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KEALI'I S. LOPEZ  
DIRECTOR

PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

Tuesday, March 27, 2012  
2:00 p.m.

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

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,  
TO THE HONORABLE KARL RHOADS, 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 2, 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 seven (7) 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 identity 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 2 attempts to do so by creating seven (7) 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" 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 about giving 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.

It would take an unscrupulous employee or criminal a matter of seconds to download an individual's personal information stored on a computer. A business should purge such information immediately except in the limited exceptions created for consumer reporting agencies, financial institutions or debt collectors. H.D. 2 now provides in subsection (b) that no business can retain or store any information obtained through scanning permitted in (a), except for one of the five (5) exceptions. H.D. 2 further provides that no business shall store, sell or disseminate to a third party any

information obtained under the section for any purpose, including marketing, advertising, or promotional activities.

H.D. 2 also 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 by Rep. Fontaine about the need for such information by medical providers.

S.B. No. 2419, SD 2, HD 2 is an attempt to reconcile all of the competing interests affected by this bill while attempting to protect important privacy and security interests of the individual consumer.

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

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

March 23, 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: S.B. No. 2419 SD2 HD2, Relating to Personal Information

The City and County of Honolulu is in favor of S.B. No. 2419 SD2 HD2, which would prohibit the scanning and retention of personal information except for the purposes specified.

The provisions of SD2 HD2 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 HD2.

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 support of the intent of S.B. 2419, SD2, HD1, Relating to Personal Information

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

The ACLU of Hawaii writes in support of the intent of S.B. 2419, SD2, HD2, 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.

**Please delete sections (1) and (2) and add the requirement that “any information obtained by certain businesses from scanning the machine-readable zone of an individual's certificate of identification or driver's license shall be purged or deleted no later than five days after it is obtained”.**

Exceptions (1) and (2) are inappropriate, unnecessary and give businesses unqualified authority to scan the barcodes. Businesses concerned about fraud can refuse to serve the customer (as is the current practice) or seek the barcode information under an exception in (3)-(7). Further, deleting the storage requirement may open Hawaii consumers up to identity theft if appropriate safeguards are not in place.

With those amendments, we support the intent of S.B. 2419. Private businesses have recently 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.

American Civil Liberties Union of Hawaii  
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Hon. Rep. McKelvey, Chair, ERB Committee  
and Members Thereof  
March 21, 2012  
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- 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.

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

American Civil Liberties Union of Hawai'i  
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Representative Gilbert Keith-Agaran, Chair  
Representative Karl Rhoads, Vice Chair  
Committee on Judiciary  
State Capitol, Honolulu, Hawaii 96813

HEARING      Tuesday, March 27, 2012  
                  2:00 pm  
                  Conference Room 312

**RE:      SB2419, SD2, HD2, 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 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.

For the most part, House Draft 2 reflects the amendments as offered and supported by the stakeholders, with the exception of subsection (c). We respectfully request the following language in its stead:

**c) No business shall 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).**

We urge your consideration to further amend SB2419, SD2, HD2 to incorporate this provision. Thank you for the opportunity to testify

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII  
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**TO:** Representative Gilbert S.C. Keith-Agaran  
Chair, Committee on Judiciary  
Hawaii State Capitol, Room 302  
*Via Email: [JUDtestimony@Capitol.hawaii.gov](mailto:JUDtestimony@Capitol.hawaii.gov) and Hand Delivery*

**FROM:** Mihoko E. Ito

**DATE:** March 26, 2012

**RE:** **S.B. 2419, SD2, HD2 – Relating to Personal Information**  
**Hearing: Tuesday, March 27, 2012 at 2:00 p.m.**  
**Conference Room 325**

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

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, HD2, 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

March 26, 2012

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on what personal identifiable information can be used and how it can be used by certain entities.<sup>1</sup>

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 appreciates that the House Committee on Economic Revitalization and business incorporated the majority of the proposed language provided by the working group of stakeholders on this measure (which was previously presented in the Office of Consumer Protection's testimony). However, the resulting HD2 is missing the following critical substantive language that we would request be restored to this bill, at page 3 lines 20 to page 4 line 2:**

(c) No business shall ~~store~~, sell, or disseminate to a third party any information obtained under this section for any purpose, including marketing, advertising, or promotional activities, except as permitted in subsections (a)(3)-(7).

**CDIA supports the above amendments, which reflect the consensus of the working group, and respectfully requests that they be included in this measure.**

Thank you very much for the opportunity to submit testimony.

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<sup>1</sup> 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.



Dan Youmans  
President - Washington/Hawaii  
External Affairs

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March 27, 2012

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

Re: AMENDMENT REQUESTED  
*Senate Bill 2419 HD 2*  
*Hearing before the House Committee on Judiciary*  
*March 27, 2012, 2 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 Senate Bill 2419 HD2. While AT&T does not believe this bill is necessary, in its present form the bill will allow us to continue using swiping technology to protect consumers. However, the bill should be amended so that subsection c does not contradict subsection a (3-7). The amendment is explained below.

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.

To achieve consistency in the bill's language, AT&T urges the committee to add the phrase below which is in italics:

(c) No business shall store, sell, or disseminate to a third party any information obtained under this section for any purpose, including marketing, advertising, or promotional activities, *except as permitted in subsections a(3-7).*

Without this phrase, subsection c will contradict the earlier section. For example, a business would not be able to "disseminate" driver's license information for the purpose of a credit check.

Thank you for considering this amendment.

Respectfully Submitted,

Dan Youmans, AT&T



Representative Gilbert Keith-Agaran, Chair  
House Committee on Judiciary

March 27, 2012; 2:00 PM  
Hawaii State Capitol; Conference Room 325

**RE: SB 2419 SD2 HD2 – Relating to Personal Information – Requesting Amendment**

Chair Keith-Agaran, Vice Chair Rhoads 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 HD2. 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 2010<sup>1</sup>. Estimates of return fraud in Hawaii are over \$101 million annually and growing<sup>2</sup>.

The world of retail return practices has grown increasingly complex and sophisticated, as has the fraud that it is attempting to prevent. Return authorization systems 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.

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<sup>1</sup> Source: National Retail Federation 2011 Consumer Returns in the Retail Industry Report

<sup>2</sup> Source: National Retail Federation 2011 Consumer Returns in the Retail Industry Report



The current version of SB 2419 is the result of a collaborative effort with stakeholders and the Office of Consumer Protection, however one of the requested amendments was not addressed in the HD2. Therefore, **we are requesting the following amendment:**

**Replacing page 3 (lines 20 and 21) and page 4 (line 1 and 2) with the following:**

**(c) Any information obtained under this section may not be sold or otherwise disseminated to a third party for any purpose, including any marketing, advertising, or promotional activities, except as permitted in subsections (a)(3)-(7).**

Without this amendment, we can not support this measure. The bill, as currently drafted, would hinder our retailer customer's ability to use electronic return authorization systems.

Thank you for this opportunity to testify.

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