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KEALI'I S. LOPEZ
DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

Thursday, March 22, 2012
9:15 a.m.

TESTIMONY ON SENATE BILL NO. 2419, SD 2, HD 1, RELATING TO PERSONAL INFORMATION.

TO THE HONORABLE ANGUS L. K. MCKELVEY, CHAIR,
TO THE HONORABLE ISAAC W. CHOY, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs appreciates the opportunity to testify on S.B. No. 2419, SD 2, HD 1 Relating to Personal Information. My name is Bruce Kim, Executive Director of the Office of Consumer Protection ("OCP"). OCP supports the intent of the bill and offers comments in support of the proposition that personal information contained on machine readable zones of Hawaii identification cards and driver's licenses should be protected.

The bill would add a new section to HRS Chap. 487J to make it unlawful to scan the machine readable zone of an individual's Hawaii identification card or driver's license to use or retain any information contained therein except in six (6) enumerated

circumstances.

Identity theft is a serious crime with lasting negative repercussions on the life of the person whose identity is stolen. A frequently used source of identify theft is information contained on an individual's Hawaii identification card 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 its use is important. Limiting the use of information scanned from a Hawaii identification card or driver's license promotes the privacy interests of individuals and eliminates a potential source of information for identity thieves.

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 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 indefinitely 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 extremely limited in nature and scope. S.B. No. 2419, SD 2, HD 1 attempts to do so by creating six (6) limited situations where information imprinted on a scanning bar or electronically readable area of an individual's Hawaii identification card or driver's license may be used or retained. 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 or 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 such documents presents the requested document at the time of the subject transaction. OCP is concerned that the bill as drafted appears to give businesses unqualified authority to scan personal identification documents even if there is a less intrusive means to verify the age or identity of the customer.

OCP has concerns as well over the requirement in subsection (c) allowing a business up to five days to delete or purge such personal identification information after scanning an individual's identification card or driver's license. It would take an unscrupulous employee or criminal a matter of seconds to download such information. A business should purge such information immediately except in the limited exceptions created for consumer reporting agencies, financial institutions or debt collectors.

S.B. No. 2419, SD 2, HD 1 is an attempt to reconcile all of the competing interests affected by this bill. OCP continues to work with the other stakeholders to come up with acceptable amendments in both the House and Senate versions of this bill. Attached is a copy of the most recent draft of the revisions approved by the relevant stakeholders. The attached draft includes a provision allowing covered entities to record, retain or transmit protected health information as permitted under the privacy and security rules adopted under the Health Insurance Portability and Availability Act of 1996 (HIPAA) to address concerns raised in other committees about the need for such information by medical providers.

Thank you for the opportunity to testify on S.B. No. 2419, SD 2, HD 1. I would be happy to answer any questions the committee may have.

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

"§487J- Unlawful use of Hawaii identification card or driver's license. (a) No business may scan the machine-readable zone of an individual's Hawaii identification card or driver's license, except for the following purposes:

(1) To verify the authenticity of the identification card or driver's license or to verify the identity of the individual if the individual pays for goods or services with a method other than cash, returns an item, or requests a refund or an exchange;

(2) To verify the individual's age when providing an age-restricted good or service to any person about whom there is a reasonable doubt of the individual having reached 18 years of age or older;

(3) To prevent fraud or other criminal activity if an individual returns an item, or requests a refund or an exchange and the business uses a fraud prevention service company or system. Information collected by scanning an individual's Hawaii identification card or driver's license pursuant to this subsection (3) shall be limited to the following information from the individual:

(a) Name;

(b) Address;

(c) Date of Birth; and

(d) Driver's license number or identification card number;

(4) To establish or maintain a contractual relationship between the business and the individual. Information collected by scanning an individual's Hawaii identification card or driver's license pursuant to this subsection (4) shall be limited to the following information from the individual:

(a) Name;

(b) Address;

(c) Date of Birth; and

(d) Driver's license number or identification card number;

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

(6) To transmit information to a consumer reporting agency, financial institution, or debt collector to be used as permitted by the federal Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, or the Fair Debt Collection Practices Act; and

(7) To record, retain or transmit information by a covered entity governed by the medical privacy and security rules issued by the federal Department of Health and Human Services, Parts 160 and 164 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996 (HIPAA).

