

A BILL FOR AN ACT

RELATING TO PROTECTION FROM SECURITY BREACHES.

OCP
DO
+RUCO

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

1 SECTION 1. The privacy and financial security of
2 individuals is increasingly at risk due to the widespread
3 collection of personal information by the private sector and
4 government agencies. Numerous sources include personal
5 information that forms the source material for identity thieves.

6 Identity theft is one of the fastest growing crimes
7 committed throughout the United States, including Hawaii.
8 Criminals who steal personal information, such as social
9 security numbers, use the information to open credit card
10 accounts, write bad checks, buy cars, and commit other financial
11 crimes with other people's identities.

12 The purpose of this Act is to alleviate the growing plague
13 of identity theft by requiring businesses and government
14 agencies that maintain records containing resident individuals'
15 personal information to notify an individual whenever the
16 individual's personal information has been compromised by
17 unauthorized disclosure.

1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding to title 26 a new chapter to be appropriately designated
3 and to read as follows:

4 "CHAPTER

5 NOTIFICATION OF SECURITY BREACHES

6 § -1 Definitions. As used in this chapter, unless the
7 context otherwise requires:

8 "Business" means a sole proprietorship, partnership,
9 corporation, association, or other group, however organized, and
10 whether or not organized to operate at a profit. The term
11 includes a financial institution organized, chartered, or
12 holding a license or authorization certificate under the laws of
13 the State, any other state, the United States, or any other
14 country, or the parent or the subsidiary of any such financial
15 institution. The term also includes an entity whose business is
16 records destruction.

17 "Encryption" means the use of an algorithmic process to
18 transform data into a form in which the data is rendered
19 unreadable or unusable without the use of a confidential process
20 or key.

1 "Government agency" means any department, division, board,
2 commission, public corporation, or other agency or
3 instrumentality of the State or of any county.

4 "Personal information" means an individual's first name or
5 first initial and last name in combination with any one or more
6 of the following data elements, when either the name or the data
7 elements are not encrypted:

- 8 (1) Social security number;
- 9 (2) Driver's license number or Hawaii identification card
10 number; or
- 11 (3) Account number, credit or debit card number, access
12 code, or password that would permit access to an
13 individual's financial account.

14 "Personal information" does not include publicly available
15 information that is lawfully made available to the general
16 public from federal, state, or local government records.

17 "Records" means any material on which written, drawn,
18 spoken, visual, or electromagnetic information is recorded or
19 preserved, regardless of physical form or characteristics.

20 "Redacted" means the rendering of data so that it is
21 unreadable or is truncated so that no more than the last four

1 digits of the identification number are accessible as part of
2 the data.

3 "Security breach" means an incident of unauthorized access
4 to and acquisition of unencrypted or unredacted records or data
5 containing personal information where illegal use of the
6 personal information has occurred, or is reasonably likely to
7 occur and that creates a risk of harm to a person. Any incident
8 of unauthorized access to and acquisition of encrypted records
9 or data containing personal information along with the
10 confidential process or key constitutes a security breach. Good
11 faith acquisition of personal information by an employee or
12 agent of the business for a legitimate purpose is not a security
13 breach; provided that the personal information is not used for a
14 purpose other than a lawful purpose of the business and is not
15 subject to further unauthorized disclosure.

16 § -2 Notice of security breach. (a) Any business that
17 owns or licenses personal information of residents of Hawaii,
18 any business that conducts business in Hawaii that owns or
19 licenses personal information in any form (whether computerized,
20 paper, or otherwise), or any government agency that collects
21 personal information for specific government purposes shall
22 provide notice to the affected person that there has been a

1 security breach following discovery or notification of the
2 breach. The disclosure notification shall be made without
3 unreasonable delay, consistent with the legitimate needs of law
4 enforcement as provided in subsection (c) of this section, and
5 consistent with any measures necessary to determine sufficient
6 contact information, determine the scope of the breach, and
7 restore the reasonable integrity, security, and confidentiality
8 of the data system.

9 (b) Any business located in Hawaii or any business that
10 conducts business in Hawaii that maintains or possesses records
11 or data containing personal information of residents of Hawaii
12 that the business does not own or license, or any government
13 agency that maintains or possesses records or data containing
14 personal information of residents of Hawaii shall notify the
15 owner or licensee of the information of any security breach
16 immediately following discovery of the breach, consistent with
17 the legitimate needs of law enforcement as provided in
18 subsection (c).

19 (c) The notice required by this section shall be delayed
20 if a law enforcement agency informs the business or government
21 agency that notification may impede a criminal investigation or
22 jeopardize national security and requests a delay; provided that

1 such request is made in writing, or the business or government
2 agency documents the request contemporaneously in writing,
3 including the name of the law enforcement officer making the
4 request and the officer's law enforcement agency engaged in the
5 investigation. The notice required by this section shall be
6 provided without unreasonable delay after the law enforcement
7 agency communicates to the business or government agency its
8 determination that notice will no longer impede the
9 investigation or jeopardize national security.

10 (d) The notice shall be clear and conspicuous. The notice
11 shall include a description of the following:

- 12 (1) The incident in general terms;
- 13 (2) The type of personal information that was subject to
14 the unauthorized access and acquisition;
- 15 (3) The general acts of the business or government agency
16 to protect the personal information from further
17 unauthorized access;
- 18 (4) A telephone number that the person may call for
19 further information and assistance, if one exists; and
- 20 (5) Advice that directs the person to remain vigilant by
21 reviewing account statements and monitoring free
22 credit reports.

