

JAN 25 2023

A BILL FOR AN ACT

RELATING TO PRIVACY.

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

1 SECTION 1. Chapter 321, Hawaii Revised Statutes, is
2 amended by adding a new section to part XXII to be appropriately
3 designated and to read as follows:

4 "§321- Disclosure of individually identifiable health
5 information of newborn children; prohibition. (a)

6 Notwithstanding any other law to the contrary, it shall be
7 unlawful for the department or any person who receives
8 individually identifiable health information of a newborn child
9 obtained through a newborn screening test performed pursuant to
10 section 321-291, including:

11 (1) Any laboratory designated by the department to perform
12 newborn screening tests;

13 (2) Any person designated by the department or laboratory
14 in paragraph (1) to provide consultation regarding
15 interpretation of test results, guidelines for care,
16 treatment, and follow-up of infants with positive
17 newborn screening test results;



1 (3) Any hospital required to keep record of newborn
2 screening test results; and

3 (4) Any physicians caring for the newborn child;
4 to disclose to any person other than the newborn child's
5 parents, guardian, or other persons having custody or control of
6 the newborn child, any individually identifiable health
7 information of a newborn child, including disclosure to a law
8 enforcement officer or any agent of a law enforcement officer,
9 regardless of whether the law enforcement officer or the agent
10 presents a court order, subpoena, or any other document issued
11 by a governmental agency requiring the disclosure of the newborn
12 child's individually identifiable health information.

13 (b) Any information obtained by a law enforcement officer
14 or an agent of a law enforcement officer in violation of
15 subsection (a) shall be deemed evidence acquired by unlawful
16 means.

17 (c) As used in this section, unless the context clearly
18 requires otherwise:

19 "Disclosure" means the release, transfer, provision of
20 access to, or divulging in any manner of information outside the
21 entity holding the information.



1 "Governmental agency" means the judiciary and each
2 department, division, board, commission, public corporation,
3 officer, or any other agency or instrumentality of the State or
4 any of its political subdivisions.

5 "Health information" means any information, including
6 genetic information, whether oral or recorded in any form or
7 medium, that relates to:

- 8 (1) The past, present, or future physical or mental health
9 or condition of a newborn child;
10 (2) The provision of health care to a newborn child; or
11 (3) The past, present, or future payment for the provision
12 of health care to a newborn child.

13 "Individually identifiable health information" means
14 information that is a subset of health information, including
15 demographic information collected from a newborn child, and
16 relates to:

- 17 (1) The past, present, or future physical or mental health
18 or condition of the newborn child;
19 (2) The provision of health care the newborn child; or
20 (3) The past, present, or future payment for the provision
21 of health care to the newborn child; and



1 that either identifies the newborn child or with respect to
2 which there is a reasonable basis to believe the information can
3 be used to identify the newborn child.

4 "Law enforcement officer" means a sheriff or deputy
5 sheriff, a police officer, a special agent of the department of
6 the attorney general, and any other public servant, whether
7 employed by the United States, State, or county, vested by law
8 with a duty to maintain public order, make arrests for offenses,
9 or enforce criminal laws, whether that duty extends to all
10 offenses or is limited to a specific class of offenses.

11 "Person" means an individual, firm, partnership, company,
12 corporation, association, cooperative, or other form of business
13 or legal entity, governmental body, or agency, board, bureau, or
14 other instrumentality thereof, or any combination of two or more
15 of the foregoing. "Person" includes "covered entities" and
16 "business associates" as defined in section 323B-2."

17 SECTION 2. Section 323B-3, Hawaii Revised Statutes, is
18 amended by amending its title and subsection (a) to read as
19 follows:

20 "[+]§323B-3[+] Privacy of individually identifiable health
21 information. (a) [~~Notwithstanding~~] Except as prohibited by



1 section 321- , and notwithstanding any other law to the
 2 contrary, any use or disclosure of individually identifiable
 3 health information by any covered entity or business associate
 4 that is permitted by 45 Code of Federal Regulations part 164,
 5 subpart E, shall be deemed to comply with all state laws
 6 relating to the use, disclosure, or confidentiality of [~~such~~]
 7 the information."

8 SECTION 3. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

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

11

INTRODUCED BY:




S.B. NO. 1471

Report Title:

Privacy; Individually Identifiable Health Information; Newborn Child; Genetic and Metabolic Screening; Disclosure; Prohibition; Law Enforcement Officers

Description:

Prohibits the Department of Health or any recipient of individually identifiable health information of a newborn child obtained through genetic and metabolic screening tests required by law to disclose to any person other than the newborn child's parents, guardian, or other persons having custody or control of the newborn child, any individually identifiable health information of a newborn child, including disclosure to a law enforcement officer. Establishes that any information obtained by a law enforcement officer in violation of this prohibition shall be deemed evidence acquired by unlawful means.

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