

JAN 23 2009

A BILL FOR AN ACT

RELATING TO INFORMATION.

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

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

4 "§487- Inadvertent, unauthorized disclosure of personal
5 financial information by public or private entities; duty to
6 notify and pay for credit monitoring reports. (a) Any public
7 or private entity responsible for an inadvertent, unauthorized
8 disclosure of personally identifiable financial information that
9 may result in a crime being committed under section 708-839.6,
10 708-839.7, or 708-839.8 shall be liable for the costs of
11 providing each person whose personally identifiable financial
12 information was disclosed with, at a minimum, a one year
13 subscription to a credit reporting agency's services.

14 (b) No later than three calendar days after a public or
15 private entity's discovery of an inadvertent, unauthorized
16 disclosure of personally identifiable financial information, the
17 public or private entity responsible for the inadvertent,



1 unauthorized disclosure of personally identifiable financial
2 information shall provide the executive director of the office
3 of consumer protection and each person whose personally
4 identifiable financial information was inadvertently disclosed
5 without the person's authorization with notice of the
6 disclosure, the requirements imposed upon the responsible
7 entity, and the credit monitoring and reporting options
8 available to the person pursuant to this section.

9 (c) No later than seven calendar days after a public or
10 private entity's discovery of an inadvertent, unauthorized
11 disclosure of personally identifiable financial information, the
12 public or private entity responsible for the inadvertent,
13 unauthorized disclosure of personally identifiable financial
14 information shall provide each person with a choice of not less
15 than two credit reporting agencies from which the person may
16 select to subscribe. The person, if the person so chooses,
17 shall select a credit reporting agency and the credit monitoring
18 and reporting services that the person requires and shall inform
19 the responsible public or private entity of the person's
20 selection. If a person elects not to subscribe to any credit
21 monitoring and reporting services offered by a credit reporting
22 agency, the person shall notify the responsible public or



1 private entity in writing of the person's choice to not
2 subscribe to any credit monitoring or reporting services. The
3 public or private entity responsible for the inadvertent,
4 unauthorized disclosure of the person's personally identifiable
5 financial information shall keep a record of each person's
6 credit monitoring and reporting services selection, or election
7 to not subscribe to such services, for at least three years
8 after the receipt by the public or private entity of a person's
9 selection or election under this subsection.

10 (d) The responsible public or private entity shall enroll
11 the person into the credit monitoring and reporting plan of the
12 person's choice within seven calendar days of receipt of a
13 person's selection made under subsection (c) and shall pay all
14 costs associated with the one year subscription of the services
15 of the selected credit reporting agency.

16 (e) For the purposes of this section:

17 "Credit reporting agency" means a nationwide consumer
18 credit reporting agency, such as Equifax, Experian, or
19 TranUnion, or any successor entity thereof, that provides
20 consumer credit monitoring and reporting services.

21 "Inadvertent, unauthorized disclosure" or "disclosure"
22 means any compromising of sensitive, personal, or financial



1 information that could result in a person being a victim of
2 identity theft under section 708-839.6, 708-839.7, or 708-839.8.
3 The term does not include any wilful or wanton act by a public
4 or private entity or employee or agent thereof that could or
5 does result in a crime being committed under section 708-839.6,
6 708-839.7, or 708-839.8.

7 "Personally identifiable financial information" means any
8 sensitive, personal, or financial information that, if
9 inappropriately disclosed or obtained, could result in a person
10 being a victim of identity theft under section 708-839.6, 708-
11 839.7, or 708-839.8.

12 "Public or private entity", in the case of a public entity,
13 has the same meaning as "government entity" as that term is
14 defined in section 663-10.5. In the case of a private entity,
15 the term includes a sole proprietorship, corporation, limited
16 liability company, association, partnership, joint stock
17 company, joint venture, mutual fund, trust, joint tenancy, or
18 other similar form of business organization or other legal
19 entity, whether organized for-profit or not-for-profit.

20 (f) The executive director of the office of consumer
21 protection may adopt rules in accordance with chapter 91 to
22 effectuate this section."



1 SECTION 2. New statutory material is underscored.

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

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INTRODUCED BY:

Aronis y Jey

Clara K. Nishihara

Ronald de Baker

Jim ...

Will Eyo

Yu ...

Caro Fukunaga

Mike Gabbaed

... ..

Norman Saka...

John ...

Jim

Thomas Chen Oakland

Handwritten signatures and scribbles on the left side of the page.



