

Testimony of
Jonathan Ching
Government Relations Specialist

Before:
Senate Committee on Judiciary
The Honorable Brian T. Taniguchi, Chair
The Honorable Karl Rhoads, Vice Chair

April 3, 2018
9:20 a.m.
Conference Room 016

Re: HB2318 HD1, Relating to Confidential Personal Information

Chair Taniguchi, Vice Chair Rhoads, and committee members, thank you for this opportunity to provide testimony on HB2318 HD1, which amends the definition of “confidential personal information” for offenses against property rights to conform the definition as determined by a recent ruling by the Hawai‘i Supreme Court.

Kaiser Permanente Hawai‘i submits the following COMMENTS on HB2318 HD1

We take no position regarding the underlying content of HB2318 HD1; however, we respectfully request that the phrase “or medical record number” in Section 1, page 1, line 14 be stricken because medical record numbers (MRNs) alone do not rise to the same level of significance as other types of accounts and information sought to be included in amendments to Section 708-800, Hawai‘i Revised Statutes.

MRNs, which are regulated under the federal Health Insurance Portability and Accountability Act of 1996, are mainly used by healthcare facilities as an identification number for a patient—essentially, the MRN replaces a patient’s name in documentations to help protect the privacy of a patient. In other words, a MRN is required as an identifier on every page of a record.


However, MRNs cannot be the only information provided to service staff to access services or get medical record information. Our employees will ask for a picture identification if the services are provided in-person, or will ask for verifying information if services are provided over the phone. This limits the ability of any perpetrators to use a MRN in accessing medical records or attempting to commit identify theft or fraud.

Considering the ubiquity and nature of the MRN, we respectfully request the committee strike “or medical record number” from Section 1, page 1, line 14. Thank you for your consideration of our comments and for the opportunity to testify on this measure.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Brian T. Taniguchi, Chair
The Honorable Karl Rhoads, Vice Chair
Members, Committee on Judiciary

From:  Paula Yoshioka, Vice President, Government Relations and External Affairs, The Queen's Health Systems

Date: March 30, 2018

Hrg: Senate Committee on Judiciary Hearing; Tuesday, April 3, 2018 at 9:20 A.M. in Room 016

Re: **Comments on H.B. 2318, H.D.1, Relating to Confidential Personal Information**

My name is Paula Yoshioka and I am the Vice President for Government Relations and External Affairs for The Queen's Health Systems (Queen's). We appreciate the opportunity to provide comments on H.B. 2318, H.D.1, Relating to Confidential Personal Information. This measure would amend the definition of "confidential person information", specifies other type of confidential personal information, and clarifies when a password constitutes confidential personal information. .

We respectfully request that the medical record number reference on page 1, line 14 be removed since it does not rise to the same status as bank information, social security numbers, or other information that would be considered confidential personal record information. Medical record numbers (MRNs) are regulated under federal law through the Health Insurance Portability and Accountability Act (HIPAA). They are primarily utilized by health care facilities to internally identify a patient and are specific to that facility. If an individual were to get a hold of an MRN that number would not give them access to the medical record.

Thank you for the opportunity to testify on this measure.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS IN OPPOSITION TO
HB 2318, HD 1, RELATING TO CONFIDENTIAL PERSONAL INFORMATION

April 3, 2018

Honorable Senator Brian T. Taniguchi, Chair
Committee on Judiciary
State Senate
Hawaii State Capitol, Conference Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Taniguchi and Committee Members:

Thank you for the opportunity to testify in opposition to HB 2318, HD 1, relating to Confidential Personal Information.

Our firm represents the American Council of Life Insurers (“ACLI”), a Washington, D.C., based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the policyholders that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 95 percent of industry assets, 93 percent of life insurance premiums, and 98 percent of annuity considerations in the United States. Two hundred twenty-one (221) ACLI member companies currently do business in the State of Hawaii; and they represent 96% of the life insurance premiums and 100% of the annuity considerations in this State.

ACLI and its member companies believe that an individual’s personal information should remain private and confidential to protect not only the individual’s privacy but to prevent the theft of his property.

HB 2318, HD 1, proposes to amend the criminal definition of “Confidential Personal Information” currently set forth in HRS Section 708-800 of Hawaii’s Penal Code relating to offenses against property rights.

As currently drafted, however, HB 2318, HD 1, would make the simple disclosure of a person’s entire driver’s license number or credit card number, for example, without other information that identifies that person, a crime.

ACLI suggests that Section 1 of the bill be revised by inserting the text below in place of the current text of the bill set forth on page 1, at lines 4 – 17:

“Confidential Personal Information” means any information concerning a person which because of name, number, personal mark, or other identifier can be used to identify such person, in combination with any one or more of the following data elements:

(a) Such person’s entire Social Security number, Driver’s license number or non-driver identification card number, credit card, depository, investment, credit or debit Account number, or

(b) Any security code, access code or password that would permit access such person’s financial account, or

(e) Such person’s Biometric records.

Again, thank you for the opportunity to testify in opposition to HB 2318, HD 1, Relating to Confidential Personal Information.

