



JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
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NADINE Y. ANDO
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DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Economic Development and Technology
Friday, March 14, 2024
10:00 a.m.
State Capitol, Conference Room 423 and via Videoconference

On the following measure:
S.B. 1038, S.D. 1, RELATING TO PRIVACY

Chair Ilagan and Members of the Committee:

My name is Jerry Bump, and I am the Acting Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this bill.

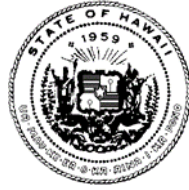
The purpose of this bill is to add definitions of "identifier" and "specified data element" and amends the definition of "personal information" for the purposes of notifying affected persons of data and security breaches under existing state law that governs the security breach of personal information. Includes licensees subject to the Insurance Data Security Law among the businesses deemed compliant with security breach notice requirements under existing state law.

This bill amends section 487N-2(g), Hawaii Revised Statutes (HRS) by adding paragraph (3) which references the Insurance Data Security Law, chapter 431, article 2B. See page 6, lines 16 to 17. We have concerns that this amendment may lead to confusion and statutory interpretation issues. With respect to consumer notices, the

Insurance Data Security Law requires that notices be provided in accordance with chapter 487 but does not set forth separate provisions for consumer notification. See HRS § 431:3B-303. The proposed new paragraph (3) in this bill does not appear to account for this, and instead appears to erroneously presume that the Insurance Data Security Law includes its own process for consumer notifications. As such, the proposed new paragraph (3) would likely create statutory interpretation issues and even be used to argue that insurers are not required to issue consumer notices. As such, we respectfully request that paragraph 3, page 6, lines 16 to 17, be removed.

Thank you for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



RYAN I. YAMANE
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWE LAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

March 13, 2025

TO: The Honorable Representative Greggor Ilagan, Chair
House Committee on Economic Development & Technology

FROM: Ryan I. Yamane, Director

SUBJECT: **SB 1038 SD1 – RELATING TO PRIVACY.**

Hearing: March 14, 2025, 10:00 a.m.
Conference Room 423 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the measure and provides comments. DHS will need time to assess the resources and time frames needed to implement this measure. For example, we will need to review and update our notices across programs. DHS respectfully requests that the effective date of this bill be extended.

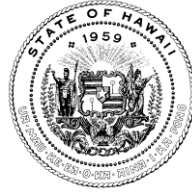
PURPOSE: This bill adds definitions of "identifier" and "specified data element" and amends the definition of "personal information" for the purposes of notifying affected persons of data and security breaches under existing state law that governs the security breach of personal information. Includes licensees subject to the Insurance Data Security Law among the businesses deemed compliant with security breach notice requirements under existing state law. Effective 7/1/2050. (SD1)

The Committee on Commerce and Consumer Protection amended the measure by:

- (1) Expanding the definition of "identifier" to include:
 - (A) An individual's first name, initials, or nickname, combined with the individual's last name; and

- (B) A mobile or home phone number;
- (2) Clarifying the definition of "specified data element" to include financial account numbers, unless redacted, and military identification numbers;
- (3) Amending the definition of "personal information";
- (4) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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



JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
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STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
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Testimony of the Department of Commerce and Consumer Affairs

Office of Consumer Protection

Before the
House Committee on Economic Development & Technology
Friday, March 14, 2025
10:00 a.m.
Via Videoconference
Conference Room 423

On the following measure:
S.B. 1038, S.D. 1 RELATING TO PRIVACY

Chair Ilagan, Vice Chair Hussey, and Members of the Committee:

My name is Mana Moriarty, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department offers comments.

The purpose of this bill is to implement the recommendation of the twenty-first century privacy law task force by updating and expanding the scope of Hawaii's data breach notification law, Hawaii Revised Statutes (HRS) Chapter 487N. Specifically, this bill adds definitions of "identifier" and "specified data element"; amends the definition of "personal information"; and deems "licensees" subject to the Insurance Data Security Law, codified at HRS Chapter 431, article 3B in compliance with the data breach notification requirements codified at section 487N-2, Hawaii Revised Statutes.

