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**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Friday, January 28, 2022
9:30 a.m.
State Capitol, Conference Room 229 & Videoconference**

**On the following measure:
S.B. 2292, RELATING TO PRIVACY**

Chair Baker, and Members of the Committee:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department supports this bill.

The purpose of this bill is to amend the definition of "personal information" for the purpose of applying modern security breach of personal information law.

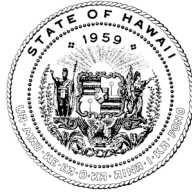
The Department supports S.B. 2292's expansion of the definition "personal information" in Hawaii Revised Statutes (HRS) chapter 487N because the current definition is obsolete. Businesses that collect or store data digitally have a responsibility to protect information that is sensitive, confidential, or identifiable from access by hackers; these businesses also have a responsibility to prevent the data from being made available to criminals who engage in identity theft. As of 2018, all 50 states have data breach notification laws that prescribe when consumers must be notified when their "personal information" has been breached. Hawaii's data breach notification laws

were codified in 2006 as HRS chapter 487N, which, in pertinent part, defines “personal information” in relation to when a breach notification is required, and specifies the circumstances in which a business or government agency must notify a consumer that his or her personal information has been breached. Although Hawaii was one of the first states to enact this law, advancements in technology have made identity theft easier than it was 16 years ago. Businesses and government agencies now collect far more information, and bad actors exploit vulnerabilities in computer databases for nefarious purposes and with increased frequency.

S.B. 2292 corrects existing statutory inadequacies by expanding the definition of “personal information” to include various personal identifiers and data elements, such as email addresses, health insurance policy numbers, security codes, and medical histories. The measure also subjects the business associates of health plan or health care providers to the same security standards for securing electronic health information according to the Health Insurance Portability and Accountability Act of 1996. Expanding the definition of “personal information” will enhance consumer protections involving privacy and align with legislation recently enacted in other jurisdictions, including, Nevada, Rhode Island, Vermont and California.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR



DOUGLAS MURDOCK
CHIEF INFORMATION
OFFICER

OFFICE OF ENTERPRISE TECHNOLOGY SERVICES

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Testimony of
DOUGLAS MURDOCK
Chief Information Officer
Enterprise Technology Services

Before the

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
FRIDAY, JANUARY 28, 2022

SENATE BILL NO. 2292
RELATING TO PRIVACY

Dear Chair Baker, Vice Chair Chang, and members of the committee,

The Office of Enterprise Technology Services supports updating the definition of “personal information” in HRS Section 487N to add expanded identifiers and data elements that many other states have included in their security breach notification laws. These changes recognize many new identifying data elements that have been created since Hawaii enacted that statute in 2008.

Thank you for the opportunity to provide testimony on this measure.

STATE PRIVACY & SECURITY COALITION

January 26, 2022

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
CC: Senator Chris Lee
Hawaii Committee on Commerce and Consumer Protection

Re: Concerns Regarding SB 2292

Dear Chair Baker and Vice Chair Chang,

The State Privacy and Security Coalition, a coalition of 31 leading communications, media, technology, retail, payment and automotive companies and 7 major trade associations, writes to request modifications to SB 2292 in order to better align it with similar laws enacted in other states. At a high level, we believe the bill would benefit from removing outlier provisions that would impose difficult and very costly compliance requirements, as well as disadvantage Hawaii businesses without material benefit to consumers.

Our primary concern lies in the approach SB 2292 takes to the data elements covered in the bill. This bill would cover any of an amorphous range of “identifiers” combined with a single “specified data element.” This is a significant outlier compared to other state data breach laws, and would do little to protect the security of Hawaii consumers in the event of a data breach. Meanwhile, it would force Hawaii businesses to create new compliance programs, conduct much broader searches for potential “identifiers” in the event of a breach, and increase the cost and timeframe for breach notice compliance.

