

# LATE TESTIMONY

## TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS IN OPPOSITION TO HOUSE BILL 678, RELATING TO INFORMATION

January 27, 2011

### Hand Delivery

Representative Angus L. K. McKelvey, Chair  
Committee on Economic Revitalization & Business  
State House of Representatives  
Hawaii State Capitol, Conference Room 312  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair McKelvey and Committee Members:

Thank you for the opportunity to testify in opposition to House Bill 678, relating to Information.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association, who represents more than three hundred (300) legal reserve life insurer and fraternal benefit society member companies operating in the United States. These member companies account for 90% of the assets and premiums of the United States Life and annuity industry. ACLI member company assets account for 91% of legal reserve company total assets. Two hundred thirty-nine (239) ACLI member companies currently do business in the State of Hawaii; and they represent 93% of the life insurance premiums and 95% of the annuity considerations in this State.

ACLI member companies recognize that their customers expect them to maintain the security as well as the confidentiality of their personal information; and acknowledge their affirmative and continuing obligation to protect the confidentiality and security of their customers' personal information.

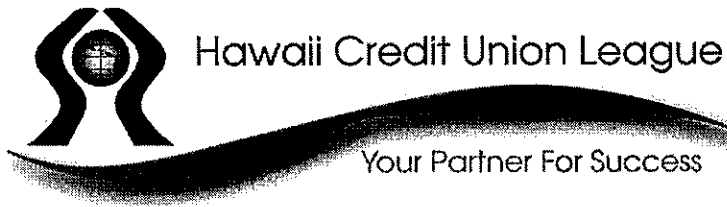
ACLI member companies are supportive of legislation requiring notification to customers when their personal information has been acquired and accessed by unauthorized persons.

However, ACLI opposes House Bill 678.

Although ACLI has not had sufficient time to fully analyze the bill's provisions, at this time ACLI opposes House Bill 678 for the following reasons.

- The bill's proposed definition as to what constitutes a "security breach" may be the most expansive in the country. Under existing Hawaii law, as in many other jurisdictions, to constitute a "security breach" the breach must result in a risk of harm to a person. Section 2 of this bill would amend the definition of a "security breach"

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House Committee on Economic Revitalization & Business  
Thursday, January 27, 2011 at 9:00 a.m.

Testimony in opposition to HB 678, Relating to Information

To: The Honorable Angus McKelvey, Chair  
The Honorable Isaac Choy, Vice-Chair  
Members of the Committee on Economic Revitalization & Business

My name is Stefanie Sakamoto and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 85 Hawaii credit unions, representing approximately 810,000 credit union members across the state.

We are in opposition to HB 678, Relating to Information. While we understand the concerns of this bill, we are in opposition because laws already exist for those who fall victim to a data breach. Credit unions in Hawaii are in full compliance with the state and federal laws that are already in place. In addition, everyone is already entitled to free credit reports every year. With three major credit reporting agencies, staggering the request over the three agencies allows everyone to get a different credit report every four months.

This bill would require business and government agencies to pay for three years of credit monitoring services. The cost of this would be extremely detrimental to credit unions, and would likely place their low-cost services in jeopardy. The mission of credit unions is to serve the underserved, and a burden such as this would be difficult to bear without establishing or raising fees.

Thank you for the opportunity to testify.

to now include the inadvertent, unauthorized disclosure of personal information whether or not the disclosure results in a risk of harm to the consumer.

- In the event of a security breach who may be liable for the cost of a credit reporting agency's monitoring and reporting the consumer's credit is vague and contradictory:
  - Subsection (a) of the proposed addition to Chapter 487N, HRS, which is set forth in section 1 of the bill (1<sup>st</sup> page, lines 4 through 7) states that if a business or government agency (1) "is responsible for a security breach" and (2) that breach may result in the commission of identity theft under Hawaii's Penal Code, the business is liable to the consumer whose personal information was disclosed as a result of the breach for the cost of monitoring and reporting the consumer's credit for a 3 year period.
  - When and under what circumstances a business is "responsible for a security breach" is unclear.
  - Section 2 of the bill (page 4, lines 1 through 4) amends the meaning of "security breach" to now include "any incident of inadvertent, unauthorized disclosure of unencrypted or unredacted records or data containing personal information."
  - By definition, the inadvertent, unauthorized disclosure of personal information cannot result in the commission of identity theft because under the Penal Code the unauthorized acquisition of the information must be acquired with the intent to commit a crime.
- To require a business to pay for the cost of monitoring and reporting the consumer's credit and retaining the required records because of an inadvertent, unauthorized disclosure of personal information is unwarranted particularly where the disclosure has resulted in no risk of harm to the consumer.
- The bill's provisions of mandating the required process of monitoring and reporting of a consumer's credit would be costly, time consuming and an administrative burden to businesses.
  - Subsection (b) of the proposed addition to Chapter 487N, HRS, which is set forth in section 1 of the bill (1<sup>st</sup> page, lines 11 through 18) states that the business must within 7 calendar days of giving notice of the security breach provide the affected consumers (who may number in thousands) with a choice of subscribing to 2 credit reporting agencies; alternatively, the consumer may select "a credit reporting agency and the credit monitoring and reporting services that the person requires."
  - The business is liable for the cost of monitoring and reporting the consumer's credit for a 3 year period. ACLI is informed that one year of credit monitoring is the current industry standard.

- Subsection (b) also requires the business to retain records of each person's decision to select a credit monitoring and reporting services selection or election not to subscribe for such services for 5 years.
- A business has only 7 calendar days after delivery of notice of the security breach to the consumer to (1) provide the consumer with a choice of 2 credit reporting agencies from which to select, (2) to enroll the consumer into the credit monitoring and reporting plan of the person's choice, and (3) pay for the costs of the subscription for the reporting agency's services for 3 years. ACLI submits that the 7 calendar day period is an insufficient amount of time for a business to comply with these requirements.

ACLI is in the process of reviewing House Bill 678 with its member companies and may submit additional testimony on this bill in the future.

Again, thank you for this opportunity to testify in opposition to House Bill 678.

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