The Department proposes the following amendments:

- Delete the definition of the term “identifier.”
- Amend the definition of “personal information” as described below.
- Delete Section 3 of the bill, which deems licensees subject to the Insurance Data Security Law in compliance with the data breach notification requirements of section 487N-2, HRS.

Delete the definition of the term “identifier”

The Senate Standing Committee on Commerce and Consumer Protection adopted amendments to the proposed definition of “personal information.” See page 4, line 15, to page 5, line 13. With these amendments, the term “identifier” no longer appears in the definition of “personal information,” or anywhere else in chapter 487N, HRS. The definition of “identifier” should be deleted.

Amend the definition of “personal information”

Information that identifies an individual is not limited to the person’s name. Indeed, for many people, their individual email address contains their last name. Similarly, a phone number is in many instances capable of being uniquely associated with an individual. We propose an amended definition of “personal information” to reflect the judgment that a person’s email address that contains the person’s last name, or a phone number, when combined with a specified data element, warrants a data breach notification to a person affected by a security breach.

Delete section 3 of this bill

Section 3 deems licensees of the Insurance Data Security Law compliant with section 487N-2, HRS. Read together with section 431:3B-303, HRS, this provision could be interpreted to eliminate the existing requirement that licensees subject to the Insurance Data Security Law must provide notice to persons affected by data breaches. Section 431:3B-303, entitled “Notification to consumers,” generally requires that licensees comply with chapter 487N, HRS, but does not otherwise require notice to persons affected by the data breaches. Section 3 may be premised on the mistaken assumption that the Insurance Data Security Law includes its own processes for consumer notifications. It does not.

The proposed draft with our requested wording is attached as S.B. No. 1038, H.D. 1. We respectfully ask the Committee to make the amendments in the attached, proposed S.B. No. 1038, H.D. 1 if this bill is to advance.

Thank you for the opportunity to testify on this bill.

A BILL FOR AN ACT

RELATING TO PRIVACY

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

1 SECTION 1. The legislature finds that House Concurrent
2 Resolution No. 225, H.D. 1, S.D. 1, regular session of 2019
3 (H.C.R. No. 225), convened the twenty-first century privacy law
4 task force, whose membership consisted of individuals in
5 government and the private sector having an interest or
6 expertise in privacy law in the digital era. H.C.R. No. 225
7 found that public use of the Internet and related technologies
8 have significantly expanded in recent years and that a lack of
9 meaningful government regulation has resulted in personal
10 privacy being compromised. Accordingly, the legislature
11 requested that the task force examine and make recommendations
12 regarding existing privacy laws and rules to protect the privacy
13 interests of the people of the State.

14 The legislature further finds that, following significant
15 inquiry and discussion, the task force recommended that the
16 outdated definition of "personal information" in chapter 487N,
17 Hawaii Revised Statutes, which requires the public to be
18 notified of data breaches, should be updated and expanded. Many

S.B. NO. 1038

Proposed H.D. 1

1 identifying data elements relating to individuals are collected,
2 and, when exposed to the public in a data breach, can place an
3 individual at risk of identity theft or may compromise the
4 individual's personal safety. In its current form,
5 chapter 487N, Hawaii Revised Statutes, is not comprehensive
6 enough to cover the additional identifiers.

7 Accordingly, the purpose of this Act is to update the
8 definition of "personal information" in chapter 487N, Hawaii
9 Revised Statutes, to include personal identifiers and specified
10 data elements that are found in more comprehensive laws.

11 SECTION 2. Section 487N-1, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By adding a new definition to be appropriately inserted
14 and to read:

15 "Specified data element" means any of the following:

16 (1) An individual's username or e-mail address, in
17 combination with a password or security question and answer that
18 would permit access to an online account;

19 (2) An individual's date of birth;

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

S.B. NO. 1038

Proposed H.D. 1

1 (4) An individual's driver's license number, federal or
2 state identification card number, or passport number;

3 (5) A federal individual taxpayer identification number;

4 (6) A military identification number;

5 (7) A financial account number, or credit or debit card
6 number, in combination with any security code, access code,
7 personal identification number, or password that would allow
8 access to a financial account of an individual;

9 (8) Unique biometric data generated from a measurement or
10 analysis of human body characteristics used for authentication
11 purposes, including a fingerprint, voice print, retina or iris
12 image, or other unique physical or digital representation of
13 biometric data;

14 (9) A private key that is unique to an individual and is
15 used to authenticate or sign an electronic record; and

16 (10) Health insurance policy number, subscriber
17 identification number, medical identification number, or any
18 other unique number used by a health insurer to identify a
19 person.

