

Honolulu, Hawaii

FEB 11 2013

RE: S.B. No. 1015  
S.D. 1

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 1015 entitled:

"A BILL FOR AN ACT RELATING TO PRODUCTION OF RECORDS,"

begs leave to report as follows:

The purpose and intent of this measure is to clarify the  
reciprocity provision under existing law that allows the service  
of process issued by another state upon a Hawaii recipient.  
Specifically, this measure clarifies that:

- (1) The service of process may be upon a person or business,  
but not a government agency;
- (2) The service of process is for the production of records;
- (3) The service of process shall be based upon a pending  
criminal investigation or prosecution; and
- (4) The person or business being served has conducted  
business or engaged in transactions occurring at least  
in part in the issuing state.

Your Committee received testimony in support of this measure  
from the Department of the Attorney General; Department of the  
Prosecuting Attorney, City and County of Honolulu; Department of  
the Prosecuting Attorney, County of Maui; Police Department,  
County of Hawai'i; Police Department, City and County of Honolulu;  
and Police Department, County of Maui.



Your Committee finds that existing law requires an entity located in Hawaii to comply with the criminal process issued by another state as if that process had been issued by a Hawaii court. This law creates reciprocity between Hawaii and other states to make access to records relating to a criminal matter a two-way street. However, the Department of the Attorney General raised three concerns in its written testimony regarding the language under existing law.

First, the Department is concerned that the reciprocity provision may be interpreted as allowing someone from another state to issue process to try to compel a state agency in Hawaii to disclose government records. This measure clarifies that a recipient in Hawaii may be a person or business, but not a government agency.

Second, according to the Department of the Attorney General, the term "criminal process" appears to be misplaced and confusing because this term is defined under section 806D-1, Hawaii Revised Statutes, as a process issued pursuant to the Hawaii Penal Code, Hawaii Rules of Penal Procedure, or signed by a Hawaii district or circuit court judge. However, process issued in another state cannot be issued pursuant to Hawaii law or signed by a Hawaii judge. This measure clarifies that the service of process is for the production of records that shall be based upon a pending criminal investigation or prosecution.

Third, the reciprocity provision does not appear to require that the Hawaii recipient have a nexus to the issuing state that is requesting the Hawaii recipient's records. This measure clarifies that the person or entity being served has conducted business or engaged in transactions occurring at least in part in the issuing state.

Your Committee has amended this measure by:

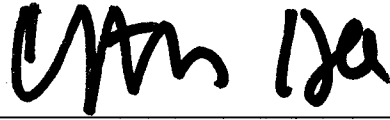
- (1) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report,



your Committee is in accord with the intent and purpose of S.B. No. 1015, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1015, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



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CLAYTON HEE, Chair



The Senate  
 Twenty-Seventh Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>SB 1015</b>	Committee Referral: <b>JPL</b>	Date: <b>01-29-2013</b>		
<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
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam	✓			
<b>TOTAL</b>	<b>5</b>			
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes