STAND. COM. REP. NO. 316

Honolulu, Hawaii

MAR 24 2006

RE: H.B. No. 2535

S.D. 1

Honorable Robert Bunda President of the Senate Twenty-Third State Legislature Regular Session of 2006 State of Hawaii

Sir:

Your Committees on Media, Arts, Science, and Technology and Commerce, Consumer Protection, and Housing, to which was referred H.B. No. 2535 entitled:

"A BILL FOR AN ACT RELATING TO OFFENSES AGAINST PROPERTY RIGHTS,"

beg leave to report as follows:

The purpose of this measure is to deter internet fraud by amending section 708-893, Hawaii Revised Statutes, use of a computer in the commission of a separate crime, to include:

- (1) The additional state of mind of "intentionally" when a person uses a computer to obtain control over the property of another; and
- (2) The offenses of Theft in the First Degree and Theft in the Second Degree among the offenses that can constitute an element of the crime.

Your Committees received testimony in support of this measure from the Department of the Prosecuting Attorney, City and County of Honolulu; the Honolulu Police Department; and the Department of the Prosecuting Attorney, County of Maui. The Office of the Public Defender submitted testimony in opposition to this measure.

The use of a computer to commit theft is a growing problem in Hawaii and the number of crimes that are perpetrated via the Internet is increasing. The use of a computer as an instrument of



the crime offers the perpetrator relative anonymity, a quick and easy mechanism to commit fraud, and the potential for sizable financial gain. According to the Federal Trade Commission (FTC), Hawaii ranks fifth in the nation in internet fraud complaints per capita.

Although Hawaii has statutes relating to computer fraud, these statutes are inadequate for the purposes of prosecuting internet fraud. Under section 708-891, Hawaii Revised Statutes, a person commits the crime of computer fraud in the first degree if that person accesses a computer without permission and obtains control over the property of another. This statute is difficult to use to prosecute internet fraud because it requires proof that the suspect's use of the computer was "without permission." Lack of permission is difficult to prove in internet fraud cases where criminals use their own computers to commit crimes because these criminals have permission to use their own computers.

Your Committees find that amending section 708-893, Hawaii Revised Statutes, relating to the use of a computer in the commission of a separate crime to include persons who use a computer to commit theft will enable law enforcement to respond more efficiently to computer crime in its various forms. Furthermore, maintaining the highest level of scienter in proof of the new offense preserves the rights of the accused.

Your Committees have amended this measure by making technical, nonsubstantive stylistic changes.

As affirmed by the records of votes of the members of your Committees on Media, Arts, Science, and Technology and Commerce, Consumer Protection, and Housing that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2535, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2535, S.D. 1, and be referred to the Committee on Judiciary and Hawaiian Affairs.

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Respectfully submitted on behalf of the members of the Committees on Media, Arts, Science, and Technology and Commerce, Consumer Protection, and Housing,

RON MENOR, Chair

CAROL FUKUNAGA, Chair

The Senate Twenty-Third Legislature State of Hawaii

Record of Votes of the Committee on Media, Arts, Science and Technology (Bills and Resolutions)

	MAT/CPH, 5H	M Date:	3/21/5	-006
The committee is reconsideri				
The Recommendation is to:				
Pass, unamended (2312)	Pass, with amendments (2311)	Hold (231)		Recommit (2313)
Members	Ayes	Ayes(WR)	Nays	Excused
FUKUNAGA, Carol (C)	✓			
IGE, David Y. (VC)				en todan i kirk i jedi. Najvijaji Otalijaji i 190
ENGLISH, J. Kalani				
IHARA, Jr., Les				
HOGUE, Bob	V			
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TOTAL	4			
Recommendation: Adopted Not Adopted				
Chair's or Designee's Signature:	id y dy	e		
Distribution : Original File with Committee Re	eport Clerk's Office	Pink Drafting Agend		denrod ee File Copy

^{*}Do <u>not</u> list more than one measure per Record of Votes.

The Senate Twenty-Third Legislature State of Hawaii

Record of Votes of the Committee on Commerce, Consumer Protection and Housing (Bills and Resolutions)

Measure:* HB 2535 Committee MAT/	Referral: CPH, THI	Date:	Date: 3-21-06				
The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to:							
The Recommendation is to:							
Pass, unamended Pass, with amendments Hold Recommit (2312) (2311) (2310) (2313)							
Members	Ayes	Ayes(WR)	Nays	Excused			
MENOR, Ron (C)		Caramina or a day minimal final maximum.					
BAKER, Rosalyn H. (VC)							
ESPERO, Will							
IGE, David Y.							
SAKAMOTO, Norman			- 100-100 - 100 A - 10				
HOGUE, Bob		1	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1				
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TOTAL	b						
Recommendation: Adopted Not Adopted							
Chair's or Designee's Signature: Kossly H Ball							
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy							

^{*}Do not list more than one measure per Record of Votes.