First, the combination of an “identifier” and a “specified data element” as defined in the bill would often have no bearing on consumer security or privacy. For example, an email address for an online account combined with a biometric voiceprint would not create a risk of harm to consumers. Even a password would do hackers little good if the identifier was, for example, an IP address. It would be far better for both businesses and consumers to align the structure of these security determinations with concerns over real risk of harm to consumers.

Second, there is no reason to depart from the effective structures defining covered data in other state data breach laws. In addition to avoiding increased compliance costs and delayed searches of data necessary to scope a breach and provide notice, some of the listed specified data elements are very difficult to map, search and secure and have not been the subject of data breaches. Email addresses, phone numbers, and IP addresses are particularly problematic here. They present little privacy risk to consumers by themselves, but the bill would cover them the moment they were associated with a single listed element.

We thank you for considering our perspective and would welcome the opportunity to discuss this with you further. We can be available for a virtual meeting at your convenience, if helpful.

Respectfully submitted,

STATE PRIVACY & SECURITY COALITION

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TESTIMONY OF ALISON UEOKA

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

Friday, January 28, 2022
9:30 a.m.

SB 2292

Chair Baker, Vice Chair Chang, and members of the Committee on Commerce and Consumer Protection, my name is Alison Ueoka, President of the Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council offers comments on this bill. Just last year in 2021, the Hawaii Legislature enacted the NAIC Model Law on Insurance Data Security. This model law is a comprehensive one that insurance commissioners from across the nation have produced to address privacy issues of the insurance industry. Thus far, 18 states have adopted the Model Law and more are expected to adopt it in 2022.

Hawaii Insurers Council asks for an amendment to the bill to make the Insurance Data Security Law the exclusive standard applicable to insurance licensees for data security, investigation, and notification to the commissioner of a cybersecurity event. To that end, we request that Section 3 of the bill be amended to add (g)(3) to read as follows,

(g)(3) Any licensee that is subject to the Insurance Data Security Law, chapter 431, article 3B."

Thank you for the opportunity to testify.



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

S.B. 2292

Relating to Privacy

January 28, 2022

9:30 a.m., Agenda Item #4

State Capitol, Conference Room 229 & Videoconference

Wendee Hilderbrand
Managing Counsel & Privacy Officer
Hawaiian Electric Company, Inc.

Chair Baker, Vice Chair Chang, and members of the Committee:

My name is Wendee Hilderbrand, and I am testifying on behalf of Hawaiian Electric Company, Inc. **with comments on and suggested amendments to S.B. 2292.** While Hawaiian Electric is supportive of modernizing Hawaii’s data breach statute, adding health information to the definition of personally identifiable information (“PII”) would go further than the vast majority of other state data security statutes, subject all employers to greater restrictions on the use of health information than healthcare providers, and lead to a host of unintended compliance consequences.

The bill is intended to update Hawaii’s data breach notification statutes, H.R.S. § 487N-1 *et seq.*, by including additional types of data in the definition of “Personal Information,” and thereby, expanding the scope of what constitutes a “security breach.” Importantly, H.R.S. § 487N-2, like most state data breach notification statutes, has one primary objective: to protect individuals against identity theft by requiring that they receive notification if certain types of their data (*e.g.*, social

security numbers, drivers' license numbers) are compromised, so they can take steps to protect themselves (e.g., credit monitoring, credit freeze).

S.B. 2292 proposes to add medical information to the definition of "Personal Information" in H.R.S. § 487N-1. See S.B. 2292, § 2(1)(7). While we agree that medical information should be kept confidential and secure, it is not the type of information that subjects individuals to the risk of identity theft, and thus, is ill-suited for H.R.S. § 487N-1. Rather, the confidentiality and security of medical information is better addressed by the Health Insurance Portability and Accountability Act ("HIPAA"). HIPAA and its enacting regulations are among the most protective privacy laws in the world; however, they also address considerations unique to health information, such as the business use exception, risk of harm analysis, and implicit consent.

