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KEALI'I S. LOPEZ
DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON JUDICIARY

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

Thursday, February 16, 2012
2:40 p.m.

TESTIMONY ON HOUSE BILL NO. 2309, RELATING TO PERSONAL INFORMATION.

THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs, Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify concerning H.B. No. 2309. My name is Bruce B. Kim and I am the Executive Director of OCP. OCP supports the intent of H.B. No. 2309 but has concerns that the exceptions set forth in the bill may be unnecessarily broad in scope.

H.B. 2309 would add a new section to Chap. 487R Destruction of Personal Information Records making it unlawful to scan the machine-readable zone of an individual's certificate of identification or driver's license to use or retain any information contained therein except in five (5) enumerated circumstances.

Identity theft is a serious crime with lasting negative repercussions on the life of the person whose identity is stolen. A common source of identity theft is information contained on an individual's certificate of identification or driver's license. The widespread use of such personal identification numbers has made it relatively easy for thieves to gain access to sensitive information of innocent victims. Minimizing access to such information is therefore critically important in protecting the privacy interests of individuals and preventing identity theft. Therefore, restricting the use of such personal identification cards to law enforcement or other legitimate purposes significantly reduces the chance of such information falling into the wrong hands.

These concerns are even more significant when a business scans the machine-readable zone of an individual's certificate of identification or driver's license. By scanning the machine-readable zone of a driver's license, the business obtains significant personal information, including name, address, date of birth, hair color, eye color, height, weight, gender, license expiration date, organ donor status, driver's license number, fingerprint, medical information and driver's classification code. OCP is very concerned that a business could retain this information in a computer or other storage device and sell or disseminate such information to third-parties without the knowledge or consent of a person for marketing, advertising, or promotional activities. It would also be susceptible to theft or other illegal purposes if stored or retained by the business.

OCP subscribes to the proposition that any exception to the general rule against

the unauthorized use or dissemination of personal identification numbers must be significantly limited in scope and purpose. H.B. No. 2309 attempts to do so by limiting the use or retention of information obtained by scanning the machine-readable zone of a certificate of identification or driver's license to five (5) situations. That being said, the statute allows for scanning of a certificate of identification or driver's license to "verify the age of the individual who possesses the certificate of identification or driver's license" or to "verify the authenticity of the certificate of identification or driver's license". It is unclear why a business would need to scan a certificate of identification or driver's license in either circumstance if the holder of the document presents the requested document at the time of the subject transaction. OCP is concerned that the bill as drafted appears to give a business the license to scan the machine-readable zones of a person's personal identification documents even if there are less intrusive means of verifying the age or identity of the customer.

OCP submits that the following amendments to the bill would be useful in protecting the personal information of the individual while balancing the legitimate needs of a business in obtaining such information:

1. The section should be moved to Chap. 487J and 487J should be renamed "Personal Identification Information Protection".
2. Subsection (5) should be deleted in its entirety as unduly vague and open-ended.
3. A provision should be added defining the word "scan" as accessing the

machine-readable zone of an individual's certificate of identification or driver's license by an electronic device capable of deciphering electronically readable information on an individual's certificate of identification or driver's license.

4. A provision should be added to the effect that only a consumer reporting agency as defined by the Fair Credit Reporting Act, financial institution as defined by the Gramm-Leach-Bliley Act, or a debt collector as defined by the Fair Debt Collection Practices Act may retain information obtained by scanning for the purpose of approving, processing, or collecting negotiable instruments, electronic funds transfers, or other methods of payments.

5. A provision should be added prohibiting a business, other than a consumer reporting agency as defined by the Fair Credit Reporting Act, a financial institution as defined by the Gramm-Leach-Bliley Act, or a debt collector as defined by the Fair Debt Collection Practices Act, from retaining or using any information obtained by the scanning of the machine-readable zone of an individual's certificate of identification or driver's license for any reason other than the stated exceptions and may not sell or otherwise disseminate any information obtained by the scanning to a third-party for any purpose, including any marketing, advertising, or promotional activities.

6. A provision should be added that establishes a time limit by which a business, other than a consumer reporting agency as defined by the Fair Credit Reporting Act, a financial institution as defined by the Gramm-Leach-Bliley Act, or a debt collector as defined by the Fair Debt Collection Practices Act, must purge or delete

scanned information after scanning is completed.

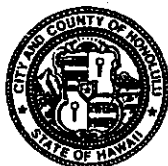
7. A provision should be added that prohibits businesses from scanning personal information if there are less intrusive means of verification.

