

JAN 25 2006

A BILL FOR AN ACT

RELATING TO IDENTITY THEFT.

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

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

5 "CHAPTER

6 § -1 **Purpose.** The Federal Trade Commission recently
7 determined that between October 1998 and September 2003, more
8 than 27.3 million Americans have been victims of identity theft,
9 resulting in billions of dollars of losses to consumers. The
10 purpose of this chapter is to protect Hawaii consumers who are
11 victims of identity theft by allowing them to (1) place a
12 security freeze on their credit reports, (2) require that
13 sensitive financial data be encrypted, (3) require notification
14 when personal information may be compromised, and (4) prohibit
15 companies from sharing or selling data without consumer consent.
16 This security freeze will prohibit a credit reporting agency
17 from releasing any information to unauthorized parties without
18 the consumer's express consent and provide consumers more



1 control over who has access to their credit report. Requiring
2 sensitive financial data to be encrypted would help reduce the
3 usefulness of stolen or lost data. Prohibiting companies from
4 sharing or selling data without express consumer consent allows
5 consumers the choice to restrict the proliferation of their
6 personal information, reducing the chances for identity theft.
7 This chapter is intended to prevent would be perpetrators of
8 identity theft from continuing to secure credit in a victim's
9 name.

10 § -2 **Definitions.** When used in this chapter, unless the
11 context otherwise requires:

12 "Credit report" means any written, oral, or other
13 communication of any credit information by a credit reporting
14 agency, as defined in the federal Fair Credit Reporting Act,
15 which operates or maintains a database of consumer credit
16 information bearing on a consumer's credit worthiness, credit
17 standing, or credit capacity.

18 "Credit reporting agency" means any person who, for
19 monetary fees, dues, or on a cooperative nonprofit basis,
20 regularly engages in whole or in part in the practice of
21 assembling or evaluating consumer credit information or other
22 information on consumers for the purpose of furnishing consumer



1 credit reports to third parties, but does not include any
2 governmental agency whose records are maintained primarily for
3 law enforcement or licensing purposes.

4 "Customer" means any person that is a resident of or is
5 domiciled in this state and that has transacted or is
6 transacting business with or has used or is using the services
7 of a financial institution, or for which a financial institution
8 has acted as a fiduciary with respect to trust property.

9 "Customer information" means either of the following:

10 Any original or any copy of any records held by a financial
11 institution pertaining to a customer's relationship with the
12 financial institution.

13 Any information derived from a record described in this
14 definition.

15 "Federal institution regulatory agency" means any of the
16 following: the Federal Deposit Insurance Corporation, the
17 Federal Savings and Loan Insurance Corporation, the National
18 Credit Union Administration, the Federal Reserve Board, the
19 United State Comptroller of Currency, the Federal Home Loan Bank
20 Board, and the Department of Commerce.



1 "Governmental agency" means any agency or department of
2 this state, or any authorized officer, employee, or agent of an
3 agency or department of this state.

4 "Identity theft" means the unauthorized use of another
5 person's identifying information to obtain credit, goods,
6 services, money, or property.

7 "Law enforcement agency" means any agency or department of
8 this state or of any political subdivision of this state
9 authorized by law to enforce the law and to conduct or engage in
10 investigations or prosecutions for violations of law.

11 "Security freeze" means a notice placed in a credit report,
12 at the request of the consumer who is a victim of identity
13 theft.

14 **PART I - CONSUMER CREDIT REPORTING AGENCIES**

15 **§ -3 Security freeze by credit reporting agency.** (a) A
16 consumer who has been the victim of identity theft may place a
17 security freeze on the consumer's credit report by making a
18 request in writing by certified mail to a credit reporting
19 agency with a valid copy of a police report, investigative
20 report, or complaint the consumer has filed with a law
21 enforcement agency about the unlawful use of the consumer's
22 personal information by another person. A credit reporting



1 agency shall not charge a fee for placing or removing a security
2 freeze on a credit report. A security freeze shall prohibit the
3 credit reporting agency from releasing the consumer's credit
4 report or any information from it without the express
5 authorization of the consumer. When a security freeze is in
6 place, information from a consumer's credit report shall not be
7 released to a third party without prior express authorization
8 from the consumer. This subsection does not prevent a credit
9 reporting agency from advising a third party that a security
10 freeze is in effect with respect to the consumer's credit
11 report.

