

LATE
SB796

NEIL ABERCROMBIE
GOVERNOR



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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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TESTIMONY
OF
BRUCE A. COPPA, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEES
ON
ECONOMIC DEVELOPMENT AND TECHNOLOGY
AND
COMMERCE AND CONSUMER PROTECTION
AND
JUDICIARY AND LABOR
ON
February 8, 2011

S.B. 796

RELATING TO INFORMATION.

Chair Fukunaga, Chair Baker, Chair Hee, and members of the Committees, thank you for the opportunity to testify on S.B. 796.

While the Department of Accounting and General Services (DAGS) supports the overall intent of S.B. 796, we are unable to support this bill due to several concerns.

1. Mandatory credit reporting requirements will increase the cost of government and business in Hawaii. Mandatory credit reporting requirements generally notify individuals after-the-fact. Although early notification can be helpful, this is less effective than stopping the crime via enhanced training before breaches occur or technical solutions that eliminate the need for use or retention of personal information. Instead, we suggest requiring credit agencies to provide

free and convenient credit freeze services to anyone who is notified of a data breach by any public or private organization. This would help prevent identity theft rather than help detect it after-the-fact. And unlike the current legislation, it would protect Hawaii residents who are notified of breaches by national organizations as well, including the federal government, credit card companies, alumni associations, hotels and online merchants. Further extension of free credit freeze services to all Hawaii residents, whether or not they have been notified of a breach, would even more strongly protect Hawaii citizens from identity theft, most of which has origins other than local data breaches. This approach would have no additional direct costs to Hawaii businesses or government and would provide significantly greater protection to consumers beyond those who might be affected by local public or private sector data breaches.

2. If required to establish and pay for credit monitoring services (or credit freeze services), for public agencies to provide commercial credit monitoring services in a timely manner, either a master contract would need to be in place or the selection of the service would need to be fully exempt from 103D. Otherwise it would be a months-long process to develop specifications and conduct a successful competitive solicitation to choose among the private for-profit vendors of these services.
3. The requirement to have each impacted person have a choice of credit monitoring services to choose from would be logistically impractical since it would then require a public agency or business to contract with multiple credit monitoring (or credit freeze services). We would suggest the public agency or business be allowed to select one provider based on best value.
4. The requirement to have each impacted person submit their decision to not subscribe to credit monitoring (or credit freeze services) or submit their choice of credit monitoring service in

writing would be logistically impractical. What would the public agency or business have to do if the impacted person failed to select an option or submit a response in writing? We would suggest the person be allowed to enroll on-line with the contracted credit monitoring service and provide an enrollment code provided to them from the public agency or business that would then grant access to that service and charge costs to the public agency or business if required (Note: If credit agencies are required to provide free credit freeze services, there would be no charges/costs to the public agency or business, simply notification that a list of individuals are eligible for their services and requesting an enrollment code).

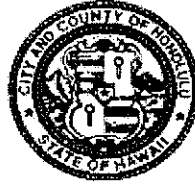
5. Enrolling in a credit monitoring service requires provision of a full complement of personal identifying information (PII), including the SSN. This should be performed directly between the individual and the credit monitoring vendor. It would be much less secure and more time-consuming to involve the entity that performed the notification into the mechanics of providing the individual's PII to the credit monitoring vendor and executing the enrollment. This should be accomplished on-line or via phone directly by the person and the credit service provider.

Thank you for the opportunity to testify on this matter.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
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LAIE

PETER B. CARLISLE
MAYOR



NOEL T ONO
DIRECTOR

February 8, 2011

The Honorable Rosalyn H. Baker, Chair
and Members of the Committee on Commerce
and Consumer Protection
The Honorable Carol Fukunaga, Chair
and Members of the Committee on Economic
Development and Technology
The Honorable Clayton Hee, Chair
and Members of the Committee on Judiciary and Labor
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Baker, Fukunaga and Hee and Members:

Subject: Senate Bill No. 796, Relating to Information

The City & County of Honolulu, Department of Human Resources respectfully opposes Senate Bill No. 796.

Although well-intended, the City must oppose the measure as it contains provisions which impose additional financial requirements on government at a time when fiscal austerity is required. Specifically, the potential cost of the three-year subscription to a credit monitoring service mandated under Section 1 of Senate Bill No. 796 could be overwhelming.

In addition, public agencies are required to comply with the Hawaii Public Procurement Code when contracting for services such as those set forth in Senate Bill No. 796. As a result, it will be extremely difficult, if not impossible, for a public agency to provide each affected individual with a choice of not less than two credit reporting agencies within the required seven-day deadline.

The Honorable Rosalyn H. Baker, Chair
and Members of the Committee on Commerce
and Consumer Protection

The Honorable Carol Fukunaga, Chair
and Members of the Committee on Economic
Development and Technology

The Honorable Clayton Hee, Chair
and Members of the Committee on Judiciary and Labor

February 8, 2011

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We accordingly urge the committee to file Senate Bill No. 796.

Thank you for the opportunity to testify.

