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PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEES ON COMMERCE & CONSUMER PROTECTION  
AND JUDICIARY

TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION OF 2009

Monday, February 2, 2009  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 581 – RELATING TO INFORMATION.**

TO THE HONORABLE ROBERT N. HERKES AND JON RIKI KARAMATSU, CHAIRS,  
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding House Bill No. 581, Relating to Information. My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

House Bill No. 581 proposes to require public or private entities responsible for the inadvertent, unauthorized disclosure of personal financial information to pay for access to credit reports for at least one year. The Department takes no position at this time but offers the following comments.

Under a recent federal law, the Fair and Accurate Credit Transactions Act ("FACTA"), all Hawaii residents can receive free copies of their credit reports once a year from each of the three national credit reporting agencies--Equifax, Experian, and Trans Union. This law provides consumers with an easier and more timely ability than ever before to determine that their credit is being fraudulently used.

To maximize the benefits of FACTA, consumer advocates advise consumers to order one report from one agency at a time, at four-month intervals. In effect, consumers now have the ability to monitor their credit reports for free three times per year. In addition to the free reports available each year, consumers are entitled to a free report from each of the agencies if they believe that they have become the victim of identity theft. To receive the free report in these circumstances, all that a victim needs to do is to contact each reporting agency directly and be prepared to provide a copy of a police report. Reviewing the credit reports enables consumers to detect fraudulent activity early and allows them to implement effective steps to limit damage resulting from potential identity theft.

The advances of FACTA notwithstanding, House Bill No. 581 imposes an obligation on public and private entities responsible for the unauthorized release of

personal information to bear the costs of providing a credit monitoring service for the potential victims. While the need for credit monitoring arises due to the action of those who release personal information, it is not clear that "credit monitoring services" are any more valuable to consumers than the tri-annual credit reports which are now available free of charge as a consequence of FACTA.

Credit monitoring services offer their programs as "privacy protection" or "anti-ID-theft" services. They are not a deterrent to identity theft, but simply a potential early warning. The actual services provided vary widely. In general, the services promise to check a consumer's report regularly and alert them if suspicious activity is found. Many consumer groups feel that the monitoring services, which can cost up to \$200 per year, provide a service that most consumers can do for themselves for free or for considerably less than the relatively high subscription costs. If this bill becomes law, Hawaii businesses and government agencies may be placed in a position in which they will have to spend millions of dollars to comply with this measure. Consequently, imposing such a potentially significant financial burden on the affected entities may not be warranted at this time in view of the consumer-friendly changes made by FACTA.

Thank you for this opportunity to testify on House Bill No. 581. I will be happy to answer any questions that the members of the Committees may have.

**HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE  
and  
HOUSE COMMITTEE ON JUDICIARY**

February 2, 2009

House Bill 581 Relating to Information

Chair Herkes, Chair Karamatsu, members of the House Committee on Consumer Protection & Commerce, and members of the House Committee on Judiciary, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm opposes House Bill 581 Relating to Information.

This measure proposes additional sections regarding the “inadvertent, unauthorized disclosure of personal financial information by public or private entities” to be added to Chapter 487, which deals with the Office of Consumer Protection (hereinafter OCP). Chapter 487N provides restrictions and remedies for security breaches of personal information by businesses as well as government agencies. The proposed measure conflicts with the provisions of current law contained in Chapter 487N. Specifically the proposed bill uses definitions, timetables, and language which are different from existing statutes covering the identical subject matter.

The measure requires notice of the breach within three days. Current provisions of Chapter 487N have no specific timetable but include detailed requirements for notice and the methodologies for notice. Generally speaking, the shortest time frame in any other state is 45 days, and this proposed bill specifies three days, an impracticable standard.

The measure also requires notice to the OCP in addition to the customer. Chapter 487N already specifies thresholds for notifying OCP. See Section 487N-2(f). The proposed bill conflicts with the existing statute and provides less guidance than already contained in existing law.

The measure also requires the private business within seven days to provide the person the option to use credit monitoring, and would require the private business to actually enroll the person in the service. If the person chose not to enroll, it would require the person to notify the company of that choice. What would happen if the person simply didn't respond? Would the company have to follow up multiple times to get an answer? To require the company to enroll the customer in a credit monitoring program adds risk to the customer for no real purpose.

For these reasons we request the measure be held. Thank you for the opportunity to present this testimony.

**HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE  
and  
HOUSE COMMITTEE ON JUDICIARY**

February 2, 2009

House Bill 581 Relating to Information

Chair Herkes, Chair Karamatsu, members of the House Committee on Consumer Protection & Commerce, and members of the House Committee on Judiciary, I am Rick Tsujimura, representing T-Mobile USA, Inc. T-Mobile opposes House Bill 581 Relating to Information.

