
A BILL FOR AN ACT

RELATING TO INFORMATIONAL PRIVACY ESTABLISHING THE HAWAII
INFORMATION PRIVACY ACT

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

1 SECTION 1. The flow of information has become essential to
2 the modern global economy. The multi-billion dollar commercial
3 trade in personal information--financial, job-related, medical,
4 and lifestyle--is one of the fastest growing industries in the
5 world. In the private sector, this information is often treated
6 as a commodity for development, purchase, and sale. Personal
7 information fuels an industry devoted to the thorough tracking,
8 monitoring, and recording of specific aspects of individuals'
9 lives and their interaction with society.

10 There has been a dramatic increase in the use of the
11 Internet to disseminate and gather information, as well as to
12 buy and sell products and services. However, a major impediment
13 to the growth of the internet as a commercial market place is
14 customer confidence. Surveys indicate that consumers will not
15 use the internet as a market place unless their privacy is
16 protected and their financial information is secure.

1 Hawaii has a unique constitutional right to privacy.
2 Article I, section 6 of the State Constitution, states that the
3 "right of the people to privacy is recognized and shall not be
4 infringed without the showing of a compelling state interest"
5 and requires the legislature to "take affirmative steps to
6 implement this right." The standing committee report of the
7 1978 Constitutional Convention specified three ways in which the
8 constitutional privacy right applies: to protect an individual
9 from disclosure of the individual's private affairs; to allow an
10 individual to control the privacy of information about the
11 individual; and to maintain the individual's right to be left
12 alone in certain highly personal areas of the individual's life.
13 It was intended that this right apply to private, as well as
14 governmental intrusions.

15 Business recognizes that responsible handling of personal
16 information engenders consumer confidence and trust. Therefore,
17 setting information privacy standards will be advantageous to
18 businesses. Businesses will know what their obligations are and
19 consumers will know what to expect from businesses that collect
20 or use their information.

21 In the United States, the individual behind each piece of
22 information is largely neglected, and has few, if any, rights to
23 review the information for accuracy or to restrict the use of
24 the information. Other countries, such as New Zealand, Hong

1 Kong and those members states in the European Union, set
2 standards for the collection and dissemination of personal
3 information out of respect for an individual's personal privacy
4 interests. In general, the United States has not developed
5 comparable individual privacy protections.

6 While certain personal information needs to be collected to
7 accommodate and further current practices in a modern age,
8 safeguards need to be in place to ensure that privacy intrusions
9 are both consented to and minimized to achieve only the intended
10 purpose. While chapter 92F, Hawaii Revised Statutes, governs
11 the public sector's information practices, including collection
12 and dissemination of information, standards for the private
13 sector are virtually nonexistent.

14 Individual states, as well as the federal government, have
15 been trying to resolve the conflict between the use of personal
16 information and the right to privacy not only for the
17 individuals' rights but because of the European Union's recent
18 directive on the protection of personal information. This
19 directive prohibits the transfer of personally identifiable data
20 to other countries that do not provide an adequate level of
21 privacy protection. Failure to enact adequate protection can
22 restrict trade involving data, a situation that the federal
23 government is endeavoring to avoid in ongoing negotiations with
24 the European Union nations. Hawaii, with its strong

1 constitutional mandate of individual privacy, can and must take
2 affirmative steps to ensure privacy even in the absence of
3 federal action.

4 The purpose of this Act is to assure an individual's
5 constitutional right to privacy, while providing for the
6 reasonable exchange of information with adequate safeguards to
7 protect its appropriate use.

8 SECTION 2. The Hawaii Revised Statutes is amended by
9 adding a new chapter to be appropriately designated and to read
10 as follows:

11 **"CHAPTER**

12 **HAWAII INFORMATION PRIVACY ACT**

13 **PART I. GENERAL PROVISIONS AND DEFINITIONS**

14 **§ -1 General definitions.** As used in this chapter:

15 "Director" means the director of the office of information
16 practices.

17 "Individual" means a natural person.

18 "Office" means the office of information practices.

19 "Organization" means all nongovernmental entities,
20 associations, partnerships, and individuals using personal
21 information in a commercial context, including not-for-profit
22 entities.

23 "Personal information" means all information that is
24 identifiable to an individual.

1 "Privacy standard" or "standard" means any of the privacy
2 standards set out in part II.

3 "Related organizations" means a group of organizations
4 related by common ownership or control, and includes all
5 parents, subsidiaries, branches, and divisions.

