

Honolulu, Hawaii

APR 05 2012

RE: H.B. No. 1788  
H.D. 1  
S.D. 1

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred  
H.B. No. 1788, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO COMPUTER CRIME,"

begs leave to report as follows:

The purpose and intent of this measure is to update Hawaii's  
computer fraud statutes by adding language mirroring Hawaii's  
identity theft statutes to better address the realities of modern  
cybercrime. Specifically, this measure:

- (1) Establishes a new offense of computer fraud in the third degree;
- (2) Adds new definitions related to computer crime to incorporate the element of phishing and spyware into all computer fraud offenses and unauthorized computer access offenses;
- (3) Changes the offenses of computer crime in the first degree and unauthorized computer access in the first degree from class B to class A felonies;
- (4) Changes the offenses of computer crime in the second degree and unauthorized computer access in the second degree from class C to class B felonies;



- (5) Changes the offense of unauthorized computer access in the third degree from a misdemeanor to a class C felony; and
- (6) Increases the minimum value of identifying information obtained that constitutes unauthorized computer access in the first degree from \$5,000 to \$20,000.

Your Committee received testimony in support of this measure from the Department of the Prosecuting Attorney of the City and County of Honolulu, Hawaiian Electric Company, Maui Electric Company, Hawaii Electric Light Company, and one private individual. The Department of the Attorney General and the State Privacy and Security Coalition submitted comments.

Your Committee finds that existing computer fraud statutes are too narrow to address most activities that are typically thought of as "computer fraud". For example, first-degree computer fraud requires proof that an offender accessed a computer without authorization to obtain or exert control over the property of another. However, most potential computer fraud offenders use their own computer, which they presumably are authorized to use to carry out offenses such as online auction fraud, advance fee scams, counterfeit check scams, phishing, and e-mail scams. This measure is intended to streamline and update computer crime statutes to better address and combat cybercrime.

Your Committee recognizes the concerns raised by the State Privacy and Security Coalition that defining spyware to include computer programs designed to gather information about an authorized user without authorization may result in unintended consequences. There are a large range of beneficial software programs that collect information about an authorized user without the user's express authorization, such as parental control software programs that protect children from objectionable or harmful content; programs that secure end user computers and networks from spyware, malware, and botnet attacks; programs that authenticate authorized users and detect intruders; and spell and grammar check programs that detect and fix typing errors.

Accordingly, your Committee has amended this measure by:

- (1) Adopting the suggested amendment from the State Privacy and Security Coalition to clarify that spyware only means any computer program or software designed to

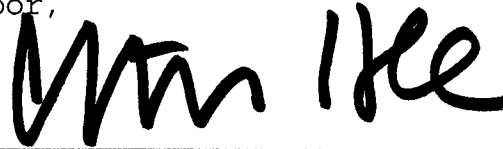


disrupt or modify an authorized user's access or use of the Internet by deceptive means; and

- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1788, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1788, H.D. 1, S.D. 1.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



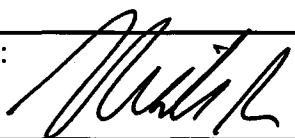
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CLAYTON HEE, Chair



The Senate  
 Twenty-Sixth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:*	Committee Referral:	Date:	
HB 1788, HD1	EDT, JDL	3/27/12	
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____			
The Recommendation is:			
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310	<input type="checkbox"/> Recommit 2313
Members	Aye	Aye (WR)	Nay
HEE, Clayton (C)	✓		
SHIMABUKURO, Maile (VC)	✓		
GABBARD, Mike	✓		
IHARA, Jr., Les	✓		
SLOM, Sam	✓		
<b>TOTAL</b>	<b>5</b>		
Recommendation:			
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted			
Chair's or Designee's Signature:			
			
<b>Distribution:</b>			
Original	Yellow	Pink	Goldenrod
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy

\*Only one measure per Record of Votes