

LIQUOR COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



February 20, 2014

Representative Karl Rhoads, Chair  
Representative Sharon E. Har, Vice Chair  
Committee on Judiciary

MICHAEL S. YAMAGUCHI  
CHAIRMAN  
  
IRIS R. OKAWA  
VICE CHAIR  
  
WESLEY F. FONG  
COMMISSIONER  
  
JOSEPH V. O'DONNELL  
COMMISSIONER  
  
JOSEPH M. MAGALDI, JR.  
COMMISSIONER  
  
ANNA C. HIRAI  
ACTING ADMINISTRATOR

**Hearing:** Friday, February 21, 2014  
1:00 p.m.; Room 325

**Position:** Support HB2666, Relating to Personal Information

Dear Chair Rhoads, Vice Chair Har, and Members:

The Liquor Commission, City and County of Honolulu ("Commission"), supports House Bill 2666, Relating to Personal Information.

The proposed measure will help prevent the sale of liquor to minors by making permanent the changes made by Act 195, 2013 Session Laws of Hawaii ("Act 195"), to Section 487J-6(a), Hawaii Revised Statutes.

Based upon data obtained through the use of decoy operations in the City and County of Honolulu over ten-plus years, the Commission has found a persistent failure rate in the 20 percent range by licensees selling liquor to minors. This disappointing statistic persists even with the use of Hawaii driver's license and state identification cards using vertical formats and clear notation on the card indicating the date on which the holder will obtain the age of majority. Further, the proliferation of high quality fake identification cards which are readily obtainable on the internet and the use of skillfully altered identification cards has made visual inspection an unreliable method of detecting fake or altered cards.

Accordingly, businesses selling liquor, tobacco, or other age-restricted products should be allowed to scan the identification of all customers for the purpose of verifying age before completing the sale of said products. As Act 195 prohibits the storage, retention, or selling of any scanned data, the privacy rights of the individual are protected, while still permitting businesses to use a valuable tool to further their compliance with liquor laws and rules.

The Liquor Commission urges your support of House Bill 2666, Relating to Personal Information. Thank you for the opportunity to testify.

Respectfully submitted,

  
ANNA C. HIRAI  
Acting Administrator

ACH:

**Bernard P. Carvalho, Jr.**  
Mayor

**Nadine K. Nakamura**  
Managing Director



**Gerald T. Rapozo**  
Director

**DEPARTMENT OF LIQUOR CONTROL**  
**County of Kaua'i, State of Hawai'i**  
4444 Rice Street, Suite 120, Lihu'e, Hawai'i 96766  
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February 19, 2014

Representative Karl Rhoads, Chair  
Representative Sharon E. Har, Vice Chair  
Committee on Judiciary

**Hearing:** Friday, February 21; 2014  
1:00 p.m.; Room 325

**Position:** Support HB2666 Relating to Personal Information

Dear Chair Rhoads, Vice Chair Har and Members:

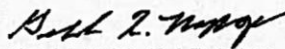
The Department of Liquor Control, County of Kauai, supports House Bill 2666 relating to Personal Information.

The proposed measure will continue to allow storekeepers who sell age-restricted products a greater ability to prevent the sale of these products to persons who have not reached the required age to purchase these products. .

The Department of Liquor Control, County of Kauai urges your support of House Bill 2666 relating to Personal Information.

Thank-you for the opportunity to testify on this matter.

Respectfully Submitted,

  
GERALD T. RAPOZO  
Director

ALAN M. ARAKAWA  
MAYOR



FRANKLYN L. SILVA  
DIRECTOR

TRACI FUJITA VILLAROSA  
DEPUTY DIRECTOR

DEPARTMENT OF LIQUOR CONTROL  
C O U N T Y O F M A U I

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February 20, 2014

Representative Karl Rhoads, Chair  
Representative Sharon E. Har, Vice Chair  
Committee on Judiciary

Hearing: Friday, February 21, 2014  
1:00 p.m.; Room 325

Position: Support HB2666

Dear Chair Rhoads, Vice Chair Har, and Members:

The purpose of this testimony is to support House Bill 2666. The bill repeals the July 31, 2014 sunset provision in Act 195, Session Laws of Hawaii 2013 and makes permanent the ability for businesses to scan the machine-readable zone of an individual's Hawaii identification card or driver's license to verify age when age-restricted goods or services are purchased.