6 § -2 **Application.** This chapter shall not apply to: (1)
7 The domestic collection, holding, use, or disclosure of personal
8 information by individuals; (2) The collection, holding, use,
9 or disclosure of personal information by government agencies; or
10 (3) The collection, holding, use, or disclosure of personal
11 information solely for journalistic, artistic, or literary
12 purposes.

13 § -3 **Obligations.** All organizations shall handle or
14 process personal information pursuant either to the privacy
15 standards set forth in part II or to codes of practice adopted
16 by the director.

17 § -4 **Codes of practice.** (a) The director may initiate
18 or receive requests for the adoption of codes of practice after
19 public hearing, if satisfied that the code:

20 (1) Incorporates all the privacy standards and obligations
21 under this chapter, or sets out obligations that,
22 overall, are at least the equivalent of all the
23 obligations set out in those principles;

24 (2) Specifies or sets out a mechanism to identify all

- 1 organizations bound by the code;
- 2 (3) Sets out procedures that allow an organization to be
3 released from the code and when the release takes
4 effect;
- 5 (4) Sets out appropriate procedures for making and dealing
6 with complaints, including the appointment of one or
7 more persons knowledgeable about this chapter and who
8 have due regard for human rights and societal
9 interests that compete with privacy, including the
10 free flow of information through society;
- 11 (5) Provides that decisions may be affirmed by the
12 director;
- 13 (6) Provides that the organization against whom a decision
14 was rendered is bound by the requirements of the
15 decision;
- 16 (7) Provides that the decisions shall be publicly
17 available through the office and that the director may
18 segregate parts of a decision that may identify a
19 person or otherwise constitute an invasion of the
20 person's privacy; and
- 21 (8) Provides that a report be prepared and given to the
22 director no later than July 31st of each year to
23 include the number, nature, and outcome of complaints
24 made under the code.

1 (b) Codes of practice may cover either, both, or all of the
2 following:

3 (1) Personal information or specified types of
4 personal information; or

5 (2) Specified activity or class of activities of an
6 organization; or

7 (3) A specified industry sector and professions or a
8 specified class of industry sectors and
9 professions.

10 (c) Once adopted, the code shall have the force and effect
11 of a rule.

12 (d) The director may amend or revoke codes of practices on
13 the director's initiative or on request by an organization that
14 is bound by the code, after public hearing.

15 **PART II. PRIVACY STANDARDS**

16 **§ -11 Accountability.** An organization shall be
17 responsible for personal information under its control and shall
18 appoint at least one individual responsible for ensuring
19 compliance with this chapter. In the absence of an appointment,
20 the owners, all partners, the president, or all members of the
21 board of directors of a corporation shall be held accountable
22 for compliance with this chapter.

23 **§ -12 Purpose of collection.** The purposes for which
24 personal information is collected shall be identified by the
25 organization at or before the time the information is collected.

1 Every organization shall advise the individual about whom they
2 are collecting personal information of the purposes, uses, and
3 any anticipated disclosures of the collected information. The
4 advice or notice shall be given at or before the time of
5 collection.

6 **§ -13 Collection, consent to collect.** Personal
7 information shall be collected by fair and lawful means. An
8 organization shall obtain the individual's consent for the
9 collection, use, or disclosure of personal information about the
10 individual, except where such requirement is inappropriate.

11 Consent shall not be required where:

12 (1) Collection is clearly in the interest of the
13 individual and consent cannot be obtained in a timely
14 manner;

15 (2) It is reasonable to believe collection with consent
16 and knowledge would compromise the accuracy of the
17 information and collection is for purposes or
18 investigating a breach of an agreement or
19 contravention of the laws of this State or the United
20 States; or

21 (3) The information is publicly available.

22 **§ -14 Limitation on collection, use, and disclosure.**

23 (a) Except with the consent of the individual or as required by
24 law, personal information shall:

- 1 (1) Not be used or disclosed for purposes other than those
2 for which it was collected;
- 3 (2) not be disclosed beyond this jurisdiction by an
4 organization, whether to an agent, subcontractor or
5 unrelated third party, unless the transmitting
6 organization has taken all reasonable measures to
7 ensure that the transferee provides the same or
8 greater levels of protection of personal information
9 as required by these standards;
- 10 (3) Not be compiled, used, or disclosed by the
11 organization in a discriminatory fashion on the basis
12 of race, medical condition or status, political or
13 religious association, or gender, unless there is a
14 compelling state interest; and
- 15 (4) Be retained only for so as long as is necessary for
16 the fulfillment of those purposes or as otherwise
17 required by law.
- 18 (b) Consent shall not be required when the use or
19 disclosure is:
- 20 (1) For the purpose of investigating an offense that has
21 been or is about to be committed under the laws of the
22 United States or a state and the information could be
23 reasonably believed to be useful in the investigation
24 of the offense;

