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## MEMORANDUM

**TO:** Representative Angus L.K. McKelvey  
Chair, Committee on Economic Revitalization & Business  
Via Email: [ERBtestimony@Capitol.hawaii.gov](mailto:ERBtestimony@Capitol.hawaii.gov)

**FROM:** Mihoko E. Ito

**DATE:** January 26, 2011

**RE:** **H.B. 678 – Relating to Information**  
**Hearing: Thursday, January 27, 2010 at 9:00 a.m., Room 312**

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Dear Chair McKelvey and Members of the Committee on Economic Revitalization & Business:

I am Mihoko Ito, testifying on behalf of the Consumer Data Industry Association (CDIA). Founded in 1906, CDIA is the international trade association that represents more than 400 data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, fraud prevention, risk management, employment reporting, tenant screening and collection services.

CDIA **submits comments** regarding H.B. 678, which requires a business or government agency responsible for the inadvertent, unauthorized disclosure of personal information to pay for the person's access to credit reports for at least three years.

CDIA generally supports credit monitoring legislation, but only where such legislation conforms to existing federal law and is consistent with existing statutory language.

The federal Fair Credit Reporting Act ("FCRA") already defines a "nationwide consumer reporting agency" at 15 U.S.C. Sec. 1681a(p), as:

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[A] consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

- (1) Public record information.
- (2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

Moreover, the FCRA allows the Federal Trade Commission ("FTC") to promulgate rules, and under these rules, a nationwide consumer reporting agency includes Equifax, Experian, and TransUnion.

Based upon the foregoing definitions, CDIA respectfully requests that H.B. 678 be revised to conform the language of the bill to that which is consistent with federal law. This would include making the following revisions to this measure:

1. Replacing "credit reporting agency" with "nationwide consumer reporting agency" in relevant parts of the bill.
2. On page 3, line 3 – replacing the definition of nationwide consumer reporting agency with a "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined by the 15 U.S.C. Sec. 1681a(p)" (the federal Fair Credit Reporting Act).

A blacklined version of the bill reflecting the revised language follows.

We respectfully request that the foregoing concerns be considered, and welcome any questions you have regarding our testimony. Thank you very much for the opportunity to testify.

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**H.B. 678 (with proposed revisions):**

SECTION 1. Chapter 487N, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§487N- Duty to pay for credit monitoring reports. (a) Any business or government agency responsible for a security breach that may result in a crime being committed under section 708-839.6, 708-839.7, or 708-839.8 shall be liable for the costs of providing each person whose personal information was disclosed with, at a minimum, a three year subscription to a ~~credit-nationwide consumer reporting~~ agency's services.

(b) No later than seven calendar days after a business or government agency provides notice of the security breach, the business or government agency responsible for the security breach shall provide each person with a choice of not less than two ~~credit-nationwide consumer reporting~~ agencies from which the person may select to subscribe. The person, if the person so chooses, shall select a ~~credit national consumer reporting~~ agency and the credit monitoring and reporting services that the person requires and shall inform the responsible business or government agency of the person's selection. If a person elects not to subscribe to any credit monitoring and reporting services offered by a ~~credit national consumer reporting~~ agency, the person shall notify the responsible business or government agency in writing of the person's choice to not subscribe to any credit monitoring or reporting services. The business or government agency responsible for the security breach shall keep a record of each person's credit monitoring and reporting services selection, or election to not subscribe to those services, for at least five years after the receipt by the business or government agency of a person's selection or election under this subsection.

(c) The responsible business or government agency shall enroll the person into the credit monitoring and reporting plan of the person's choice within seven calendar days of receipt of the person's selection made under subsection (b) and shall pay all costs associated with the three year subscription to the selected ~~credit national consumer reporting~~ agency's services.

(d) The office of consumer protection may adopt rules in accordance with chapter 91 to effectuate this section."

SECTION 2. Section 487N-1, Hawaii Revised Statutes, is amended as follows:

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1. By adding a new definition to be appropriately inserted and to read:

""-Credit National consumer reporting agency" means a nationwide consumer credit reporting agency, such as Equifax, Experian, or TransUnion, or any successor entity thereof, that provides consumer credit monitoring and reporting services consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined by the 15 U.S.C. Sec. 1681a(p)."

2. By amending the definition of "security breach" to read:

""Security breach" [means an]:

(1) Means:

(A) An incident of unauthorized access to and acquisition of unencrypted or unredacted records or data containing personal information where illegal use of the personal information has occurred, or is reasonably likely to occur and that creates a risk of harm to a person[.];

(B) Any incident of unauthorized access to and acquisition of encrypted records or data containing personal information along with the confidential process or key constitutes a security breach[. Good]; and

(C) Any incident of inadvertent, unauthorized disclosure of unencrypted or unredacted records or data containing personal information constitutes a security breach.

(2) Does not include good faith acquisition of personal information by an employee or agent of the business for a legitimate purpose is not a security breach; provided that the personal information is not used for a purpose other than a lawful purpose of the business and is not subject to further unauthorized disclosure."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.

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SECTION 5. This Act shall take effect upon its approval.



# HAWAII BANKERS ASSOCIATION

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Presentation to the House Committee on Economic Revitalization Business  
Thursday, January 27, 2011, at 9:00 am

## Testimony for HB 678 Relating to Information Economic Revitalization Business

TO: The Honorable Angus L.K. McKelvey, Chair  
The Honorable Isaac W. Choy, Vice Chair  
Members of the House Committee on Economic Revitalization Business

My name is Neal Okabayashi and I testify for the Hawaii Bankers Association. While we acknowledge and are sympathetic to the concern which is the impetus behind this bill, we respectfully ask that this committee hold this bill because the protections offered by HB 678 already exist under federal and state laws, and thus this bill is not necessary. This is the third time since 2007 that this concept has been raised. Previously, the concept was rejected twice because of existing protections under federal and state law.