The County of Maui, Department of Liquor Control supports this bill because it will continue to give liquor licensees another means of properly checking personal identification to ensure that liquor is not sold to minors.

For the purpose of determining whether someone is twenty-one years of age or older, licensees are responsible for the proper checking of personal identification. Documents acceptable as personal identification shall be limited to: (1) A valid federal or state identification card; or (2) A passport; or (3) A valid state or international driver's license. §08-101-61(c), Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui.

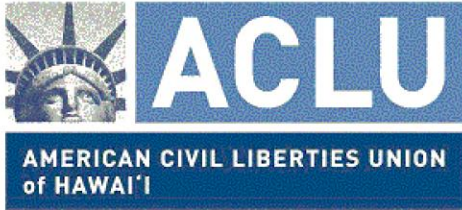
Passage of this bill will help County of Maui liquor licensees to comply with liquor rules and prevent sales of liquor to minors.

Respectfully submitted,

A handwritten signature in cursive script that reads "Franklyn L. Silva".

Franklyn L. Silva

Director



Committee: Committee on Judiciary  
Hearing Date/Time: Friday, February 21, 2014, 1:00 p.m.  
Place: Room 325  
Re: *Testimony of the ACLU of Hawaii in **opposition** to H.B. 2666, Relating to Personal Information*

Dear Chair Rhoads and Members of the Committee on Judiciary:

The ACLU of Hawaii writes in opposition to H.B. 2666, which seeks to make permanent the current exception to the law limiting when a private business may scan a driver's license barcode.

H.B. 2666 is inappropriate and unnecessary, and gives businesses unfettered access to government-issued identification barcodes for age-related transactions. Businesses concerned about fraud can refuse to serve the customer (as was the practice prior to last year's addition of an exception to HRS § 487J-6(a)) or seek the barcode information under the other exceptions allowed by law.

Scanning by private businesses 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. As more personal information is amassed in more databases, the likelihood increases that the information will be misused or stolen. Individuals cannot protect the accuracy or distribution of their personal information when it is held by others.

Session Laws of Hawaii 2012 Act 191, which restricts driver license scanning, already includes many exceptions to the limits on obtaining this personal information. H.B. 2666 seeks to make permanent another exception – namely, to allow any private business to swipe driver's license barcodes to verify age (regardless of the reasonableness of doing so). This would effectively allow any private business to scan the license of anyone who sought to buy an age-restricted purchase, including alcohol, Nicorette gum, mature video games, and compressed air and cold medicines, among others.

American Civil Liberties Union of Hawaii  
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Chair Rhoads and Members of the Committee on Judiciary  
February 21, 2014  
Page 2 of 2

Ensuring that private businesses do not sell age-restricted products to minors should not come at the expense of our privacy (and the very real risk of identity theft). The law as it existed before last year adequately balances those concerns, and the exception written into the law last year should be allowed to expire.

Sincerely,

Daniel Gluck  
Senior Staff Attorney  
ACLU of Hawaii

*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 45 years.*

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**Executive Officers:**  
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John Schilf, RSM Hawaii - Vice Chair  
Derek Kurisu, KTA Superstores - Treasurer  
Lisa DeCoito, Aloha Petroleum - Secretary  
Lauren Zirbel, Executive Director

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TO:  
HOUSE COMMITTEE ON JUDICIARY  
Rep. Karl Rhoads, Chair  
Rep. Sharon Har, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION  
Lauren Zirbel, Executive Director

DATE: February 21, 2014  
TIME: 1pm  
PLACE: Conference Room 325

RE: HB 2666

Position: Support

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers and distributors of food and beverage related products in the State of Hawaii.