Yours truly,

A handwritten signature in black ink, appearing to read "Noel T. Ono". The signature is written in a cursive, flowing style.

Noel T. Ono
Director

Presentation to the Senate Committee on Economic Development and Technology
Presentation to the Senate Committee on Commerce and Consumer Protection
Presentation to the Senate Committee on Judiciary and Labor

Tuesday, February 8, 2011, at 9:00 a.m.

Testimony on Senate Bill 796 Relating to Information

- TO: The Honorable Carol Fukunaga, Chair
The Honorable Glenn Wakai, Vice Chair
Members of the Senate Committee on Economic Development and Technology
- TO: The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection
- TO: The Honorable Clayton Hee, Chair
The Honorable Maile S. L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

My name is Neal Okabayashi and I testify for the Hawaii Bankers Association. While we acknowledge and are sympathetic to the concerns over identity theft, we oppose this bill and respectfully ask this committee hold this bill because the protections mandated by HB 678 already exist under federal and state laws, and thus this bill is not necessary. This is the third time since 2007 that this concept has been raised. Previously, the concept was rejected twice because of existing protections under federal and state law.

This bill would require businesses and government agencies to pay for three years of a credit monitoring services. The cost would be an onerous burden on businesses and may drive some of them to shutter their doors, adding to our economic woes by increasing unemployment. For example, the recent data breach at the University of Hawaii would have cost the University a minimum of 12 million dollars under this bill. The excessive cost to business and government cannot be justified in light of the many protections already offered under federal and state law which are far more valuable than a subscription to a credit monitoring service.

The purpose of the subscription is to monitor a person's credit report. However, the value of the subscription service pales in comparison to the value of measures a person can take under Hawaii and federal law. Such measures are infinitely more valuable to fighting identity theft than a subscription service.

Hawaii law permits an affected consumer to freeze his or her credit report so no one can access it (except for statutory exceptions) unless the consumer either temporarily or permanently consents to the unfreezing of the credit report. Since the credit report is frozen, there is no need to monitor it because there can be no credit activity without the consent of the consumer. This law was passed in 2007 and is in chapter 489P.

To insure that a consumer know about a data breach so the consumer may take protective action, chapter 487N, also adopted in 2007, requires businesses and government agencies notify those affected by a security breach and if more than 1,000 persons are affected, also notify the office of the consumer protector and all credit reporting agencies. Those subject to a similar federal requirement were exempted from this law.

Should a consumer choose not to freeze the consumer's credit report, the consumer may nonetheless monitor the consumer's credit report for free under federal law. The consumer is entitled to three free credit reports in a year. As the Office of the Consumer Protection testified in 2009 on a similar measure: "To maximize the benefits of FACTA, consumer advocates advise consumers to order one report from one agency at a time, at four-month intervals."

The consumer may place a fraud alert in the credit file which is good for 90 days and an extended alert which is good for 7 years. To activate an extended report, you must file an identity theft report which is a copy of a complaint you have filed with a law enforcement agency. These measures then require a potential creditor take steps to ascertain the true identity of the credit applicant.

The initial fraud alert entitles you to a copy of a free credit report from each of the three credit reporting agencies (as indicated above) and in addition, an extended alert entitles you to two free credit reports from each of the credit reporting agencies in the first year following the placing of the alert. A person may also require that a consumer reporting agency block certain information from your file so it will not be reported.

It should be emphasized that credit monitoring services are not a deterrent to identity theft. It is merely a signal of potential problem. That signal can be provided from the free credit reports any consumer is permitted to obtain, or to prevent the need for any signal, freeze the credit report.

In summary, we oppose SB 796 because a better service is provided under federal and state law for free without endangering the economic well being of this State.



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Testimony to the Senate Committee on Economic Development and Technology,
Senate Committee on Commerce and Consumer Protection, and
Senate Committee on Judiciary and Labor



Testimony in opposition to SB 796, Relating to Information

To: The Honorable Carol Fukunaga, Chair
The Honorable Glenn Wakai, Vice-Chair
The Honorable Rosalyn Baker, Chair
The Honorable Brian Taniguchi, Vice-Chair
The Honorable Clayton Hee, Chair
The Honorable Maile Shimabukuro, Vice-Chair
Members of the Committees

My name is Stefanie Sakamoto and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 85 Hawaii credit unions, representing approximately 810,000 credit union members across the state.

We are in opposition to SB 796, Relating to Information. While we understand the concerns of this bill, we are in opposition because laws already exist for those who fall victim to a data breach. Credit unions in Hawaii are in full compliance with the state and federal laws that are already in place.

This bill would require business and government agencies to pay for three years of credit monitoring services. The cost of this would be extremely detrimental to credit unions, and would likely place their low-cost services in jeopardy. The mission of credit unions is to serve the underserved, and a burden such as this would be difficult to bear without establishing or raising fees.

