

2002 Legislative Update**Bills Affecting Information Practices**

One of the goals of the Uniform Information Practices Act is to provide for **uniform legislation** in the area of government's information practices.



To further this goal, the OIP monitors, and testifies on, proposed legislation that has an impact on the UIPA and affects government's practices in the **collection, use,**

maintenance, and dissemination of information. The OIP also tracks bills affecting the open meetings law, often referred to as the Sunshine Law.

During the 2002 Regular Session of the Hawaii State Legislature, the Office of Information Practices has been reviewing and monitoring **194 legislative proposals** that could affect government's information practices in Hawaii.

The bills below have all crossed over from House to Senate, or Senate to House. For current information about their status, text of bills, hearings, and committee reports, consult the Legislature's web site at www.Capitol.hawaii.gov.

► Office of Information Practices

State Information Practices Commission

SB 2545 SD2 creates a state information practices commission to study and make recommendations on where the Office of Information Practices should be permanently placed. The commission is also charged with recommending changes to the UIPA and other issues of government records, disclosure, and privacy.

Funding of OIP and Other State Programs

HB 2654 SD2 authorizes the issuance of \$100,000,000 in general obligation bonds for deposit into Hurricane Reserve Trust Fund. The bill appropriates \$100,000,000 from the Hurricane Reserve Trust Fund into the General Fund, and appropriates funds to save numerous threatened state programs, including the OIP.

► Open Meetings & Government Records

Public Meetings

SB 2445 SD1 amends the Sunshine Law to include telephonic meetings. The OIP testified in support of this bill.

Education

SB 2102 SD1 and several other bills replace the current board of education with district boards of education and a statewide board of education. Most of these bills also create a superintendent selection commission. The OIP testified that the commission should not be allowed to deliberate outside the open meeting requirements of chapter 92, Hawaii Revised Statutes.

Adult Residential Care Homes

HB 1749 HD2 requires the Department of Health to disclose to adult residential care home operators the prior criminal history of certain prospective residents.

Auditor's Records

HB 2231 and SB 2038 SD2 clarify the confidential nature of the Auditor's records in the education area.

Juror Privacy

HB 2304 HD1 and SB 2633 SD1 provide that juror qualification forms shall not be disclosed except to the litigants in redacted form and in accordance with other laws.

Vital Statistics

HB 2506 HD1 provides a more streamlined, efficient, and convenient process for registering and recording births and deaths occurring in the State.

See Bills, p. 2

Terrorism, Security, and the UIPA's Frustration Exception


With everyone concerned about security these days, the federal government, and the states, are engaged in a critical debate. At issue:



attempts to control the dissemination of information in the name of national security. The challenge: how to balance protection with the public's right to know.

Government is charged with protecting the public safety, clearly a legitimate government function. To guard government information that can be used by terrorists to plan attacks, federal, state, and local government agencies are withdrawing such records as maps about transportation networks and security plans of hazardous chemical sites.

Because Hawaii's public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), already contains an exemption, in section 92F-13, to the general rule of open State and county records, new legislation is not needed. This exception covers "Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function."

The Office of Information Practices cautions Hawaii's State and county agencies to use the frustration exception carefully and sparingly. Requests for records should be evaluated on a case-by-case basis. If you have questions, please call the OIP at 586-1400. 

Bills (from p. 1)



Cave Protection

HB 2659 HD2 and SB 2898 SD2 protect caves as unique cultural and natural resources of the State of Hawaii. The OIP supports

the House version regarding the ability of the Department of Land and Natural Resources ("DLNR") to determine the confidentiality of cave location or resource information. The Senate version allows a cave owner unilaterally to require the DLNR to keep the information confidential.

University of Hawaii

SB 2099 SD1 establishes an interagency working group within the University of Hawaii to develop a comprehensive, linked preschool to graduate school (P-20) student database for Hawaii. The OIP testified that the database should be nonidentifiable as to individuals, and that the work of the committee should be subject to chapters 92 (open meetings) and 92F (public records), Hawaii Revised Statutes.

Prescription Drugs

SB 2520 SD2 creates a pharmaceutical discount program for all state residents under which the State obtains manufacturers' rebates on drugs that are offered at discounted prices to program participants. The bill establishes an advisory commission and special fund. The OIP's position is that annual reports concerning marketing and education should be public.

Photocopy Costs

SB 2550 SD2 amends section 92-21, Hawaii Revised Statutes, to provide that copying costs shall be not less than 5 cents or more than 25 cents per page, sheet, or a fraction thereof. It also provides an exception for certain fees charged by the Director of Finance and the Director of Commerce and Consumer Affairs, pursuant to section 92-24. The OIP testified in favor of this bill to minimize and standardize the cost of obtaining copies of government records.

Birth Defects

SB 2763 SD2 establishes the Hawaii birth defects program and registry. Following the testimony of the OIP and others, privacy protections were inserted.

Crime Stoppers Organizations

SB 2990 SD2 allows courts to order a defendant to repay the rewards paid by crime stoppers organizations. The OIP testified that adding a provision to the UIPA to make crime stoppers records confidential was unnecessary, as the bill itself makes such records confidential. Section 92F-13(4) recognizes laws mandating confidentiality as an exception to disclosure. The bill was amended to adopt the OIP's suggestion.

► Privacy

Identity Theft

HB 2438 HD1 provides criminal penalties for those who steal the identity of another, and for those who obtain identity documents

under false pretenses. The OIP testified in support of the intent of the bill.

Electronic Surveillance

SB 2694 SD2 conforms Hawaii's electronic surveillance laws to federal laws. In its testimony, the OIP noted Hawaii's Constitution provides that the right of privacy shall not be infringed without the showing of a compelling state interest. Following the OIP's testimony, the bill was amended to require that reports concerning interrupted communications are public documents.

Hawaii Long-Term Care Financing Act

HB 2638 HD2 and SB 2416 SD2 would enact the Hawaii Long-Term Care Financing Act and create a mandatory assessment system to collect premiums from employee paychecks. The OIP testified against the use of social security numbers unless required by law.

► Privacy of Financial & Insurance Records

Insurance

HB 1761 HD1 gives the Insurance Commissioner power to regulate health insurance rates. The OIP testified in support of the bill's intent, but requested that the measure require all records to be subject to disclosure as required by the UIPA.

Captive Insurance

HB 2655 HD1 gives the Insurance Commissioner discretion to decide whether to publicly release information filed by a captive insurance company that was not already a government record. The OIP testified in opposition to this bill. SB 3040 SD2, a similar bill, changes the effective date to July 1, 2050, to further discussions on the measure.

Health Insurance

SB 2093 SD1 prohibits insurance fraud in health insurance provided by accident and sickness insurance contracts, mutual benefit societies through medical indemnity or hospital service associations, and HMOs. The OIP testified that the records the bill seeks to protect would already be permitted to be withheld from disclosure by the present provisions of the UIPA.

SB 2302 SD2 prohibits health insurance rates that are excessive, inadequate, or unfairly discriminatory. It requires health care insurers to submit rate filings for approval by the Insurance Commissioner, and also establishes penalties and appeal procedures. The OIP questioned whether the Commissioner would need the power to deem information confidential. 🏠

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