HB 2666 will help prevent the sale of liquor to minors by deleting the requirement that a business have a reasonable doubt that a customer is less than 18 years old before being able to scan the customer's identification or driver's license to verify the customer's age.

Businesses selling liquor, cigarettes or other age-restricted products should be allowed to scan the identification of all customers for the purpose of verifying age. Requiring a business to have a "reasonable doubt" imposes a vague standard that will only hamper the efforts to prevent the sale of liquor and cigarettes to minors by preventing business from applying uniform standards to age verification. In addition, the 18-year-old threshold makes no sense when applied to the sale of liquor, which by law is restricted to 21 year olds and older.

This bill also maintains the necessary privacy protections. A business that scans a customer's identification card or driver license to verify age for the purchase of age-restricted products may not store or retain any data from the scan, nor sell such data to any third party. Thus, the scan is solely for the purpose of verifying the age of the customer and the validity of the ID card.

Please support the efforts by business to prevent the sale of liquor and cigarettes to minors by passing HB 2666. Thank you for the opportunity to testify.



**SEVEN-ELEVEN HAWAII, INC.**  
7-ELEVEN Stores

February 19, 2014

Honorable Kharl Rhoads, Chair  
Honorable Sharon E. Har, Vice-Chair  
Committee on Judiciary  
House of Representatives  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: Testimony in Support of House Bill No. 2666, relating to personal information

Dear Chair Rhoads, Vice-Chair Har and Committee Members:

Seven-Eleven Hawaii, Inc., respectfully submits this testimony in strong support of House Bill No. 2666, relating to personal information, which is being heard by your Committee on Judiciary on February 21, 2014 at 1:00 p.m.

The purpose of House Bill No. 2666 is make permanent the changes made by Act 195, 2013 Sessions Laws of Hawai'i ("Act 195"), to section 487J-6(a), Hawai'i Revised Statutes ("HRS").

Act 195 amended section 487J-6(a), HRS, to permit a business to scan the identification of a purchaser of age-restricted goods, such as cigarettes or alcohol, if the business has a reasonable doubt that the purchaser has reached the minimum age required for purchasing the age-restricted goods.

Prior to the amendment, section 487J-6(a), HRS, required that there be a reasonable doubt that the purchaser had reached 18 years of age or older.

Under Act 195, a business which scans a customer's identification card or driver license for the purpose of verifying age for the purchase of age-restricted products may *not* store or retain any data from the scan, nor sell such data to any third party. Thus, the scan is solely for the purpose of verifying the age of the customer.

The prior version of section 487J-6(a), HRS, was inappropriate on its face for the sale of alcoholic beverages, for which the required age is 21 years, because if there is a reasonable doubt that a customer is over 18 but under 21 years of age, the business would have been barred from scanning the customer's identification card or driver's license. Even in the case of sales of tobacco, FDA regulations require retailers to verify the age of purchasers 26 years and younger. *See* 21 Code of Federal Regulations § 1140.14.

Act 54, 2013 Sessions Laws of Hawai'i, relating to intoxicating liquor, lowered the state of mind requirement for illegal sales to minor from "knowingly" to "recklessly." The Senate Committee on Public Safety, Intergovernmental and Military Affairs' report on SB 442, SD 1 notes, in relevant part:

Honorable Kharl Rhoads, Chair  
Honorable Sharon E. Har, Vice-Chair  
Committee on Judiciary  
February 18, 2014  
Page 2

Your Committee finds that the consumption of liquor by minors continues to be a significant public health issue. The goal of this measure is to ensure that those selling, serving, delivering, or giving intoxicating liquor verify the date of birth of the person receiving the intoxicating liquor, resulting in increased compliance with liquor laws.

Stand. Com. Rep. No. 222 (underscoring added).

Act 195 complements Act 54 by providing businesses with effective tools to verify the age of purchasers. Scanning, as opposed to visible inspection by a clerk, of an identification or driver's license, is an effective method for distinguishing fake or bogus identification cards or driver's licenses. Fake identification cards are readily available and are used by minors to purchase alcohol, with some tragic results. The inability to scan would make it more likely that minors can successfully use fake identification cards and driver's licenses to purchase age restricted products.