If medical information is added to H.R.S. § 487N-1, which does not contain the same considerations and exceptions as HIPAA, businesses unrelated to healthcare, like Hawaiian Electric, will have to apply even greater protections to medical information than HIPAA places on healthcare entities, like hospitals. Even hospitals are allowed to use healthcare information for business purposes, allowed to disclose healthcare information under circumstances of implied consent, and allowed to determine whether there is a significant risk of harm before notification of disclosure is required. Hawaii's data breach statutes do not include these exceptions and would, therefore, place stricter compliance obligations on employers than HIPAA places on doctors and hospitals.

Some of the unintended consequences that could arise if health information is added to H.R.S. § 487N-1 include prohibitions on internal "safety alerts" that advise

of workplace injuries as a teaching tool; difficulty in investigating medical leave abuses; and bans on interoffice emails advising of a family illness or birth of a baby. Health information is not related to identity theft, is heavily regulated by HIPAA, and should not be in Hawaii's data breach notification statutes.

Accordingly, **Hawaiian Electric respectfully requests that S.B. 2292, Section 2 be amended by deleting subparagraph (7) regarding medical information (page 3, lines 14-17).** Thank you for this opportunity to testify.



Testimony to the Senate Committee on Commerce and Consumer Protection
Friday, January 28, 2022
9:30 am
Via Videoconference

Comments on SB 2292, Relating to Privacy

To: The Honorable Rosalyn Baker, Chair
The Honorable Stanley Chang, 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 48 Hawaii credit unions, representing over 800,000 credit union members across the state.

We offer the following comments regarding SB 1009, Relating to Privacy. This bill would amend the definition of “personal information” for the purpose of applying modern security breach of personal information law.

While we understand the intent of this bill, we have the following comments.

This bill defines “identifier” as a “common piece of information related specifically to an individual, that is commonly used to identify that individual across technology platforms”. We have concerns that “common piece of information” is too broad. The criteria of what constitutes “common” should not be left to interpretation.

Additionally, credit unions and other financial institutions are already required to safeguard sensitive data and financial information via the Gramm-Leach-Bliley Act.

We further concur with the testimony of the Hawaii Bankers Association.

Thank you for the opportunity to provide comments on this issue.

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

January 28, 2022

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
and members of the Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **S.B. 2292 (Privacy)**
Hearing Date/Time: Friday, January 28, 2022, 9:30 a.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA offers comments and a proposed amendment.

This Bill does the following: amends the definition of “personal information” for the purpose of applying modern security breach of personal information law.

We incorporate by reference the testimony of the Hawaii Bankers Association.

Additionally, we offer below a proposed amendment.

In this Bill, “personal information”, for the purpose of a security breach of personal information, means an “identifier” in combination with one or more “specified data elements.” (See page 5, lines 7 through 18.)

Page 2, line 20 through page 4, line 4 of this Bill adds following definition of “specified data element”:

“Specified data element” means any of the following:

- (1) **An individual's social security number, either in its entirety or the last four or more digits;**
- (2) Driver's license number, federal or state identification card number, or passport number;
- (3) A federal individual taxpayer identification number;
- (4) An individual's financial account number or credit or debit card number;
- (5) A security code, access code, personal identification number, or password that would allow access to an individual's account;
- (6) Health insurance policy number, subscriber identification number, or any other unique number used by a health insurer to identify a person;

...

(bold and yellow highlight added.)

Paragraph 1 of the definition of “specified data element” relates to an individual’s social security number. We agree with intent of the wording in the first phrase of paragraph 1 which includes an individual’s social security number “**in its entirety**” (i.e. the entire 9 digits such as **987-65-4321**) as a specified data element. This is similar to the intent of the wording in the other paragraphs of the “specified data element” definition, i.e. a “driver’s license number” (see paragraph 2), a “federal individual taxpayer identification number” (see paragraph 3), an “individual’s financial account number” (see paragraph 4), etc.

That’s also consistent with existing Hawaii statutes which prohibit communicating or making publicly available a person’s entire social security number, i.e. all 9 digits are protected from being displayed.¹

But we disagree with the wording in the second phrase of paragraph 1 in the definition of “specified data element” which includes “**the last four or more digits**” of an individual’s social security number. As the second phrase is written, a “specified data element” would be when the last 4 or more digits is displayed, including the following: xxx-xx-**4321**.

