
A BILL FOR AN ACT

RELATING TO DESTRUCTION OF PERSONAL INFORMATION RECORDS.

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

1 SECTION 1. Business and government agency records are a
2 leading source of personal information for identity thieves.
3 Any entity that maintains personal information as part of its
4 business operations should establish security procedures to
5 maintain the confidentiality and integrity of that data. A
6 critical element of any security plan is the destruction of
7 records containing personal information when they are being
8 discarded. Throughout the United States, there have been
9 repeated instances of businesses carelessly dumping boxes
10 containing scores of customers' personal information in
11 dumpsters.

12 The purpose of this Act is to protect the people of Hawaii
13 from identity theft by requiring businesses and government, when
14 disposing of records containing personal information, to take
15 reasonable measures to protect against unauthorized access to
16 that information.

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

4 "CHAPTER

5 DESTRUCTION OF PERSONAL INFORMATION RECORDS

6 § -1 Definitions. As used in this chapter:

7 "Business" means a sole proprietorship, partnership,
8 corporation, association, or other group, however organized and
9 whether or not organized to operate at a profit. Except as
10 provided in section -2(e), the term includes a financial
11 institution organized, chartered, or holding a license or
12 authorization certificate under the laws of the State, any other
13 state, the United States, or any other country, or the parent or
14 the subsidiary of any such financial institution. The term also
15 includes an entity whose business is records destruction.

16 "Disposal" means the discarding or abandonment of records
17 containing personal information or the sale, donation,
18 discarding, or transfer of any medium, including computer
19 equipment or computer media, containing records of personal
20 information, or other nonpaper media upon which records of
21 personal information are stored, or other equipment for nonpaper
22 storage of information.



1 "Government agency" means any department, division, board,
2 commission, public corporation, or other agency or
3 instrumentality of the State or any county.

4 "Personal information" means an individual's first name or
5 first initial and last name in combination with any one or more
6 of the following data elements, when either the name or the data
7 elements are not encrypted:

8 (1) Social security number;

9 (2) Driver's license number or Hawaii identification card
10 number; or

11 (3) Account number, credit or debit card number, access
12 code, or password that would permit access to an
13 individual's financial account.

14 "Personal information" shall not include publicly available
15 information that is lawfully made available to the general
16 public from federal, state, or local 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 **§ -2 Destruction of personal information records. (a)**

21 Any business or government agency that conducts business in
22 Hawaii and any business or government agency that maintains or

1 otherwise possesses personal information of a resident of Hawaii
2 shall take reasonable measures to protect against unauthorized
3 access to or use of the information in connection with or after
4 its disposal.

5 (b) The reasonable measures shall include:

- 6 (1) Implementing and monitoring compliance with policies
7 and procedures that require the burning, pulverizing,
8 recycling, or shredding of papers containing personal
9 information so that information cannot be practicably
10 read or reconstructed;
- 11 (2) Implementing and monitoring compliance with policies
12 and procedures that require the destruction or erasure
13 of electronic media and other nonpaper media
14 containing personal information so that the
15 information cannot practicably be read or
16 reconstructed; and
- 17 (3) Describing procedures relating to the adequate
18 destruction or proper disposal of personal records as
19 official policy in the writings of the business
20 entity.

21 (c) A business or government agency may satisfy its
22 obligation hereunder by exercising due diligence and entering



1 into a written contract with, and thereafter monitoring
2 compliance by, another party engaged in the business of record
3 destruction to destroy personal information in a manner
4 consistent with this section. Due diligence should ordinarily
5 include one or more of the following:

6 (1) Reviewing an independent audit of the disposal
7 business's operations or its compliance with this
8 statute or its equivalent;

9 (2) Obtaining information about the disposal business from
10 several references or other reliable sources and
11 requiring that the disposal business be certified by a
12 recognized trade association or similar third party
13 with a reputation for high standards of quality
14 review; or

15 (3) Reviewing and evaluating the disposal business's
16 information security policies or procedures, or taking
17 other appropriate measures to determine the competency
18 and integrity of the disposal business.

19 (d) A disposal business that conducts business in Hawaii
20 or disposes of personal information of residents of Hawaii shall
21 take reasonable measures to dispose of records containing
22 personal information by implementing and monitoring compliance



1 with policies and procedures that protect against unauthorized
2 access to, or use of, personal information during or after the
3 collection, transportation, and disposing of such information.

4 (e) This chapter shall not apply to any of the following:

5 (1) Any financial institution that is subject to 15 U.S.C.
6 Sections 6801 to 6809, as amended;

7 (2) Any health plan or healthcare provider that is subject
8 to and in compliance with the standards for privacy of
9 individually identifiable health information and the
10 security standards for the protection of electronic
11 health information of the Health Insurance Portability
12 and Accountability Act of 1996; or

13 (3) Any consumer reporting agency that is subject to and
14 in compliance with the Fair Credit Reporting Act, 15
15 U.S.C. Sections 1681 to 1681x.

16 § -3 **Penalties; civil action.** (a) Any business that
17 violates any provision of this chapter shall be subject to
18 penalties of not more than \$2,500 for each violation. The
19 attorney general or the executive director of the office of
20 consumer protection may bring an action pursuant to this
21 section. No such action may be brought against a government
22 agency.



1 (b) In addition to any penalty provided for in subsection
2 (a), any business that violates any provision of this chapter
3 shall be liable to the injured party in an amount equal to the
4 sum of any actual damages sustained by the injured party as a
5 result of the violation. The court in any action brought under
6 this section may award reasonable attorneys' fees to the
7 prevailing party. No such action may be brought against a
8 government agency.

9 (c) The penalties provided in this section shall be
10 cumulative to the remedies or penalties available under all
11 other laws of this State.

12 **§ -4 Reporting requirements.** A government agency shall
13 submit a written report to the legislature within twenty days
14 after the discovery of a material occurrence of unauthorized
15 access to personal information records in connection with or
16 after its disposal by or on behalf of the government agency.
17 The report shall contain information relating to the nature of
18 the incident, the number of individuals affected by the
19 incident, and any procedures that have been implemented to
20 prevent the incident from reoccurring. In the event that a law
21 enforcement agency informs the government agency that the report
22 may impede a criminal investigation or jeopardize national



1 security, the report to the legislature may be delayed until
2 twenty days after the law enforcement agency has determined that
3 the report will no longer impede the investigation or jeopardize
4 national security."

5 SECTION 3. This Act shall take effect on January 1, 2007.

Report Title:

Identity Theft; Prevention

Description:

Requires businesses and government agencies that dispose of documents and other records containing personal information of Hawaii residents to destroy the records to protect against unauthorized access to or use of the information. (CD1)