OCP submits that the privacy, retention and security issues need to be carefully vetted before this bill moves forward. There may be as well other protections that should be considered before this bill moves on.

Thank you for allowing me to present testimony to the committee on H.B. No. 2309. If there are any questions, I would be happy to respond.

DEPARTMENT OF CUSTOMER SERVICES
CITY & COUNTY OF HONOLULU
DIVISION OF MOTOR VEHICLE, LICENSING AND PERMITS
ADMINISTRATION
P.O. BOX 30300
HONOLULU, HAWAII 96820-0300

PETER B. CARLISLE
MAYOR



GAIL Y. HARAGUCHI
DIRECTOR

DENNIS A. KAMIMURA
LICENSING ADMINISTRATOR

February 14, 2012

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Committee Members
Committee on Judiciary
House of Representatives
State of Hawaii
State Capitol, Room 302
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Committee Members:

Subject: H.B. No. 2309, Relating to Personal Information

The City and County of Honolulu has no objections to the intent of H.B. No. 2309, which would prohibit the scanning and retention of personal information except for the purposes specified.

We are concern with allowing unlimited retention of the scanned information for items (1), (2), and (4). We note that items (1) and (2) are for verification and therefore retention should be prohibited. With regard to item (4), we recommend a limited retention period, if retention is necessary, and certification that the personal information that are retained shall not be used for any commercial purposes and physically secured from disclosure in accordance with applicable federal and state laws.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis A. Kamimura".

Dennis A. Kamimura
Licensing Administrator



Dan Youmans
President - Washington/Hawaii
External Affairs

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February 16, 2012

The Honorable Rep. Gilbert S.C. Keith-Agaran
Chair, Committee on Judiciary

Re: AMENDMENT REQUESTED
House Bill 2309
Hearing before the House Committee on Judiciary
Feb. 16, 2:40 p.m., Conference Room 325

Rep. Keith-Agaran and Members of the Committees:

Thank you for this opportunity to express AT&T's position on House Bill 2309. While we respect the bill sponsor's intentions, AT&T has concerns about how the current proposal has potentially negative effects on our customers and the transactional processes at our retail establishments.

Scanning a certificate of identification or a driver's license for purposes of credit checks is a common practice for many types of retail establishments. Scanners are helpful because they reduce human errors while procuring personal information and also ensure the customer isn't required to orally share personal information in front of other consumers. This provides many customers the added benefit of privacy and serves as a tool against fraud prevention. Additionally, our goal is to make the credit check process as expedient as possible and scanners accelerate the process and help deliver a positive customer experience. AT&T has devised and deployed scanners throughout our retail stores, and our employees have been carefully trained on proper use of the technology.

AT&T takes the procurement, retention and purging of customer information with absolute care. With the exception of name and address, which is retained for billing purposes only, all other highly sensitive personal information is electronically purged from our database after taking fraud prevention measures.

Although we may not be the target of this proposal, we hope you can see how the new statute jeopardizes our retail business processes. Therefore, AT&T proposes the bill be amended to include a minor exemption that would allow retention for the purposes of establishing or maintaining a contract with the consumer. Here is the specific language:

(6) for the purpose of establishing or maintaining a contract between the person and another individual.

I thank you for your time and consideration on this matter and look forward to additional dialogue on this issue.

Respectfully Submitted,

Dan Youmans, AT&T

**AT&T Proposed Amendment on Page 2, bold and italic
language new subsection (6)**

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

H.B. NO. 2309

A BILL FOR AN ACT

RELATING TO PERSONAL INFORMATION.

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

SECTION 1. Chapter 487R, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§487R- Unlawful use of certificate of identification or driver's license. (a) No person shall scan the machine-readable zone of an individual's certificate of identification or driver's license to use or retain any information contained therein, except for the following purposes:

- (1) To verify the age of the individual who possesses the certificate of identification or driver's license;
- (2) To verify the authenticity of the certificate of identification or driver's license;
- (3) To record, retain, or transmit information as required by law;

- (4) To transmit information to a check service company for the purpose of approving negotiable instruments, electronic funds transfers, or similar methods of payments; provided that only the name and identification number from the certificate of identification or driver's license may be used or retained by the check service company; or
- (5) To collect or disclose personal information that is required to report, investigate, or prevent fraud, abuse, or material misrepresentation.
- (6) For the purpose of establishing or maintaining a contract between the person and another individual.