12 (b) A credit reporting agency shall place a security
13 freeze on a consumer's credit report no later than five business
14 days after receiving a written request from the consumer.

15 (c) The credit reporting agency shall send a written
16 confirmation of the security freeze to the consumer within ten
17 business days of placing the security freeze and shall provide
18 the consumer with a unique personal identification number or
19 password, other than the consumer's social security number, to
20 be used by the consumer when providing authorization for the
21 release of the consumer's credit to a specific party or parties,
22 or for a specific period of time.



1 (d) If the consumer wishes to allow access to the
2 consumer's credit report by a specific party or parties, or for
3 a specific period of time while the freeze is in place, the
4 consumer shall contact the credit reporting agency, request that
5 the freeze be temporarily lifted, and provide the following:

6 (1) Clear and proper identification;

7 (2) The unique personal identification number or password
8 provided by the credit reporting agency; and

9 (3) Clear and proper information regarding the third party
10 or parties who shall be permitted access, or the
11 specific time period during which the report shall be
12 available to users of the credit report.

13 (e) A credit reporting agency may develop procedures
14 involving the use of telephone, facsimile, the Internet, or
15 other electronic media to receive and process a request from a
16 consumer to temporarily lift a freeze on a credit report in an
17 expedited manner.

18 (f) A credit reporting agency that receives a request from
19 a consumer to temporarily lift a freeze on a credit report shall
20 comply with the request no later than three business days after
21 receiving the request.



1 (g) A credit reporting agency shall remove or temporarily
2 lift a freeze placed on a consumer's credit report only in the
3 following cases:

4 (1) Upon consumer request; or

5 (2) When the consumer's credit report was frozen due to a
6 material misrepresentation of fact by the consumer.

7 If a credit reporting agency intends to remove a freeze upon a
8 consumer's credit report pursuant to this subsection, the credit
9 reporting agency shall notify the consumer in writing prior to
10 removing the freeze.

11 (h) If a third party requests access to a credit report
12 for which a security freeze is in effect and this request is in
13 connection with an application for credit or any other use and
14 the consumer does not allow the consumer's credit report to be
15 accessed by that specific party or for that period of time, the
16 third party may treat the application as incomplete.

17 (i) If a consumer requests a security freeze, the credit
18 reporting agency shall disclose to the consumer the process of
19 placing and temporarily lifting a security freeze and the
20 process for allowing access to information from the consumer's
21 credit report by a specific party or parties, or for a specific
22 period of time while the security freeze is in place.



1 (j) A security freeze shall remain in effect until the
2 consumer requests that the security freeze be removed. A credit
3 reporting agency shall remove a security freeze within three
4 business days of receiving a request for removal from the
5 consumer who provides both of the following:

- 6 (1) Clear and proper identification; and
- 7 (2) The unique personal identification number or password
8 provided by the credit reporting agency pursuant to
9 subsection (c).

10 (k) A credit reporting agency shall require clear and
11 proper identification of the person making a request to place or
12 remove a security freeze.

13 (l) This section, including the security freeze, shall not
14 apply to the use of a consumer report by the following:

- 15 (1) A person, or the person's subsidiary, affiliate,
16 agent, or assignee with which the consumer has or,
17 prior to assignment, had an account, contract, or
18 debtor-creditor relationship for the purposes of
19 reviewing the account or collecting the financial
20 obligation owing for the account, contract, or debt,
21 or extending credit to a consumer with a prior or
22 existing account, contract, or debtor-creditor



- 1 relationship. For purposes of this paragraph,
2 "reviewing the account" includes activities related to
3 account maintenance, monitoring, credit line
4 increases, and account upgrades and enhancements;
- 5 (2) A subsidiary, affiliate, agent, assignee, or
6 prospective assignee of a person to whom access has
7 been granted for purposes of facilitating the
8 extension of credit or other permissible use;
- 9 (3) Any person acting pursuant to a court order, warrant,
10 or subpoena;
- 11 (4) A child support enforcement agency when investigating
12 a child support case pursuant to Title IV-D of the
13 Social Security Act (42 U.S.C. 651-679) and chapter
14 576D;
- 15 (5) The Department of the Attorney General or county
16 prosecuting attorneys or their agents or assignees
17 acting to investigate medicaid fraud;
- 18 (6) The department of taxation, county taxing authorities,
19 or any of their agents or assignees, acting to
20 investigate or collect delinquent taxes or
21 assessments, including interest and penalties, unpaid



