

JAN 20 2017

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# A BILL FOR AN ACT

RELATING TO GOVERNMENT RECORDS.

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

1           SECTION 1. In *Molfino v. Yuen*, Civ. No. 07-1-0378, 2014  
2 (Haw. Sup. Ct. Nov. 13, 2014), the supreme court of the state of  
3 Hawaii upheld a circuit court ruling that, absent a statutory  
4 requirement, a government agency does not have a duty of  
5 reasonable care with respect to maintaining government records  
6 for the purpose of public inspection. The purpose of this Act  
7 is to amend chapter 92, Hawaii Revised Statutes, to create a  
8 statutory requirement that government agencies exercise  
9 reasonable care in maintaining those government records open to  
10 public inspection.

11           SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended  
12 by adding a new section to part V to be appropriately designated  
13 and to read as follows:

14           "§92-     Duty to exercise reasonable care in maintaining  
15 records. (a) Each unit of government in the State and its  
16 political subdivisions shall:



- 1       (1) Exercise reasonable care in the maintenance of all  
2           government records under its control that are required  
3           by chapter 92F to be available for public inspection;  
4       (2) Issue instructions and guidelines necessary to  
5           effectuate this section; and  
6       (3) Take steps to ensure that all its employees and  
7           officers who are responsible for the collection,  
8           maintenance, use, and dissemination of government  
9           records are informed of the requirements of this  
10          section.
- 11       (b) Adherence to a duly adopted records retention and  
12       destruction policy shall create a rebuttable presumption that  
13       the unit of government of the State or its political  
14       subdivisions exercised reasonable care in its maintenance of  
15       government records for purposes of this section and in defending  
16       a cause of action raised pursuant to this section.
- 17       (c) Damages for any breach of the duty set forth under  
18       this section shall be no more than \$2,000 per violation."

19       SECTION 3. New statutory material is underscored.

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1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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# S.B. NO. 245

**Report Title:**

Government Records; Maintenance; Duty to Exercise Reasonable Care; Public Inspection

**Description:**

Requires each unit of government of the State and its political subdivisions to exercise reasonable care in the maintenance of all government records under its control that are required to be made available for public inspection.

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