Thank you for the opportunity to present this testimony in opposition to House Bill 581, which would mandate the provision of credit monitoring service to any person whose "Personally Identifiable Financial Information" may be disclosed without authorization. As a nationwide provider of wireless telecommunications services serving nearly 33 million customers, T-Mobile certainly recognizes the importance of protecting our customers' personal information. We operate in a vibrantly competitive industry and the failure to responsibly secure and protect our customer's information would undoubtedly result in the loss of their loyalty. We recognize that our customers have many choices and we do everything reasonably within our power to protect our relationship with them.

Accordingly, although we applaud the general consumer protection intentions of House Bill 581, we oppose its specific approach because we believe (1) it is unnecessary given existing Hawaii law, (2) mandated credit monitoring ignores material risk/benefit considerations and may interfere with offering alternatives that may be more favorable to customers, and (3) the bill is flawed because it contains numerous contradictions of existing state law and other ambiguities that will create compliance issues for businesses large and small – leading to increased costs for Hawaii consumers.

First, Hawaii has already enacted a broadly supported breach notice law. See Hawaii Revised Statutes §§ 4897N-1 & 487N-2. This statute, which is based on the landmark California Breach Notice Statute (SB 1386) enacted in 2002, is in most respects identical to the statutes adopted in over 40 other states since that time. For national and international companies, the relative consistency of this state legislation has been critical to the successful implantation of breach notice procedures and compliance programs. Because information does not recognize state borders, widely divergent state breach laws create unnecessary compliance complications. The privacy community and the commercial community have largely supported the balanced approach contained in Hawaii's existing law. Indeed, there is no evidence to indicate it is not working as intended.

Second, although many companies have offered their customers credit monitoring as the result of an information breach within their business, it is short-sighted to assume that such monitoring is necessary or even useful in every instance. In fact, despite the costs incurred by commercial entities for credit monitoring, many consumers choose not to take advantage of the

offer. Indeed, there is empirical evidence that credit monitoring may not be wanted or meaningful to many breach victims, and that other evolving credit services may be more suited to their needs. Our point is simply that mandating credit monitoring offers from at least two of the major credit agencies may in many cases increase the cost of the service a business would choose to offer (i.e., the credit agencies often provide volume discounts) and may simply create a windfall for the credit agencies. Notably, this bill does nothing to protect businesses – especially small businesses – from the pricing choices the credit agencies may make. The far better approach, in our view, is to allow the market to decide whether credit monitoring should be provided – or whether other services, offers, or concessions better serve the interests of Hawaii consumers.

Finally, even if the Committee believes that mandated credit monitoring is good public policy, this bill suffers from inconsistencies and conflicts with the existing breach notice law. For instance, House Bill 581 introduces a new term "Personally identifiable financial information," but defines it in a hopelessly circular manner: "any sensitive, personal, or financial information that, if inappropriately disclosed or obtained, could result in a person being a victim of identity theft . . ." This definition provides no meaningful guidance as to what types of information it really covers. Compare this definition to that of "personal information" in the existing Hawaii breach notice statute (and the law in the vast majority of the states), which very specifically defines the term in a way that businesses know exactly what it means. Why would the Committee entertain this ambiguity when it could simply amend the existing statute and utilize the existing definition – covering precisely the types of information previously identified as potentially subjecting consumers to identity theft.

Similarly, House Bill 581 would mandate three (3) and seven (7) day deadlines after discovery of a breach for providing notices to the office of consumer protection and the consumer, respectively. The law provides no leeway for reasonable investigation into the cause, the correction, or the extent of any breach. This stands in stark contrast – indeed it directly conflicts – with the existing Hawaii breach notice statute, which more appropriately requires notice "without unreasonable delay, consistent with the legitimate needs of law enforcement . . ." and provides law enforcement an opportunity to request a delay in such notice. Businesses must be given enough time to adequately research the breach, determine who was affected, and investigate how it occurred, before reactively sending notice letters. Indeed, in many instances law enforcement may request a delay in notice to facilitate their pursuit of wrongdoers. In this regard, House Bill 581 provides fixed deadlines for the offer of credit monitoring in direct conflict with the more reasonable timing requirements of existing law. Why would the Committee introduce this conflict when it could simply utilize the existing notice obligation and add the requirement to offer credit monitoring along with the existing notice?

In conclusion, we believe this Bill represents a solution in search of a problem – a problem that has already been adequately addressed by Hawaii state law. T-Mobile strongly urges the Committee to reject this Bill. But even if the Committee believes mandated credit monitoring is good policy, it really must recognize that this bill is not an appropriate vehicle to implement that policy. Thank you again for the opportunity to provide these comments.



# HAWAII BANKERS ASSOCIATION

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Presentation to the House Committee on Consumer  
Protection and Commerce House Judiciary Committee  
Monday, February 2, 2009, at 2:00 p.m.

