

Presentation To
Senate Committee on Economic Development and Technology
Senate Committee on Commerce and Consumer Protection
Wednesday, February 8, 2012, at 1:15 p.m.

Testimony on Senate Bill 2389 Relating to Information Protection

In Opposition

TO: The Honorable Carol Fukunaga & Rosalyn H. Baker, Chairs
The Honorable Glenn Wakai & Brian T. Taniguchi, Vice Chairs
Members of the Committees

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to SB 2389. HBA is the trade association representing FDIC insured depository institutions with branches in Hawaii.

SB 2389 requires Hawaii businesses to implement a comprehensive identify (ID) theft program by January 1, 2014.

While the intent of this bill is laudable, we respectfully ask that the respective committees hold this bill because of the regulatory burden and cost that will be placed on the business community, especially, small businesses.

The mandate to train **“all”** employees, Section I (b), is an overreaching and costly requirement. This places unnecessary cost to train even employees that do not have access to personal information. Further the bill stipulates **only businesses** meet the new Section I ID theft ID program requirements. Hopefully, it was not the intent to only cover businesses and exclude government agencies.

During these tough economic times many business are already struggling to survive and do not need well intended, but, more regulations that may not achieve its intent. Unnecessary, but, well intended laws, only add more expenses for business, which can affect businesses’ ability to retain or hire employees.

We note that previously the Legislature recognized that banks and credit unions were already subject to stringent identity theft provisions under federal law as a result of the Gramm-Leach-Bliley Act of 1999 and resulting regulations and thus, provided an exemption for banks with respect to Acts 135 and 136, Session Laws of Hawaii 2006, so that financial institutions would not be subject to duplicative but conflicting obligations.

Thus, if the committees decide to report this bill favorably, we request that financial institutions be exempt from the provisions of this bill in the same manner as under Acts 135 and 136. We would suggest that this language from HRS section 487N-2(g) (I) [Act 135] **be used to exempt financial institutions:**

“A financial institution that is subject to the Federal Interagency Guidance on Response Programs for Unauthorized Access to Consumer Information and Customer Notice published in the Federal Register on March 29, 2005 by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, or subject to 12 C.F.R. Part 748, and any revisions, additions, or substitutions relating to said interagency guidance” shall be exempt from this Chapter.

I would be happy to answer any questions you may have.

Testimony before the Senate Committees on Economic Development and Technology and Commerce and Consumer Protection

S.B. 2389 -- Relating to Information Protection

**Wednesday, February 8, 2012
1:15 pm, Conference Room 016**

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

Chairs Fukunaga and Baker, Vice-Chairs Wakai and Taniguchi and Members of the Committees:

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 oppose S.B. 2389 because of the lack of clarity on training, record keeping, auditing, and because of the cost of implementing the recordkeeping process required by these bills.

S.B. 2389 strives to enhance the protections specified in Chapter 487J, 487N and 487R of Hawaii Revised Statutes, which is not a bad thing per-se. This bill, however, would create a requirement for all businesses to keep records, but would not provide guidance on the length of time the records must be kept, the form and format of these records, on which government agency would review/approve these records, or for whatever other purpose the records would serve. The same is true of the training requirement. It is unclear whether the State will subsequently have one of its agencies start defining the training requirements and recordkeeping formats for this bill. More

importantly, it does not provide clarity on what constitutes sufficient employee training. A company might have a one-minute training which instructs employees to comply with Hawaii law, while another company might have a half-day training class giving the details and process for ensuring the intended protections. As it currently reads, both companies would be in compliance with the law, yet the training provided by these two companies would be very different. The ability for companies to be compliant with S.B. 2389, without actually providing any details in their training, would prove fatal to its ability to serve its intended function.

Another challenge is that, H.B. 1788, which is currently under consideration in the House, provides a new term called “Identifying information” which is proposed for inclusion in Chapter 708 of Hawaii Revised Statutes. The bills under consideration here do not provide guidance on whether the training should be specified toward the protections existing today in Chapter 487, or whether the training should also include the definitions of “Identifying Information” provided in H.B. 1788.

Lastly, the opposition to the training and recordkeeping requirement in these bills is on the basis of this question: how much training on Hawaii laws is enough? Each new documentation and training requirement imposed by the State increases the costs of doing business in Hawaii.

