

ACT 91

H.B. NO. 1491

A Bill for an Act Relating to Subpoenas.

Be It Enacted by the Legislature of the State of Hawaii:

Part I.

SECTION 1. Section 803-47.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) (1) A provider of electronic communication or remote computing services may disclose a record or other information pertaining to a sub-

scriber or customer of such service (other than the contents of any electronic communication) to any person other than a governmental entity.

- (2) A provider of electronic communication or remote computing services shall disclose a record or other information pertaining to a subscriber or customer of such service (other than the contents of an electronic communication) to a governmental entity only when:
 - [(A) Presented with a grand jury subpoena;
 - (B)] (A) Presented with a search warrant;
 - [(C)] (B) Presented with a court order for such disclosure; [or
 - (D)] (C) The consent of the subscriber or customer to such disclosure has been obtained[.]; or
 - (D) Presented with an administrative subpoena issued pursuant to section 28-2.5 or a grand jury or trial subpoena, which seeks the disclosure of information concerning electronic communication, including but not limited to the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, length of service of a subscriber to or customer of the service, and the types of service utilized by the subscriber or customer.
- (3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.”

Part II.

SECTION 2. Section 323C-38, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This section shall not apply in a case in which the protected health information sought under the discovery request or subpoena is:

- (1) Nonidentifiable health information; [and] or
- (2) Related to a party to the litigation whose medical condition is at issue.”

SECTION 3. Act 87, Session Laws of Hawaii 1999, section 4, is amended by amending subsection (a)¹ to read as follows:

“SECTION 4. Section 622-52, Hawaii Revised Statutes, is amended to read as follows:

§622-52 Subpoena duces tecum for medical records, compliance. (a) [Whenever a subpoena duces tecum is served upon the custodian of medical records or other qualified witness from a medical facility, in an action or other proceeding on a claim for personal injuries in which the custodian or the custodian’s employer is neither a party to the action or proceeding nor is it alleged that the claim arose at the medical facility, and such subpoena requires the production in court, or before an officer, board, commission, or tribunal, of all or any part of the medical records of a patient who is or has been cared for or treated at the medical facility, it shall be sufficient compliance therewith if the custodian or other qualified witness within five days after receipt of such subpoena, delivers by registered or certified mail or by messenger a true and correct copy (which may be by any method described in rule 1001(4), Hawaii rules of evidence) of all the medical records described in such subpoena to the clerk of the court or the clerk’s deputy authorized to issue it, together with the affidavit described in section 622-53.] Except as provided by section 323C-38(c), [A] a subpoena duces tecum or discovery request for protected health

information is valid only if accompanied by either a court order, or a written authorization signed in accordance with section 323C-23.² An order issued under this section shall:

- (1) Provide that the protected health information involved is subject to court protection;
- (2) Specify to whom the information may be disclosed;
- (3) Specify that the information may not be disclosed or used except as provided in the order; and
- (4) Meet any other requirements that the court determines are needed to protect the confidentiality of the information.’’’

Part III.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that Part II of this Act shall take effect on July 1, 2000.

(Approved May 16, 2000.)

Notes

1. So in original.
2. ‘‘323C’’ should be underscored.