

JAN 25 2006

S.B. NO. 2301

A BILL FOR AN ACT

RELATING TO IDENTITY THEFT.

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

1 SECTION 1. Section 706-606.5, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:
3 "(1) Notwithstanding section 706-669 and any other law to
4 the contrary, any person convicted of murder in the second
5 degree, any class A felony, any class B felony, or any of the
6 following class C felonies: section 188-23 relating to
7 possession or use of explosives, electrofishing devices, and
8 poisonous substances in state waters; section 707-703 relating to
9 negligent homicide in the first degree; section 707-711 relating
10 to assault in the second degree; section 707-713 relating to
11 reckless endangering in the first degree; section 707-716
12 relating to terroristic threatening in the first degree; section
13 707-721 relating to unlawful imprisonment in the first degree;
14 section 707-732 relating to sexual assault or rape in the third
15 degree; section 707-735 relating to sodomy in the third degree;
16 section 707-736 relating to sexual abuse in the first degree;
17 section 707-751 relating to promoting child abuse in the second
18 degree; section 707-766 relating to extortion in the second

1 degree; section 708-811 relating to burglary in the second
2 degree; section 708-821 relating to criminal property damage in
3 the second degree; section 708-831 relating to theft in the first
4 degree as amended by Act 68, Session Laws of Hawaii 1981; section
5 708-831 relating to theft in the second degree; section 708-835.5
6 relating to theft of livestock; section 708-836 relating to
7 unauthorized control of propelled vehicle; section 708-839.6
8 relating to identity theft in the first degree; section 708-839.7
9 relating to identity theft in the second degree; section 708-
10 839.8 relating to identity theft in the third degree; section
11 708-852 relating to forgery in the second degree; section 708-854
12 relating to criminal possession of a forgery device; section 708-
13 875 relating to trademark counterfeiting; section 710-1071
14 relating to intimidating a witness; section 711-1103 relating to
15 riot; section 712-1203 relating to promoting prostitution in the
16 second degree; section 712-1221 relating to gambling in the first
17 degree; section 712-1224 relating to possession of gambling
18 records in the first degree; section 712-1243 relating to
19 promoting a dangerous drug in the third degree; section 712-1247
20 relating to promoting a detrimental drug in the first degree;
21 section 134-7 relating to ownership or possession of firearms or
22 ammunition by persons convicted of certain crimes; section 134-8

1 relating to ownership, etc., of prohibited weapons; section 134-9
2 relating to permits to carry, or who is convicted of attempting
3 to commit murder in the second degree, any class A felony, any
4 class B felony, or any of the class C felony offenses enumerated
5 above and who has a prior conviction or prior convictions for the
6 following felonies, including an attempt to commit the same:

7 murder, murder in the first or second degree, a class A felony, a
8 class B felony, any of the class C felony offenses enumerated
9 above, or any felony conviction of another jurisdiction shall be
10 sentenced to a mandatory minimum period of imprisonment without
11 possibility of parole during such period as follows:

12 (a) One prior felony conviction:

13 (i) Where the instant conviction is for murder in the
14 second degree or attempted murder in the second
15 degree--ten years;

16 (ii) Where the instant conviction is for a class A
17 felony--six years, eight months;

18 (iii) Where the instant conviction is for a class B
19 felony--three years, four months;

20 (iv) Where the instant conviction is for a class C
21 felony offense enumerated above--one year, eight
22 months;

- 1 (b) Two prior felony convictions:
- 2 (i) Where the instant conviction is for murder in the
- 3 second degree or attempted murder in the second
- 4 degree--twenty years;
- 5 (ii) Where the instant conviction is for a class A
- 6 felony--thirteen years, four months;
- 7 (iii) Where the instant conviction is for a class B
- 8 felony--six years, eight months;
- 9 (iv) Where the instant conviction is for a class C
- 10 felony offense enumerated above--three years, four
- 11 months;
- 12 (c) Three or more prior felony convictions:
- 13 (i) Where the instant conviction is for murder in the
- 14 second degree or attempted murder in the second
- 15 degree--thirty years;
- 16 (ii) Where the instant conviction is for a class A
- 17 felony--twenty years;
- 18 (iii) Where the instant conviction is for a class B
- 19 felony--ten years;
- 20 (iv) Where the instant conviction is for a class C
- 21 felony offense enumerated above--five years."

S.B. NO. 2301

1 SECTION 2. Section 708-800, Hawaii Revised Statutes, is
2 amended by adding a new definition to read as follows:

3 "Confidential personal information" means information
4 associated with an actual person or a fictitious person that is a
5 driver's license number, a social security number, a state
6 identification number, an employee identification number, a
7 mother's maiden name, an identifying number of a depository
8 account, a bank account number, a password, or a personal
9 identification number (PIN) or code used for accessing loan,
10 credit, or banking information."

11 SECTION 3. Section 708-839.8, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+]§708-839.8[+] **Identity theft in the third degree.** (1)

14 A person commits the offense of identity theft in the third
15 degree if that person [~~makes~~]:

16 (a) Makes or causes to be made, either directly or
17 indirectly, a transmission of any personal information
18 of another by any oral statement, any written
19 statement, or any statement conveyed by any electronic
20 means, with the intent to commit the offense of theft
21 in the third or fourth degree from any person or
22 entity[~~-~~]; or

S.B. NO. 2301

1 (b) Intentionally or knowingly possesses, without
2 authorization, any confidential personal information
3 of another in any form, including, but not limited to,
4 mail, physical documents, identification cards, or
5 information stored in digital form.

6 (2) It is an affirmative defense that the person who
7 possessed the confidential personal information of another did
8 so under the reasonable belief that the person was authorized to
9 possess the confidential personal information of another by the
10 other person.


11 ~~[(+2)]~~ (3) Identity theft in the third degree is a class C
12 felony."

13 SECTION 4. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

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

16

17

INTRODUCED BY:  _____

18

BY REQUEST

JUSTIFICATION SHEET

SB. NO. 2301

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO IDENTITY THEFT.

PURPOSE: To include in the offense of identity theft in the third degree the unauthorized possession of confidential personal information; add a new definition of "confidential personal information"; and add identity theft in the first degree, identity theft in the second degree and identity theft in the third degree to the list of repeatable offenses for purpose of enhanced sentencing.

MEANS: Amend sections 706-606.5(1), 708-800, and 708-839.8, Hawaii Revised Statutes.

JUSTIFICATION: Identity theft is a growing problem in the State of Hawaii. The unauthorized possession of confidential personal information is the precursor to the crime of identify theft because perpetrators will use confidential personal information to carry out the theft. Law enforcement agencies routinely find law violators in possession of confidential personal information of others in the form of mail, identification cards or receipts. However, current laws fail to adequately address this violation as violators are either released or charged with a petty misdemeanor theft. To provide law enforcement with the tools to better combat identity theft, the act of possessing "confidential personal information" without proper authorization should be made a criminal offense and the crime of identity theft should be amended as a repeatable offense warranting harsher criminal penalties.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-110.

OTHER AFFECTED
AGENCIES: Department of the Attorney General,
Judiciary, county police, county
prosecutors, and the Office of the Public
Defender.

EFFECTIVE DATE: Upon approval.