

STAND. COM. REP. NO.

3036

Honolulu, Hawaii

MAR 21 2014

RE: H.B. No. 1641
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Technology and the Arts, to which was referred H.B. No. 1641 entitled:

"A BILL FOR AN ACT RELATING TO GOVERNMENTAL ACCESS TO STORED COMMUNICATIONS,"

begs leave to report as follows:

The purpose and intent of this measure is to increase the privacy rights of individuals and simplify the standards by which law enforcement is able to access certain information by:

- (1) Requiring a search warrant in order to compel disclosure to a government entity of the contents of electronic communications, regardless of whether the communications were held in storage or not, how long the communications have existed, or if the communications are classified as retrieved or unretrieved; and
- (2) Requiring a court order in order to compel disclosure to a governmental entity of non real-time, or historical, transactional records and requiring the court order to issue only if the governmental entity demonstrates probable cause that the records sought constitute a crime or are relevant to a legitimate law enforcement inquiry.

Your Committee received testimony in support of this measure from the Department of the Prosecuting Attorney of the City and



County of Honolulu, Honolulu Police Department, and the Mestizo Association.

Your Committee finds that users of electronic communication services and remote storage providers have various privacy rights. Existing state law requires law enforcement to obtain a court order before having access to retrieved electronic mail and electronic mail that has been held in storage for more than one hundred eighty days. Furthermore, probable cause must be shown for the issuance of a court order to access transactional records. This measure provides even greater privacy protection for individuals by requiring a search warrant for disclosure of electronic communications and streamlines the criteria that law enforcement must satisfy to access certain information, without unduly interfering with law enforcement's need to investigate criminal activity.

Your Committee has amended this measure by inserting an effective date of July 1, 2020, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Technology and the Arts that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1641, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1641, S.D. 1, and be referred to the Committee on Judiciary and Labor.

Respectfully submitted on
behalf of the members of the
Committee on Technology and the
Arts,



GLENN WAKAI, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Technology and the Arts
TEC

Bill / Resolution No.:* HB 1641	Committee Referral: TEC, JDL	Date: 3/18/14		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
WAKAI, Glenn (C)				✓
NISHIHARA, Clarence K. (VC)	✓			
IHARA, Les	✓			
TOKUDA, Jill N.	✓			
SLOM, Sam	✓			
TOTAL	4	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>[Signature]</i>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes