

**HB 678**

**HD3, SD1**

# GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:  
GARY M. SLOVIN  
ANNE T. HORIUCHI  
MIHOKO E. ITO  
CHRISTINA ZAHARA NOH  
CHRISTINE OGAWA KARAMATSU

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET  
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196  
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880  
info@goodsill.com • www.goodsill.com

INTERNET:  
gslovin@goodsill.com  
ahoriuchi@goodsill.com  
meito@goodsill.com  
cnoh@goodsill.com  
ckaramatsu@goodsill.com

**TO:** Senator David Y. Ige  
Chair, Committee on Ways and Means  
Hawai'i State Capitol, Room 215  
*Via Email: WAMTestimony@Capitol.hawaii.gov*

**FROM:** Gary M. Slovin / Mihoko E. Ito

**DATE:** March 29, 2011

**RE:** **H.B. 678, H.D. 3, S.D. 1 – Relating to Information  
Hearing: Wednesday, March 30, 2011 at 9:30 a.m.**

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Dear Chair Ige and Members of the Committee on Ways and Means:

We respectfully submit comments 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.

Overall, CDIA **opposes** H.B. 678, HD 3, S.D. 1.

## **Free Security Freeze for Security Breach**

CDIA strongly opposes Section 8 of H.B. 678 HD 3, S.D. 1 at pages 9-10, which amends HRS Section 489P-3 and would require nationwide consumer reporting agencies to provide free security freezes for consumers who receive security breach notices from public and private entities. Consumer reporting agencies already provide credit freeze services for Hawai'i consumers and they provide those services for free to identity theft victims. Even before laws required free freezes for ID theft victims, consumer reporting agencies provided free freezes to these consumers.

Consumer reporting agencies should not be required to give its credit freeze services away for non-identity theft victims (i.e., those who merely receive breach notices). Under Hawai'i law, consumer reporting agencies cannot charge more than \$5.00 to place

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a freeze on a credit file for non-victims. This amount is less than the standard fee that these agencies are allowed to recover in many other states.

It is neither fair nor appropriate to force consumer reporting agencies to give away its freeze service to non-identity theft victims. Consumer reporting agencies, who are not the cause of security breaches, should not be forced to bear the costs of other business or government data breaches. Accordingly, CDIA would ask that this section be removed from the bill.

### **Definitions of “Credit Reporting Agency”**

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:

[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, H.D. 3, S.D. 1 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. Amending Section 3, page 4, lines 5-8 to read:

~~“Credit Nationwide 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~~

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services that complies and maintains files on consumers on a nationwide basis defined in 15 U.S.C. Sec. 1681a(p).”

2. Amending Section 4, page 6, lines 10-14 to read:

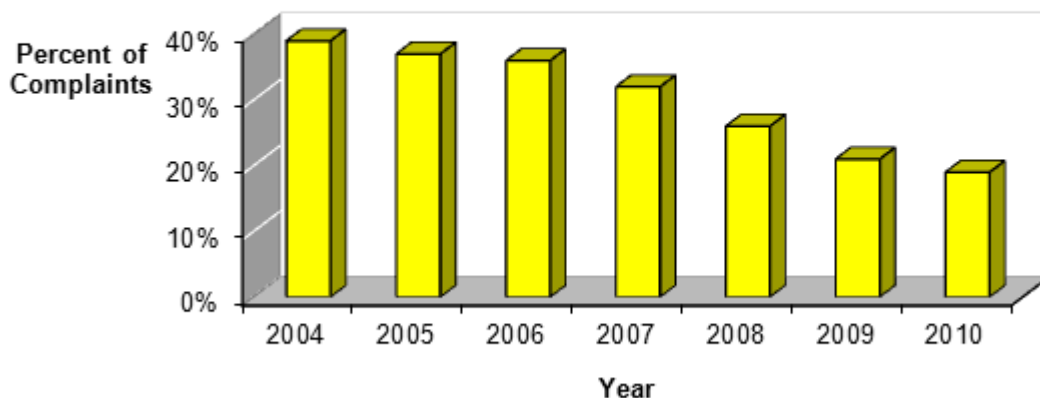
The toll-free contact telephone numbers, postal and Internet addresses for the major ~~credit~~ nationwide consumer reporting agencies ~~that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. Section 1681a,~~ and information on how to place a fraud alert or security freeze.

### **Exemption for Entities Already Required to Comply with FCRA Requirements**

Finally, CDIA requests that, if the S.D.1 continues to move forward, an exemption be considered for entities that are required to comply with the disposal of records requirements of the FCRA. The FCRA requires businesses that prepare or use consumer reports to properly dispose of these records. This is intended to reduce the instances of identity theft. The decreasing percentage of consumer complaints to the FTC about identity theft indicates that many existing laws and practices—including the FCRA disposal provisions—are working.

#### **ID Theft Complaints as a Percentage of All Complaints**

Source: Federal Trade Commission



Thus, CDIA requests that those already subject to these stringent federal requirements be exempted from the bill. This would be similar to the existing exemption for financial institutions. CDIA proposes language as follows at Section 2, page 3, lines 19-22:

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- “(d) This section shall not apply to:
- (1) a financial institution that is subject to the federal Interagency Guidelines Establishing Information Security Standards in 12 C.F.R. Part 748, Appendix A, both as amended from time to time; or
  - (2) a person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose that is subject to the rules regarding disposal of consumer information and records as promulgated by the federal banking agencies, the National Credit Union Administration, the Federal Trade Commission, and the Bureau of Consumer Financial Protection in accordance with 15 U.S.C. Sec. 1681w.

**CDIA notes that it is actively working with other stakeholders to develop language that would focus the bill on preventing data security breaches and minimizing the chances of personal information being used inappropriately after a security breach, while being mindful of the impact on those parties that are not responsible for the breach.**

Thank you very much for the opportunity to submit comments.

