
A BILL FOR AN ACT

RELATING TO INFORMATION PRIVACY.

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

1 SECTION 1. Identity theft affects millions of Americans
2 and costs more than \$54 billion each year. The legislature
3 finds that unauthorized disclosures of personal information are
4 a leading source of identity theft. To mitigate the effects of
5 these security breaches, the legislature passed Act 135, Session
6 Laws of Hawaii 2006, which requires consumers and businesses to
7 be notified when a security breach occurs. However, Act 135
8 required only limited information in the notice of a security
9 breach and did not provide for any consumer or small business
10 remedies.

11 The purpose of this Act is to require that victims of a
12 security breach receive more specific information about the
13 breach and how to respond to it. This Act also establishes a
14 private cause of action for consumers and businesses that are
15 victims of security breaches to pursue damages and increases
16 damages for security breaches caused by gross negligence.

17 SECTION 2. Chapter 487N, Hawaii Revised Statutes, is
18 amended as follows:



1 1. By adding a new section to be appropriately designated
2 and to read:

3 "§487N- Security program. (a) A business or government
4 agency that maintains personal information of any residents of
5 the State shall implement a comprehensive written information
6 security program that includes administrative, technical, and
7 physical safeguards for the protection of personal information.
8 The administrative, technical, and physical safeguards included
9 in the information security program shall be appropriate to the
10 size and complexity of the business or government agency and the
11 nature and scope of its activities.

12 (b) The information security program of a business or
13 government agency shall be designed to:

- 14 (1) Ensure the security and confidentiality of personal
15 information;
16 (2) Protect against any anticipated threats or hazards to
17 the security or integrity of the information; and
18 (3) Protect against unauthorized access to or use of the
19 information that could result in substantial harm to
20 any resident of the State.



1 (c) The business or government agency shall train its
2 staff, as appropriate, to implement the business or government
3 agency's security program."

4 2. By adding a new definition to section 487N-1 to be
5 appropriately inserted and to read:

6 "Identity theft" means the unauthorized use of another
7 person's identifying information to obtain credit, goods,
8 services, money, or property, or to commit an unlawful act."

9 3. By amending the definition of "security breach" in
10 section 487N-1 to read:

11 "Security breach" means an incident of unauthorized
12 [~~access to and acquisition~~] disclosure of unencrypted or
13 unredacted records or data containing personal information
14 [~~where illegal use of the personal information has occurred, or~~
15 ~~is reasonably likely to occur and that creates a risk of harm to~~
16 ~~a person~~]. Any incident of unauthorized [~~access to and~~
17 ~~acquisition~~] disclosure of encrypted records or data containing
18 personal information along with the confidential process or key
19 constitutes a security breach. Good faith [~~acquisition~~]
20 disclosure of personal information by an employee or agent of
21 the business or government agency for a legitimate purpose is
22 not a security breach; provided that the personal information is



1 not used for a purpose other than a lawful purpose of the
2 business and is not subject to further unauthorized disclosure."

3 4. By amending subsection (d) of section 487N-2 to read:

4 "(d) The notice shall be clear and conspicuous. The
5 notice shall include a description of the following:

6 (1) The incident [~~in general terms~~], including the
7 duration of time the information was exposed;

8 (2) The type of personal information that was subject to
9 the unauthorized access and acquisition;

10 (3) The types of fraudulent activities that could result
11 pursuant to a breach of that nature, and any remedial
12 actions that the individual can take;

13 (4) A statement of the individual's legal rights pursuant
14 to the breach, and the legal responsibilities of the
15 business or government, if any;

16 [~~+3~~] (5) The general acts of the business or government
17 agency to protect the personal information from
18 further unauthorized access;

19 [~~+4~~] (6) A telephone number that the person may call for
20 further information and assistance, if one exists;

21 [and]



1 ~~[(+5)]~~ (7) Advice that directs the person to remain vigilant
2 by reviewing account statements and monitoring free
3 credit reports~~[-]~~; and

4 (8) The toll-free contact telephone numbers and addresses
5 for the major credit reporting agencies that compile
6 and maintain files on consumers on a nationwide basis,
7 as defined by 15 United States Code Section 1681a, and
8 information on how to place a fraud alert or security
9 freeze."

10 5. By amending subsection (b) of section 487N-3 to read:

11 "(b) In addition to any penalty provided for in subsection
12 (a), ~~[any business that violates any provision of this chapter~~
13 ~~shall be liable to the injured party in an amount equal to the~~
14 ~~sum of any actual damages sustained by the injured party as a~~
15 ~~result of the violation. The court in any action brought under~~
16 ~~this section may award reasonable attorneys' fees to the~~
17 ~~prevailing party.]~~ any person who is harmed by a security breach
18 may sue for damages sustained by the person; provided that if a
19 judgment is obtained by the plaintiff:

20 (1) The court shall award the plaintiff a sum of not less
21 than \$ _____ or threefold damages sustained by the
22 plaintiff, whichever is greater, and reasonable



1 attorney's fees and costs. For purposes of this
2 subsection, damages sustained by a person shall
3 include actions taken to mitigate injury from future
4 identity theft, including actual or future purchase of
5 credit monitoring and identity theft insurance; or
6 (2) The court shall award the plaintiff actual damages if
7 the business or entity implements a security program
8 and is in compliance with section 487N- . The court
9 may award reasonable attorney's fees and costs.

10 No such action may be brought against a government agency."

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect on January 1, 2050.



Report Title:

Identity Theft; Security Program

Description:

Requires a business or government entity to implement a security program. Provides increased damages for a victim who, as a result of an information security breach provided by an entity without a security program, suffers harm from identity theft. Amends the type of notice that must be given to a person affected by a security breach. Defines identity theft. Effective January 1, 2050. (HB1220 HD1)

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