LAW OFFICES OF
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April 3, 2018 at 9:20 AM
Conference Room 016

Senate Committee on Judiciary

To: Chair Brian T. Taniguchi
Vice Chair Karl Rhoads

From: Paige Heckathorn
Senior Manager, Legislative Affairs
Healthcare Association of Hawaii

Re: **Submitting Comments**
HB 2318 HD 1, Relating to Confidential Personal Information

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the health care continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

The Healthcare Association of Hawaii would like to thank the committee for the opportunity to **submit comments** on HB 2318 HD 1, which seeks to specify the definition of "confidential personal information" in Hawaii Revised Statute Section 708-800. We do not take a position on the underlying bill, but would request that the phrase "or medical record number" on page 1, line 14, be stricken. Medical record numbers do not rise to the level of other identifying information cited by this legislation, and should not be included as part of this definition.

Medicare record numbers (MRNs) are mainly used by healthcare facilities as an identification number for a patient—essentially, the MRN replaces a patient's name in documentations to help protect the privacy of a patient. Each facility assigns a different MRN for a patient, meaning that the number for a patient at Queen's is different from the number used for that same patient at Straub. The MRN alone is not sufficient for someone to access a patient's medical records. In order to access an electronic medical record, a person would need a username and password. The username is not the MRN, and thus the MRN is not a piece of information used when accessing medical records.

Further, MRNs cannot be the only information provided to service staff to access services or get information. Workers will ask for a picture identification if the services are provided in-person, or will ask for verifying information if services are provided over the phone. This limits the ability of any bad actors to use an MRN in accessing medical records or attempting to commit identity theft or fraud.

Elevating MRNs to the status of bank account information, social security numbers, or other sensitive information would also create undue operational burdens on hospitals and other healthcare facilities. Because the MRN is mainly used for identification purposes—just as a name would be—it is used on every page of a record, IV labels, discharge summaries, and other information used widely in the hospital. Classifying MRNs as confidential personal information would then require hospitals to develop new identification systems or find ways to elevate the security for these documents. It would create a serious burden on providers to comply with these new standards.

Considering the ubiquity and nature of the MRN, we would ask that you strike “or medical record number” from page 1, line 14, of this measure. Thank you for your consideration of our comments.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

CHASID M. SAPOLU
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE BRIAN T. TANIGUCHI, CHAIR
SENATE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai'i

April 3, 2018

RE: H.B. 2318, H.D. 1; RELATING TO CONFIDENTIAL PERSONAL INFORMATION.

Chair Taniguchi, Vice-Chair Rhoads and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony, in strong support of H.B. 2318, H.D. 1, with one suggested amendment. The current version of this bill contains language adopted from H.B. 1775, which was part of our Department’s 2018 legislative package.

The purpose of H.B. 2318, H.D. 1, is to address a 2016 decision, *State v. Pacquing* (139 Haw 302, 389 P.3d 897, 12/9/16), in which the Hawaii Supreme Court held that—as currently written—certain parts of the definition of “confidential personal information” are unconstitutionally vague. Specifically, the Court found it vague to include, as examples of confidential personal information, “a password or other information that is used for accessing information, or any other name, number, or code that is used, alone or in conjunction with other information, to confirm the identity of a person.” H.B. 2318, H.D. 1, would address the Court’s concerns by narrowing and clarifying the circumstances under which a password constitutes confidential personal information, and would also add several other types of information that would be considered confidential.

The term “confidential personal information” is used in prosecuting the offense of Unauthorized Possession of Confidential Personal Information (HRS §708-839.55). Essentially, it is illegal to possess certain types of information without proper authorization--such as another person’s driver’s license number or social security number--so the definition of “confidential personal information” informs people of what information they are not allowed to possess.

Today, the average person would likely agree that the usernames and passwords that “provide access to [their] credit card account, medical records, or depository, investment, or credit account” are highly confidential, and would not want that information to be known to

anyone else without express authority. Because usernames and passwords can provide direct access to some of our most personal information and/or valuable assets—often without having to know any account numbers at all—the Department strongly believes that these items should be protected and included as examples of “confidential personal information.”

In order to satisfy the Hawaii Supreme Court’s concerns about vagueness, H.B. 2318, H.D. 1, would specify that usernames and passwords are only considered confidential personal information if they, “when used in conjunction, provide access to a person’s credit card account, medical records, or depository, investment, or credit account.” Because usernames and passwords are now such an everyday occurrence, and such commonly understood terms, the Department believes it would be unnecessary—and possibly even confusing—to further define these terms within the definition of confidential personal information.