(b) No business may retain or store any information obtained pursuant to subsection (a) above except as permitted in subsections (a)(3) - (7).

(c) A business may not sell or otherwise disseminate to a third party any information obtained under this section for any purpose, including any marketing, advertising, or promotional activities, except as permitted in subsections (a)(3)-(7).

(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.

(e) Any waiver of a provision of this section is contrary to public policy and is void and unenforceable.

(f) For purposes of this section:

"Consumer reporting agency" shall have the same meaning as in the federal Fair Credit Reporting Act, title 15 United States Code section 1681a(f).

"Debt collector" shall have the same meaning as in the federal Fair Debt Collection Practices Act, title 15 United States Code section 1629a.

"Financial institution" shall have the same meaning as in the federal Gramm-Leach-Bliley Act, title 15 United States Code section 6809."

"Covered Entity" shall have the same meaning as in security rules issued by the federal Department of Health and Human Services, Parts 160 and 164 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996 (HIPAA).

SECTION 2. Chapter 487J, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"[SOCIAL SECURITY NUMBER] PERSONAL INFORMATION PROTECTION"

SECTION 3. Section 487J-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Scan" means accessing the machine-readable zone of an individual's Hawaii identification card or driver's license by an electronic device capable of deciphering, in an electronically readable format, information electronically encoded on an individual's Hawaii identification card or driver's license."

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

SECTION 5. This Act shall take effect on January 7, 2009.

DEPARTMENT OF CUSTOMER SERVICES
CITY & COUNTY OF HONOLULU
DIVISION OF MOTOR VEHICLE, LICENSING AND PERMITS
ADMINISTRATION
P.O. BOX 30300
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PETER B. CARLISLE
MAYOR



GAIL Y. HARAGUCHI
DIRECTOR

DENNIS A. KAMIMURA
LICENSING ADMINISTRATOR

March 20, 2012

The Honorable Angus L.K. McKelvey, Chair
and Committee Members
Committee on Economic Revitalization and Business
House of Representatives
State of Hawaii
State Capitol, Room 427
Honolulu, Hawaii 96813

Dear Chair McKelvey and Committee Members:

Subject: S.B. No. 2419 SD2 HD1, Relating to Personal Information

The City and County of Honolulu is in favor of S.B. No. 2419 SD2 HD1, which would prohibit the scanning and retention of personal information except for the purposes specified.

The provisions of SD2 HD1 will protect both the retailer as well as the personal identifiable information of the consumer.

The City and County of Honolulu urges your favorable action on S.D. No. 2419 SD2 HD1.

Sincerely,

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

Dennis A. Kamimura
Licensing Administrator



Committee: Committee on Economic Revitalization and Business
Hearing Date/Time: Thursday, March 21, 2012, 9:15 a.m.
Place: Room 312
Re: Testimony of the ACLU of Hawaii in Strong Support of S.B. 2419, SD2, HD1, Relating to Personal Information

Dear Chair McKelvey and Members of the Committee on Economic Revitalization and Business:

The ACLU of Hawaii writes in support of S.B. 2419, SD2, HD1, 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.

American Civil Liberties Union of Hawai'i
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Hon. Rep. McKelvey, Chair, ERB Committee
and Members Thereof
March 21, 2012
Page 2 of 2

Transmission of driver's license data to third parties should be limited to situations where there is a clear need.

