

THE SENATE TWENTY-THIRD LEGISLATURE, 2006 STATE OF HAWAII

S.B. NO. 2292 S.D. 2

## A BILL FOR AN ACT

RELATING TO DESTRUCTION OF PERSONAL INFORMATION RECORDS.

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

- 1 SECTION 1. The Hawaii Revised Statutes is amended by adding to title 26 a new chapter to be appropriately designated 2 3 and to read as follows: 4 "CHAPTER DESTRUCTION OF PERSONAL INFORMATION RECORDS 6 -1 Purpose. Business and government agency records 7 are a leading source of personal information for identity thieves. Any entity that maintains personal customer 8 9 information as part of its business operations should establish 10 security procedures to maintain the confidentiality and 11 integrity of that data. A critical element of any security plan 12 is the destruction of records containing personal information when they are being discarded. Throughout the United States, 13 there have been repeated instances of businesses carelessly
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- 15 dumping boxes containing scores of customers' personal
- 16 information in dumpsters. This chapter seeks to protect the
- 17 people of Hawaii by making such practices unlawful.
- 18 -2 Definitions. As used in this chapter:

1 "Business" means a sole proprietorship, partnership, 2 corporation, association, or other group, however organized and 3 whether or not organized to operate at a profit. Except as provided in section -3(e), the term includes a financial 4 5 institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any 6 other state, the United States, or any other country, or the 7 8 parent or the subsidiary of any such financial institution. The term also includes an entity whose business is records 9 10 destruction. 11 "Disposal" means the discarding or abandonment of records containing personal information or the sale, donation, 12 13 discarding, or transfer of any medium, including computer 14 equipment or computer media, containing records of personal 15 information, or other nonpaper media upon which records of 16 personal information are stored, or other equipment for nonpaper 17 storage of information. 18 "Government agency" means any department, division, board, 19 commission, public corporation, or other agency or 20 instrumentality of the State of any county.

"Personal information" means an individual's first name or

first initial and last name in combination with any one or more

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of the following data elements, when either the name or the data 1 2 elements are not encrypted: 3 (1)Social security number; 4 (2) Driver's license number or Hawaii identification card number; or 5 Account number, credit or debit card number, access 6 (3) 7 code, or password that would permit access to an individual's financial account. 8 For purposes of this section, "personal information" shall 9 not include publicly available information that is lawfully made 10 available to the general public from federal, state, or local 11 12 government records. 13 "Records" means any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or 14 15 preserved, regardless of physical form or characteristics. 16 -3 Destruction of personal information records. 17 Any business or government agency that conducts business in 18 Hawaii and any business or government agency that maintains or 19 otherwise possesses personal information of a resident of Hawaii

shall take reasonable measures to protect against unauthorized

access to or use of the information in connection with or after

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its disposal.

(b)

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The reasonable measures shall include:

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2	(1)	Implementing and monitoring compliance with policies
3		and procedures that require the burning, pulverizing,
4		recycling, or shredding of papers containing personal
5		information so that information cannot be practicably
6		read or reconstructed;
7	(2)	Implementing and monitoring compliance with policies
8		and procedures that require the destruction or erasure
9		of electronic media and other nonpaper media
10		containing personal information so that the
11		information cannot practicably be read or
12		reconstructed; and
13	(3)	Describing procedures relating to the adequate
14		destruction or proper disposal of personal records as
15		official policy in the writings of the business

17 (c) A business or government agency may satisfy its
18 obligation hereunder by exercising due diligence and entering
19 into a written contract with, and thereafter monitoring
20 compliance by, another party engaged in the business of record
21 destruction to destroy personal information in a manner

entity.

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1	consistent	with thi	s section	. Due dil	igence shou	ald ordinarily
2	include one	or more	of the f	following:		

- 3 (1) Reviewing an independent audit of the disposal
  4 business's operations or its compliance with this
  5 statute or its equivalent;
- 6 (2) Obtaining information about the disposal business from
  7 several references or other reliable sources and
  8 requiring that the disposal business be certified by a
  9 recognized trade association or similar third party
  10 with a reputation for high standards of quality
  11 review; or
  - (3) Reviewing and evaluating the disposal business's information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the disposal business.
- (d) A disposal business that conducts business in Hawaii

  17 or disposes of personal information of residents of Hawaii,

  18 shall take reasonable measures to dispose of records containing

  19 personal information by implementing and monitoring compliance

  20 with policies and procedures that protect against unauthorized

  21 access to, or use of, personal information during or after the

  22 collection and transportation and disposing of such information.

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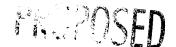
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1	(e)	This	chapter	shall	not	apply	to	any	of	the	following:
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- 2 Any financial institution that is subject to 15 U.S.C. (1)3 sections 6801 to 6809, as amended;
  - Any health plan or healthcare provider that is subject (2)to and in compliance with the standards for privacy 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; or
- 10 (3) Any consumer reporting agency that is subject to and in compliance with the Fair Credit Reporting Act, 15 U.S.C. sections 1681 to 1681v.
- 13 Any business that violates any provision of this (f)14 chapter shall be deemed to have engaged in an unfair or 15 deceptive act or practice in the conduct of trade or commerce 16 within the meaning of section 480-2. The attorney general or 17 the director of the office of consumer protection may bring an 18 action based upon unfair or deceptive acts or practices declared 19 unlawful by this section. No such action may be brought against **20** a government agency.
- 21 In addition to any penalty provided for in subsection 22 (f), any business that violates any provision of this chapter is

- 1 liable to the injured party in an amount equal to the sum of any
- 2 actual damages sustained by the injured party as a result of the
- 3 violation, or damages not less than \$500, whichever is greater.
- 4 The court, in any action brought under this section, may award
- 5 reasonable attorneys' fees to the prevailing party. No such
- 6 action may be brought against a government agency."
- 7 SECTION 2. This Act shall take effect on January 1, 2007.



## Report Title:

Identity Theft; Prevention

## Description:

Requires businesses that maintain or possess personal information of Hawaii residents to protect against unauthorized access to or use of the information after its disposal by destroying the personal information. (SD2)