

JAN 20 2012

A BILL FOR AN ACT

RELATING TO RECORDS IN A CRIMINAL CASE.

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

1 SECTION 1. The legislature finds that many businesses and
2 individuals providing goods or services to Hawaii now operate
3 nationally or globally and often maintain their business records
4 outside the State. The ability of law enforcement agencies to
5 perform their duties often depends upon obtaining business
6 records located outside the State including, for example,
7 personal information from an internet protocol address stored
8 with an out-of-state internet service provider. The inability
9 to obtain records located outside the State affects law
10 enforcement's ability to enforce Hawaii's criminal laws and
11 therefore affects the deterrence value arising from criminal
12 prosecution. Combating crime requires laws facilitating and
13 requiring that all those who possess records relevant to a
14 criminal investigation comply with the legal process.

15 The purpose of this Act is to provide law enforcement with
16 a process to obtain records located outside the State.



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

4 "CHAPTER

5 OBTAINING RECORDS BY CRIMINAL PROCESS

6 § -1 **Definitions.** As used in this chapter, unless the
7 context otherwise requires:

8 "Adverse result" has the same meaning as defined in section
9 803-47.8(b).

10 "Applicant" means a law enforcement officer, attorney, or
11 defendant who is seeking criminal process under section -2.

12 "Criminal process" means legal process or a search warrant
13 issued pursuant to chapter 621 or 803; the Hawaii rules of penal
14 procedure; or any other legal process signed by a judge or clerk
15 of the district or circuit court and issued in a criminal matter
16 that authorizes a search for or commands production of records
17 that are in the actual or constructive possession of the
18 recipient, regardless of whether the recipient or the records
19 are physically located within the State.

20 "Recipient" means a person, as defined in section 1-19,
21 that has conducted business or engaged in transactions occurring



1 at least in part in the State upon whom criminal process issued
2 under this chapter is served.

3 "Records" means any material on which written, drawn,
4 spoken, visual, or electromagnetic information is recorded or
5 preserved, regardless of physical form or characteristics.

6 § -2 **Issuance of criminal process.** A judge of the
7 district or circuit court may issue any criminal process to any
8 recipient at any address, within or outside the State, for any
9 matter over which the court has jurisdiction pursuant to section
10 701-106. This section does not limit a court's authority to
11 issue warrants or legal process under any other provision of
12 law.

13 § -3 **Production of records.** (a) This section shall
14 apply to any criminal process allowing for search of or
15 commanding production of records that are in the actual or
16 constructive possession of a recipient who receives service
17 outside the State, regardless of whether the recipient or the
18 records are physically located within the State.

19 (b) When served with criminal process issued under this
20 section, the recipient shall provide the applicant all records
21 sought pursuant to the criminal process. The records shall be
22 produced within twenty business days of receipt of the criminal



1 process, unless the process requires earlier production. An
2 applicant may consent to a recipient's request for additional
3 time to comply with the criminal process.

4 (c) Criminal process issued under this section shall
5 contain the following language in bold type on the first page of
6 the document: "This subpoena is issued pursuant to
7 chapter , Hawaii Revised Statutes. A response is due within
8 twenty business days of receipt, unless a shorter time is stated
9 herein, or the applicant consents to a recipient's request for
10 additional time to comply."

11 (d) If the court finds that failure to produce records
12 within twenty business days would cause an adverse result, the
13 criminal process may require production of records within less
14 than twenty business days. The court may reasonably extend the
15 time required for production of the records upon finding that
16 the recipient has shown good cause for the extension and that an
17 extension of time would not cause an adverse result.

18 (e) When served with criminal process issued under this
19 section, a recipient who seeks to quash the criminal process
20 shall seek relief from the court that issued the criminal
21 process within the time originally required for production of



1 records. The court shall hear and decide the motion no later
2 than five days after the motion is filed.

3 § -4 **Certification of records.** The recipient of
4 criminal process shall provide certification that complies with
5 rule 902(11), Hawaii Rules of Evidence, or other statute
6 permitting certification.

7 § -5 **Immunity from liability.** Any recipient responding
8 in good faith to a criminal process shall be immune from any
9 liability, civil or criminal, that might otherwise be incurred,
10 be imposed or result from the acts or omissions."

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

12

INTRODUCED BY: _____



S.B. NO. 2531

Report Title:

Criminal Process; Subpoena; Out-of-State Records

Description:

Establishes a procedure for law enforcement and attorneys in a criminal case to obtain records located out-of-state.

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