Senator David Y. Ige, Chair  
Senator Michelle Kidani, Vice Chair  
Committee on Ways and Means

State Capitol, Honolulu, Hawaii 96813

HEARING      Wednesday, March 30, 2011  
                  9:30 am  
                  Conference Room 211



RE:    **HB678, HD3, SD1, Relating to Information**

Chair Ige, Vice Chair Kidani, and Members of the Committees:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to supporting the retail industry and business in general in Hawaii.

**RMH opposes HB678, HD3, SD1**, which requires a government agency that maintains personal information systems to include mandatory training programs for agency personnel; requires a business that maintains personal information to implement an information security program; adds a definition of "credit reporting agency"; amends the definition of "security breach" to include inadvertent, unauthorized disclosure of unencrypted or unredacted records or data containing personal information; requires a notice of security breach to include toll-free contact telephone numbers and addresses for the major credit reporting agencies; requires a government agency to submit a written report to the information privacy and security council within twenty days after discovery of a security breach; requires the information privacy and security council to be responsible for coordinating the implementation of security breach guidelines by government agencies; includes a victim of a security breach to those residents entitled to free security freeze services; appropriates unspecified funds for the information privacy and security council for positions and security tools.

We acknowledge the Legislature's reaction to the security breach that occurred at the University of Hawaii last year, but believe that the focus of additional identity theft legislation should be on government.

**Our primary opposition to HB678, HD3, SD1 is in Section 3, Subsection 2** which broadens the definition of "security breach" to include any incident of inadvertent, unauthorized disclosure of unencrypted or unredacted records or data containing personal information, regardless of whether affected persons are likely to be at risk of harm. Retailers will be required to send notices even if there is no threat of compromise.

In 2007, landmark legislation was enacted to combat the growing incidents of identity theft in Hawaii. Working with DCCA, RMH developed a number of policy statements and advisories which are available to our industry.

Retailers' greatest vulnerability is in the area of payment card processing; according to the Digital Resources Group, 85% of data compromise is related to credit/debit cards and 75% to POS systems. Retailers continue to work with their financial partners to assure initial and on-going compliance with PCI standards. The process is costly, but the end result is greater security for consumers and, ultimately, retailers.

Considering the breadth of this measure and concerns of other stakeholders, RMH respectfully requests the Chair's consideration to allow additional time for further research and dialogue with the goal of crafting a measure that is workable for all and accomplishes the desired result. Thank you for the opportunity to comment on this measure.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII  
1240 Ala Moana Boulevard, Suite 215  
Honolulu, HI 96814  
ph: 808-592-4200 / fax: 808-592-4202

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
ON HB 678, HD 3, SD 1, RELATING TO INFORMATION

March 30, 2011

Via e mail: [wamtestimony@capitol.hawaii.com](mailto:wamtestimony@capitol.hawaii.com)

Hon. Senator David Y. Ige, Chair  
Committee on Ways and Means  
State Senate  
Hawaii State Capitol, Room 211  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Ige and Committee Members:

Thank you for the opportunity to testify in opposition to the proposed modifications to the definition of "security breach" set forth in section 3 of HB 678, HD 3, SD 1, Relating to Information.

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

ACLI and its member companies recognize that their customers expect them to maintain the security of their personal information.

ACLI acknowledges that life insurers have an affirmative and continuing obligation to protect the security of their customers' personal information and strongly supports requirements for insurers to protect the security of their customers' personal information.

ACLI also supports legislation that provides standards for notification to individuals whose personal information has been subject to a security breach.

At the same time, ACLI supports legislation that avoids needlessly alarming individuals and undermining the significance of notification of a security breach - legislation that requires notification only when the security and confidentiality of personal information is truly at risk and the information is likely to be misused.

Unfortunately, however, ACLI must respectfully strongly oppose the proposed modifications to the definition of "security breach" set forth in section 3 of the bill. The modifications are likely to have significant unintended harmful consequences for Hawaii consumers.

Most significantly, section 3 of the bill would amend the definition of "security breach" to include the following:

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

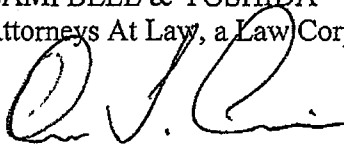
The proposed modifications will cause the definition of "security breach" to include inadvertent, unintentional disclosures of personal information - irrespective of whether affected persons are likely to be at risk of harm. They will effectively eliminate the "harm trigger" in the current definition of "security breach."

As a result of the proposed modifications to the definition of "security breach," businesses will be required to provide affected persons with notice even when their personal information is not likely to be misused or even compromised - needlessly alarming Hawaii residents. Most importantly, the likely significant increase in the number of notices provided Hawaii residents may well undermine the importance of the notices and may cause Hawaii residents not to pay adequate attention to notices of breaches involving real threats to their personal information. In other words, the proposed modifications to the definition of "security breach" may have the unintended consequence of marginalizing the importance of real threats to consumers' personal information.

ACLI respectfully submits that Hawaii residents will be most effectively protected if they are not overwhelmed by unnecessary notices and are provided notice only when there is a risk of harm. Accordingly, ACLI respectfully strongly urges this Committee to amend the bill by deleting the proposed modifications to the definition of "security breach" set forth in section 3 of the bill.

Again, thank you for the opportunity to testify in opposition to the proposed modifications to the definition of "security breach" set forth in section 3 of HB 678, HD 3, SD 1., Relating to Information.

CHAR, HAMILTON  
CAMPBELL & YOSHIDA  
Attorneys At Law, a Law Corporation



Oren T. Chikamoto  
737 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813  
Telephone: (808) 524-3800  
Facsimile: (808) 523-1714