Report Title:

Personally Identifiable Financial Information; Unauthorized Disclosure; Remedy

Description:

Requires public or private entities responsible for the inadvertent, unauthorized disclosure of personally identifiable financial information to pay for access to credit reports for at least 1 year.





LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

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

335 MERCHANT STREET, ROOM 310

P.O. Box 541

HONOLULU, HAWAII 96809

Phone Number: (808) 586-2850

Fax Number: (808) 586-2856

www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009

Tuesday, February 17, 2009
8:30 p.m.

TESTIMONY ON SENATE BILL NO. 431 – RELATING TO INFORMATION.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding Senate Bill 431, Relating to Information. My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

Senate Bill No. 431 proposes to require public or private entities responsible for the inadvertent, unauthorized disclosure of personal financial information to pay for access to credit reports for at least one year. The Department takes no position at this time but offers the following comments.

Under a recent federal law, the Fair and Accurate Credit Transactions Act ("FACTA"), all Hawaii residents can receive free copies of their credit reports once a year from each of the three national credit reporting agencies--Equifax, Experian, and Trans Union. This law provides consumers with an easier and more timely ability than ever before to determine that their credit is being fraudulently used

To maximize the benefits of FACTA, consumer advocates advise consumers to order one report from one agency at a time, at four-month intervals. In effect, consumers now have the ability to monitor their credit reports for free three times per year. In addition to the free reports available each year, consumers are entitled to a free report from each of the agencies if they believe that they have become the victim of identity theft. To receive the free report in these circumstances, all that a victim needs to do is to contact each reporting agency directly and be prepared to provide a copy of a police report. Reviewing the credit reports enables consumers to detect fraudulent activity early and allows them to implement effective steps to limit damage resulting from potential identity theft.

The advances of FACTA notwithstanding, Senate Bill No. 431 imposes an obligation on public and private entities responsible for the unauthorized release of

personal information to bear the costs of providing a credit monitoring service for the potential victims. While the need for credit monitoring arises due to the action of those who release personal information, it is not clear that "credit monitoring services" are any more valuable to consumers than the tri-annual credit reports which are now available free of charge as a consequence of FACTA.

Credit monitoring services offer their programs as "privacy protection" or "anti-ID-theft" services. They are not a deterrent to identity theft, but simply a potential early warning. The actual services provided vary widely. In general, the services promise to check a consumer's report regularly and alert them if suspicious activity is found. Many consumer groups feel that the monitoring services, which can cost up to \$200 per year, provide a service that most consumers can do for themselves for free or for considerably less than the relatively high subscription costs. If this bill becomes law, Hawaii businesses and government agencies may be placed in a position in which they will have to spend millions of dollars to comply with this measure. Consequently, imposing such a potentially significant financial burden on the affected entities may not be warranted at this time in view of the consumer-friendly changes made by FACTA.

Thank you for this opportunity to testify on Senate Bill No. 431. I will be happy to answer any questions that the members of the Committees may have.

Date: 02/17/2009

Committee: Senate Commerce and
Consumer Protection

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent

Title of Bill: SB 0431 RELATING TO INFORMATION

Purpose of Bill: Requires public or private entities responsible for the inadvertent, unauthorized disclosure of personally identifiable financial information to pay for access to credit reports for at least 1 year.

Department's Position: The Department of Education (Department) opposes SB 431. The Department shares the concern that identity theft-related crimes are on the rise. The resulting consequences of the misuse of confidential personal information can be devastating and costly to an individual. However, the Department feels that holding public or private entities responsible for the "inadvertent, unauthorized disclosure of personal or financial information" is not reasonable. The Department feels strongly that the term "inadvertent" is too broad and uncertain. For example, hacking into a computer database or a burglary, even with an alarm system, could result in the loss of personal or financial information that could be used in identity theft. We would suggest use of the term "negligent" instead. The issue of what party is negligent, the impact of such negligence and any remedial measures should be settled in a court of law.

The Department does not support this bill as written.

LINDA LINGLE
GOVERNOR OF HAWAII



MARIE C. LADERTA
DIRECTOR

CINDY S. INOUE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

February 16, 2009

TESTIMONY TO THE
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
For Hearing on February 17, 2009
8:30 a.m., Conference Room 229
BY
MARIE C. LADERTA, DIRECTOR

Senate Bill 431
Relating to Information

Written Testimony Only

TO CHAIRPERSON BAKER AND MEMBERS OF THE COMMITTEE:

The purpose of Senate Bill 431 requires public or private entities responsible for the inadvertent unauthorized disclosure of personally identifiable financial information to pay for access to credit reports for at least one year.