(b) Any person who violates this section shall be guilty of a misdemeanor, punishable by a fine of no more than \$2,000, or imprisonment of no more than one year, or both; provided that each violation of this section shall constitute a separate offense.

(c) As used in this section, "certificate of identification" means the certificate of identification described under part II of chapter 846."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Personal Information; Unlawful Use of Certificate of Identification or Driver's License

Description:

Allows the scanning and retention of personal information contained in a state identification card or driver's license for only limited purposes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Committee: Committee on Judiciary
Hearing Date/Time: Thursday, February 16, 2012, 2:40 p.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in Strong Support of H.B. 2309,
Relating to Personal Information

Dear Chair Keith-Agaran and Members of the Committee on Judiciary:

The ACLU of Hawaii writes in support of H.B. 2309, which specifies the limited purposes for which a private business would be allowed to scan and retain personal information contained in a state identification card or driver's license.

Private businesses have adopted a practice of scanning the bar codes on customer driver's licenses for all manner of purchases. Bar code scanning may be required by company policy for purchases of alcohol and other age-related transactions, including Nicorette gum, mature video games, and cold medicines.

This bar code scanning practice raises serious privacy concerns: Hawaii driver's licenses contain bar codes with significant personal information, including name, address, date of birth, hair color, eye color, height, weight, gender, license expiration date, organ donor status, driver's license number, fingerprint, medical indicators and driver classification code.

- By scanning this information for each customer, private businesses are able to keep and use this data for any purpose. There are no regulations on what they may do with this information.
- Other states, including California, Texas and Nebraska have enacted laws to strictly limit the retention and use of driver's license information by businesses and to protect driver's license privacy.

As more personal information is amassed in more databases, the likelihood increases that the information will be misused or stolen, leading to risks of identity theft. Individuals can't protect the accuracy or distribution of their personal information when it is held by others. Driver's license data should only be retained by business entities where otherwise required by law. Transmission of driver's license data to third parties should be limited to situations where there is a clear need.

American Civil Liberties Union of Hawaii
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Hon. Rep. Keith-Agaran, Chair, JUD Committee
and Members Thereof
February 16, 2012
Page 2 of 2

In Hawaii, we need a law that prohibits businesses and other private entities from swiping driver's licenses or identification cards to collect personal information which is then used for marketing purposes. H.B. 2309 will help to protect our privacy by reducing this surreptitious way of copying, storing and using our personal information.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Sincerely,

Laurie A. Temple
Staff Attorney

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Representative Gilbert Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
Committee on Judiciary
State Capitol, Honolulu, Hawaii 96813

HEARING Thursday, February 16, 2012
 2:40 pm
 Conference Room 325

RE: HB2309, Relating to Personal Information

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to supporting the retail industry and business in general in Hawaii.

RMH supports HB2309 which allows the scanning and retention of personal information contained in a state identification card or driver's license for only limited purposes.

We have conferred with the Consumer Data Industry Association (CDIA) and essentially agree with their proposed amendments, with the following changes:

- §487J, Subsection (4) (c) A business, other than a consumer reporting agency as defined by the Fair Credit Reporting Act, a financial institution as defined by the Gramm-Leach-Bliley Act, or a debt collector as defined by the Fair Debt Collection Practices Act, shall immediately purge or delete any information obtained by scanning the machine-readable zone of an individual's certificate of identification or driver's license no later than ~~five (5)~~ **thirty (30)** days after scanning is completed.

Our experience with identity thieves and fraudulent check writers is that this additional information allows tracking these individuals and provides greater protection for our consumers.

- Insert in §487J, after subsection (4), Subsection (5) **To collect or disclose personal information in order to report, investigate, or prevent fraud, abuse or material misrepresentation, or to enforce a transaction.**

Career shoplifters and criminals frequent multiple stores / locations. Retailers work in tandem with HPD and the Prosecutor's Office to build cases against such individuals.

Thank you for your consideration of our comments and for the opportunity testify.

Carol Pregill, President

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TO: Representative Gilbert S.C. Keith-Agaran
Chair, Committee on Judiciary
Via Email: JUDtestimony@Capitol.hawaii.gov

FROM: Gary M. Slovin / Mihoko E. Ito

DATE: February 15, 2012

RE: **H.B. 2309 – Relating to Personal Information**
Hearing Date: Thursday, February 16, 2012 at 2:40 p.m.
Conference Room 325

Dear Chair Keith-Agaran and Members of the Committee on Judiciary:

I am Gary Slovin submitting on behalf of the Consumer Data Industry Association (CDIA). Founded in 1906, CDIA is the international trade association that represents more than 400 data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, fraud prevention, risk management, employment reporting, tenant screening and collection services.