- 1 court orders, or to fulfill any of their other
- 2 statutory or charter responsibilities;
- 3 (7) The use of credit information for the purposes of
- 4 prescreening as provided by the federal Fair Credit
- 5 Reporting Act (15 U.S.C. 1681-1681u);
- 6 (8) Any person for the sole purpose of providing a credit
- 7 file monitoring subscription service to which the
- 8 consumer has subscribed; and
- 9 (9) A credit reporting agency for the sole purpose of
- 10 providing a consumer with a copy of the consumer's
- 11 credit report upon the consumer's request.

12 § -4 **Credit reporting agency duties when security freeze**
13 **in effect.** If a security freeze is in effect, a credit
14 reporting agency shall not change any of the following official
15 information in a credit report without sending a written
16 confirmation of the change's to the consumer within thirty days
17 of the change being posted to the consumer's file: name, date of
18 birth, social security number, and address. Written
19 confirmation is not required for technical modifications of a
20 consumer's official information, including name and street
21 abbreviations, complete spellings, or transposition of numbers
22 or letters. In the case of an address change, the written



1 confirmation shall be sent to both the new address and the
2 former address.

3 § -5 **Persons not required to place security freeze.** The
4 requirement under this chapter to place a security freeze on a
5 credit report does not apply to:

6 (1) A check services or fraud prevention services company
7 that reports on incidents of fraud or issues
8 authorizations for the purpose of approving or
9 processing negotiable instruments, electronic fund
10 transfers, or similar methods of payment;

11 (2) A deposit account information service company that
12 issues reports regarding account closures due to
13 fraud, substantial overdrafts, automated teller
14 machine abuse, or similar negative information
15 regarding a consumer to inquiring banks or other
16 financial institutions for use only in reviewing a
17 consumer request for a deposit account at the
18 inquiring bank or financial institution; and

19 (3) A credit reporting agency that:
20 (A) Acts only to resell credit information by
21 assembling and merging information contained in a

1 database of one or more credit reporting
2 agencies; and

3 (B) Does not maintain a permanent database of credit
4 information from which new credit reports are
5 produced.

6 **PART II - DISCLOSURE OF CUSTOMER INFORMATION**

7 **§ -6 Duty of confidentiality.** (a) A financial
8 institution may not disclose customer information to any person,
9 governmental agency, or law enforcement agency unless the
10 disclosure is made in accordance with any of the following:

- 11 (1) Pursuant to consent granted by the customer in
12 accordance with this chapter;
- 13 (2) To a person other than a governmental agency or
14 law enforcement agency pursuant to valid legal
15 process;
- 16 (3) To a governmental agency or law enforcement
17 agency pursuant to valid legal process in
18 accordance with this chapter; or
- 19 (4) For the purpose of reporting a suspected
20 violation of the law in accordance with this
21 chapter.



1 § -7 **Consent.** (a) No consent or waiver shall be
2 required as a condition of doing business with any financial
3 institution, and any consent or waiver obtained from a customer
4 as a condition of doing business with a financial institution
5 shall not be deemed a consent of the customer for purposes of
6 this chapter.

7 (b) A valid consent must be in writing and signed by the
8 customer. In consenting to disclosure of customer information,
9 a customer may specify any of the following:

- 10 (1) The time during which such consent will operate;
11 (2) The customer information to be disclosed; and
12 (3) The persons, governmental agencies, or law
13 enforcement agencies to which disclosure may be
14 made.

15 § -8 **Government access.** (a) A governmental agency or
16 law enforcement agency may obtain customer information from a
17 financial institution pursuant to either of the following:

- 18 (1) The consent of the customer, in accordance with
19 this chapter; or
20 (2) Valid legal process, in accordance with this
21 section.



1 (b) A governmental agency or law enforcement agency may
2 obtain customer information from a financial institution
3 pursuant to a judicial or administrative subpoena duces tecum
4 served on the financial institution, if there is no reason to
5 believe the customer information sought is relevant to a proper
6 law enforcement objective or is otherwise authorized by law.

7 (c) A governmental agency or law enforcement agency may
8 obtain customer information from a financial institution
9 pursuant to a search warrant if it obtains the search warrant
10 pursuant to the rules of criminal procedure of this state.
11 Examination of the customer information may occur as soon as it
12 is reasonably practicable after the warrant is served on the
13 financial institution.

14 § -9 **Suspicion of unlawful conduct.** (a) Nothing
15 in this chapter precludes a financial institution from
16 initiating contact with, and thereafter communicating with and
17 disclosing customer information to, a law enforcement agency
18 when the financial institution reasonably believes that the
19 customer about whom such information pertains:

- 20 (1) Is engaged in unlawful activity; or,
21 (2) Is defrauding the financial institution.



1 (b) Conviction of the customer or admission by the
2 customer shall be conclusive of the reasonableness of the
3 disclosure for purposes of this section.

4 (c) The burden is on the financial institution to show
5 that at the time the disclosure was made, the disclosure was
6 reasonable for the purposes of this section.

7 § -10 **Cost reimbursement.** Any governmental agency, law
8 enforcement agency, or person requiring or requesting access to
9 customer information shall pay to the financial institution that
10 assembles or provides the customer information a fee for
11 reimbursement of reasonable necessary costs which have been
12 directly incurred by the financial institution. A financial
13 institution must deliver the customer information as soon as
14 reasonably possible notwithstanding any dispute concerning the
15 amount of reimbursement due under this section. A separate
16 action may be maintained by the financial institution against
17 the governmental agency, law enforcement agency, or person
18 requiring or requesting access for recovery of reasonable
19 reimbursement. The financial institution may not charge the
20 legislative auditor for customer information requested when
21 performing an audit; however, the financial institution may



1 charge the entity being audited by the legislative auditor for
2 the information required.

3 § -11 **Joint marketing agreements - consent.** A
4 financial institution must have a customer's consent before the
5 financial institution may disclose the customer's information to
6 a nonaffiliated third party under a joint marketing agreement as
7 provided under section 502(b)(2) of the federal Financial
8 Services Modernization Act of 1999.

9 § -12 **Exemptions.** This part does not apply to any of
10 the following:

11 (a) The disclosure of necessary customer information in
12 the preparation, examination, handling, or maintenance of any
13 customer information by any officer, employee, or agent of a
14 financial institution having custody of such information or in
15 the examination of such necessary information by an accountant
16 engaged by the financial institution to perform an audit.

17 (b) The disclosure of necessary customer information in
18 the examination of any customer information by or the furnishing
19 of customer information to any officer, employee, or agent of a
20 financial institution regulatory agency solely for use in the
21 exercise of that person's duties.



1 (c) The publication of data derived from customer
2 information if the data cannot be identified to any particular
3 customer or account.

4 (d) Any acts required of the financial institution by the
5 Internal Revenue Code.

6 (e) Disclosures permitted under the Uniform Commercial
7 Code concerning the dishonor of any negotiable instrument.

8 (f) The exchange in the regular course of business of
9 necessary customer credit information between a financial
10 institution and other financial institutions or commercial
11 entities, directly or indirectly through a customer reporting
12 agency.

13 (g) The disclosure of customer information in the
14 examination, handling, or maintenance of any customer
15 information by any governmental agency or law enforcement agency
16 for purposes of verifying information necessary in the licensing
17 process, provided prior consent is obtained from the licensee
18 and customer.

19 (h) The disclosure of customer information to a law
20 enforcement agency or governmental agency pursuant to a search
21 warrant or subpoena duces tecum issued in accordance with
22 applicable statutes or court rules.



1 **PART III - PROTECTION OF PERSONAL AND CUSTOMER INFORMATION**

2 § **-13 Protection of personal and customer information.**

3 A person or business that acquires, owns, or licenses personal
4 or customer information about a Hawaii resident shall implement
5 and maintain reasonable security procedures and practices
6 appropriate to the nature of the information to protect the
7 personal and customer information from unauthorized access,
8 destruction, use, modification, or disclosure, including, but
9 not limited to encryption of personal and customer information
10 stored electronically or on magnetic media.

11 **PART IV - NOTICE; DISCLOSURE OF INFORMATION**

12 § **-14 Notice.** (a) Any person or business that
13 acquires, owns or licenses computerized data that includes
14 personal or customer information shall disclose any breach of
15 the security of the system following discovery or notification
16 of the breach of the security of the system to any resident of
17 Hawaii whose unencrypted personal information was, or is
18 reasonably believed to have been, acquired by an unauthorized
19 person.

