

NEIL ABERCROMBIE
GOVERNOR



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TESTIMONY
OF
BRUCE A. COPPA, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
FINANCE
ON
March 01, 2011
H.B. 678, H.D. 2

LATE TESTIMONY

RELATING TO INFORMATION.

Chair Oshiro and members of the Committee, thank you for the opportunity to testify on H.B. 678, H.D. 2.

The Department of Accounting and General Services (DAGS) supports the intent of H.B. 678, H.D. 2, but has several strong concerns.

1. Mandatory credit reporting requirements will increase the cost of government and business in Hawaii. Mandatory credit reporting requirements generally notify individuals after-the-fact. Although early notification can be helpful, this is less effective than stopping the crime via enhanced training before breaches occur or technical solutions that eliminate the need for use or retention of personal information. Instead, we suggest requiring credit agencies to provide free and convenient credit freeze services to anyone who is notified of a data breach by

any public or private organization. This would help prevent identity theft rather than help detect it after-the-fact. And unlike the current legislation, it would protect Hawaii residents who are notified of breaches by national organizations as well, including the federal government, credit card companies, alumni associations, hotels and online merchants. Further extension of free credit freeze services to all Hawaii residents, whether or not they have been notified of a breach, would even more strongly protect Hawaii citizens from identity theft, most of which has origins other than local data breaches. This approach would have no additional direct costs to Hawaii businesses or government and would provide significantly greater protection to consumers beyond those who might be affected by local public or private sector data breaches.

2. If required to establish and pay for credit monitoring services (or credit freeze services), for public agencies to provide commercial credit monitoring services in a timely manner, either a master contract would need to be in place or the selection of the service would need to be fully exempt from 103D. Otherwise it would be a months-long process to develop specifications and conduct a successful competitive solicitation to choose among the private for-profit vendors of these services.

3. The requirement to have each impacted person have a choice of credit monitoring services to chose from would be logistically impractical since it would then require a public agency or business to contract with multiple credit monitoring (or credit freeze services). We would suggest the public agency or business be allowed to select one provider based on best value.

4. The requirement to have each impacted person submit their decision to not subscribe to credit monitoring (or credit freeze services) or submit their choice of credit monitoring service in writing would be logistically impractical. What would the public agency or business

have to do if the impacted person failed to select an option or submit a response in writing? We would suggest the person be allowed to enroll on-line with the contracted credit monitoring service and provide an enrollment code provided to them from the public agency or business that would then grant access to that service and charge costs to the public agency or business if required (Note: If credit agencies are required to provide free credit freeze services, there would be no charges/costs to the public agency or business, simply notification that a list of individuals are eligible for their services and requesting an enrollment code).

5. Enrolling in a credit monitoring service requires provision of a full complement of personal identifying information (PII), including the SSN. This should be performed directly between the individual and the credit monitoring vendor. It would be much less secure and more time-consuming to involve the entity that performed the notification into the mechanics of providing the individual's PII to the credit monitoring vendor and executing the enrollment. This should be accomplished on-line or via phone directly by the person and the credit service provider.

Thank you for the opportunity to testify on this matter.



LATE TESTIMONY

NEEL AMBERCROMBIE
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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION
TO THE HOUSE COMMITTEE ON FINANCE
TWENTY-SIXTH LEGISLATURE
Regular Session of 2011
Tuesday, March 1, 2011
11:00 a.m.

TESTIMONY ON HOUSE BILL NO. 678, H.D. 2, RELATING TO INFORMATION.

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, AND MARILYN B. LEE, VICE CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding House Bill No. 678, H.D. 2, 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. 678, H.D. 2 proposes to require government entities responsible for a security breach to pay for access to credit reports for at least three years. The Department takes no position at this time but offers the following comments.

Under federal law, the Fair and Accurate Credit Transactions Act ("FACTA"), all

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Tuesday, March 1, 2011
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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 timelier 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. 678, H.D. 2 imposes an obligation on government 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.

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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. 678, H.D. 2. I will be happy to answer any questions that the Committee members may have.

LATE TESTIMONY

Presentation to the Committee on Finance
Monday, March 1, 2011 at 11:00 a.m.
Testimony on HB 678 HD2 Relating to Information

In Opposition

TO: The Honorable Chair Marcus R. Oshiro
The Honorable Vice Marilyn B. Lee
Members of the Committee

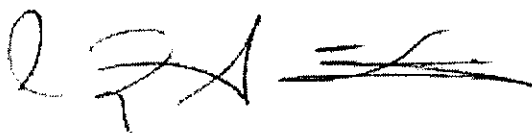
I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to HB 678 HD2. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

It is our understanding that HB 678 HD2 requires any government agency responsible for a security breach to pay for the costs of providing each person whose personal information was disclosed with, at a minimum, a three-year subscription to a nationwide consumer reporting agency's services.

While it appears this legislation is intended for government agencies, it is our understanding that modifications to the definition of "Security breach" may result in business being subject to the notice requirement provision.

We incorporate by reference the testimony of The American Council of Life Insurers and support the requested amendment to delete the definition of "Security breach".

Thank you for the opportunity to provide our testimony.



Gary Y. Fujitani
Executive Director



LATE TESTIMONY

TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-SIXTH LEGISLATURE, 2011

ON THE FOLLOWING MEASURE:

H.B. NO. 678, H.D. 2, RELATING TO INFORMATION.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, March 1, 2011 TIME: 11:00 a.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Charleen M. Aina, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General testifies to recommend that agencies be given sufficient time to implement the provisions of this bill, if the Committee intends to recommend that this measure pass Third Reading.

Under H.B. No. 678, H.D. 2, every government agency¹ is required to give notice, and offer every person a free, three-year subscription to a nationwide consumer reporting agency's services, when the personal information the agency keeps about the person is accessed, acquired, or disclosed without authority, and is thereafter used or otherwise could be used to commit identity theft in the first, second, or third degree under the Hawaii Penal Code.

The bill's "upon its approval" effective date, anticipates that these protections against identity theft will be in place the next day. This is not realistic.

The Office of Consumer Protection will need to develop and adopt appropriate rules. To devise effective procedures to implement the bill's requirements, state and county agencies

¹ We assume when the bill refers to "any government agency," it is contemplating both state and county agencies.

will need to know how often and to what extent their information systems could be breached, how many people could be affected by those breaches, and how much the subscriptions they must provide will cost. Revising the bill to provide a separate implementation deadline further in the future than the bill's "upon . . . approval" deadline will allow the time needed to do this.

Establishing that separate deadline will also give each jurisdiction (state or county) time to consider whether designating a single agency to implement the bill's requirements might be more efficient and economical. Most agency information systems are stored on centralized servers. A single security breach could result in one person receiving notice and a subscription offer from more than one agency, without the multiple agencies being aware of the competing or duplicate offers the person received.

Assigning a single agency the responsibility for issuing notices and offering subscriptions would allow the jurisdictions to take advantage of economies of scale, minimize duplication, consolidate record keeping, and rely on a single, jurisdiction-wide requirements contract to purchase the nationwide consumer reporting agency services on a long-term, cost-effective basis. It would also obviate delays in issuing notices of security breaches when agencies that collect and maintain personal information, and agencies that store that information, are unable to agree which of them was the "government agency responsible for a security breach."

The Attorney General takes no position as to whether this bill should be enacted. If it is enacted, however, agencies should be given sufficient time to implement it.²

² Two technical, non-substantive amendments should be made. First, on page 4, lines 8 and 11, "or a government agency" should be inserted after "business." Second, "Section 2" at line 14 should be changed to "Section 3," and the following sections should be appropriately renumbered.