The Department of Human Resources Development understands the Legislature's efforts in protecting personal data; however, given the current fiscal difficulties, and the potential cost associated with the paid service, it would not be prudent to pursue enactment at this time.

The Department is actively involved in the protection of personal data contained within our data processing systems and data exchanges made between these systems and external entities such as DAGS, ERS, CSEA as well as external service providers. In addition, the department is also an active participant in the recently convened Information Privacy and Security Council (IPSC), chaired by the DAGS Comptroller.

Finally, it should also be mentioned, that access to credit information is provided free of charge to individuals seeking their own information. The various reporting agencies however, apply additional charges to their standard services for individuals wanting information above and beyond the free service offerings.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Commerce and Consumer Protection
February 17, 2009 at 8:30 am

by

David Lassner

Vice President for Information Technology/CIO, University of Hawai'i

SB 0431 – RELATING TO INFORMATION

Chair Baker, Vice Chair Ige and Members of the Committee:

The University of Hawaii appreciates and supports the intent of the Legislature to protect Hawaii's citizenry from identity theft. However, we cannot support this Bill in its current form.

Following are our concerns and suggestions:

We recommend that if the Legislature wishes to protect Hawaii's citizenry against identity theft, it would be more effective to enact legislation that would focus on preventing the crime of identity theft rather than to focus solely on data breaches. Evidence tells us that most data breaches do not result in identity theft, and most identity theft does not result from data breaches.

Identify theft occurs when an organization issues new credit in someone's name without their permission. In most cases, the data used by the identify thief was acquired through means other than data breaches. Techniques include stolen paper mail, stolen wallets, compromise of the victim's personal computer, phishing, burglary or compromise by acquaintances, relatives, colleagues or someone working in the victim's home.

A more effective approach to protect Hawaii citizens from identity theft would recognize all these potential sources of compromise and focus on prevention of the crime of identity theft itself.

One approach would be to enact legislation that puts credit records for all of Hawaii's citizens in a default state of "freeze," so that new accounts could be opened in someone's name only with their explicit permission. This would make it more difficult for creditors to open fraudulent accounts in someone's name regardless of how their personal information had been compromised.

Another alternative would be for the State to attempt to mandate and/or purchase regular credit reports for all of Hawaii's citizens.

These approaches would protect Hawaii's citizens against identify theft resulting from compromises in other states or other countries rather than focusing solely on data breaches in Hawaii.

Nonetheless, if the Legislature wishes to continue to focus on data breaches, we offer the following suggestions. Any new reporting requirements should be completely integrated with existing reporting requirements enacted by the Legislature in previous sessions (e.g., Act 135 SLH 2006). Timelines should be reasonable and achievable, and recognize that at the time a data breach is discovered it may take extensive investigation to determine exactly what information may have been breached. And then it may take an extensive period of time to locate and contact the individuals affected -- who may no longer have any active affiliation with the entity that suffered the breach. And in this time of budget reductions, if the Legislature wishes to create new financial obligations for public entities, it would be preferable to provide funding and resources to a single central agency, perhaps the Consumer Advocate. This would allow the negotiation of lower prices for the desired credit reports and the avoidance of potentially duplicative expenditures if an individual's information were breached in more than one place.

Thank you for this opportunity to testify in support of improved protection for Hawaii's citizenry from identity theft.



HAWAII BANKERS ASSOCIATION

1000 BISHOP ST., SUITE 301B • HONOLULU, HAWAII 96813-4203
PHONE: (808) 524-5161 • FAX: (808) 521-4120

Presentation to the Senate Committee on Consumer
Protection and Commerce
Tuesday, February 17, 2009, at 8:30 a.m.

Testimony for SB 431 Relating to Information

TO: The Honorable Roz Baker, Chair
The Honorable David Ige, Vice Chair
Members of the Senate Committee on Consumer Protection and Commerce

My name is Neal Okabayashi and I testify for the Hawaii Bankers Association. While we are sympathetic to the intent of this bill, we respectfully ask that the respective committees hold this bill because the protections proffered by SB 431 already exist under federal and state laws, and thus are not necessary. SB 431 appears to be the companion of HB 581 which mirrored HB 246 which was introduced in 2007 and held by the House Committee on Consumer Protection and Commerce for the reasons that there are more than adequate remedies for the consumer. HB 581 was again held by the House Committee on Consumer Protection and Commerce.

