

Honolulu, Hawaii

MAR 24 2006

RE: H.B. No. 2535
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committees on Media, Arts, Science, and Technology and
Commerce, Consumer Protection, and Housing, to which was referred
H.B. No. 2535 entitled:

"A BILL FOR AN ACT RELATING TO OFFENSES AGAINST PROPERTY
RIGHTS,"

beg leave to report as follows:

The purpose of this measure is to deter internet fraud by
amending section 708-893, Hawaii Revised Statutes, use of a
computer in the commission of a separate crime, to include:

- (1) The additional state of mind of "intentionally" when a
person uses a computer to obtain control over the
property of another; and
- (2) The offenses of Theft in the First Degree and Theft in
the Second Degree among the offenses that can constitute
an element of the crime.

Your Committees received testimony in support of this measure
from the Department of the Prosecuting Attorney, City and County
of Honolulu; the Honolulu Police Department; and the Department of
the Prosecuting Attorney, County of Maui. The Office of the
Public Defender submitted testimony in opposition to this measure.

The use of a computer to commit theft is a growing problem in
Hawaii and the number of crimes that are perpetrated via the
Internet is increasing. The use of a computer as an instrument of



the crime offers the perpetrator relative anonymity, a quick and easy mechanism to commit fraud, and the potential for sizable financial gain. According to the Federal Trade Commission (FTC), Hawaii ranks fifth in the nation in internet fraud complaints per capita.

Although Hawaii has statutes relating to computer fraud, these statutes are inadequate for the purposes of prosecuting internet fraud. Under section 708-891, Hawaii Revised Statutes, a person commits the crime of computer fraud in the first degree if that person accesses a computer without permission and obtains control over the property of another. This statute is difficult to use to prosecute internet fraud because it requires proof that the suspect's use of the computer was "without permission." Lack of permission is difficult to prove in internet fraud cases where criminals use their own computers to commit crimes because these criminals have permission to use their own computers.

Your Committees find that amending section 708-893, Hawaii Revised Statutes, relating to the use of a computer in the commission of a separate crime to include persons who use a computer to commit theft will enable law enforcement to respond more efficiently to computer crime in its various forms. Furthermore, maintaining the highest level of scienter in proof of the new offense preserves the rights of the accused.

Your Committees have amended this measure by making technical, nonsubstantive stylistic changes.


As affirmed by the records of votes of the members of your Committees on Media, Arts, Science, and Technology and Commerce, Consumer Protection, and Housing that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2535, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2535, S.D. 1, and be referred to the Committee on Judiciary and Hawaiian Affairs.



Respectfully submitted on
behalf of the members of the
Committees on Media, Arts,
Science, and Technology and
Commerce, Consumer Protection,
and Housing,



RON MENOR, Chair



CAROL FUKUNAGA, Chair



