

Honolulu, Hawaii

FEB 17

, 2006

RE: S.B. No. 2158
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 Commerce, Consumer Protection, and Housing and Media, Arts, Science, and Technology, to which was referred S.B. No. 2158 entitled:

"A BILL FOR AN ACT RELATING TO IDENTITY THEFT,"

beg leave to report as follows:

The purpose of this measure is to prohibit public inspection of the social security number of any individual contained in family court records or judgments affecting title to land without the consent of that individual.

Your Committees received testimony in support of this measure from the Department of the Attorney General, the Honolulu Police Department, the Hawaii Financial Services Association, and the Hawaii Bankers Association. Your Committees received testimony in opposition to this measure from the Judiciary and the Consumer Data Industry Association. The Department of Commerce and Consumer Affairs submitted comments.

In 2005, the Hawaii Anti-Phishing Task Force was established in the Department of the Attorney General to develop state policy on how best to prevent further occurrences of phishing and other forms of electronic commerce-based crimes in the State. By reviewing Hawaii's and other jurisdictions' activities, policies, directives, and laws relating to the prevention, monitoring, and enforcement of electronic commerce-based crimes, the Task Force determined that identity theft was a more pervasive and serious problem than was previously recognized in the State of Hawaii.



Its recommendations have focused primarily on providing law enforcement with better tools to prosecute identity theft related activities, and determining how government agencies can better protect personal information currently found in accessible public records. Taken in conjunction with the identity theft initiatives proposals from Department of Commerce and Consumer Affairs, the Senate's developing package of identity theft bills takes a major step forward in bringing the business, law enforcement and government communities together to effectively track and combat identity theft crimes in Hawaii.

One area of particular concern to the Task Force was the number of Hawaii laws that require individuals to provide nonpublic personal and financial information that subsequently becomes embedded in publicly accessible records. The Task Force concluded that the best way to prevent exploitation of personal and financial information belonging to Hawaii residents was to provide greater protection for such information under Hawaii's public law records and identity theft prevention laws. The Task Force identified two categories of public records that are potentially vulnerable to misuse: family court actions and judgments affecting title to land.

Hawaii divorce, separation, and annulment proceedings are initiated by filing a complaint, summons, and matrimonial action information (MAI) form with the family court. The MAI requires the party initiating the proceedings to furnish the social security number, among other items of personal information, of each party to the action. Divorce judgments and paternity judgments also require the inclusion of the parties' social security numbers. The documents filed to establish or modify a support order or to determine parentage also require personal identifying information, including social security numbers, which becomes part of the family court record.

All judgments affecting title to real property must include the social security number, general excise tax number, or federal identification number for persons, corporations, partnerships, or other entities against which the judgment is rendered. This includes every judgment recorded by the Bureau of Conveyances and judgments of federal courts recorded in either the Bureau of Conveyances or Land Court.



Although public inspection of public records is a strong public policy, an equally strong policy exists to protect individuals' private information. Your Committees find that amending the law to prohibit the public inspection of the social security number of an individual contained in family court records or land judgments without the consent of that individual allows individuals to protect and have control over their own personal information. Despite concerns and comments raised on restricting access to social security numbers contained in public records, your Committees have decided to move ahead with their efforts to combat the growing problem of identity theft.

It is noted that the Judiciary had concerns with respect to obtaining an individual's consent prior to the family or land court releasing a document for public inspection that contains that individual's social security number. Besides the delay and burden this requirement will cause court records staff, the Judiciary noted that land court documents are all public documents and social security numbers are needed for purposes of identification and verification.

Your Committees have amended sections 501-151, 502-33, 504-1, and 636-3, Hawaii Revised Statutes, with respect to land judgments, to require that the social security number be redacted so that only the last four digits of the number are available rather than requiring the consent from the individual before public inspection. Furthermore, new sections were added to chapters 501, 502, 571, and 580, Hawaii Revised Statutes, to require the registrar of the land court, the registrar of the Bureau of Conveyances, and the family court to redact the first five digits of an individual's social security number before the public inspection. While your Committees note that there are other records available for public inspection that may contain an individual's social security number, the amendments to this measure are limited to family court documents and land judgments as the starting point in a package of identity theft initiatives this session.

Your Committees believe that the Committee on Judiciary and Hawaiian Affairs, especially in light of the concerns that were raised by the Judiciary, should continue the dialogue on this matter. Your Committees suggest that the Committee on Judiciary and Hawaiian Affairs consider limiting the liability of the courts in cases where social security numbers in documents are inadvertently released in pleadings or exhibits prepared by



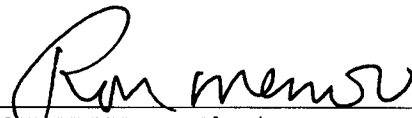
parties or their attorneys. Your Committees also suggest that the Judiciary set a deadline to implement guidelines that will prohibit the use of social security numbers in future pleadings and court documents when it is not specifically required by statute. Your Committees further note that the continuing evaluation of how best to safeguard personal identifying information in public records is proposed as part of the responsibilities of the Identity Theft Task Force specified in S.B. No. 2157 S.D. 1. Lastly, your Committees suggest an appropriation to the Judiciary to train its employees to conform to the new guidelines. Your Committees emphasize that this measure is a "work in progress" and it is a strong effort to combat electronic commerce-based crimes that are a growing problem in Hawaii.

As affirmed by the records of votes of the members of your Committees on Commerce, Consumer Protection, and Housing and Media, Arts, Science, and Technology that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2158, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2158, 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 Commerce,
Consumer Protection, and
Housing and Media, Arts,
Science, and Technology,



CAROL FUKUNAGA, Chair



RON MENOR, Chair