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. S.B. 2419 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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TO: Representative Angus L.K. McKelvey
Chair, Committee on Economic Revitalization & Business
Hawaii State Capitol, Room 427
Via Email: ERBtestimony@capitol.hawaii.gov and Hand Delivery

FROM: Mihoko E. Ito

DATE: March 21, 2012

RE: **S.B. 2419, SD2, HD1 – Relating to Personal Information**
Hearing: Thursday, March 22, 2012 at 9:15 a.m.
Conference Room 312

Dear Chair McKelvey and Members of the Committee on Economic Revitalization & Business:

I am Mihoko Ito, an attorney with Goodsill Anderson Quinn & Stifel, submitting testimony 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 S.B. 2419, SD2, HD1, which allows the scanning and retention of personal information contained in a Hawaii identification card or driver's license for limited purposes only.

CDIA appreciates that this bill is intended to address the potential illegitimate use of information contained in driver's 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 limitations

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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 been working cooperatively with the stakeholders on this measure to refine the language of the bill so that it addresses the concerns of the interested parties. CDIA supports the proposed amendments which reflect the consensus of the working group, and which CDIA believes strikes a balance between protecting personal information and continuing to allow its use for legitimate purposes.

Thank you very much for the opportunity to submit testimony.

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.



Representative Angus McKelvey, Chair
Representative Isaac Choy, Vice Chair
Committee on Economic Revitalization & Business
State Capitol, Honolulu, Hawaii 96813

HEARING Thursday, March 22, 2012
 9:15 am
 Conference Room 312

RE: SB2419, SD2, HD1, Relating to Personal Information

Chair McKelvey, Vice Chair Choy, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. Through November 2011, retail generated \$25.6 billion in sales and paid over \$1 billion in GET. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

The retail industry shares the Legislature's concerns with preventing identity theft and protecting an individual's personal information. RMH has been in considerable conversation with other stakeholders to address the legitimate uses of such information without jeopardizing consumers' privacy rights.

The result of our collaboration is a draft that is being offered by Mr. Bruce Kim, Office of Consumer Protection. We concur with that language and urge your support to advance this measure as a HD2.

Thank you for your consideration and for the opportunity to comment.

A handwritten signature in cursive script, appearing to read 'Carol Pregill'.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202



Representative Angus McKelvey, Chair
House Committee on Economic Revitalization & Business

March 22, 2012; 9:15 AM
Hawaii State Capitol; Conference Room 312

RE: SB 2419 SD2 HD1 – Relating to Personal Information – Request amendments

Chair McKelvey, Vice Chair Choy and Members of the Committee,

Thank you for the opportunity to provide written testimony on behalf of the Retail Equation, a member of the Retail Merchants of Hawaii, regarding SB 2419 SD2 HD1. The Retail Equation offers services to retailers across the nation to help them manage their merchandise return programs and is currently operating in 19 major retail stores across Hawaii.

The retail industry lost \$18.4 billion to return fraud and abuse in 2011 alone, an increase of over 4.4% from 2010¹. Estimates of return fraud in Hawaii are over \$101 million annually and growing². This fraud is not only growing rapidly in size, but also in sophistication.

SB 2419 SD2 HD1, as currently written, would prevent retailers from using sophisticated return authorization systems, which have been designed to identify and prevent return fraud. These systems are dependent on the ability to use the State ID as a unique identifier. Automated systems, like the systems operated by The Retail Equation, not only enable retailers to reduce fraud, they also benefit consumers by allowing retailers to offer more flexible return policies for good consumers and by providing much greater security for consumer information compared to paper-based systems, which is a key safeguard in helping to prevent ID theft.

¹ Source: National Retail Federation 2011 Consumer Returns in the Retail Industry Report

² Source: National Retail Federation 2011 Consumer Returns in the Retail Industry Report



We have collaborated with other stakeholders on a revised draft bill, which will be offered by Bruce Kim, Office of Consumer Protection. We are in support of these amendments and ask for the committee's favorable consideration.

Thank you for this opportunity to testify.

Submitted by:
The Retail Equation, Inc.
Irvine, CA 92619-1373



**Testimony of Michael Bagley
Director of Public Policy for Verizon
Before the
Committee on Economic Revitalization and Business
On S.B. 2419 SD2 HD 1
March 22, 2012**

The Honorable Angus McKelvey
Chair, Committee on Economic Revitalization and Business
Hawai'i House of Representatives

Re: S.B. 2419, S.D. 2, H.D. 1 Relating to Personal Information

Chairman McKelvey and Members of the Committee:

On behalf of Verizon, I appreciate the opportunity to submit testimony to in *OPPOSITION* of S.B. 2419 SD2 HD1 *unless AMENDED*, legislation that would prohibit the scanning of driver's licenses in business transactions. Although much improved with the most recent HD 1 amendments, Verizon seeks further amendments that would make an exception for businesses that use customer information obtained from scanning an individual's driver's license to "*establish a contract and thereafter maintain an ongoing business relationship*" with them.

Verizon worked with other stakeholders from the broader business community to seek acceptable language that is now offered by the State Department of Consumer Protection and we "SUPPORT" these amendments that have resulted from cooperative efforts of participants. Verizon however must *OPPOSE* S.B. 2419 SD2 HD1 *without the inclusion* of requested amendments.

There are a number of legitimate reasons for businesses to "scan" and have access to customer driver's licenses. Verizon is concerned that S.B 2419 SD2 HD1 as currently drafted, will have unintended consequences that are adverse to our business operations.

Verizon is proud of its service to our customers in Hawaii, where we have invested nearly \$300 million in the network in this State since 2000, and where we have over 300,000 customers. Our main concern is to be able to maintain our existing business operations and protect our customers against fraud, and we believe this legislation as proposed would disrupt our ability to scan a driver's license when setting up service and verifying customers for certain transactions. Being able to scan a driver's license is more efficient than manual entry, and protects our customers from potential fraudulent behavior.

According to our Retail Operations Team, the machine-readable strip on a customer's driver's license is scanned, which we refer to as "swiping," when a customer first initiates service in a

store, and as part of subsequent transactions after the customer's account has been established. For new customers, the driver's license, or other state-issued identification, is swiped so that information can be transmitted for credit check processing. The information from the same swipe populates a new customer record in our billing system which is the basis for the customer's account. Later, when the customer comes into a store to perform a transaction such as an upgrade, since sales representatives are required to verify the customer's identity with a picture ID, the Sales Associate can also swipe the DL in order to update customer information into the account.

The ability to swipe a driver's license versus manually entering the information is a convenience for both our business and the customer. We need to get certain information from the customer, particularly for a credit check. So, whether we swipe the driver's license, or manually enter information from the driver's license, a gathering of the information is required – it's just a matter of how long it will take and how accurate it will be. Manual entry takes longer and is more likely to be inaccurate. We only retain information from the driver's license that we need in order to maintain the account.

The ability to swipe a driver's license allows us to service our customers in the most efficient manner. Since we use the driver's license to verify ID and need to populate our system with information that is required to maintain a customer's account, we are able to streamline processes by scanning a driver's license rather than obtaining information manually. Impeding our ability to do this will negatively impact customers by causing longer wait times and increasing the risk of information being entered into the system incorrectly. For example, an incorrect billing address could result in a customer not receiving a bill. We only gather information from the driver's license scan that we need to maintain the account, so we are going to get the information regardless of whether or not the information is obtained from a driver's license swipe. But we need the ability to swipe the license for legitimate business purposes and to also verify the customer's identity to protect their account as well.

We thank Chairman McKelvey and the Committee for the opportunity to present our concerns with regard to S.B. 2419 SD2 HD1. As proposed this legislation would have unintended consequences that are adverse to our business operations, and we urge that the bill be *DEFEATED* or *AMENDED* to allow the scanning and retention of information from a driver's license to establish a contract and maintain an ongoing business relationship with our customer for legitimate business practices.

Thank You.