SB 431 proposes to accomplish three goals. If an entity inadvertently and without authority discloses personal financial information that could result in a criminal incident of identity theft, the entity must notify the office of consumer protection within three days of the discovery of the disclosure, inform the consumer and pay for an one year credit monitoring subscription. However the foregoing is already covered by existing law.

Four identity theft bills were enacted effective 2007.

As to notification requirements, section 487N-2, HRS, effective January 1, 2007, requires businesses and government agencies notify those affected by a security breach and if more than 1,000 persons are affected, notify the office of the consumer protector and all credit reporting agencies. Banks are exempt from Act 135 because we are already under a duty under federal law to notify our banking regulator as well as affected consumers. 12 CFR Part 364, Appendix B. Thus, the notification provisions proposed in HB 581 already exist in the law.

As to the payment for a subscription to a credit monitoring service, it is not necessary because a combination of federal and state law render it unnecessary.

Section 489P, HRS, (effective January 1, 2007) permits an affected consumer to place a freeze on their 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 would be no changes.

State law goes further than federal law. Federal law permits the consumer to 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.

The initial fraud alert entitles you to a copy of a free credit report from each of the three credit reporting agencies and 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.

We note that this Legislature recognized that banks and credit unions were already subject to stringent identity theft provisions under federal law as a result of the Gramm-Leach-Bliley Act of 1999 and resulting regulations and thus, provided an exemption for banks with respect to Acts 135 and 136, Session Laws of Hawaii 2006, so that banks would not be subject to duplicative but conflicting obligations. Thus, if the committees decide to report this bill favorably, we request that banks be exempt from the provisions of this bill in the same manner as under Acts 135 and 136. We would suggest that this language from HRS section 487N-2(g)(I) [Act 135] be used to exempt financial institutions: "A financial institution that is subject to the Federal Interagency Guidance on Response Programs for Unauthorized Access to Consumer Information and Customer Notice published in the Federal Register on March 29, 2005 by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, or subject to 12 C.F.R. Part 748, and any revisions, additions, or substitutions relating to said interagency guidance."

The protections that I have referenced above are the product of recent legislation, some became effective as recently as July 1, 2007. Since these laws are recently effective, we urge this body to recognize that there are more than adequate measures to protect the consumer and hold this bill.

**SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

February 17, 2009

Senate Bill 431 Relating to Information

Chair Baker and members of the Senate Committee on Commerce and Consumer Protection, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm opposes Senate Bill 431 Relating to Information.

This measure proposes additional sections regarding the “inadvertent, unauthorized disclosure of personal financial information by public or private entities” to be added to Chapter 487, which deals with the Office of Consumer Protection (hereinafter OCP). Chapter 487N provides restrictions and remedies for security breaches of personal information by businesses as well as government agencies. The proposed measure conflicts with the provisions of current law contained in Chapter 487N. Specifically the proposed bill uses definitions, timetables, and language which are different from existing statutes covering the identical subject matter.

The measure requires notice of the breach within three days. Current provisions of Chapter 487N have no specific timetable but include detailed requirements for notice and the methodologies for notice. Generally speaking, the shortest time frame in any other state is 45 days, and this proposed bill specifies three days, an impracticable standard.

The measure also requires notice to the OCP in addition to the customer. Chapter 487N already specifies thresholds for notifying OCP. See Section 487N-2(f). The proposed bill conflicts with the existing statute and provides less guidance than already contained in existing law.

The measure also requires the private business within seven days to provide the person the option to use credit monitoring, and would require the private business to actually enroll the person in the service. If the person chose not to enroll, it would require the person to notify the company of that choice. What would happen if the person simply didn't respond? Would the company have to follow up multiple times to get an answer? To require the company to enroll the customer in a credit monitoring program adds risk to the customer for no real purpose.

For these reasons we request the measure be held. Thank you for the opportunity to present this testimony.

**SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

February 17, 2009

Senate Bill 431 Relating to Information

Chair Baker and members of the Senate Committee on Commerce and Consumer Protection, I am Rick Tsujimura, representing T-Mobile USA, Inc. T-Mobile opposes Senate Bill 431 Relating to Information.

