

S.B. NO. 2664

JAN 25 2010

A BILL FOR AN ACT

RELATING TO IDENTITY THEFT.

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

1 SECTION 1. Section 708-800, Hawaii Revised Statutes, is
2 amended by amending the definition of "personal information" to
3 read as follows:

4 "Personal information" means information associated with
5 ~~[an actual]~~ a real person, alive or dead, other than the person
6 transmitting the information, or a fictitious person that is a
7 name, an address, a telephone number, an electronic mail
8 address, a driver's license number, a social security number, an
9 employer, a place of employment, information related to
10 employment, an employee identification number, a mother's maiden
11 name, an identifying number of a depository account, a bank
12 account number, a password used for accessing information, or
13 any other name, number, or code that is used, alone or in
14 conjunction with other information, to confirm the identity of
15 an actual or a fictitious person."

16 SECTION 2. Section 708-839.6, Hawaii Revised Statutes, is
17 amended by amending subsection (1) to read as follows:

1 "(1) A person commits the offense of identity theft in the
2 first degree if that person makes or causes to be made, either
3 directly or indirectly, a transmission of any personal
4 information [~~of another~~] by any oral statement, any written
5 statement, or any statement conveyed by any electronic means,
6 with the intent to:

7 (a) Facilitate the commission of a murder in any degree, a
8 class A felony, kidnapping, unlawful imprisonment in
9 any degree, extortion in any degree, any offense under
10 chapter 134, criminal property damage in the first or
11 second degree, escape in any degree, any offense under
12 part VI of chapter 710, any offense under section 711-
13 1103, or any offense under chapter 842; or

14 (b) Commit the offense of theft in the first degree [~~from~~
15 ~~the person whose personal information is used, or~~
16 from any [~~other~~] person or entity."

17 SECTION 3. Section 708-839.7, Hawaii Revised Statutes, is
18 amended by amending subsection (1) to read as follows:

19 "(1) A person commits the offense of identity theft in the
20 second degree if that person makes or causes to be made, either
21 directly or indirectly, a transmission of any personal
22 information [~~of another~~] by any oral statement, any written

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1 statement, or any statement conveyed by any electronic means,
2 with the intent to commit the offense of theft in the second
3 degree from any person or entity."

4 SECTION 4. Section 708-839.8, Hawaii Revised Statutes, is
5 amended by amending subsection (1) to read as follows:

6 "(1) A person commits the offense of identity theft in the
7 third degree if that person makes or causes to be made, either
8 directly or indirectly, a transmission of any personal
9 information [~~of another~~] by any oral statement, any written
10 statement, or any statement conveyed by any electronic means,
11 with the intent to commit the offense of theft in the third or
12 fourth degree from any person or entity."

13 SECTION 5. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun, before the effective date of this Act.

16 SECTION 6. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect upon its approval.

19
20 INTRODUCED BY: _____

21 BY REQUEST

Report Title:
Identity Theft

Description:

Amends the identity theft offenses and the definition of "personal information" in chapter 708, Hawaii Revised Statutes, to clarify that the identity theft offenses include the transmission of personal information of an actual person, alive or dead, or a fictitious person.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO IDENTITY THEFT.

PURPOSE: To clarify that the identity theft offenses include the transmission of personal information of an actual person, alive or dead, or a fictitious person.

MEANS: Amend sections 708-800, 708-839.6(1), 708-839.7(1), and 708-839.8(1), Hawaii Revised Statutes.

JUSTIFICATION: This bill is intended to address the Hawaii Supreme Court decision in State v. Woodfall, 120 Haw. 387 (2009), where the Court found a conflict in the terms "another" and "personal information" in section 708-839.7, of the Hawaii Revised Statutes. Although the definition of "personal information" includes the information of either an actual or fictitious person, the use of the phrase "personal information of another" in the statute was interpreted by the Court to refer only to the information of an actual person. By making that ruling, the Court concluded that Identity Theft in the Second Degree, in violation of section 708-839.7, requires the transmission of personal information of an actual person, not a fictitious person. This bill resolves the conflict and clarifies that identify theft offenses may involve the transmission of personal information of a fictitious person. It also makes it clear that identity theft offenses may also involve the use of the personal information of someone who has died.

Impact on the public: This bill will clarify the prohibited conduct in identity theft offenses. It will also help to protect victims of theft by offenders who

use the personal information of fictitious persons.

Impact on the department and other agencies:

This bill will allow state and county law enforcement officers and prosecutors to pursue cases of identity theft involving offenders who use fictitious personal information or the personal information of dead persons to commit crimes against others.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Judiciary, county police, county prosecutors, Attorney General, and the Office of the Public Defender.

EFFECTIVE DATE: Upon approval.