20 "Specified data element" does not include medical information
21 that is protected by the Health Insurance Portability and

S.B. NO. 1038

Proposed H.D. 1

1 Accountability Act of 1996 and its enacting regulations or other
2 applicable federal or state law."

3 2. By amending the definition of "personal information" to
4 read:

5 "'Personal information" means information that identifies
6 or reasonably can be used to identify an individual, such as:

7 (1) An individual's first initial, first name, or
8 nickname, in combination with the individual's [and] last name;

9 (2) An individual's email address that includes the
10 individual's last name; or

11 (3) A phone number,

12 in combination with any one or more [~~of the following data~~
13 ~~elements~~] specified data element, when [either] any one or more
14 of the [name or the] specified data elements are not encrypted[÷

15 ~~—— (1) Social security number;~~

16 ~~—— (2) Driver's license number or Hawaii identification card~~
17 ~~number; or~~

18 ~~—— (3) Account number, credit or debit card number, access~~
19 ~~code, or password that would permit access to an individual's~~
20 ~~financial account.], redacted, or otherwise protected by another~~
21 method that renders the information unreadable or unusable.

S.B. NO. 1038

Proposed H.D. 1

Report Title:

Privacy; Personal Information; Security Breach; Notice;
Identifier; Specified Data Element

Description:

Adds definitions of "identifier" and "specified data element" and amends the definition of "personal information" for the purposes of notifying affected persons of data and security breaches under existing state law that governs the security breach of personal information. ~~Includes licensees subject to the Insurance Data Security Law among the businesses deemed compliant with security breach notice requirements under existing state law.~~ Effective 7/1/2050. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

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March 12, 2025

Representative Greggor Ilagan
Chair, Committee on Economic Development and Technology
Hawaii State Capitol
415 South Beretania Street, Room 419
Honolulu, HI 96813

Representative Ikaika Hussey
Vice Chair, Committee on Economic Development and Technology
Hawaii State Capitol
415 South Beretania Street, Room 320
Honolulu, HI 96813

Re: SB 1038 (Lee) - Oppose

Dear Chair Ilagan, Vice Chair Hussey and Members of the Committee,

TechNet must respectfully oppose SB 1038 (Lee), a bill that attempts to modernize the state's data breach notification requirements but that may have some unintended consequences.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.5 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance. Our member companies place a high priority on consumer privacy. The technology industry is fully committed to securing privacy and security for consumers and engages in a wide range of practices to provide consumers with notice, choices about how their data are used, and control over their data.

Our member companies place a high priority on consumer privacy. The technology industry is fully committed to securing privacy and security for consumers and engages in a wide range of practices to provide consumers with notice, choices about how their data are used, and control over their data.

We believe this bill is well intentioned, however, the current definitions are overbroad and could lead to confusing notices for consumers in instances when their data isn't at risk. For example, information that is encrypted or otherwise protected presents no risk to consumers if the hacker does not also have the

encryption key. Requiring consumers to be notified if this type of information is accessed in a breach would be potentially misleading.

We suggest aligning the definitions and standards in this bill to ensure interoperability with other states. This alignment will ensure consumers receive consistent and efficient notices across state lines, without the need to separate out Hawaiian residents for a distinct notice.

Thank you for your consideration. If you have any questions or concerns regarding our position, please contact Jose Torres, Deputy Executive Director at jtorres@technet.org or 909-380-2783.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JT', with a horizontal line extending to the right.

