
A BILL FOR AN ACT

RELATING TO GOVERNMENT RECORDS.

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

1 SECTION 1. In *Molfino v. Yuen*, 134 Hawaii 181 (2014), the
2 supreme court of the State of Hawaii upheld a circuit court
3 ruling that, absent a statutory requirement, a government agency
4 does not have a duty of reasonable care with respect to
5 maintaining government records for the purpose of public
6 inspection. The purpose of this Act is to create a statutory
7 requirement that government agencies exercise reasonable care in
8 maintaining those government records open to public inspection.

9 SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended
10 by adding a new section to part V to be appropriately designated
11 and to read as follows:

12 "§92-_____ Duty to exercise reasonable care in maintaining
13 records. (a) Each unit of government in the State and its
14 political subdivisions shall:

15 (1) Exercise reasonable care in the maintenance of all
16 government records under its control that are required
17 by chapter 92F to be available for public inspection;



1 (2) Issue instructions and guidelines necessary to
2 effectuate this section; and
3 (3) Take steps to ensure that all its employees and
4 officers who are responsible for the collection,
5 maintenance, use, and dissemination of government
6 records are informed of the requirements of this
7 section.

8 (b) Adherence to a duly adopted records retention and
9 destruction policy shall create a rebuttable presumption that
10 the unit of government of the State or its political
11 subdivisions exercised reasonable care in its maintenance of
12 government records for purposes of this section and in defending
13 a cause of action raised pursuant to this section.

14 (c) Damages for any breach of the duty set forth under
15 this section shall be no more than \$2,000 per violation."

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

19 SECTION 4. New statutory material is underscored.

20 SECTION 5. This Act shall take effect on January 1, 2019.



S.B. NO. 245
S.D. 2

Report Title:

Government Records; Maintenance; Duty to Exercise Reasonable Care; Public Inspection

Description:

Requires each unit of government of the State and its political subdivisions to exercise reasonable care in the maintenance of all government records under its control that are required to be made available for public inspection. Takes effect on 1/1/2019.
(SD2)

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