

JAN 23 2014

A BILL FOR AN ACT

RELATING TO PRODUCTION OF RECORDS.

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

1 SECTION 1. Section 806D-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "recipient" to read as
3 follows:

4 "Recipient" means a person, as defined in section 701-118,
5 or a business, as defined in section 487J-1, that has conducted
6 business or engaged in transactions or activities occurring at
7 least in part in this State upon whom criminal process issued
8 under this chapter is properly served."

9 SECTION 2. Section 806D-4, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~[†]~~ §806D-4 ~~[†]~~ **Service of process issued by or in another**
12 **state.** (a) When a ~~[Hawaii recipient]~~ person or business, as
13 defined in section 487J-1, located in Hawaii, excluding any
14 government agency, is properly served with process issued by or
15 in another state~~[,]~~ that commands the production of records in
16 the actual or constructive possession of that person or
17 business, and such process on its face purports to be a valid
18 ~~[criminal process,]~~ process based on a pending criminal

S.B. NO. 2190

1 investigation or prosecution in that other state, the [Hawaii
2 recipient] person or business shall comply with that process as
3 if that process had been issued by a Hawaii court[-], provided
4 that:

5 (1) The person or business has conducted business or
6 engaged in transactions or activities occurring at
7 least in part in the issuing state;

8 (2) The issuing state has a statute authorizing the
9 production of records held by out-of-state persons or
10 businesses; and

11 (3) The issuing state has a statute that allows for the
12 service of process issued by or in another state upon
13 persons or businesses within the issuing state.

14 (b) The service of process issued by or in another state
15 shall include the following information:

16 (1) The name, office, business address, telephone number,
17 and e-mail address of the person applying for the
18 issuance of the service of process;

19 (2) The statute authorizing the production of
20 records held by out-of-state persons or businesses;
21 and

22 (3) The relevant criminal statutes upon which the pending
23 investigation or prosecution is based."


S.B. NO. 2790

1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before the effective date of this Act.

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: 

BY REQUEST

Report Title:

Records; Production of

Description:

Amends provisions of chapter 806D, Hawaii Revised Statutes, which allow for the service of process issued by another state upon a Hawaii recipient, and clarifies the following: (1) that the service of process may be upon a person or business, but not a government agency; (2) that the process is for the production of records; (3) that the process must be based upon a pending criminal investigation or prosecution; and (4) that the person or business being served must have conducted business or engaged in transactions or activities occurring at least in part in the issuing state. Requires the process to include specified information. For valid process, requires that the issuing state have a law authorizing the production of records by out-of-state persons or businesses and a reciprocity provision. Also amends the definition of "recipient," to clarify that the recipient, who receives process issued in Hawaii, must have conducted business or engaged in transactions or activities occurring at least in part in Hawaii.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO PRODUCTION OF RECORDS.

PURPOSE: To clarify provisions of chapter 806D, Hawaii Revised Statutes (HRS), which allow for the service of process issued by another state upon a Hawaii recipient. This bill clarifies the following: (1) that the service of process may be upon a person or business, but not a government agency; (2) that the process is for the production of records; (3) that the process must be based upon a pending criminal investigation or prosecution; and (4) that the person or business being served must have conducted business or engaged in transactions occurring at least in part in the issuing state. The bill requires the process to include specified information. For valid process, the bill requires that the issuing state have a law authorizing the production of records by out-of-state persons or businesses and a reciprocity provision. Finally, this bill also amends the definition of "recipient," to clarify that the recipient, who receives process issued in Hawaii, must have conducted business or engaged in transactions or activities occurring at least in part in Hawaii.

MEANS: Amend sections 806D-1 and 806D-4, HRS.

JUSTIFICATION: Act 325, Session Laws of Hawaii 2012, entitled, "Relating to the Production of Records," codified in chapter 806D; HRS, created a "criminal long arm statute" that authorizes Hawaii courts to order the production of records, including electronic records, held by entities located outside

the State of Hawaii, for purposes of a criminal matter. Prior to Act 325, Hawaii law did not expressly authorize state courts to issue legal process in criminal matters for records held by out-of-state entities, such as financial institutions and internet service providers, web-based e-mail providers, website hosting companies, social networking providers, cellular telephone providers, and other entities. There was nothing to compel an out-of-state entity to comply with legal process issued by a Hawaii court, and it was not uncommon for out-of-state entities to refuse to honor legal process issued by Hawaii courts.

Act 325 also included a reciprocity provision, which requires an entity located in Hawaii to comply with the criminal process issued by another state. The idea behind the reciprocity provision was to make access to records a two-way street.

This bill is intended to address several concerns about the reciprocity provision, enacted in section 806D-4, HRS, as follows:

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

The first concern is that this reciprocity provision does not appear to require the Hawaii recipient to have a connection or nexus to the issuing state that is requesting the recipient's records. This is troubling because under Act 325, when a Hawaii applicant requests records from an out-of-state recipient, the out-of-state recipient must have a nexus to Hawaii. The recipient of that request must have conducted business, or engaged in transactions, that occurred at least in part in Hawaii. This nexus requirement supports

and justifies the authority of Hawaii courts to reach out into the other jurisdiction. The reciprocity provision, however, does not have this nexus requirement. In other words, under the present wording of section 806D-4, it appears other states may request records from Hawaii recipients even though the recipients have not conducted business or engaged in transactions in that state.

A second concern is the use of the term, "criminal process," in the reciprocity provisions of section 806D-4. The use of this term in the reciprocity provisions appears to be misplaced and confusing since the term is defined in section 806D-1, HRS, as process issued pursuant to Hawaii law or penal rules, or signed by a district or circuit court judge. The process issued in the other state could not have been issued pursuant to Hawaii law or rules, or signed by a Hawaii judge.

A third concern, raised by a state agency, is that the reciprocity provisions may be interpreted as allowing someone from another state to issue process to try to compel a state agency in Hawaii to disclose protected government records. This problem is compounded because section 806D-4 does not specify whether a recipient challenge to the out-of-state request should take place in a Hawaii court, or a court of the issuing state.

This bill will resolve these concerns with the reciprocity provision.

In the interest of fairness and reciprocity, this bill requires that the issuing state have a law authorizing the production of records by out-of-state persons or businesses and a reciprocity provision.

Furthermore, in order to make it reasonable for a local recipient to verify the process issued from out-of-state, this bill requires

that certain information be provided in the process record that is served upon the recipient.

Impact on the public: This bill will not allow process from another state to be served upon a person or business in Hawaii, unless that person or business has conducted business or engaged in transactions occurring at least in part in the other state.

Impact on the department and other agencies: This bill will not allow another state to issue process to try to compel a state agency in Hawaii to disclose protected government records.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.