

Honolulu, Hawaii  
March 24, 2016

RE: S.B. No. 2294  
S.D. 2  
H.D. 1

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 2294, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO GOVERNMENT RECORDS,"

begs leave to report as follows:

The purpose of this measure is to require government agencies to exercise reasonable care in the maintenance of all government records that are under their control and are required to be made available for public inspection. This measure establishes:

- (1) A rebuttable presumption of reasonable care in the maintenance of government records for government agencies that adopt and adhere to a records retention and destruction policy; and
- (2) A limit of \$2,000 per violation on the recovery of damages for the breach of the duty to exercise reasonable care.

The 'Āina Haina Community Association and Office of Information Practices testified in support of this measure. The Department of the Corporation Counsel of the City and County of Honolulu testified in opposition.



Your Committee has amended this measure by:

- (1) Deleting the limitation of \$2,000 per violation on the recovery of damages that result from a violation of the duty to exercise reasonable care in the maintenance of government records;
- (2) Clarifying that a person asserting a claim against a government agency for breach of the duty to exercise reasonable care in the maintenance of government records must rebut the presumption of reasonable care in the maintenance of government records and establish the government agency's negligence;
- (3) Limiting a claimant's recoverable damages to general compensatory damages;
- (4) Making this measure effective on July 1, 2018 to allow government agencies sufficient time to adopt record retention and destruction policies; and
- (5) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee finds that general compensatory damages means compensation for the natural, necessary, and usual result of the wrongful act or occurrence in question. General damages does not include punitive damages, exemplary damages, or other damages. It includes only damages that compensate a plaintiff for the injury sustained and nothing more.

Your Committee finds that a government agency could be in violation of its record retention and destruction policy by retaining more records than necessary or by retaining records beyond the destruction date. Such action or inaction would be exceeding and not breaching the duty established by this measure. Therefore, a plaintiff in an action arising under this measure must demonstrate negligence on the part of the government agency to recover any compensation.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2294, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2294, S.D. 2, H.D. 1, and be referred to your Committee on Finance.



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



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KARL RHOADS, Chair



