



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 2745, S.D. 1, RELATING TO CONFIDENTIAL PERSONAL INFORMATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, March 14, 2018 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Russell A. Suzuki, First Deputy Attorney General, or
Lance Goto, Deputy Attorney General.

Chair Nishimoto and Members of the Committee:

The Department of the Attorney General ("the Department") supports this bill with minor amendments.

The purpose of this bill is to amend the definition of "confidential personal information," in section 708-800, Hawaii Revised Statutes (HRS), to address the concerns of the Hawaii Supreme Court, in its decision of *State v. Pacquing*, 139 Haw. 302 (2016). In *Pacquing*, the court found that part of the definition of "confidential personal information" was unconstitutionally vague as it relates to the offense of unauthorized possession of confidential personal information, in section 708-839.55, HRS. This bill identifies and protects personal information in which a person has a significant privacy interest.

The Department recommends minor amendments. On page 1, line 16, the two semicolons should be changed to commas to more accurately reflect the meaning of that sentence.

The Department respectfully requests the Committee pass this bill with the recommended amendments.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawai'i

March 14, 2018

RE: S.B. 2745, S.D. 1; RELATING TO CONFIDENTIAL PERSONAL INFORMATION.

Chair Nishimoto, Vice-Chair San Buenaventura and members of the House 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 S.B. 2745, S.D. 1, with two suggested amendments. The current version of this bill contains language adopted from S.B. 2178, which was part of our Department’s 2018 legislative package.

The purpose of S.B. 2745, S.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.” S.B. 2745, S.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, S.B. 2745, S.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 Senate 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.**

In addition, we suggest the **two semicolons on page 1, line 16, be changed to commas,** to ensure that the phrase “medical records, or depository, investment, or credit account” remains tied to the “username and password” provision that spans lines 14-17.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of S.B. 2745, S.D. 1, with the two amendments noted above. Thank you for the opportunity to testify on this matter.



March 14, 2018 at 2:00 PM
Conference Room 325

House Committee on Judiciary

To: Chair Scott Y. Nishimoto
Vice Chair Joy A. San Buenaventura

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

Re: **Submitting Comments**
SB 2745 SD 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 SB 2745 SD 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 "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.

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 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 “medical record number” from page 1, line 14, of this measure. Thank you for your consideration of our comments.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Scott Y. Nishimoto, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members, Committee on Judiciary

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

Date: March 12, 2018

Hrg: House Committee on Judiciary Hearing; Wednesday, March 14, 2018 at 2:00 P.M. in Room 325

Re: **Comments on S.B. 2745, S.D.1 Relating to Confidential Personal Record 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 S.B. 2745, S.D. 1, relating to Confidential Personal Record Information. This measure would amend the definition of "confidential person information" to eliminate the unconstitutionally vague provisions in the law as determined by the Hawaii Supreme Court.

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 HOUSE BILL SB 2745, SD 1,
RELATING TO CONFIDENTIAL PERSONAL INFORMATION

March 14, 2018

Honorable Representative Scott Y. Nishimoto, Chair
Committee on Judiciary
State House of Representatives
Hawaii State Capitol, Conference Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Committee Members:

Thank you for the opportunity to testify in opposition to SB 2745, SD 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.

SB 2745, SD 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, SB 2745, SD 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 SB 2745, SD 1, Relating to Confidential Personal Information.

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