However, that second phrase is problematic. That’s because the usual practice in Hawaii (in the statutes, in the court rules, and for the financial industry) and in other states is to allow redacting, shortening, truncating, abbreviating, or limiting the display of an individual’s social security number down to the last 4 digits, i.e. xxx-xx-4321.² Because of the current laws and practice, a display of the last 4 digits should not be a “specified data element” for the purpose of a security breach under this Bill.

We wouldn’t object if paragraph 1 is reworded to include as a “specified data element” **more than** the last 4 digits of a social security number. For example, displaying xxx-x**5**-4321 would be a “specified data element.”

Accordingly, we offer two versions of a proposed amendment to this Bill. Under our proposed version #1 below, we recommend that only when the entire 9 digits of the social security number is displayed, that would be a “specified data element.” This would be consistent with the other paragraphs in the definition of “specified data element.”

Under our proposed version #2 below, we recommend that, separate from displaying the entire 9 digits of the social security number, when **more than** the last 4 digits is shown, that would be a “specified data element” for the purpose of a security breach of personal information. Thus, displaying “**more than**” xxx-xx-**4321** would be a “specified data element.”

Below are the two alternate versions:

¹ See Hawaii Revised Statutes Sec. 487J-2(a)(1) relating to social security number protection. See also the definition of “confidential personal information” in HRS Sec. 708-800.

² Among the Hawaii statutes which require or allow the public display or disclosure of the last 4 digits to be displayed (i.e. xxx-xx-4321) are those where the last 4 digits of an individual’s social security number are displayed when a judgment is to be publicly recorded at the Bureau of Conveyances. See, for example, HRS Secs. 501-151, 502-33, 504-1, and 636-3. Other Hawaii statutes which require redacting or removing the first 5 digits of the social security number so that only the last 4 digits are displayed include HRS Secs. 15-4, 232-7, 232-18, 576D-10.5(f), and 803-6(b).

PROPOSED AMENDMENT - VERSION #1:

“Specified data element” means any of the following:

(1) An individual's social security number, either in its entirety or the last four or more digits];

....

OR

PROPOSED AMENDMENT - VERSION #2:

“Specified data element” means any of the following:

(1) An individual's social security number, either in its entirety or more than the last four [or more] digits;

....

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

Presentation to The
Committee on Commerce and Consumer Protection
Friday, January 28, 2022, 9:30 AM
State Capitol Conference Room 229 & Videoconference

Testimony on SB 2292 With Proposed Amendments

TO: The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
Members of the Committee

My name is Neal K. Okabayashi, Executive Director of the Hawaii Bankers Association (HBA). HBA represents seven Hawai'i banks and three banks from the continent with branches in Hawai'i.

This bill will amend the definition of "personal information" and we do not object to the substance of the bill, but we believe that the bill can be improved by including the following amendments.

On page 2, lines 15-19, we believe that the definition of "Identifier" is vague. The definition is not specific as what would be an identifier and lead to confusion as to what is an "identifier". Rather than including examples of what is an identifier, the bill should specifically state what is an identifier. A home phone number can be the number for a variety of individuals and thus should not be an identifier, although a mobile phone can be an identifier. While we think that each individual has a specific email address, a business email address is not always specific to an individual.

Using a name by first name or initial as an identifier is vague. Is the initial the middle initial or initials or the first name such as B. John Doe, and in most cases, B. John Doe goes by John Doe.

It is better to amend the definition of "Identifier" as follows on page 2, lines 15-19.

""Identifier" means a common piece of information as set forth below related specifically to an individual, that is commonly used to identify that individual across technology platforms [.] including a first name or initial, and last name] A name used by an individual which name shall include the first name, nickname, all initials in the name, whether at the beginning of the name or middle, and the last name; a user name for an online account; a mobile phone number; or an email address specific to the individual.