Thank you for the opportunity to testify.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN OPPOSITION TO SENATE BILL 796, RELATING TO INFORMATION

February 8, 2011

Via e mail: cpntestimony@capitol.hawaii.com



Hon. Senator Carol Fukunaga, Chair
Committee on Economic Development and Technology
Hon. Senator Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection
Hon. Senator Clayton Hee, Chair
Committee on Judiciary
State Senate
Hawaii State Capitol, Room 229
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Fukunaga, Chair Baker, Chair Hee and Committee Members:

Thank you for the opportunity to testify in opposition to Senate Bill 796, relating to Information.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association, who represents more than three hundred (300) legal reserve life insurer and fraternal benefit society member companies operating in the United States. These member companies account for 90% of the assets and premiums of the United States Life and annuity industry. ACLI member company assets account for 91% of legal reserve company total assets. Two hundred thirty-nine (239) ACLI member companies currently do business in the State of Hawaii; and 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.

Accordingly, ACLI must respectfully strongly oppose S.B.796.

It is very unclear that S.B. 796 will enhance protection of the security of Hawaii consumers' personal information; and the bill is likely to have significant unintended harmful consequences.

S.B. 796 only provides for "after the fact" remedies, relating to a 3 year subscription to a credit reporting agency's services, to be provided after security breaches that already have occurred.

There is no guarantee that the required credit monitoring and credit reporting services will protect Hawaii consumers from potential harm from future security breaches.

The level of increased protection to be derived from such services is likely to vary depending on the nature of the service and the particular credit reporting agency.

Moreover, the number of credit monitoring programs and the lack of clear, uniform regulation of such programs again makes the resulting level of protection quite uncertain.

And S.B. 796 does not provide for any measures to prevent future security breaches – such as requirements for government agencies and businesses to have reasonable security programs and to train staff to implement such programs.

S.B. 796's requirements (i) to provide at minimum a three year subscription to a credit reporting agency; (ii) within 7 calendar of providing notice of a security breach, to provide a choice of no less than two credit reporting agencies and of credit monitoring and reporting services; (iii) to retain a record for at least 5 years of an individual's credit monitoring and reporting services selection; and (iv) within seven calendar days of receipt of the individual's selection, to pay all costs associated with a three year subscription are:

1. Much more stringent than requirements imposed under any other state's breach statute;
2. Likely to be very expensive and very burdensome to implement;
3. With respect to actions required within 7 calendar days, likely to be impossible to implement within the prescribed time frame; and
4. Again, not at all guaranteed to result in commensurate increased protection of the security of Hawaii residents' personal information

Moreover, S.B. 796 is likely to have significant harmful consequences for Hawaii consumers.

The amendment to the definition of "security breach," to extend the term even to inadvertent unauthorized disclosures, is likely to result in the provision of notices of "security breaches" that will needlessly alarm Hawaii residents when their personal information is unlikely to be misused.

Such notices will marginalize the importance of real threats to consumers' personal information.

S.B. 796 is problematic in other ways as well:

The threshold for imposition of the requirement to pay for the three year subscription is vague and low. The circumstances under which a business or government agency will become "responsible for a security breach" or when a security breach "may result in a crime being committed" are not clear and potentially very broad.

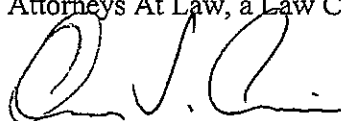
The bill's requirement that a person notify the business or government agency of his or her choice not to subscribe to a credit monitoring or reporting service is likely to be unworkable and unconstitutional.

To prevent future security breaches and to avoid likely unintentional adverse consequences of the current language of S.B. 796, ACLI respectfully strongly urges substitution of the current language of the bill with language that would require any business or government agency that conducts business in Hawaii and owns or licenses personal information of residents of Hawaii to: (i) implement and maintain reasonable security procedures and practices; and (ii) train their employees or staff, as appropriate, to implement the procedures and practices.

Attached is a draft of an SD 1 which ACLI respectfully urges this Committee to consider. The draft SD 1 replaces its provisions with those currently in the bill. ACLI requests that this Committee defer decision making on the bill to allow other stakeholders an opportunity to review the proposed SD 1.

Again, thank you for the opportunity to testify in opposition to SB 796, relating to Information.

CHAR, HAMILTON
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A BILL FOR AN ACT

RELATING TO INFORMATION PRIVACY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 487N, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§487N- Security program. (a) A business or government
5 agency that owns or licenses personal information about a Hawaii
6 resident shall implement and maintain reasonable security
7 procedures and practices appropriate to the nature of the
8 information, and to the size and complexity of the business or
9 government agency and the nature and scope of its activities.
10 The procedures and practices shall be designed to protect the
11 personal information from unauthorized access, destruction, use,
12 modification, or disclosure.

13 (b) A business or government agency shall train its staff,
14 as appropriate, to implement the business or government agency's
15 security program.

16 (c) A business or government agency that discloses personal
17 information about a Hawaii resident pursuant to a contract with a

1 nonaffiliated third party shall require by contract that the
2 third party implement and maintain reasonable security procedures
3 and practices appropriate to the nature of the information, to
4 protect the personal information from unauthorized access,
5 destruction, use, modification, or disclosure."

6 SECTION 2. New statutory material is underscored.

7 SECTION 3. This Act shall take effect upon its approval.