- 1 (2) For an emergency that threatens the life, health, or
2 security of any individual;
- 3 (3) Clearly in the interest of the individual and consent
4 cannot be obtained in a timely manner;
- 5 (4) To the organization's lawyer for purposes of
6 representation;
- 7 (5) Pursuant to a subpoena or warrant issued by a court of
8 law or other administrative body with jurisdiction to
9 compel the production of information, records, or
10 documents;
- 11 (6) To a government agency, pursuant to a lawful request,
12 for purposes of conservation of records of historic or
13 archival importance;
- 14 (7) Made after one hundred years after the record
15 containing the information was created or twenty years
16 after the death of the individual whom the information
17 is about; or
- 18 (8) Required by or specifically authorized by law.

19 § -15 **Quality of personal information.** An organization
20 shall take reasonable steps to ensure that personal information
21 that it uses is accurate, complete, and up-to-date as is
22 necessary for the purposes for which it is to be used.

23 § -16 **Safeguarding personal information.** An
24 organization shall take reasonable steps to ensure that personal

1 information it maintains is protected against loss or theft, as
2 well as unauthorized access, disclosure, copying, use, or
3 modification by security safeguards appropriate to the
4 sensitivity of the information.

5 **§ -17 Policies and practices.** An organization shall
6 make readily available to individuals clear information about
7 its policies and practices relating to the requirements of this
8 chapter, which shall include: (1) What personal information is
9 made available to related organizations; (2) The means of
10 gaining access to personal information held by the organization;
11 and (3) The process by which complaints or inquiries can be
12 made within the organization.

13 **§ -18 Individual access.** (a) Upon written request, an
14 organization shall inform an individual whether it holds, uses,
15 or discloses readily retrievable personal information about that
16 individual.

17 (b) Upon request, and within a reasonable period of time,
18 an organization shall give access to readily retrievable
19 information about an individual and after payment of the
20 reasonable costs of retrieval and duplication.

21 (c) An organization shall not give access to personal
22 information if:

23 (1) Providing access would be unlawful;

24 (2) Denying access is required or authorized by law or

- 1 rule;
- 2 (3) Giving access could reasonably be expected to threaten
3 the life or security of another individual or group of
4 individuals or would have an unreasonable impact on
5 the privacy of other individuals;
- 6 (4) The information is protected by a statutory privilege;
- 7 (5) Giving access would prejudice the enforcement of laws,
8 protection of the public, or the legal enforcement of
9 a contract with the organization;
- 10 (6) Giving access would reveal confidential business
11 information that cannot reasonably be protected by
12 other means;
- 13 (7) Giving access would prejudice the organization's
14 ongoing negotiations; or
- 15 (8) The information was generated for purposes of
16 litigation or within a formal dispute resolution
17 process.

18 These exceptions shall not apply if the individual needs
19 the information because the individual's life, health, or
20 security is threatened.

21 (d) An individual shall have the right to challenge the
22 accuracy and completeness of the personal information held by
23 the organization and have it amended as may be appropriate.

24 (e) An organization shall provide an informal method of

1 reviewing a denial of access or amendment of personal
2 information.

3 (f) An organization shall inform the individual in writing
4 of a denial, setting out the reasons and any recourse that the
5 individual may have.

6 § -19 **Sensitive data.** The director may adopt rules
7 pursuant to chapter 91 to protect sensitive personal
8 information.

9 **PART III. ADMINISTRATIVE ENFORCEMENT**

10 § -31 **Audits.** To enforce the standards or codes of
11 practice, the director may:

12 (1) Require that organizations present to the director
13 periodic independent audits of their personal
14 information management practices and policies applying
15 assurance criteria consistent with the privacy
16 standards set out in this chapter or code of practice
17 adopted under this chapter, whichever is applicable;
18 and

19 (2) On reasonable notice and at any reasonable time, audit
20 the personal information management practices of an
21 organization if the director has reasonable grounds to
22 believe that the organization is violating a provision
23 of this chapter. After an audit, the director shall
24 provide the audited organization with a report that

1 contains the findings of the audit and any
2 recommendations that the director considers
3 appropriate.