As to "specified data element" (1), on page 3, lines 1-2, we propose that it be amended by deleting "four or more" in line 2, which language is inconsistent with the term "redacted" which is defined in Section 487N-1, as "the rendering of data so that it is unreadable or is truncated so that no more than the last four digits of the identification number are accessible as part of the data". Thus, the language on line 2 should be "five or more" which would make the language consistent with the definition of redacted. The amendments proposed by the Hawaii Financial Services Association are also acceptable.

On page 3, line 6 and 7, that should be amended to read as follows: “An individual’s financial account number or credit or debit card number unless redacted.” Credit card number are almost always redacted on a credit card receipt.

On page 4, lines 20-21, the definition of personal information can be improved by deleting “from federal, state, or local government records”, so that it will read:

“Personal information [does] shall not include publicly available information that is lawfully made available to the public [from federal, state, or local government records], or personal information that is deidentified or aggregated so that the identity the individual is unknown.”

There is no reason that the exception for publicly available information should be restricted to that made available by the government since the information could be published by the media, blog, disseminated on television, radio or podcast or otherwise. It would be difficult for a business to determine whether personal information was only made available from federal, state, or local government records.

We also urge this committee to amend the definition regarding encrypted and unencrypted information. Currently, Section 487N-1 reads, in part, as: "Security breach" means an incident of unauthorized access to and acquisition of unencrypted or unredacted records or data containing personal information where illegal use of the personal information has occurred, or is reasonably likely to occur and that creates a risk of harm to a person. Any incident of unauthorized access to and acquisition of encrypted records or data containing personal information along with the confidential process or key constitutes a security breach.” We fail to understand why “unencrypted or unredacted records are held to a higher standard before becoming a security breach but “encrypted record or data” together with a “confidential process or key” is per se considered a security breach regardless of whether illegal use of the information creates a risk of harm to a person as is the standard for a breach of unencrypted data. Wouldn’t it make more sense to have encrypted data be subject to the standard as unencrypted data so we encourage businesses to use encrypted data?

Thus, we recommend an amendment of that part of the definition of security breach to be amended as follows: "Security breach" means an incident of unauthorized access to and acquisition of unencrypted or unredacted records or data containing personal information where illegal use of the personal information has occurred, or is reasonably likely to occur and that creates a risk of harm to a person. Any incident of unauthorized access to and acquisition of encrypted records or data containing personal information along with the confidential process or key where illegal use of the personal information has occurred, or is reasonably likely to occur and that creates a risk of harm to a person constitutes a security breach.”

Thank you for the opportunity to submit this testimony to offer our proposed amendments to SB 2292. Please let us know if we can provide further information.

Neal K. Okabayashi
(808) 524-5161



LATE

January 26, 2021

The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
Senate Commerce & Consumer Protection Committee

Senate Bill 2292 – Relating to Privacy

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to provide **comments** on SB 2292. HAHP is a statewide partnership of Hawaii’s health plans and affiliated organizations to improve the health of Hawaii’s communities together. The vast majority of Hawaii residents receive their health coverage through a health plan associated with one of our organizations.

HAHP believes that current Federal requirements under Health Insurance Portability and Accountability Act (HIPAA) provides significant health care consumer protection and HIPAA has its own enforcement mechanism and penalties for health care entities. As such, HAHP suggests the following edit (changes in red) to page 5 of the bill to prevent any potential inadvertent conflict between Hawaii law and Federal requirements and enforcement of HIPAA:

“(2) Any health plan or healthcare provider and its business associates that [~~is~~] are subject to ~~and in compliance with~~ the standards for privacy ~~or of~~ of individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996.”

Thank you for allowing us to submit our comments on SB 2292.

Sincerely,

HAHP Public Policy Committee

cc: HAHP Board Members

LATE

SB-2292

Submitted on: 1/27/2022 2:01:37 PM
Testimony for CPN on 1/28/2022 9:30:00 AM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Ilima DeCosta | Individual | Comments | No |

Comments:

Mahalo for the opportunity to testify on SB2292 relating to privacy. While I appreciate the intent of the proposed changes to existing law, as long as there are civil procedures that allow attorneys to file "nuisance subpoenas" - demanding access to the social media accounts of civil litigants and including identification and password information - the ability to protect one's privacy, while also protecting one's civil rights, is often stymied by overzealous attorneys, who often use illegal and/or unethical methods to defeat legitimate claims.



