

HB 1788, HD 1

EDT

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THE HONORABLE CAROL FUKUNAGA, CHAIR
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY
Twenty-sixth State Legislature
Regular Session of 2012
State of Hawai'i

March 16, 2012

RE: H.B. 1788, H.D. 1; RELATING TO COMPUTER CRIME.

Chair Fukunaga, Vice Chair Wakai and members of the Senate Committee on Economic Development and Technology, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in support of House Bill 1788, House Draft 1.

The purpose of H.B. 1788, H.D. 1, is to update Hawai'i's computer fraud statutes by adding language mirroring Hawai'i's identity theft statutes, which have already proven useful and effective. These amendments would better address the realities of modern cybercrime, and serve as a more effective tool for enforcement and prosecution of computer fraud offenses.

As currently written, Hawai'i's 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 (would-be) computer fraud offenders use their own computer (i.e. with authorization) to carry out offenses, such as online auction fraud, advance fee scams, counterfeit check scams, phishing and e-mail scams. The language in H.B. 1788, H.D. 1, would fill this gap in the law, using familiar terms from our identity theft statutes.

Similarly, second-degree computer fraud is currently too narrow to effectively prevent or prosecute most types of computer fraud, as it is limited to the misuse of passwords – and that's it. This does not reflect current patterns and schemes used by online fraudsters. The proposed amendments in H.B. 1788, H.D. 1, regarding second- and third-degree computer fraud, would be much more usable and better reflect the realities of modern-day cybercrime.

For the reasons noted above, the Department of the Prosecuting Attorney of the City and County of Honolulu supports House Bill 1788, House Draft 1. Thank you for the opportunity to testify on this matter.

Testimony before the Senate Committee on Economic Development and Technology

H.B. 1788, H.D. 1 -- Relating to Computer Crime

**Friday, March 16, 2012
1:30 pm, Conference Room 016**

**By Thomas Overman
Information Assurance Manager
Hawaiian Electric Company, Inc.**

Chair Fukunaga, Vice-Chair Wakai and Members of the Committee:

My name is Thomas Overman. I am the Information Assurance Manager for Hawaiian Electric Company. I am testifying on behalf of Hawaiian Electric Company and its subsidiary utilities, Maui Electric Company and Hawaii Electric Light Company.

We support the majority of content in H.B. 1788, H.D. 1, which seeks to strengthen and clarify Chapter 708-890, Hawaii Revised Statutes, but strongly recommend two changes to clarify the legislation. The protection of Personal Identifying Information is clearly in the best interests of everyone. In addition, clarity in the legislative language is critical for any company to be able to implement policies, procedures and systems to protect such information. There are two areas where we strongly encourage modification of the proposed bill.

- 1) As currently written, the definition of “identifying information” in Section 2 of the proposed legislation does not require correlation in order to require protection. Thus, as written, a Social Security Number (SSN) or customer number out of context, or a seemingly random nine digit number which happens to be someone’s SSN, would require protection, even if not correlated with the person’s name. To ensure clarity and afford the protections we all desire, we strongly recommend this definition on page 2, line 7 be revised as follows:

“Identifying information” means a person’s the correlation of two or more items from the list below, or the correlation of a person’s last name with any of the items below.”

- 2) Also under the definition of “identifying information” on page 2, we agree with and fully support the inclusion of items 1 through 8 on this list. However, item 9, would be impossible to implement. The phrase “any other piece of information” is too broad to be actionable by agencies or companies. While items 1-8 on this list are very specific, item 9 is a catch-all that nullifies the value of the preceding 8 items, leaving it to the discretion of the reader to determine what is and what is not “identifying information.” We therefore strongly recommend item 9 be stricken from the proposed definition of “identifying information.”

There is another bill under consideration by the legislature at this time which will be impacted by H.B 1788. H.B. 2047 relates to Information Protection (your Committee, jointly with the CPN Committee, deferred action on its companion, SB 2389). H.B. 2047, if passed and enacted into law, will require businesses which maintain personal information to have written policies, procedures and training for the protection of personal information. The changes recommended here to H.B. 1788 will provide more definitive guidance to Hawaii companies should those bills related to Information Protection become law. Without the changes recommended here, implementing recordkeeping and training in compliance with Information Protection bills will be exceptionally difficult.

And stated said earlier, we strongly support the intent of the legislation in clarifying computer crimes and in protecting personal identifying information. We feel that the changes recommended above will make the legislation, and any resulting regulations, much more clear and unambiguous.

Thank you for the opportunity to testify.

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY
Friday, March 16, 2012
1:30 PM
State Capitol, Conference Room 016
In consideration of
HB1788 HD1 RELATING TO COMPUTER CRIME.

Chair Fukunaga, Vice Chair Wakai, and Members of the Senate Committee on Economic Development and Technology:

The High Technology Development Corporation (HTDC) **respectfully opposes HB1788 HD1**, especially Section 5, where unauthorized computer access in the first degree is recategorized as a class A felony.

HTDC views **this recategorization as unnecessary and disproportional a response to crimes of this level** to join the ranks of kidnapping, rape, and murder. HTDC further **questions the intent** of this and other bills introduced this legislative session that addresses computer crimes. While some assumed that the upgrade to a class A felony is a mere “parity” issue to this State’s unusually harsh punishment for identity theft which already carries a class A felony distinction, they are incorrect. **HRS §708-839.6 which describes identity theft in the first degree, already explicitly includes theft by electronic means.** Therefore, there is no need for a mere unauthorized access to be redefined, as if it were a crime of identity theft, it is already covered in HRS §708-839.6, whether it was committed using electronic means or not.

Further, HTDC has concerns regarding the language used in computer crime bills including HB1788 HD1. Because computer technologies become obsolete quickly, the definitions in these bills are also prone to a very short shelf life. HTDC recommends shifting from describing specific technologies such as hard drive, cookies, etc. to using terms that reflect functionality, such as storage device, client-side persistent state, respectively.

HTDC feels it is essential that these types of bills that require deeper understanding of technologies, to be shared with the tech industry first. HTDC is willing to be that bridge between the industry and the policy leaders in absence of a tech trade association, so that the industry can assist the State in crafting effective bills that represent a clear and noble intent, and to avoid the kind of confusion and national concern HB2288 (obligatory record keeping for 2 yrs by internet service providers) has caused.

Thank you for the opportunity to submit testimony on this bill.