Jose Torres, MPA
Deputy Executive Director for California and the Southwest



DATE: March 13, 2025

TO: Representative Greggor Ilagan
Chair, Committee on Economic Development & Technology

Representative Ikaika Hussey
Vice Chair, Committee on Economic Development & Technology

FROM: Mihoko Ito / Tiffany Yajima

RE: **S.B. 1038, SD1 – Relating to Privacy**
Hearing Date: Friday, March 14, 2025 at 10:00 a.m.
Conference Room: 423

Dear Chair Ilagan, Vice Chair Hussey, and Members of the Committee on Economic Development & Technology:

We submit this testimony on behalf of the Hawaii Bankers Association (HBA). HBA represents seven Hawai'i banks and one bank from the continent with branches in Hawai'i.

HBA submits **comments** regarding **S.B.1038, SD1**, which adds definitions of "identifier" and "specified data element" and amends the definition of "personal information" for the purposes of notifying affected persons of data and security breaches under existing state law that governs the security breach of personal information.

We appreciate that the committee made amendments in the S.D.1 version of the bill to clarify some of the data identifier categories. However, we do have some remaining concerns that the disclosure of a redacted social security number if disclosed would trigger a security breach. This would create a significant change in how redacted social security numbers are handled and create an inconsistency in how the public and private sectors handle this information.

We concur with the recommendations for language made by the Hawaii Financial Services Association. We would suggest that these amendments either be adopted, or that entities who are exempted from breach notice requirements section also be exempted from Chapter 487N at page 5, line 17 as follows:

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

Mahalo for the opportunity to comment on this measure.



808-524-5161



P.O. Box 10065, Honolulu, Hawaii 96816



director@hawaiiiba.org



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

March 13, 2025

Rep. Greggor Ilagan, Chair
Rep. Ikaika Hussey, Vice Chair
Members of the House Committee on Economic Development and Technology

Hearing Date: March 14, 2025
Hearing Time: 10:00 am
Hearing Place: Hawaii State Capitol, Conference Room 423

Re: SB1038 SD-1 Relating to Privacy

I am Victor Brock, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate and service, or support the origination and servicing, of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation or rules, it is related only to mortgage lending and servicing.

MBAH OPPOSES SB 1038 SD-1 AS DRAFTED

MBAH has concerns about the definition in this Bill of a "specified data element" to include "the last four or more digits" of a social security number. We concur with the suggested amendment proposed in the testimony submitted by Marvin Dang representing the Hawaii Financial Services Association to revise to "more than the last 4 digits."

Thank you for the opportunity to present this testimony.

Victor Brock
Mortgage Bankers Association of Hawaii

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

March 14, 2025

Rep. Greggor Ilagan, Chair
Rep. Ikaika Hussey, Vice Chair
and members of the House Committee on Economic Development & Technology
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **S.B. 1038, S.D. 1 (Privacy)**
Hearing Date/Time: Friday, March 14, 2025, 10:00 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 opposes this Bill as drafted and offers a proposed amendment.

This Bill does the following: (a) adds definitions of “identifier” and “specified data element” and amends the definition of “personal information” for the purposes of notifying affected persons of data and security breaches under existing state law that governs the security breach of personal information; and (b) includes licensees subject to the Insurance Data Security Law among the businesses deemed compliant with security breach notice requirements under existing state law.

This Bill amends various provisions in **Hawaii Revised Statutes (HRS) Chapter 487N which is titled “Security Breach of Personal Information.”**

HRS Sec. 487N-1 of that Chapter contains definitions, including the following,

“**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. (emphasis added.)

In this Bill, “**personal information**” for the purpose of a “**security breach**” means an individual’s first initial or first name, and last name, in combination with any one or more **specified elements** when the personal information is not encrypted, redacted, or otherwise protected by another method that renders the information unreadable or unusable.” (See page 4, lines 9-21 through page 5, lines 1-13.)

This Bill adds a definition of “**specified data element**” on page 3, lines 6-20 through page 4, lines 1-8:

“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) A military identification number;

...

(bold and yellow highlight added.)

All social security numbers have 9 digits. In the above definition of “specified data element,” paragraph (1) deals with an individual’s **social security number “either in its entirety or the last four or more digits”**. The first phrase “**in its entirety**” means that displaying the entire 9 digits of the social security number, such as **987-65-4321**, would be a specified data element.

