorized Access to Consumer Information and
2 Customer Notice, issued on March 7, 2005, by the Board
3 of Governors of the Federal Reserve System, the
4 Federal Deposit Insurance Corporation, the Office of
5 the Comptroller of the Currency, and the Office of
6 Thrift Supervision, or subject to 12 C.F.R. Part 748,
7 and any revisions, additions, or substitutions
8 relating to said interagency guidance; and
9 (2) Any health plan or healthcare provider that is subject
10 to and in compliance with the standards for privacy or
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 (i) Any business who violates or attempts to violate any
16 provision of this chapter shall be deemed to have engaged in an
17 unfair or deceptive act or practice in the conduct of trade or
18 commerce within the meaning of section 480-2. The attorney
19 general or the director of the office of consumer protection may
20 bring an action based upon unfair or deceptive acts or practices
21 declared unlawful by this section. No such action may be
22 brought against a government agency.

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1 (j) In addition to any penalty provided for in subsection
2 (i), any business who violates any provision of this chapter is
3 liable to the injured party in an amount equal to the sum of any
4 actual damages sustained by the injured party as a result of the
5 violation, or damages not less than \$500, whichever is greater.
6 The court, in any action brought under this section, may award
7 reasonable attorneys' fees to the prevailing party. No such
8 action may be brought against a government agency."

9 SECTION 2. This Act shall take effect on January 1, 2007.

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Report Title:

Identity Theft; Prevention

Description:

Requires businesses that experience a security breach to notify affected people of the breach. (SD2)

