

PROPOSED

THE SENATE
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

S.B. NO. 2290
S.D. 2

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

4 "CHAPTER

5 **NOTIFICATION OF SECURITY BREACHES**

6 § -1 **Purpose.** The privacy and financial security of
7 individuals is increasingly at risk due to the widespread
8 collection of personal information by the private sector.
9 Credit card transactions, magazine subscriptions, telephone
10 numbers, real estate records, automobile registrations, consumer
11 surveys, warranty registrations, credit reports, and Internet
12 websites are all sources of personal information and form the
13 source material for identity thieves.

14 Identity theft is one of the fastest growing crimes
15 committed throughout the United States, including Hawaii.
16 Criminals who steal personal information, such as social
17 security numbers, use the information to open credit card



1 accounts, write bad checks, buy cars, and commit other financial
2 crimes with other people's identities.

3 The purpose of this chapter is to alleviate the growing
4 plague of identity theft by requiring businesses that maintain
5 records containing resident individuals' personal information,
6 and to notify an individual, whenever the individual's personal
7 information has been compromised by unauthorized disclosure.

8 § -2 Definitions. As used in this chapter:

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

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.

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.
- 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 "Security breach" means an incident of unauthorized access
19 to and acquisition of unencrypted or unredacted records or data
20 containing personal information where illegal use of the
21 personal information has occurred or is reasonably likely to
22 occur or that creates a material risk of harm to a person. Any



1 incident of unauthorized access to and acquisition of encrypted
2 records or data containing personal information along with the
3 confidential process or key shall constitute a security breach.
4 Good faith acquisition of personal information by an employee or
5 agent of the business for a legitimate purpose is not a security
6 breach, provided that the personal information is not used for a
7 purpose other than a lawful purpose of the business and is not
8 subject to further unauthorized disclosure.

9 **§ -3 Protection from security breaches.** (a) Any
10 business that owns or licenses personal information of residents
11 of Hawaii or any business that conducts business in Hawaii that
12 owns or licenses personal information in any form (whether
13 computerized, paper, or otherwise) shall provide notice to the
14 affected person that there has been a security breach following
15 discovery or notification of the breach. The disclosure
16 notification shall be made without unreasonable delay,
17 consistent with the legitimate needs of law enforcement, as
18 provided in subsection (c) of this section, and consistent with
19 any measures necessary to determine sufficient contact
20 information, determine the scope of the breach, and restore the
21 reasonable integrity, security, and confidentiality of the data
22 system.



1 (b) Any business that maintains or possesses records or
2 data containing personal information of residents of Hawaii that
3 the business does not own or license, or any business that
4 conducts business in Hawaii that maintains or possesses records
5 or data containing personal information that the business does
6 not own or license shall notify the owner or licensee of the
7 information of any security breach immediately following
8 discovery of the breach, consistent with the legitimate needs of
9 law enforcement as provided in subsection (c).

10 (c) The notice required by this chapter shall be delayed
11 if a law enforcement agency informs the business that
12 notification may impede a criminal investigation or jeopardize
13 national security, provided that such request is made in writing
14 or the business documents such request contemporaneously in
15 writing, including the name of the law enforcement officer
16 making the request and the officer's law enforcement agency
17 engaged in the investigation. The notice required by this
18 section shall be provided without unreasonable delay after the
19 law enforcement agency communicates to the business its
20 determination that notice will no longer impede the
21 investigation or jeopardize national security.

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

3 (1) The incident in general terms;

4 (2) The type of personal information that was subject to
5 the unauthorized access and acquisition;

6 (3) The general acts of the business to protect the
7 personal information from further unauthorized access;

8 (4) A telephone number that the person may call for
9 further information and assistance, if one exists; and

10 (5) Advice that directs the person to remain vigilant by
11 reviewing account statements and monitoring free
12 credit reports.

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

15 (1) Written notice to the last available address the
16 person, business or government agency has on record;

17 (2) Electronic notice, for those persons for whom it has a
18 valid email address and who have agreed to receive
19 communications electronically if the notice provided
20 is consistent with the provisions regarding electronic
21 records and signatures for notices legally required to
22 be in writing set forth in 15 U.S.C. section 7001;



- 1 (3) Telephonic notice provided that contact is made
2 directly with the affected persons; and
- 3 (4) Substitute notice, if the business demonstrates that
4 the cost of providing notice would exceed \$250,000 or
5 that the affected class of subject persons to be
6 notified exceeds 500,000, or if the business does not
7 have sufficient contact information or consent to
8 satisfy paragraph (1), (2), or (3), for only those
9 affected persons without sufficient contact
10 information or consent, or if the business is unable
11 to identify particular affected persons, for only
12 those unidentifiable affected persons. Substitute
13 notice shall consist of all the following:
- 14 (A) Email notice when the business has an electronic
15 mail address for the subject persons;
- 16 (B) Conspicuous posting of the notice on the website
17 page of the business, if one is maintained; and
- 18 (C) Notification to major statewide media.
- 19 (f) In the event a business provides notice to more than
20 1,000 persons at one time pursuant to this section, the business
21 shall notify in writing, without unreasonable delay, the State
22 of Hawaii's office of consumer protection and all consumer



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1 reporting agencies that compile and maintain files on consumers
2 on a nationwide basis, as defined in 15 U.S.C. section 1681a(p),
3 of the timing, distribution, and content of the notice.

4 (g) Any waiver of the provisions of this chapter is
5 contrary to public policy and is void and unenforceable.

6 (h) A financial institution that is subject to and in
7 compliance with the Federal Interagency Guidance Response
8 Programs for Unauthorized Access to Consumer Information and
9 Customer Notice, issued on March 7, 2005, by the Board of
10 Governors of the Federal Reserve System, the Federal Deposit
11 Insurance Corporation, the Office of the Comptroller of the
12 Currency, and the Office of Thrift Supervision, and any
13 revisions, additions, or substitutions relating to said
14 interagency guidance, shall be deemed to be in compliance with
15 this chapter.

16 (i) Any person who violates or attempts to violate 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. The attorney
20 general or the director of the office of consumer protection may
21 bring an action based upon unfair or deceptive acts or practices
22 declared unlawful by this section.



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1 (j) In addition to any penalty provided for in subsection
2 (i), any person 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."

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

PROPOSED

Report Title:

Identity Theft; Prevention

Description:

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