We **agree**. Displaying the **entire social security number** should be a “specified data element” for the purpose of determining whether there is a “security breach.” Existing Hawaii statutes **prohibit** communicating or making publicly available a person’s **entire** social security number, i.e. where all 9 digits are being displayed.¹

However, **we disagree with the wording in the second phrase of paragraph (1) of the definition of “specified data element” which would include “the last four or more digits” of an individual’s social security number.** As the second phrase is written, displaying even the last 4 digits would be a data element that would comprise “personal information” in the definition of “security breach.” **Thus, in this Bill as drafted, a “specified data element” would exist when displaying more than the last 3 digits (i.e., more than xxx-xx-x321) by displaying xxx-xx-4321.**

That second phrase is problematic because the current practice in Hawaii (in the Hawaii Revised Statutes, in the court rules, and for the financial industry) and elsewhere 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., displaying xxx-xx-4321.²

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 last 4 digits of a social security number to be displayed (i.e., xxx-xx-4321) are those when a judgment is to be publicly recorded at the state’s Bureau of Conveyances. See HRS Secs. 501-151, 502-33, 504-1, and 636-3.

Hawaii Court Records Rule 2.19 states that when a social security number is required in an accessible document, the last 4 digits may be displayed, provided that no more than half of the social security are disclosed.

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. 11-15, 15-4, 134-83, 232-7, 232-16, 232-18, 329D-4, 388-11.5, 487D-2, 576D-10.5, and 803-6.

Inconsistently, this Bill does NOT propose to change the provisions in other existing Hawaii laws which ALLOW the state government to publicly display the last 4 digits of the social security number (xxx-xx-4321). (Some of those state laws are cited in footnote 2 on page 2 of this testimony.)

Beginning in 2020, bills that are worded similar to this Bill have been introduced annually in the Legislature. The HFSA and others have pointed out the inconsistency if those bills are enacted to mandate that the display of the last 4 digits of a social security number is a “data element” for the purpose of a security breach. As of today, over the course of 6 legislative sessions (2020-2025), no bills have been introduced to prohibit the state government from public displaying the last 4 digits of a social security number.

Unless a holistic and consistent approach is undertaken in this Bill, we disagree with the wording in the second phrase of paragraph (1) of the definition of “specified data element” which would include “the last four or more digits” of an individual’s social security number.

Accordingly, we recommend that this Bill be amended as proposed below.

Under the proposed amendment, separate from displaying the entire 9 digits of the social security number, we recommend that 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. Displaying “more than” xxx-xx-4321 would be a “specified data element.” Thus, displaying xxx-xx-4321 should be ... and would be ... a “specified data element.” But displaying xxx-xx-4321 would NOT be ... and should NOT be ... a “specified data element.”

HERE IS OUR PROPOSED AMENDMENT:

“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



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: March 13, 2025

TO: Representative Greggor Ilagan
Chair, Committee on Economic Development & Technology

Representative Ikaika Hussey
Vice Chair, Committee on Economic Development & Technology

FROM: Ryan Toyomura / Mihoko Ito

RE: **S.B. 1038, SD1 - Relating to Privacy**
Hearing Date: Friday, March 14, 2025 at 10:00 a.m.
Conference Room: 423

Dear Chair Ilagan, Vice Chair Hussey, and Members of the Committee on Economic Development & Technology:

We offer this testimony on behalf of the Consumer Data Industry Association (CDIA). The Consumer Data Industry Association (CDIA) is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check companies, and others.

CDIA **opposes** S.B. 1038, SD1, which amends Hawaii's security breach law by adding definitions of "identifier" and "specified data element" and amends the definition of "personal information" for the purposes of notifying affected persons of data and security breaches.

The SD1 amends S.B. 1038 by: (1) expanding the definition of "identifier" to include: (a) An individual's first name, initials, or nickname, combined with the individual's last name; and (b) A mobile or home phone number; (2) clarifying the definition of "specified data element" to include financial account numbers, unless redacted, and military identification numbers; (3) amending the definition of "personal information"; (4) inserting a defective effective date and other technical amendments.

CDIA appreciates the legislature's intent to update Hawaii's current data breach statute. However, CDIA believes that the changes being proposed are overbroad and do not reflect data elements that truly present a risk of identity theft or other types of consumer fraud to affected individuals. Overbroad or vague data elements mean that, in many cases, consumers will receive confusing notices that their identities may be at risk when, in reality, no such risk exists.

