



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

LATE

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Friday, February 2, 2018

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 016

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

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General ("the Department") appreciates the intent of this bill, but prefers Senate Bill No. 2178.

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.

Senate Bill No. 2178 is preferred because, with greater specificity, it identifies and protects more personal information in which a person has a significant privacy interest. Consequently, we recommend that the amended definition in Senate Bill No. 2178 be substituted for the definition in this bill.

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

February 2, 2018

RE: S.B. 2745; 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, supporting the intent of S.B. 2745, and respectfully asks the Committee to adopt the alternative language of S.B. 2178, which is part of our Department’s 2018 legislative package.

The purpose of S.B. 2745 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.”

While S.B. 2745 proposes to address the Court’s concerns by simply deleting any reference to passwords, the language of S.B. 2178 would also address the Court’s concerns, but would do so by narrowing and clarifying the circumstances under which a password constitutes confidential personal information. In addition, language from S.B. 2178 would add several other types of information that should also be considered confidential (e.g. credit card numbers, medical record numbers).

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 permission. Because usernames and passwords now 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, the Department does believe it is necessary to narrow and clarify the circumstances under which passwords (and usernames) qualify as confidential personal information. To this end, the language of S.B. 2175 specifies that usernames and passwords are only considered confidential personal information if, "when used in conjunction, [they] provide access to a person's credit card account, medical records, or depository, investment, or credit account." At the same time, however, usernames and passwords are now such an everyday occurrence, and such commonly understood terms, that the Department believes it is unnecessary—and possibly even confusing—to further define these terms within the definition of confidential personal information.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the intent of S.B. 2745, and urges the Committee to adopt the alternative language of S.B. 2178. Thank you for the opportunity to testify on this matter.

Report Title:

Crime; Confidential Personal Information

Description:

Amends the definition of "confidential personal information" with regard to offenses against property rights. (Proposed S.D. 1)

A BILL FOR AN ACT

RELATING TO THE DEFINITION OF CONFIDENTIAL PERSONAL INFORMATION.

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

1 SECTION 1. Section 708-800, Hawaii Revised Statutes, is
2 amended by amending the definition of "Confidential personal
3 information" to read as follows:
4 "Confidential personal information" means information in
5 which ~~[an individual]~~ a person has a significant privacy
6 interest, including but not limited to a person's
7 entire driver's license number~~[, a]~~ or social security number~~[,~~
8 an]; the entire identifying number of a person's depository,
9 investment, or credit account~~[, a bank account number, a~~
10 ~~password,~~]; a person's entire credit card number or medical
11 record number; or a username and password that, when used in
12 conjunction, provide access to a person's credit card account,
13 medical records, or depository, investment, or credit
14 account ~~[or other information that is used for accessing~~
15 ~~information, or any other name, number, or code that is used,~~
16 ~~alone or in conjunction with other information, to confirm the~~
17 ~~identity of a person]."~~

1 SECTION 2. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

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

INTRODUCED BY: _____