Since the prior committee hearing on this bill, the Department has had the opportunity to meet with a number of health care providers, to discuss the proposed insertion of “medical record numbers” into the definition of “confidential personal information.” Based on their strong concerns that medical record numbers—standing alone—do not hold the same level of significance (or provide the same level of access) as the other types of account and identification numbers listed, the Department has no objection to **removing the phrase “or medical record number” from page 1, lines 13-14.**

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 2318, H.D. 1, with the amendment noted above. Thank you for the opportunity to testify on this matter.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

SHAN S. TSUTSUI
LT. GOVERNOR
STATE OF HAWAII



JOBIE M. K. MASAGATANI
CHAIRMAN
HAWAIIAN HOMES COMMISSION

WILLIAM J. AILA, JR.
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

LATE

**TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON JUDICIARY**

IN SUPPORT WITH AMENDMENT OF

HB 2318, HD1 RELATING TO CONFIDENTIAL PERSONAL INFORMATION

April 3, 2018

Aloha Chair Taniguchi and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) appreciates the scheduling of this bill for a hearing and requests that this bill be used to insert the contents of SB 2782, SD1, which is part of the Governor's administrative package by request of our department. DHHL strongly supports SB2782, SD1 that creates a new section of the HRS specifying that certain content of the Department's homestead applicant and lessee files are not required to be disclosed.

The Department has received Uniform Information Practices Act (UIPA) requests for specific homestead application files and homestead lease files that include personal contact information, genealogies, finance and loan documents, succession forms, permission forms regarding the use of records in the file and other correspondence. Public access to this information should be considered an unwarranted invasion of privacy. This bill also allows the Hawaiian Homes Commission to discuss these matters during an executive session recognizing the sensitive nature of these private family matters.

The relationship between DHHL and its applicants and lessees is unique and very different than relationships between other agencies and members of the public they each serve. The department is required to maintain records that affect beneficiaries' day-to-day life related to matters that are highly personal – their home and their families. In many cases the documents in these files may be very old, stretching back 90 years for our oldest homestead communities. This fact distinguishes these beneficiary files from other types of government records, and therefore those documents that are not currently deemed public information should not be required to be disclosed.

Thank you for your consideration of our testimony.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
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To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: April 3, 2018, 9:20 a.m.
State Capitol, Conference Room 016

Re: Testimony on H.B. No. 2318, H.D. 1
Relating to Confidential Personal Information

LATE

Thank you for the opportunity to submit testimony on this bill, which amend the definition of “confidential personal information” for offenses against property rights. The Office of Information Practices (OIP) takes no position on this bill. However, OIP’s understanding is that the Department of Hawaiian Home Lands will be asking this Committee to add to this bill the provisions of a different bill, S.B. 2782. OIP therefore wished to provide this Committee with a copy of its most recent testimony on S.B. 2783, which is attached.

Thank you for the opportunity to testify.

Tuesday, April 3, 2018 at 9:20am
Conference Room 016

Senate Committee on Judiciary

To: Senator Brian Taniguchi, Chair
Senator Karl Rhoads, Vice Chair

From: David Fox
Vice President – Government Relations & Community Affairs

Re: HB 2318, HD1 -- Comments

My name is David Fox and I am the Privacy Officer at Hawai'i Pacific Health (HPH). Hawai'i Pacific Health is a not-for-profit health care system with over 70 locations statewide including medical centers, clinics, physicians and other caregivers serving Hawai'i and the Pacific Region with high quality, compassionate care. Its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox – specialize in innovative programs in women's health, pediatric care, cardiovascular services, cancer care, bone and joint services and more. Hawai'i Pacific Health is recognized nationally for its excellence in patient care and the use of electronic health records to improve quality and patient safety.

I write to provide comments on HB 2318, HD1 which amends the definition of “confidential personal information” for offenses against property rights to include other types of confidential information to encompass a patient’s “medical record number”. Medical record numbers (MRNs) are mainly used by healthcare facilities as an identification number for a patient. Essentially, the MRN replaces a patient’s name in documentations to help protect the privacy of a patient. Each of our hospitals assigns a different MRN for a patient.

Elevating MRNs to the status of bank account information, social security numbers, or other sensitive information would create undue operational burdens on hospitals and other healthcare facilities. Because the MRN is mainly used for identification purposes—just as a name would be—it is used on every page of a record, IV labels, discharge summaries, and other information used widely in the hospital. Classifying MRNs as confidential personal information would then require hospitals to develop new identification systems or find ways to elevate the security for these documents. It would create a serious burden on providers to comply with these new standards.

Considering the ubiquity and nature of the MRN, we would ask that this Committee strike “or medical record number” from page 1, line 14, of this measure.

Thank you for this opportunity to testify.

HB-2318-HD-1

Submitted on: 3/30/2018 9:47:37 AM

Testimony for JDC on 4/3/2018 9:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Testifying for Hawaiian Civic Club of Honolulu	Support	No

Comments:

HB-2318-HD-1

Submitted on: 3/29/2018 9:23:55 PM

Testimony for JDC on 4/3/2018 9:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Support	No

Comments:

HB-2318-HD-1

Submitted on: 4/2/2018 8:06:00 PM

Testimony for JDC on 4/3/2018 9:20:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Testifying for Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We STRONGLY SUPPORT this bill as we do for DHHL. Mahalo.

LATE

HB-2318-HD-1

Submitted on: 4/2/2018 8:05:21 PM

Testimony for JDC on 4/3/2018 9:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Support	Yes

Comments:

IN STRONG SUPPORT TO KEEP PERSONAL INFORMATION PRIVATE.