Perhaps most concerning is that, unlike every other state which excludes from a security breach encrypted or otherwise protected information, this legislation deviates from this practice and would create a data breach law for Hawaii that is not interoperable with other states and would inadvertently make the state an outlier. We note that the S.B. 1038, SD1 was amended to exclude information that is encrypted, redacted, or otherwise protected, which without such exception would have serious unintended consequences for businesses and consumers alike. However, we are concerned that redacted information is still included as part of this bill.

Consumer reporting agencies are already highly regulated and required to safeguard sensitive data and financial information via multiple federal statutes.

We oppose this measure as currently drafted and request that the bill not move forward in its current form.

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

March 13, 2025

SB 1038 SD1 Relating to Privacy
House Committee on Economic Development & Technology
Hearing Date/Time: Friday, March 14, 2025, 10 AM
Place: Conference Room 423, State Capitol, 415 South Beretania Street

Dear Chair Ilagan, Vice Chair Hussey, and members of the Committee:

I write in SUPPORT of SB 1038. As a privacy expert, I have worked in data privacy for almost 20 years and served on the 21st Century Privacy Law Task Force that was created by the Legislature and that wrote the first version of this bill.

History:

In 2006, Hawaii passed a data breach notification law (487-N). By 2018, all 50 states had similar laws. Most states have updated their data breach notification law and passed additional privacy legislation; 31 states now have more data elements identified in their laws than Hawaii. Hawaii should remain mainstream by updating our privacy law, too.

Current Issues This Bill Solves:

Identifiers: 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 Ilagan as an example, the loss of his name (Greggor Ilagan) plus his SSN is a breach, but the loss of his email address (repilagan@capitol.hawaii.gov) and his SSN is not. Since his name and email address are closely aligned AND 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 current law.

Other states are making similar changes to the "Identifier" definition of this bill. For instance, Maine's law states

Any of the above data elements when not in connection with the individual's name, if the information, if compromised, would be sufficient to permit a person to fraudulently assume or attempt to assume the identity of the person whose information was compromised.

Texas, Washington and New Jersey have similar broad language.

New York's law actually defines two enumerated lists, just like this bill originally did. It reads:

"Personal Information" means any information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person.

"Private Information" is their list of data fields, just like this bill's "Specified data element".

So starting on Page 4 line 15, please restore the simple definition of "Personal information" to An Identifier in combination with one or more Specified Data Elements.

If you cannot do this, then at least address the biggest issue: people's email address and user ids often contain their name. To protect the name, but not protect the email address and user id when it contains the name, just doesn't make sense. This can be fixed with the following small addition:

"Personal information" means either: (1) An individual's first initial or first name and last name, in a name field, email address or user id, in combination with any one or more specified elements,

Last 4 of Social: Another example of an issue solved by this bill, is the idea of protecting the last 4 digits of an SSN vs. the whole SSN. Every person born in Hawaii before 2004 has an SSN that starts with 575 or 576. So the common question "where did you go to high school?" is tantamount to asking "what are the first 3 digits of your SSN?" For most people in Hawaii, if the last 4 digits are breached, all that protects their SSN is the middle 2 digits. Moreover, in some years, as few as 9 sets of middle digits were used. So if the last 4 digits are breached, it is extremely easy to reverse engineer the whole SSN. Hawaii is the only state where only 2 prefixes were used (575 and 576), therefore our SSNs are easiest to reverse engineer.

Please be wary of multiple testimonies by big tech companies that sell data:

Two of the groups testifying against this bill are Big Data in disguise. Both Technet and the State Privacy & Security Coalition have a huge overlap of members, including Amazon, Apple, Google, Meta / Facebook, Mastercard, and Yahoo. These groups are so inbred that Technet is actually even a member of the State Privacy & Security Coalition. Don't let billionaires like Mark Zuckerberg and Jeff Bezos testify under two different names on this bill. And it is easy to see why they oppose this bill – they sell our data. Of course, they oppose it.

Thank you for your consideration and the opportunity to SUPPORT this legislation.

Kelly McCanlies

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International Association of Privacy Professionals