As stated earlier, while we support the intent of the legislation – enhancing the protections of either “Personal Information” or “Identifying Information”, or both -- the ambiguities on the level of training and recordkeeping, as well as the costs of implementing such a recordkeeping process for companies, and for the State, suggest this legislation should be held.

Thank you for the opportunity to testify.

GOODSILL ANDERSON QUINN & STIFEL

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TO: Senator Carol Fukunaga
Chair, Committee on Economic Development and Technology
Senator Rosalyn Baker
Chair, Committee on Commerce and Consumer Protection
Via Email: EDTtestimony@capitol.hawaii.gov

FROM: Mihoko E. Ito

DATE: February 4, 2012

RE: **S.B. 2389 – Relating to Information Protection**
Hearing Date: Wednesday, February 8, 2012 at 1:15 p.m.
Conference Room 016

Dear Chairs Fukunaga and Baker and Members of the Committees:

I am Mihoko Ito submitting 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 S.B. 2389, which by January 1, 2014, requires businesses to implement a comprehensive, written policy and procedure to prevent identity theft, and to designate an employee to be responsible for protecting personal information. It further requires businesses to train all employees in the implementation of the policy and procedure.

CDIA is concerned that the measure expands the existing law in a way that will create significant additional burdens on businesses. While we understand that this measure is intended to implement a security policy to prevent identity theft, existing protections and penalties under federal and state law already exist. Federal and state laws require the private sector to maintain safe and secure databases and data transfers. State laws also require the private sector to provide for file freezing and security breach notification. Based upon the foregoing, expanding the law at this time appears to be unjustified.

February 7, 2012

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We respectfully request that the foregoing concerns be considered, and welcome any questions you have regarding our comments. If the Committee is inclined to move this measure, we are also willing to work with the Committee on looking at alternatives that would address the Committee's concerns. Thank you very much for the opportunity to submit testimony.

Senator Carol Fukunaga, Chair
Senator Glenn Wakai, Vice Chair
Committee on Economic Development & Technology

Senator Rosalyn Baker, Chair
Senator Brian Taniguchi, Vice Chair
Committee on Commerce & Consumer Protection

HEARING Wednesday, February 08, 2012
 1:15 pm
 Conference Room 016
 State Capitol, Honolulu, Hawaii 96813



RE: SB2389, Relating to Information Protection

Chairs Baker and Fukunaga, Vice Chairs Taniguchi and Wakai, 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 recognizes the intent of this proposed legislation, which by January 1, 2014, requires businesses to implement a comprehensive, written policy and procedure to prevent identity theft, and to designate an employee to be responsible for protecting personal information, and to train all employees in the implementation of the policy and procedure.

However, this legislation is not necessary. All the guidelines that businesses need to protect both employees' and consumers' personal identification already are in place. Since 2007, Sections 487N, Security Breach of Personal Information, 487R, Destruction of Personal Information Records; and 487J, Social Security Number Protection, Hawaii Revised Statutes, have provided the framework for businesses to address these issues. Additionally, there are federal laws that provide additional tiers of protection: Health Information (HIPPA); Credit and Background Checks (The Fair Credit Reporting Act); Search of Company and Employee Property; Surveillance and Electronic Monitoring of Employees (ECPA-"The Wire Tap Act" and The Stored Communications Act (SCA).

Recognizing that electronic payment systems were an area of vulnerability for the retail industry, Payment Card Identity Data Security Standard (PCI DSS) was launched in 2007. Although not a federal law, PCI applies to all organizations or merchants, regardless of size or number of transactions, that accept, transmit or store any card holder data, and defines the cardholder data that is relevant and necessary for normal operations and that which is sensitive authentication data which is prohibited. Standards can found at this website:
https://www.pcisecuritystandards.org/security_standards/pci_dss.shtml

Should this committee decide to advance this measure, we respectfully request considering the following:

- This requirement under §487J should be expanded to include government agencies as well; the standard should be equally applied.
- The requirement in subsection (b) to train **all** employees will be very costly and in not warranted. Employees with access to customers' payment information at POS stations are trained in policies and procedures. Employees with no such contact do not need training.
- While this mandate is another cost burden for business, we especially are concerned with the many small business owners who have neither the cash nor the time resources to comply. We suggest that perhaps DCCA could develop a template that would facilitate compliance without a major hardship.

We look forward to continuing the dialogue to develop effective and manageable regulations. Thank you for the opportunity to comment.

Carol Pregill, President