This bill would require businesses and government agencies to pay for three years of a credit monitoring services. The cost would be an onerous burden on businesses and may drive some of them to shutter their doors, adding to our economic woes by increasing unemployment. For example, the recent data breach at the University of Hawaii would have cost the University a minimum of 12 million dollars. The excessive cost to business and government cannot be justified in light of the many protections already offered under federal and state law which are far more valuable than a subscription to a credit monitoring service.

The purpose of a subscription is to monitor a credit report. However, the value of the subscription service pales in comparison to the value of measures a person can take under Hawaii and federal law. Such measures are infinitely more valuable to fighting identity theft than a subscription service.

Hawaii law permits an affected consumer to freeze his or her 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. Since the credit report is frozen, there is no need to monitor it because there can be no credit activity without the consent of the consumer. This law was passed in 2007 and is in chapter 489P.

To insure that a consumer knows about a data breach so the consumer may take protective action, chapter 487N, also adopted in 2007, requires businesses and government agencies notify those affected by a security breach and if more than 1,000 persons are affected, also notify the

office of the consumer protector and all credit reporting agencies. Those subject to a similar federal requirement were exempted from this law.

Should a consumer choose not to freeze the consumer's credit report, the consumer may nonetheless monitor the consumer's credit report for free under federal law. The consumer is entitled to three free credit reports in a year. As the Office of the Consumer Protection testified in 2009 on a similar measure: "To maximize the benefits of FACTA, consumer advocates advise consumers to order one report from one agency at a time, at four-month intervals."

The consumer may place a 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. These measures then require a potential creditor take steps to ascertain the true identity of the credit applicant.

The initial fraud alert entitles you to a copy of a free credit report from each of the three credit reporting agencies (as indicated above) and in addition, an extended alert entitles you to two free credit reports from each of the credit reporting agencies in the first year following the placing of the alert. A person may also require that a consumer reporting agency block certain information from your file so it will not be reported.

It should be emphasized that credit monitoring services are not a deterrent to identity theft. It is merely a signal of potential problem. That signal can be provided from the free credit reports any consumer is permitted to obtain, or to prevent the need for any signal, freeze the credit report.

In summary, we oppose HB 581 because a better service is provided under federal and state law for free without endangering the economic well being of this State.



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## TESTIMONY ON HOUSE BILL 678, RELATING TO INFORMATION

House Committee on Economic Revitalization and Business

Hon. Angus L.K. McKelvey, Chair

Hon. Isaac W. Choy, Vice Chair

Thursday, January 27, 2011, 9:00 AM

State Capitol, Conference Room 312

Honorable Chair McKelvey and committee members:

I am Kris Coffield, editorial director of Fracturedpolitics, an emergent political action network born out of a weblog. Currently, the network boasts over 50 local members, though I offer this testimony only on behalf of myself, in support of HB 678, with consideration for minor changes.

As you are undoubtedly aware, a security breach at the University of Hawaii, in October of 2010, exposed the personal information of approximately 40,000 students and faculty to the public, allegedly when a faculty member mistook a public server for a private server. Information bared by the breach included names, addresses and Social Security numbers. This follows a similar breach at the college, in July of 2010, in which the credit card information, driver's license numbers and vehicle information of up to 53,000 people was jeopardized, and a further breach, in May of 2009, that placed at risk the information of 15,000 financial aid applicants at Kapi'olani Community College because of a malware infection. All told, over 250,000 private records held by the university have been compromised in the past seven years, earning the university the grade of "F" for online security from The Liberty Coalition.

While such lapses are appalling, their potential origins are by no means limited to public institutions and agencies. Every day, residents of the state engage in transactions with local businesses and government agencies—from banks and insurance providers to employment assistance centers and the Department of Health—that require the authorized use of private information. Students of the university and private citizens, like me, have little recourse when data breaches occur, aside from costly and prolonged litigation (lawsuits resulting from the two most recent UH breaches, for example, could cost the university nearly \$10 million each, if the Ponemon Institute's \$204 average per-person legal compensation figure is to be believed). Requiring offending institutions and businesses to provide subscriptions to credit reporting agencies for at least three years provides another alternative, one that may make victims less inclined to seek court ordered remuneration.

That said, I would encourage the committee to insert language into the proposed bill mandating the written provision of potential credit reporting subscriptions not more than seven days after a breach has transpired, thus amending the first sentence of §487N-(b) to read: "No later than seven calendar



days after a business or government agency provides notice of the security breach, the business or government agency responsible for the security breach shall provide each person, in writing, with a choice of not less than two credit reporting agencies from which the person may select to subscribe.” While mass security breaches, like those occurring at UH, practically necessitate written correspondence due to the sheer volume of impacted individuals, smaller breaches, should they emerge, may not. Nonetheless, persons affected by such breaches should be entitled to a written record of not only the breach, but all actions taken to resolve the problem, once discovered. Moreover, it may be advisable to add language to the measure mandating that the offending business or government agency notify victims of enrollment, once a victim has selected a credit reporting agency and been provided with a subscription. Since this legislation directs businesses and government agencies to manage enrollment on behalf of individuals, all efforts should be taken to maximize communication between persons responsible for the alleviation of a breach and persons whose privacy has been impugned.

Mahalo for the opportunity to testify in support of this bill.

Sincerely,  
Kris Coffield  
*Editorial Director*  
Fracturedpolitics