



GOV. MSG. NO. 1442

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 10, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

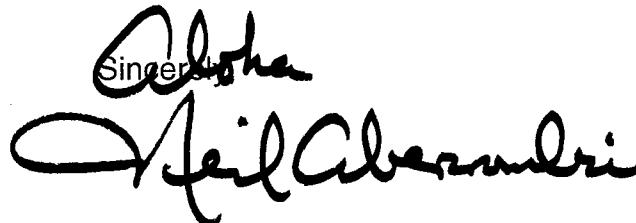
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 10, 2012, the following bill was signed into law:

HB1777 HD1 SD1

RELATING TO PRODUCTION OF RECORDS.
Act 325 (12)

Signed


NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

JUL 10 2012

on _____

ORIGINAL

ACT 325

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

H.B. NO. 1777
H.D. 1
S.D. 1

A BILL FOR AN ACT

RELATING TO PRODUCTION OF RECORDS.

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

1 SECTION 1. The legislature finds that many businesses,
2 associations, and organizations providing goods and services to
3 the residents of the State, conducting other activities in the
4 State, or otherwise affecting the residents of Hawaii, now
5 operate nationally or globally, and many maintain their business
6 records in a location outside the State.

7 The legislature further finds that such records may provide
8 significant evidence in criminal investigations or litigation
9 taking place in the State. Crime results in direct and
10 significant harm and losses to citizens, businesses,
11 associations, and other organizations victimized, and indirectly
12 affects the community at large when those entities must raise
13 prices to cover losses in response. In order to effectively
14 investigate and litigate these crimes, Hawaii law enforcement
15 agencies, prosecutors, and criminal defense attorneys must be
16 able to obtain records relevant to all crimes occurring here,
17 and must be able to use these records in court. Thus, Hawaii
18 courts must have the ability to order the production of records



1 by all who possess records relevant to a criminal investigation
2 or litigation taking place here, whether such records are kept
3 in-state or out-of-state.

4 SECTION 2. The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 "CHAPTER

8 CRIMINAL PROCESS RECORDS

9 § -1 Definitions. Whenever used in this chapter, unless
10 otherwise apparent from the context:

11 "Adverse result" includes one or more of the following
12 possible consequences:

- 13 (1) Danger to the life or physical safety of an
14 individual;
- 15 (2) A flight from prosecution;
- 16 (3) The destruction of, potential loss of, or tampering
17 with evidence;
- 18 (4) The intimidation of potential witnesses; or
- 19 (5) Jeopardy to an investigation or undue delay of a
20 trial.

21 "Applicant" means a law enforcement officer, prosecuting
22 attorney or deputy prosecuting attorney, attorney general or



1 deputy attorney general, or defense attorney who is seeking
2 criminal process under section -2.

3 "Criminal process" means a search warrant or legal process
4 issued pursuant to chapters 621, 622, and 803; the Hawaii Rules
5 of Penal Procedure; and any other legal process signed by a
6 judge or clerk of the district or circuit court and issued in a
7 criminal matter which allows the search for or commands
8 production of records that are in the actual or constructive
9 possession of the recipient, regardless of whether the recipient
10 or the records are physically located within the State.

11 "Defense attorney" means an attorney of record for a person
12 charged with a crime, when such attorney is seeking the issuance
13 of criminal process for the defense of the criminal case.

14 "Properly served" means delivery by hand or in a manner
15 reasonably allowing for proof of delivery if delivered by United
16 States mail, overnight delivery service, or facsimile to the
17 recipient addressee of criminal process.

18 "Recipient" means a person, as defined in section 701-118,
19 or a business, as defined in section 487J-1, that has conducted
20 business or engaged in transactions occurring at least in part
21 in this State upon whom criminal process issued under this
22 chapter is properly served.



1 § -2 **Production of records.** (a) This section shall
2 apply to any criminal process allowing for search of or
3 commanding production of records that are in the actual or
4 constructive possession of a recipient who is properly served
5 outside the State, regardless of whether the recipient or the
6 records are physically located within the State.

7 (b) When properly served with criminal process issued
8 under this section, the recipient shall provide the applicant
9 all records sought pursuant to the criminal process. The
10 records shall be produced within twenty business days of service
11 of the criminal process, unless the process requires earlier
12 production. An applicant may consent to a recipient's request
13 for additional time to comply with the criminal process.

14 (c) Criminal process issued under this section shall
15 contain the following language in bold type on the first page of
16 the document:

17 "This [warrant, subpoena, order] is issued pursuant to
18 § -2, Hawaii Revised Statutes. Production is due within
19 twenty business days of service, unless a shorter time is
20 stated herein, or the applicant consents to a recipient's
21 request for additional time to comply."



1 (d) If the issuing court finds reason to suspect that
2 failure to produce records within twenty business days would
3 cause an adverse result, the criminal process may require
4 production of records within less than twenty business days.
5 The court may reasonably extend the time required for production
6 of the records upon finding that the recipient has shown good
7 cause for requesting that extension and that an extension of
8 time would not cause an adverse result.

