

Honolulu, Hawaii

FEB 17

, 2006

RE: S.B. No. 2159

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. 2159 entitled:

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

beg leave to report as follows:

The purpose of this measure is to increase the penalties for identity theft and make it a crime to intentionally or knowingly possess the confidential information of another without that person's authorization.

Your Committees received testimony in support of this measure from the Department of the Attorney General, the Department of Commerce and Consumer Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu, the Honolulu Police Department, the Hawaii Bankers Association, the Consumer Data Industry Association, and the Hawaii Financial Services Association. Your Committees received testimony in opposition to this measure from the Office of the Public Defender.

In 2005, the Hawaii Anti-Phishing Task Force was established by 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 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 the 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.

Hawaii law enforcement has found it difficult to curb the rise in identity theft related crimes when identity thieves in possession of personal information who have not yet caused a monetary loss to the victim cannot be prosecuted for crimes other than petty misdemeanor thefts. A nominal criminal consequence is inadequate to address and deter possession of another's personal information, and in fact perpetuates the larger problem of identity theft. Your Committees find that increasing the penalties for identity theft by amending the law to make identity theft an enumerated offense within the repeat offender statute, and amending the law to make intentionally or knowingly possessing confidential information of another without authorization a class C felony, will help to deter identity theft crimes.

Your Committees have amended this measure to address concerns that were raised in the testimony submitted. The definition of "confidential personal information" was amended to exclude the terms "mother's maiden name" and "fictitious person." A mother's maiden name is not considered confidential personal information and the term "fictitious person" is obsolete for purposes of this definition.

Your Committees recognize that identity theft in the first and second degree are offenses already subject to the repeat offender statute due to the fact that they are class A and B felonies, respectively. Therefore, section 3 of the measure, amending section 706-606.5, Hawaii Revised Statutes, was amended to delete references to section 708-839.6 and 708-839.7.

Your Committees further recognize that the unauthorized possession of confidential personal information should be treated



as a separate offense from identity theft in the first degree, second degree, or third degree. The purpose of enacting a new law for the unauthorized possession of confidential personal information is to fill the loophole under current law and provide for appropriate criminal prosecution. Therefore, the amendment to section 708-839.8, identity theft in the third degree, was deleted. Instead, your Committees added a new section to chapter 708 to prohibit the unauthorized possession of confidential personal information. The definition of "personal information" was also added to section 708-800, Hawaii Revised Statutes. Finally, technical and nonsubstantive amendments were made to change formatting.

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. 2159, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 2159, 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,

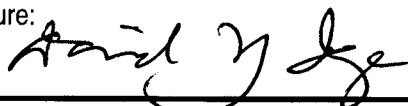

CAROL FUKUNAGA, Chair


RON MENOR, Chair



The Senate
Twenty-Third Legislature
State of Hawaii

Record of Votes of the
Committee on Media, Arts, Science and Technology
(Bills and Resolutions)

Measure:*	Committee Referral:	Date:		
SB2159	CPA/MAT, JAW	2/14/2006		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is to:				
<input type="checkbox"/> Pass, unamended (2312) <input checked="" type="checkbox"/> Pass, with amendments (2311) <input type="checkbox"/> Hold (2310) <input type="checkbox"/> Recommit (2313)				
Members	Ayes	Ayes(WR)	Nays	Excused
FUKUNAGA, Carol (C)	✓			
IGE, David Y. (VC)	✓			
ENGLISH, J. Kalani				✓
IHARA, Jr., Les				✓
HOGUE, Bob	✓			
TOTAL	3			2
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Do not list more than one measure per Record of Votes.