CDIA submits comments regarding H.B. 2309, which allows the scanning and retention of personal information contained in a state identification card or driver's license for only limited purposes.

CDIA appreciates that this bill is intended to address the potential illegitimate use of information contained in drivers licenses and state identification cards, but that the information in such licenses or identifications could still be used for the purposes of screening identification when verifying checks.

Many states have updated their statutes to allow for scanning and storage of driver's license information because, over the last decade, more sophisticated technology has been developed to protect the safety of the data compiled. Federal law also places

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limitations on what personal identifiable information can be used and how it can be used by certain entities.¹

We believe that it is important to continue to allow the use of driver's license information through scanning technology. Scanning decreases manual errors, which can be problematic in the check verification process. Manual entry of licenses also backs up lines at the point of sale, which frustrates both consumers and clerks and makes purchase processes less efficient. Allowing scanning also reduces fraud, because, while it is easy to create a fake ID with numbers on a card, it is far more difficult to create a fake ID with numbers embedded in a magnetic stripe.

Moreover, capturing the information contained in the driver's license or identification assists in the collections and enforcement process. It is to everyone's benefit that merchants be able to collect on bad checks -- the harder it is to collect on bad checks, the less likely merchants are to continue accepting checks. This would tend to impact the youngest, oldest, and least well-off consumers.

CDIA has worked with the Office of Consumer Protection on S.B. 2419, a bill similar to H.B. 2309 that is being considered in the Senate. As a result of these discussions, CDIA supports the attached language, because it makes clear that: 1) a consumer reporting agency as defined by the Fair Credit Reporting Act, a financial institution as defined by the Gramm-Leach-Bliley Act, or a debt collector as defined by the Fair Debt Collection Practices Act may retain personal information, and 2) that the scanning of a driver's license or identification card may be used for the purpose of approving, processing, or collecting negotiable instruments, electronic funds transfers, or other methods of payments.

We respectfully request your consideration of the foregoing, and welcome any questions you have. Thank you very much for the opportunity to submit testimony.

Attachment.

¹ Check services companies who scan the information are governed by two federal privacy laws, the Fair Credit Reporting Act and the Gramm-Leach-Bliley Act for the express reasons of protecting against actual or potential fraud or effecting transactions.

Chapter 487J ~~Social Security Number~~ Personal Information
Protection.

487J-1 Definitions.

* * *

"Scan" means accessing the machine-readable zone of an individual's certificate of identification or driver's license by an electronic device capable of deciphering electronically readable information on an individual's certificate of identification or driver's license.

§487J - Unlawful use of certificate of identification or driver's license. (a) No business may scan the machine-readable zone of an individual's certificate of identification or driver's license to use or retain any information contained therein, except for the following purposes:

(1) To verify the age of the individual who possesses the certificate of identification or driver's license;

(2) To verify the authenticity of the certificate of identification or driver's license;

(3) To record, retain, or transmit information as required by state or federal law; and

(4) To transmit information to a consumer reporting agency as defined by the Fair Credit Reporting Act, financial institution as defined by the Gramm-Leach-Bliley Act, or a debt collector as defined by the Fair Debt Collection Practices Act for the purpose of approving, processing, or collecting negotiable instruments, electronic funds transfers, or other methods of payments.

(b) A business, other than a consumer reporting agency as defined by the Fair Credit Reporting Act, a financial

institution as defined by the Gramm-Leach-Bliley Act, or a debt collector as defined by the Fair Debt Collection Practices Act, may not retain or use any information obtained by the scanning of the machine-readable zone of an individual's certificate of identification or driver's license other than as provided herein and may not sell or otherwise disseminate any information obtained under this section to a third-party for any purpose, including any marketing, advertising, or promotional activities.

(c) A business, other than a consumer reporting agency as defined by the Fair Credit Reporting Act, a financial institution as defined by the Gramm-Leach-Bliley Act, or a debt collector as defined by the Fair Debt Collection Practices Act, shall immediately purge or delete any information obtained by scanning the machine-readable zone of an individual's certificate of identification or driver's license no later than five (5) days after scanning is completed.

(d) A business covered by this section shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this chapter are complied with.