Thank you for the opportunity to present this testimony in opposition to Senate Bill 431, which would mandate the provision of credit monitoring service to any person whose “Personally Identifiable Financial Information” may be disclosed without authorization. As a nationwide provider of wireless telecommunications services serving nearly 33 million customers, T-Mobile certainly recognizes the importance of protecting our customers’ personal information. We operate in a vibrantly competitive industry and the failure to responsibly secure and protect our customer’s information would undoubtedly result in the loss of their loyalty. We recognize that our customers have many choices and we do everything reasonably within our power to protect our relationship with them.

Accordingly, although we applaud the general consumer protection intentions of Senate Bill 431, we oppose its specific approach because we believe (1) it is unnecessary given existing Hawaii law, (2) mandated credit monitoring ignores material risk/benefit considerations and may interfere with offering alternatives that may be more favorable to customers, and (3) the bill is flawed because it contains numerous contradictions of existing state law and other ambiguities that will create compliance issues for businesses large and small – leading to increased costs for Hawaii consumers.

First, Hawaii has already enacted a broadly supported breach notice law. See Hawaii Revised Statutes §§ 4897N-1 & 487N-2. This statute, which is based on the landmark California Breach Notice Statute (SB 1386) enacted in 2002, is in most respects identical to the statutes adopted in over 40 other states since that time. For national and international companies, the relative consistency of this state legislation has been critical to the successful implantation of breach notice procedures and compliance programs. Because information does not recognize state borders, widely divergent state breach laws create unnecessary compliance complications. The privacy community and the commercial community have largely supported the balanced approach contained in Hawaii’s existing law. Indeed, there is no evidence to indicate it is not working as intended.

Second, although many companies have offered their customers credit monitoring as the result of an information breach within their business, it is short-sighted to assume that such monitoring is necessary or even useful in every instance. In fact, despite the costs incurred by commercial entities for credit monitoring, many consumers choose not to take advantage of the offer. Indeed, there is empirical evidence that credit monitoring may not be wanted or meaningful to many breach victims, and that other evolving credit services may be more suited to their needs. Our point is simply that mandating credit monitoring offers from at least two of

the major credit agencies may in many cases increase the cost of the service a business would choose to offer (i.e., the credit agencies often provide volume discounts) and may simply create a windfall for the credit agencies. Notably, this bill does nothing to protect businesses – especially small businesses – from the pricing choices the credit agencies may make. The far better approach, in our view, is to allow the market to decide whether credit monitoring should be provided – or whether other services, offers, or concessions better serve the interests of Hawaii consumers.

Finally, even if the Committee believes that mandated credit monitoring is good public policy, this bill suffers from inconsistencies and conflicts with the existing breach notice law. For instance, Senate Bill 431 introduces a new term "Personally identifiable financial information," but defines it in a hopelessly circular manner: "any sensitive, personal, or financial information that, if inappropriately disclosed or obtained, could result in a person being a victim of identity theft . . ." This definition provides no meaningful guidance as to what types of information it really covers. Compare this definition to that of "personal information" in the existing Hawaii breach notice statute (and the law in the vast majority of the states), which very specifically defines the term in a way that businesses know exactly what it means. Why would the Committee entertain this ambiguity when it could simply amend the existing statute and utilize the existing definition – covering precisely the types of information previously identified as potentially subjecting consumers to identity theft.

Similarly, Senate Bill 431 would mandate three (3) and seven (7) day deadlines after discovery of a breach for providing notices to the office of consumer protection and the consumer, respectively. The law provides no leeway for reasonable investigation into the cause, the correction, or the extent of any breach. This stands in stark contrast – indeed it directly conflicts – with the existing Hawaii breach notice statute, which more appropriately requires notice "without unreasonable delay, consistent with the legitimate needs of law enforcement . . ." and provides law enforcement an opportunity to request a delay in such notice. Businesses must be given enough time to adequately research the breach, determine who was affected, and investigate how it occurred, before reactively sending notice letters. Indeed, in many instances law enforcement may request a delay in notice to facilitate their pursuit of wrongdoers. In this regard, Senate Bill 431 provides fixed deadlines for the offer of credit monitoring in direct conflict with the more reasonable timing requirements of existing law. Why would the Committee introduce this conflict when it could simply utilize the existing notice obligation and add the requirement to offer credit monitoring along with the existing notice?

In conclusion, we believe this Bill represents a solution in search of a problem – a problem that has already been adequately addressed by Hawaii state law. T-Mobile strongly urges the Committee to reject this Bill. But even if the Committee believes mandated credit monitoring is good policy, it really must recognize that this bill is not an appropriate vehicle to implement that policy. Thank you again for the opportunity to provide these comments.