9 (e) When properly served with criminal process issued
10 under this section, a recipient who seeks to quash the criminal
11 process may seek relief from the issuing court only within the
12 time originally required for production of records. The issuing
13 court shall hear and decide the motion no later than five court
14 days after the motion is filed. An applicant's consent, under
15 subsection (b), to a recipient's request for additional time to
16 comply with the criminal process shall not extend the date by
17 which a recipient who seeks relief may do so.

18 § -3 **Authenticity of records; verification; affidavit,**
19 **declaration, or certification.** (a) Upon written request from
20 the applicant or if ordered by the issuing court, the recipient
21 of criminal process shall verify the authenticity of records
22 that the recipient produces by providing an affidavit or



1 declaration that complies with subsection (b). The requirements
2 of rule 902(11) of the Hawaii Rules of Evidence regarding
3 business records as evidence may be satisfied by an affidavit,
4 or declaration that complies with subsection (b), without the
5 need for testimony from the custodian of records, regardless of
6 whether the business records were produced by a foreign or
7 Hawaii entity.

8 (b) To be admissible without testimony from the custodian
9 of records, a business record shall be accompanied by an
10 affidavit or declaration from its records custodian or other
11 qualified person, including contact information for the person
12 completing the affidavit or declaration and an attestation to
13 the following:

- 14 (1) The person is the custodian of the record or sets
15 forth evidence that the witness is qualified to
16 testify about the record;
- 17 (2) The record was made at or near the time of the act,
18 condition, or event set forth in the record by, or
19 from information transmitted by, an individual with
20 knowledge of those matters;
- 21 (3) The record was kept in the course of the regularly
22 conducted activity;



1 (4) The record was made by the regularly conducted
2 activity as a regular practice;

3 (5) The identity of the record and the mode of its
4 preparation; and

5 (6) The record is either the original or a duplicate that
6 accurately reproduces the original.

7 (c) A party intending to offer a record into evidence
8 under this section shall provide written notice of that
9 intention to all adverse parties, and shall make the record and
10 affidavit or declaration available for inspection sufficiently
11 in advance of the party's offer into evidence to provide an
12 adverse party with a fair opportunity to challenge the party. A
13 motion opposing admission in evidence of the record shall be
14 made and determined by the issuing court before trial and with
15 sufficient time to allow the party offering the record to, if
16 the motion is granted, produce the custodian of the record or
17 other qualified person at trial, without creating hardship on
18 the party or on the custodian of the record or other qualified
19 person.

20 (d) Failure by a party to timely file a motion under
21 subsection (c) shall constitute a waiver of objection to
22 admission of the evidence, but the court for good cause shown



1 may grant relief from the waiver. If the court grants relief
2 from the waiver, and thereafter determines the custodian of the
3 record shall appear, a continuance of the trial may be granted
4 to provide the proponent of the record sufficient time to
5 arrange for the necessary witness to appear.

6 (e) Nothing in this section shall preclude either party
7 from calling the custodian of the record or other witness to
8 testify regarding the record.

9 § -4 **Service of process issued by or in another state.**

10 When a Hawaii recipient is served with process issued by or in
11 another state, and such process on its face purports to be a
12 valid criminal process, the Hawaii recipient shall comply with
13 that process as if that process had been issued by a Hawaii
14 court.

15 § -5 **Recipients' immunity from liability.** A recipient
16 of criminal process under this chapter, and any other person
17 that responds to such process is immune from civil and criminal
18 liability for complying with the process, and for any failure to
19 provide notice of any disclosure to the person who is the
20 subject of or identified in the disclosure.

21 § -6 **Issuance of criminal process.** A judge of the
22 district or circuit court may issue any criminal process to any



1 recipient at any address within or out of the State, for any
2 matter over which the court has criminal jurisdiction pursuant
3 to section 701-106. This section does not limit a court's
4 authority to issue warrants or legal process under other state
5 law."

6 SECTION 3. Section 836-1, Hawaii Revised Statutes, is
7 amended by amending the definition of "summons" to read as
8 follows:

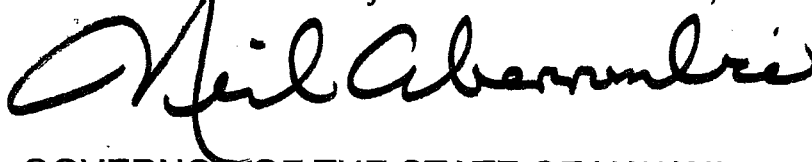
9 ""Summons" includes a subpoena[7] ad testificandum and
10 subpoena duces tecum, order, or other notice requiring the
11 appearance of a witness."

12 SECTION 4. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 5. Statutory material to be repealed is bracketed
16 and stricken. New Statutory material is underscored.

17 SECTION 6. This Act shall take effect upon its approval.

APPROVED this 10 day of JUL, 2012



GOVERNOR OF THE STATE OF HAWAII