20 (b) The disclosure shall be made in the most expedient
21 time and manner possible and without unreasonable delay,
22 consistent with the legitimate needs of law enforcement, as



1 provided in subsection (c) of this section, or any measures
2 necessary to determine the scope of the breach and restore the
3 reasonable integrity of the data system. Any person or business
4 that maintains computerized data that includes personal
5 information that the person or business does not own shall
6 notify the owner or licensee of the information of any breach of
7 the security of the system immediately following discovery if
8 the personal information was, or is reasonably believed to have
9 been, acquired by an unauthorized person.

10 (c) The notification required by this section may be
11 delayed if a law enforcement agency determines that the
12 notification will impede a criminal investigation. The
13 notification required by this section shall be made after the
14 law enforcement agency determines that it will not compromise
15 the investigation.

16 (d) Notification under this section is not required if
17 after a reasonable investigation the person or business
18 determines that there is no reasonable likelihood of harm to
19 customers.

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

22 (1) Written notice;



1 (2) Electronic mail notice, if the notice provided is
2 consistent with the provisions regarding
3 electronic records and signatures set forth in 15
4 U.S.C. § 7001, as it existed on January 1, 2005;
5 or

6 (3) Substitute notice, if the person or business
7 demonstrates that:

- 8 (i) The cost of providing notice would exceed
- 9 two hundred fifty thousand dollars;
- 10 (ii) The affected class of persons to be notified
- 11 exceeds five hundred thousand; or
- 12 (iii) The person or business does not have
- 13 sufficient contact information.

14 (f) Substitute notice shall consist of all of the
15 following:

- 16 (1) Electronic mail notice when the person or
- 17 business has an electronic mail address for the
- 18 subject persons;
- 19 (2) Conspicuous posting of the notice on the website
- 20 of the person or business, if the person or
- 21 business maintains a website; and
- 22 (3) Notification by statewide media.

1 (g) Notwithstanding subsection (e) of this section, a
2 person or business that maintains its own notification
3 procedures as part of an information security policy for the
4 treatment of personal information and is otherwise consistent
5 with the timing requirements of this section, shall be deemed to
6 be in compliance with the notification requirements of this
7 section if the person or business notifies affected persons in
8 accordance with its policies in the event of a breach of the
9 security of the system.

10 § -15 Exemptions. (a) The provisions of this part
11 do not apply to a person or business that is regulated by a
12 state or federal law that provides greater protection to
13 personal information and at least as thorough disclosure
14 requirements for breaches of the security of personal
15 information than that provided by this part.

16 (b) Compliance with the state or federal law shall be
17 deemed compliance with this part with regard to the subjects
18 covered by this part.

19 (c) This section does not relieve a person or business
20 from a duty to comply with any other requirements of other state
21 and federal law regarding the protection and privacy of personal
22 information.



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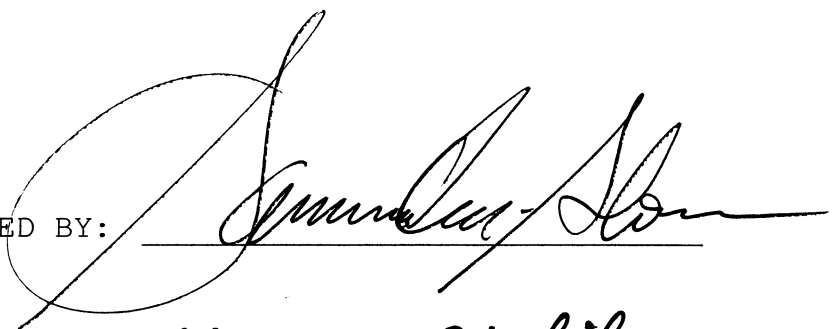
§ -16 Waiver. Any waiver of a provision of this subchapter is contrary to public policy, void, and unenforceable.

§ -17 Violation; penalties. Any person who violates any provision of this chapter shall be deemed to have engaged in an unfair or deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2."

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 3. This Act shall take effect on October 1, 2006.

INTRODUCED BY:



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Report Title:
Crime; Identity theft

SB. NO. 2524

Description:

Implements measures to assist in the prevention of identity theft.

SB SMO 06-059