Friday, January 28, 2022 at 9:30 AM
Via Video Conference

Senate Committee on Commerce and Consumer Protection

To: Senator Rosalyn Baker, Chair
Senator Stanley Chang, Vice Chair

From: Michael Robinson
Vice President, Government Relations & Community Affairs

Re: **Comments on SB 2292
Relating to Privacy**

My name is Michael Robinson, and I am the Vice President of Government Relations & Community Affairs at Hawai'i Pacific Health. Hawai'i Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawai'i.

I am writing to provide comments on SB 2292 which updates the definition of "personal information" in chapter 487N, Hawaii Revised Statutes, to include various personal identifiers and data elements that are found in more comprehensive laws.

HPH appreciates the amendments in Section 3 of the bill that provides a carve-out for business associates of healthcare providers which are in compliance with HIPAA requirements. Pursuant to the amendments, business associates would be deemed to be in compliance with Section 487N-2, Hawaii Revised Statutes.

We have concerns, however, with the new definitions outlined in Section 2 of the bill. These new definitions create responsibilities on non-healthcare business that are similar to those contained in HIPAA, and which would impact our operations as an employer and the non-healthcare types of services that we offer. At this time, HPH is continuing to analyze the potential impact SB 2292 may have on its non-healthcare services and providers.

Thank you for the opportunity to testify.

January 27, 2022

S.B. 2292 Relating to Privacy
Senate Committee on Commerce and Consumer Protection
Hearing Date/Time: Friday, January 28, 2022, 9:30 AM
Place: Conference Room 229, State Capitol, 415 South Beretania Street



Dear Chairs Baker, Vice Chairs Chang, and members of the Committee:

I write in **SUPPORT** of S.B. 2292 Relating to Privacy. As a privacy expert, I have worked in data privacy for over 15 years and served on the 21st Century Privacy Law Task Force created by HCR 225.

HISTORY:

In 2006, Hawaii passed a data breach notification law (487-N). By 2018, all 50 states had similar laws. Without them, most companies had no obligation to tell consumers when their data was hacked, and we would never have learned of major data breaches like Target and Equifax, affecting 41 million and 147 million consumers respectively.

In the last 15 years, the amount of personal information collected about Americans has grown exponentially. In response, most states have updated their data breach notification law and passed additional privacy legislation. Hawaii should remain mainstream by updating our privacy laws, too.

CURRENT ISSUES:

One example of why this update is needed is because our state data breach notification law (HRS 487-N) requires a person's name to be compromised, along with sensitive data, in order for a breach to have occurred. To use Chair Baker as an example, the loss of her name (Sen. Rosalyn Baker) plus her SSN would be a breach, but the loss of her email address (senbaker@capitol.hawaii.gov) and her SSN would not be. Since her name and email address are publically available on the state legislature's website, the risk of identity theft is the same in either case, but they are treated completely differently under the law.

Another example is involves medical information. Most of us are familiar with HIPAA, which covers medical information collected and stored by health care providers and insurance companies. But medical information stored by either employers or other companies is not subject to HIPAA. That means that if a worker at a hospital has a worker's comp claim, the health information would be covered by HIPAA breach law when in a patient computer system, but not covered by any law when in an HR computer system. It falls to state data breach laws to cover (or not) this information. That's why many states have added medical information to their data breach laws.

Finally, on the question of whether we protect the last four digits of an SSN or only the SSN in its entirety, I ask you to please keep in mind that every adult born in the state of Hawaii has an SSN with the first 3 digits of 575 or 576. So all that protects a person's SSN in Hawaii is the middle two digits.

Thank you for your consideration and the opportunity support this legislation.

Kelly McCanlies
Fellow of Information Privacy, CIPP/US, CIPM, CIPT