4 Reports of audits performed under this section shall be
5 made public; provided the director shall segregate any
6 confidential business information or other information that may
7 identify an individual or otherwise constitute an invasion of
8 the individual's privacy that are contained in the reports.

9 § -32 **Complaints.** (a) An individual may file with the
10 director a written complaint against an organization for alleged
11 violations of this chapter or of a code of practice other than a
12 refusal to grant access and correction or other amendment
13 within.

14 (b) A complaint that alleges a refusal to grant access and
15 correction or other amendment shall be filed within forty-five
16 days after the alleged refusal.

17 (c) The director may:

18 (1) Dismiss the complaint if the director determines that:

19 (A) The complaint is not timely, trivial, frivolous,
20 vexatious, or made in bad faith;

21 (B) The complainant should exhaust other grievance or
22 review procedures; or

23 (C) The complaint could more appropriately be dealt with
24 either initially or in its totality by means of

1 another procedure or body;

2 (2) If appropriate, refer the complainant to other
3 procedures or bodies for review; or

4 (3) If the director believes there are reasonable grounds
5 to believe there has been a violation of this chapter,
6 conduct an investigation under section -33.

7 § **-33 Investigations.** (a) Pursuant to complaint under
8 section -32 or by the director's initiative, the director may
9 conduct an investigation to determine whether there has been a
10 violation of this chapter or of a code of practice adopted under
11 this chapter.

12 (b) The director shall prepare a report of the findings
13 and shall issue the report to the organization investigated. In
14 addition to the findings, the director may include in the
15 report:

16 (1) Recommendations relating to the promotion of
17 compliance with this chapter;

18 (2) Any actions the director may take, pursuant to
19 subsection (c), as a result of the investigation; and

20 (3) Any other comments arising from the investigation as
21 the director thinks fit to make. A summary of the
22 report may be included in the director's published
23 annual report.

24 (c) If the findings of an investigation give the director

1 reason to believe that an organization has violated the privacy
2 standards or codes of practice, the director may:

- 3 (1) Arbitrate any dispute;
- 4 (2) Hold a hearing for issuance of a cease and desist
5 order pursuant to section -34;
- 6 (3) Employ any other of the powers given to the director
7 under section -51 as necessary to enforce the
8 obligations imposed by this chapter; and
- 9 (4) If appropriate:
 - 10 (A) Recommend to appropriate bodies that the
11 organization's license to do business within the State
12 of Hawaii be removed;
 - 13 (B) Refer for or coordinate prosecution before other
14 regulatory bodies; and
 - 15 (C) Prosecute the organization through the judicial system
16 on behalf of the State, or through other state,
17 national, or international adjudicatory bodies.

18 **§ -34 Cease and desist orders.** (a) If the director
19 has reason to believe that an organization has violated any of
20 the privacy standards or codes of practice, and that a
21 proceeding by the director in respect to that would be in the
22 interest of the public, the director shall issue and serve upon
23 the organization and the complainant, if any:

- 24 (1) A statement of the charges in that respect; and

1 (2) A notice of a hearing, to be held at a time and place
2 fixed in the notice, which shall not be fewer than
3 fifteen days after the date of service.

4 (b) At the time and place fixed for the hearing, the
5 organization and the complainant, if any, shall have an
6 opportunity to be heard and to show cause why an order should or
7 should not be made by the director requiring the organization to
8 cease and desist from the acts, methods, practices, or otherwise
9 to comply with this chapter.

10 (c) The hearing shall be deemed a contested case hearing
11 pursuant to chapter 91.

12 (d) All remedies, penalties, and proceedings set forth in
13 this section are to be invoked solely and exclusively by the
14 director.

15 (e) If after the hearing the director determines that the
16 organization charged has violated any provision of this chapter,
17 the director shall reduce the findings to writing and shall
18 issue and cause to be served on the organization charged with
19 the violation a copy of the findings and an order requiring the
20 organization to cease and desist from violating this chapter or
21 otherwise to comply with the requirements of this chapter. At
22 the director's discretion, the director may also employ any
23 other of the powers given to the director under section -51 as
24 necessary to enforce the obligations imposed by this chapter.

1 (f) Any organization that violates a cease and desist
2 order or a compliance order of the director under this section
3 may be subject, at the discretion of the director, after notice
4 and hearing and upon order of the director, to a civil penalty
5 of not more than \$10,000 for each and every act in violation of
6 the cease and desist order.

