

SB 796

NEIL ABERCROMBIE
GOVERNOR



BRUCE A. COPPA
Comptroller

RYAN OKAHARA
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
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WRITTEN TESTIMONY
OF
BRUCE A. COPPA, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
WAYS AND MEANS
ON
February 24, 2011
S.B. 796, S.D. 1

RELATING TO INFORMATION.

Chair Ige and members of the Committee, thank you for the opportunity to submit written testimony on S.B. 796, S.D. 1.

The Department of Accounting and General Services (DAGS) supports S.B. 796, S.D. 1.

The S.D. 1 version of S.B. 796 adequately addresses DAGS' previous concerns in S.B. 796 as originally introduced.

DAGS also supports language that suggests proactively investing to prevent breaches through enhanced cyber security training and technical solutions and considers it a wise use of resources.

DAGS also supports the requirement that the credit reporting provider offer free credit freezes to individuals upon request.

Thank you for the opportunity to submit written testimony on this matter.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
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PETER B. CARLISLE
MAYOR



NOEL T. ONO
DIRECTOR

February 24, 2011

The Honorable David Y. Ige, Chair
and Members of the Committee on Ways and Means
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Ige and Members:

Subject: Senate Bill No. 796, Relating to Information

The City and County of Honolulu, Department of Human Resources, offers the following written comments regarding Senate Bill No. 796, S.D.1, specifically regarding the portion of Section 2 which seeks to amend the definition of "Security breach" in Hawaii Revised Statutes Section 487N-1.

We suggest the Committee consider revising subsection (2) of the definition as follows:

Does not include good faith acquisition or disclosure of personal information by an employee or agent of the business or government agency for a legitimate purpose; provided that the personal information is not used for a purpose other than a lawful purpose of the business or government agency and is not subject to further unauthorized disclosure.

The foregoing change provides uniformity should the revisions which are being proposed in subsection (1)(C) of the definition be passed into law. The addition of "government agency" to the paragraph will also make the definition of "Security breach" consistent with the rest of Hawaii Revised Statutes ("HRS") Chapter 487N since government agencies are also subject to its disclosure notification requirements.

Yours truly,

A handwritten signature in black ink, appearing to read "Noel T. Ono", is written over a faint, larger signature.

Noel T. Ono
Director

**SENATE COMMITTEE ON
WAYS AND MEANS**

February 24, 2011

Senate Bill 796, SD 1 Relating to Information

Chair Ige and members of the Senate Committee on Ways and Means, I am Rick Tsujimura, representing Reed Elsevier, Inc.

Reed Elsevier OPPOSES Senate Bill 796, SD 1 Relating to Information. We have attached a letter prepared by Reed Elsevier which details its opposition.

For the reasons in the attached letter, we respectfully request the committee hold Senate Bill 796, SD 1.

Thank you for the opportunity to present this testimony.

Christopher Oswald
Director, State Government Affairs, Western Region



Elsevier
LexisNexis
Reed Business

February 23, 2011

SB 796 – OPPOSE

The Honorable David Ige
Chairman, Senate Ways and Means Committee
Hawaii State Capitol, Conference Room 211
415 S. Beretania St.
Honolulu, HI 96813

Dear Mr. Chairman:

On behalf of Reed Elsevier Inc. ("REI") and its affiliated companies, I write to respectfully OPPOSE SB 796 because it redefines an information security breach in an overly-broad manner that will negatively-impact industry, unduly burden Hawaiian companies, and may unnecessarily alarm Hawaiian citizens who may start to ignore breach notices just as many ignore the privacy notices that fill their mailboxes.

Specifically, SB 796 redefines a security breach to include, "Any incident of inadvertent, unauthorized disclosure of unencrypted or unredacted records or data containing personal information...." This new proposed definition is overly-broad in that it fails to include a "harm trigger" that presently exists under current law.

Redefining a "security breach" to include loss of paper or electronic data that poses no risk to consumers will unduly burden Hawaiian business by requiring a breach notifications be sent to consumers, even if their personal information is not jeopardized. Moreover, requiring companies to send data breach notifications where there is no risk of harm does nothing to help protect Hawaiian consumers and will actually alarm consumers unnecessarily when no risk to their personal information exists. As drafted, companies would be required to notify consumers of purely administrative matters (for example, the use of an incorrect e-mail address in the transmission of a document) that are not security breaches.

REI takes data security very seriously and is an industry leader in ensuring consumers' personally identifiable information is protected appropriately and from unauthorized access or acquisition. We believe that "security breach" as currently defined under existing law sufficiently compels companies to protect sensitive information and alerts Hawaiian consumers to information losses that actually place them at risk.

For the foregoing reasons, we respectfully OPPOSE SB 796. If you have questions on this, or any of the other security breach bills presently under consideration, please feel free to contact me or Reed Elsevier's retained advocate in Honolulu, Rick Tsujimura.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Oswald'.

Christopher Oswald

GOODSILL ANDERSON QUINN & STIFEL

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MEMORANDUM

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

FROM: Mihoko E. Ito

DATE: February 23, 2011

RE: **S.B. 796, S.D. 1 – Relating to Information**
Hearing: Thursday, February 24, 2011 at 9:00 a.m., Room 211

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

I am Mihoko Ito, submitting 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.

CDIA **submits comments** regarding S.B. 796, S.D. 1, which, among other provisions, requires that a consumer credit reporting agency not charge a victim of identity theft or a security breach a fee for placing, lifting, or removing a security freeze on a credit report.

Consumer reporting agencies maintain credit freeze systems but can only recoup \$5 per freeze request under Hawaii law. This fee is lower than most states. These agencies provide free freezes for ID theft victims because it is both the law and the right thing to do. In fact, credit reporting agencies provided free freezes before laws required them to do so.

Consumer reporting agencies do not cause security breaches and they should not have to pay for the breaches caused by others. CRAs should not have to absorb the cost of free freezes for consumers who merely receive a breach notice. CRAs should not have to pay

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for accidents caused by others. While CRAs recognize a breach is a serious matter, most breaches do not cause actual harm.

ID theft victims are victims of crimes. Yet, consumers who receive breach notices are not crime victims – they may be potential victims of ID theft but they are not actually ID theft victims. CRAs will gladly place a \$5 freeze for potential victims and will happily place a free freeze for actual victims. But is it not reasonable to require CRAs to provide free freezes in the case of a breach alone, particularly when the cost of securing a freeze is so low.

We respectfully request that the foregoing concerns be considered, and welcome any questions you have regarding our comments. Thank you very much for the opportunity to submit comments.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
ON SENATE BILL 796, SD 1, RELATING TO INFORMATION

February 24, 2011

Via e mail: 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 2 of Senate Bill 796, 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 2 of the bill. The modifications are likely to have significant unintended harmful consequences for Hawaii consumers.

Most significantly, Section 2 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

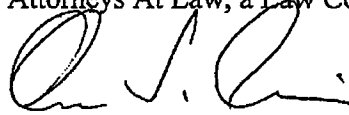
The proposed modifications will cause the definition of "security breach" to include inadvertent, unintentional disclosures of personal information - irrespective of whether affected persons are likely to be at risk of harm. They will effectively eliminate the "harm trigger" in the current definition 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 2 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 2 of SB 796, SD 1, Relating to Information.

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