
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. 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 **Purpose.** Business and government agency records
7 are a leading source of personal information for identity
8 thieves. Any entity that maintains personal customer
9 information as part of its business operations should establish
10 security procedures to maintain the confidentiality and
11 integrity of that data. A critical element of any security plan
12 is the destruction of records containing personal information
13 when they are being discarded. Throughout the United States,
14 there have been repeated instances of businesses carelessly
15 dumping boxes containing scores of customers' personal
16 information in dumpsters. This chapter seeks to protect the
17 people of Hawaii by making such practices unlawful.

18 § -2 **Definitions.** As used in this chapter:



1 "Business" means a sole proprietorship, partnership,
2 corporation, association, or other group, however organized and
3 whether or not organized to operate at a profit. Except as
4 provided in section -3(e), the term includes a financial
5 institution organized, chartered, or holding a license or
6 authorization certificate under the laws of this State, any
7 other state, the United States, or any other country, or the
8 parent or the subsidiary of any such financial institution. The
9 term also includes an entity whose business is records
10 destruction.

11 "Disposal" means the discarding or abandonment of records
12 containing personal information or the sale, donation,
13 discarding, or transfer of any medium, including computer
14 equipment or computer media, containing records of personal
15 information, or other nonpaper media upon which records of
16 personal information are stored, or other equipment for nonpaper
17 storage of information.

18 "Government agency" means any department, division, board,
19 commission, public corporation, or other agency or
20 instrumentality of the State of any county.

21 "Personal information" means an individual's first name or
22 first initial and last name in combination with any one or more



1 of the following data elements, when either the name or the data
2 elements are not encrypted:

- 3 (1) Social security number;
- 4 (2) Driver's license number or Hawaii identification card
5 number; or
- 6 (3) Account number, credit or debit card number, access
7 code, or password that would permit access to an
8 individual's financial account.

9 For purposes of this section, "personal information" shall
10 not include publicly available information that is lawfully made
11 available to the general public from federal, state, or local
12 government records.

13 "Records" means any material on which written, drawn,
14 spoken, visual, or electromagnetic information is recorded or
15 preserved, regardless of physical form or characteristics.

16 **§ -3 Destruction of personal information records.** (a)
17 Any business or government agency that conducts business in
18 Hawaii and any business or government agency that maintains or
19 otherwise possesses personal information of a resident of Hawaii
20 shall take reasonable measures to protect against unauthorized
21 access to or use of the information in connection with or after
22 its disposal.

- 1 (b) The reasonable measures shall include:
- 2 (1) Implementing and monitoring compliance with policies
3 and procedures that require the burning, pulverizing,
4 recycling, or shredding of papers containing personal
5 information so that information cannot be practicably
6 read or reconstructed;
- 7 (2) Implementing and monitoring compliance with policies
8 and procedures that require the destruction or erasure
9 of electronic media and other nonpaper media
10 containing personal information so that the
11 information cannot practicably be read or
12 reconstructed; and
- 13 (3) Describing procedures relating to the adequate
14 destruction or proper disposal of personal records as
15 official policy in the writings of the business
16 entity.
- 17 (c) A business or government agency may satisfy its
18 obligation hereunder by exercising due diligence and entering
19 into a written contract with, and thereafter monitoring
20 compliance by, another party engaged in the business of record
21 destruction to destroy personal information in a manner

1 consistent with this section. Due diligence should ordinarily
2 include one or more of the following:

- 3 (1) Reviewing an independent audit of the disposal
4 business's operations or its compliance with this
5 statute or its equivalent;
- 6 (2) Obtaining information about the disposal business from
7 several references or other reliable sources and
8 requiring that the disposal business be certified by a
9 recognized trade association or similar third party
10 with a reputation for high standards of quality
11 review; or
- 12 (3) Reviewing and evaluating the disposal business's
13 information security policies or procedures, or taking
14 other appropriate measures to determine the competency
15 and integrity of the disposal business.

16 (d) A disposal business that conducts business in Hawaii
17 or disposes of personal information of residents of Hawaii,
18 shall take reasonable measures to dispose of records containing
19 personal information by implementing and monitoring compliance
20 with policies and procedures that protect against unauthorized
21 access to, or use of, personal information during or after the
22 collection and transportation and disposing of such information.



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

2 (1) Any financial institution that is subject to 15 U.S.C.
3 sections 6801 to 6809, as amended;

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

10 (3) Any consumer reporting agency that is subject to and
11 in compliance with the Fair Credit Reporting Act, 15
12 U.S.C. sections 1681 to 1681v.

13 (f) Any business that violates any provision of this
14 chapter shall be deemed to have engaged in an unfair or
15 deceptive act or practice in the conduct of trade or commerce
16 within the meaning of section 480-2. The attorney general or
17 the director of the office of consumer protection may bring an
18 action based upon unfair or deceptive acts or practices declared
19 unlawful by this section. No such action may be brought against
20 a government agency.

21 (g) In addition to any penalty provided for in subsection
22 (f), any business that violates any provision of this chapter is



1 liable to the injured party in an amount equal to the sum of any
2 actual damages sustained by the injured party as a result of the
3 violation, or damages not less than \$500, whichever is greater.
4 The court, in any action brought under this section, may award
5 reasonable attorneys' fees to the prevailing party. No such
6 action may be brought against a government agency."

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

SB2292, SD2

Report Title:

Identity Theft; Prevention

Description:

Requires businesses that maintain or possess personal information of Hawaii residents to protect against unauthorized access to or use of the information after its disposal by destroying the personal information. (SD2)