7 (g) No order of the director pursuant to this section or
8 order of court to enforce it shall in any way relieve or absolve
9 any person affected by the order from any other liability,
10 penalty, or forfeiture required by law.

11 § **-35 Notice to other regulatory agencies.** Whenever
12 the director conducts any investigation or takes other action
13 against any organization for violation of this chapter, the
14 director shall notify any agency that has regulatory oversight
15 over the organization of the director's action.

16 § **-36 Whistleblowing.** (a) Any individual who has
17 reasonable grounds to believe that an organization has violated
18 or intends to violate a provision of this chapter, may notify
19 the director and may request that the individual's identity be
20 kept confidential with respect to the notification. The
21 director shall keep confidential the identity of an individual
22 who has notified the director and to whom an assurance of
23 confidentiality has been provided by the director.

24 (b) No employer shall dismiss, suspend, demote, discipline,

1 harass, or otherwise disadvantage any employee or deny an
2 employee a benefit of employment by reason that the employee,
3 acting in good faith and on the basis of reasonable belief:

4 (1) Has disclosed to the director that the employer or any
5 other individual has violated or intends to violate a
6 provision of this chapter;

7 (2) Has refused or stated an intention of refusing to
8 perform anything that is a violation of a provision of
9 this chapter; or

10 (3) Has done or stated an intention of doing anything
11 necessary in order that this chapter not be violated
12 or the employer believes that the employee will do
13 anything referred to in paragraph (1), (2), or (3)

14 (c) Nothing in this section shall impair any right of an
15 employee or employer either at law or under an employment
16 contract or collective agreement.

17 (d) As used in this section, "employee" includes an
18 independent contractor.

19 **PART IV. ADMINISTRATION**

20 **§ -51 Powers and duties of the office of information**
21 **practices.** (a) The director may:

22 (1) Compel witnesses and evidence;

23 (2) Administer oaths;

24 (3) Receive and accept any evidence and other information,

1 whether on oath, by affidavit, or otherwise, that the
2 director sees fit, regardless of whether it is or
3 would be admissible in a court of law;

- 4 (4) Examine or obtain copies or extracts from records;
- 5 (5) Bring lawsuits or other complaints in other tribunals;
- 6 (6) Delegate powers;
- 7 (7) Adopt rules for purposes of enforcement of this
8 chapter;
- 9 (8) Issue cease and desist orders;
- 10 (9) Order an organization to amend or correct its
11 practices to comply with this chapter;
- 12 (10) Order an organization to publish a notice of any
13 action taken or proposed to be taken to correct its
14 practices;
- 15 (11) Impose fines of not more than \$1,000 per violation or
16 a maximum of \$50,000 for a business practice;
- 17 (12) File lawsuits or enter into settlement agreements; and
- 18 (13) Use all other legal powers necessary to carry out the
19 director's duties under this chapter.

20 (b) The director shall administer this chapter.

21 **§ -52 Education.** The director shall:

- 22 (1) Develop and conduct information programs to foster
23 public understanding and recognition of the purposes
24 of this part;

- 1 (2) Undertake and publish research that is related to the
2 protection of personal information;
- 3 (3) Encourage organizations to develop detailed policies
4 and practices;
- 5 (4) Promote, by any means the director feels appropriate,
6 the purposes of this chapter.
- 7 (5) Make available to the public:
- 8 (A) Audits performed under section -11;
- 9 (B) Reports of investigations under section -32; and
- 10 (C) The number and nature of each complaint filed with an
11 organization under an adopted code, or with the office,
12 including the outcome of all complaints so described.

13 § **-53 Reporting requirement.** The director shall submit
14 a report to the legislature no later than twenty days before the
15 convening of each legislative session. On the fourth year of
16 its existence, the director shall undertake a review of this
17 chapter."

18 SECTION 3. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so much
20 thereof as may be necessary for fiscal year 2000-2001 to carry
21 out the purposes of this Act, including the hiring of necessary
22 staff. The sum appropriated shall be expended by the office of
23 information practices for the purposes of this Act. SECTION 4.
24 Nothing in this Act shall be construed to relieve any

1 organization of its obligations under any of the laws of this
2 state or of the United States.

3 SECTION 5. This Act shall take effect upon its approval,
4 provided that section 3 shall take effect on July 1, 2000.