1 (e) For purposes of this section, notice to affected
2 persons may be provided by one of the following methods:

- 3 (1) Written notice to the last available address the
4 business or government agency has on record;
- 5 (2) Electronic mail notice, for those persons for whom a
6 business or government agency has a valid electronic
7 mail address and who have agreed to receive
8 communications electronically if the notice provided
9 is consistent with the provisions regarding electronic
10 records and signatures for notices legally required to
11 be in writing set forth in 15 U.S.C. Section 7001;
- 12 (3) Telephonic notice, provided that contact is made
13 directly with the affected persons; and
- 14 (4) Substitute notice, if the business or government
15 agency demonstrates that the cost of providing notice
16 would exceed \$100,000 or that the affected class of
17 subject persons to be notified exceeds two hundred
18 thousand, or if the business or government agency does
19 not have sufficient contact information or consent to
20 satisfy paragraph (1), (2), or (3), for only those
21 affected persons without sufficient contact
22 information or consent, or if the business or

1 government agency is unable to identify particular
2 affected persons, for only those unidentifiable
3 affected persons. Substitute notice shall consist of
4 all the following:

5 (A) Electronic mail notice when the business or
6 government agency has an electronic mail address
7 for the subject persons;

8 (B) Conspicuous posting of the notice on the website
9 page of the business or government agency, if one
10 is maintained; and

11 (C) Notification to major statewide media.

12 (f) In the event a business provides notice to more than
13 one thousand persons at one time pursuant to this section, the
14 business shall notify in writing, without unreasonable delay,
15 the State of Hawaii's office of consumer protection and all
16 consumer reporting agencies that compile and maintain files on
17 consumers on a nationwide basis, as defined in 15 U.S.C. Section
18 1681a(p), of the timing, distribution, and content of the
19 notice.

20 (g) The following businesses shall be deemed to be in
21 compliance with this section:

- 1 (1) A financial institution that is subject to the Federal
2 Interagency Guidance on Response Programs for
3 Unauthorized Access to Consumer Information and
4 Customer Notice published in the Federal Register on
5 March 29, 2005 by the Board of Governors of the
6 Federal Reserve System, the Federal Deposit Insurance
7 Corporation, the Office of the Comptroller of the
8 Currency, and the Office of Thrift Supervision, or
9 subject to 12 C.F.R. Part 748, and any revisions,
10 additions, or substitutions relating to said
11 interagency guidance; and
- 12 (2) Any health plan or healthcare provider that is subject
13 to and in compliance with the standards for privacy or
14 individually identifiable health information and the
15 security standards for the protection of electronic
16 health information of the Health Insurance Portability
17 and Accountability Act of 1996.
- 18 (h) Any waiver of the provisions of this section is
19 contrary to public policy and is void and unenforceable.

20 § -3 Penalties; civil action. (a) Any business that
21 violates any provision of this chapter shall be subject to
22 penalties of not more than \$2,500 for each violation. The

1 attorney general or the executive director of the office of
2 consumer protection may bring an action pursuant to this
3 section. No such action may be brought against a government
4 agency.

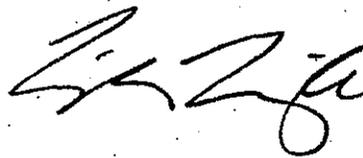
5 (b) In addition to any penalty provided for in subsection
6 (a), any business that violates any provision of this chapter
7 shall be liable to the injured party in an amount equal to the
8 sum of any actual damages sustained by the injured party as a
9 result of the violation. The court in any action brought under
10 this section may award reasonable attorneys' fees to the
11 prevailing party. No such action may be brought against a
12 government agency.

13 (c) The penalties provided in this section shall be
14 cumulative to the remedies or penalties available under all
15 other laws of this State.

16 § -4 **Reporting requirements.** A government agency shall
17 submit a written report to the legislature within twenty days
18 after discovery of a security breach at the government agency
19 that details information relating to the nature of the breach,
20 the number of individuals affected by the breach, a copy of the
21 notice of security breach that was issued, the number of
22 individuals to whom the notice was sent, whether the notice was

1 delayed due to law enforcement considerations, and any
2 procedures that have been implemented to prevent the breach from
3 reoccurring. In the event that a law enforcement agency informs
4 the government agency that notification may impede a criminal
5 investigation or jeopardize national security, the report to the
6 legislature may be delayed until twenty days after the law
7 enforcement agency has determined that notice will no longer
8 impede the investigation or jeopardize national security."

9 SECTION 3. This Act shall take effect on January 1, 2007.



GOVERNOR OF THE STATE OF HAWAII

Approved this day: MAY 25 2006

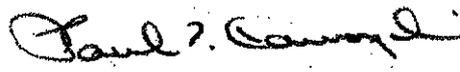
S.B. No. 2290, S.D. 2, H.D. 1, C.D. 1

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.

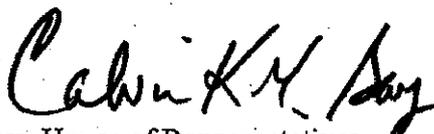

President of the Senate

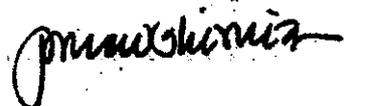

Clerk of the Senate

**THE HOUSE OF REPRESENTATIVES
OF THE STATE OF HAWAII**

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.


Speaker, House of Representatives


Clerk, House of Representatives