## Testimony for HB 581 Relating to Information

TO: The Honorable Robert Herkes, Chair  
The Honorable Glenn Wakai, Vice Chair  
Members of the House Committee on Consumer Protection and Commerce

The Honorable Jon Riki Karamatsu, Chair  
The Honorable Ken Ito, Vice Chair  
Members of the House Judiciary Committee

My name is Neal Okabayashi and I testify for the Hawaii Bankers Association. While we support the intent of this bill, we respectfully ask that the respective committees hold this bill because the protections proffered by HB 581 already exist under federal and state laws. HB 581 mirrors HB 246 which was introduced in 2007 and held by your committees for such reason.

HB 581 proposes to accomplish two goals. If an entity inadvertently and without authority discloses personal financial information that could result in a criminal incident of identity theft, the entity must notify the office of consumer protection within three days of the discovery of the disclosure and pay for, at least, an one year subscription to a credit reporting agency.

Four identity theft bills were enacted effective 2007. Act 135, effective January 1, 2007, requires that businesses and government agencies notify those affected by a security breach and if more than 1,000 persons are affected, the office of the consumer protector and all credit reporting agencies are to be notified. Banks are exempt from Act 135 because we are already under a duty under federal law to notify our banking regulator as well as affected consumers. 12 CFR Part 364, Appendix B. Thus, the notification provisions proposed in HB 581 already exist in the law.

As to the payment of the subscription to a credit reporting agency, it is not necessary because a combination of federal and state law render it unnecessary. Act 138 (effective January 1, 2007, codified as Chapter 489P) permits an affected consumer to place a freeze on their credit report so no one can access it (except for statutory exceptions) unless the consumer either temporarily or permanently consents to the unfreezing of the credit report.

State law goes further than federal law. Federal law permits the consumer to place an initial fraud alert in the credit file which is good for 90 days and an extended alert which is good for 7 years. To activate an extended report, you must file an identity theft report which is a copy of a complaint you have filed with a law enforcement agency.



The initial fraud alert does entitle you to a copy of all the information then in your file at all three credit reporting agencies and an extended alert entitles you to two free file disclosures in the first year following the placing of the alert.

Thus, under federal law, a person, who files an initial fraud alert, is entitled to a free credit report from a credit reporting agency in the first year, and since there are three of them, such person is entitled to three free credit reports. If a person files an extended alert, he or she is entitled to two free credit reports from each of the three credit reporting agencies in the first year. Thus, it is possible to obtain at least nine free credit reports in the first year.

A person may also require that a consumer reporting agency block certain information from your file so it will not be reported.

We note that this Legislature recognized that banks were already subject to stringent identity theft provisions under federal law as a result of the Gramm-Leach-Bliley Act of 1999 and resulting regulations and thus, provided an exemption for banks with respect to Acts 135 and 136 so that banks would not be subject to duplicative but conflicting obligations. Thus, if the committees decide to report this bill favorably, we request that banks be exempt from the provisions of this bill in the same manner as under Acts 135 and 136. We would suggest that this language from HRS section 487N-2(g)(I) [Act 135] be used: "A financial institution that is subject to the Federal Interagency Guidance on Response Programs for Unauthorized Access to Consumer Information and Customer Notice published in the Federal Register on March 29, 2005 by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, or subject to 12 C.F.R. Part 748, and any revisions, additions, or substitutions relating to said interagency guidance."

The protections that I have referenced above are the product of recent legislation, some became effective as recently as January 1, 2007 (Acts 135, 136 and 138 were effective January 1, 2007 and Act 137 was effective July 1, 2007). Since these laws just became effective, we urge this body to recognize that there are more than adequate measures to protect the consumer.





# HAWAII CREDIT UNION LEAGUE

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January 31, 2009

Joint Hearing of the House Committee on Consumer Protection and Commerce  
and the House Judiciary Committee

Monday, February 2, 2009, at 2:00 p.m., Conference Room 325

The Honorable Robert Herkes, Chair  
The Honorable Glenn Wakai, Vice Chair  
Members of the House Committee on Consumer Protection and Commerce

The Honorable Jon Riki Karamatsu, Chair  
The Honorable Ken Ito, Vice Chair  
Members of the House Judiciary Committee

Mr. Chairmen, Vice Chairmen and Members of the Committees:

House Bill No. 581, *Relating to Information*

My name is Michael Leach and I respectfully submit testimony requesting this measure be held on behalf of the Hawaii Credit Union League, the local trade association for Hawaii's credit unions. We strongly support protecting consumers from identity theft. However, we concur with comments submitted by the Hawaii Bankers Association that certain state and federally chartered financial institutions, including Hawaii's credit unions, already are subject to stringent reporting and notification requirements. Credit unions are specifically subject to 12 C.F.R. Part 748, *Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts and Bank Secrecy Compliance*, which forms the basis for exempting credit unions from Section 487N-2, HRS, *Notice of security breach*, part of Act 135, SLH 2006.

While we are not aware of a compelling need to amend statute to require credit unions to provide greater identity theft protection, we would like the opportunity to examine any data clearly showing a need for legislation requiring more stringent identity theft protections than currently provided.

Thank you for this opportunity to request the Committee's to hold this measure.

Sincerely,

Michael Leach  
Legislative & Regulatory Affairs Manager