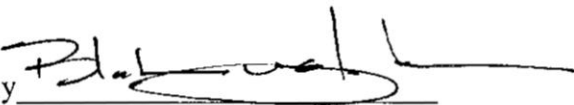
The annual cost of underage drinking in the State of Hawaii has been estimated by the Underage Drinking Enforcement Training Center to be over \$300 million in 2010. In addition to the monetary cost is incalculable pain and suffering. Making Act 195 permanent would help to combat underage consumption of alcohol and tobacco products, and reduce those costs, while protecting the privacy of those persons whose identifications are scanned by continuing the prohibition on collecting any data from such scanning.

We ask that the Legislature support efforts to prevent the sale of age restricted products, such as tobacco and alcoholic beverages to under-aged customers. We take this obligation very seriously and we hope that the Legislature will support the efforts of all businesses to rigorously enforce the law in this area.

Thank you for your consideration of our testimony.

Sincerely,

SEVEN-ELEVEN HAWAII, INC.

By 

Blake Yokotake  
Human Resources Manager





NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
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KEALI'I S. LOPEZ  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION  
TO THE HOUSE COMMITTEE ON JUDICIARY  
THE TWENTY-SEVENTH  
REGULAR SESSION OF 2014  
FEBRUARY 21, 2014  
1:00 PM

TESTIMONY IN OPPOSITION OF H.B. 2666, RELATING TO PERSONAL  
INFORMATION.

TO THE HONORABLE KARL RHOADS, CHAIR,  
AND TO THE HONORABLE SHARON E. HAR, VICE 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 on this measure, H. B. 2666, Relating to Personal Information. My name is Bruce B. Kim and I am the Executive Director of OCP. OCP opposes this bill as currently drafted.

H. B. 2666 would make permanent changes implemented by Act 195, Session Laws of Hawaii 2013 ("Act 195"), to Haw. Rev. Stat. § 487J-6, that would otherwise sunset this year on July 31, 2014.

Act 195 revised Haw. Rev. Stat. §487J-6(a) as follows:

(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: \*\*\*

(2) To verify the individual's age when providing age-restricted goods or services to the individual if [there is] the business has a reasonable doubt of the individual having reached [eighteen years of age or older;] the minimum age required for purchasing the age-restricted goods or services;

\*\*\* (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 Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and [Availability] Accountability Act of 1996."

While OCP supports the retention of the minimum age language and the conforming references to HIPAA, OCP opposes the permanent change to the reasonable doubt standard in Act 195. The sunset language in Act 195 was included primarily to provide the legislature with an opportunity to revisit the changes to the reasonable doubt standard set forth in §487J-6(a)(2), and OCP submits that, for the reasons set forth below, the statute will provide stronger protection of consumer personal information if the pre-2013 reasonable doubt standard is restored.

OCP's particular concern about this legislation is that it would allow businesses to continue the practice of scanning government issued identification with their point-of-sale ("POS") terminals. The POS terminals are often connected to a business's extended network, which is connected to the internet, and have frequently been the target of hacking and malware attacks in some of the largest data breaches in recent history. For example, the Target Corporation was recently breached by hackers who installed malware on Target's POS terminals. That malware "scraped", which is to say that it read temporary data stored in the POS terminal memory before it was deleted, customer's credit card numbers, PIN codes, and other vital information that could be

utilized for the purpose of identity theft. The Target breach exposed 121,000 Hawaii residents' information to cybercriminals, and tens of millions across the nation.

Whenever there is a data breach or hacking attack that affects Hawaii consumers, OCP is the state agency that the breached entity is required to inform of the breach. Since 2007, when OCP started tracking data breaches affecting Hawaii consumers, a minimum<sup>1</sup> of 228,250, or slightly more than 16% of, Hawaii consumers have been the victims of data breaches. Of that number, 68.2% of the impacted consumers were from data breaches to general businesses of the sort that strenuously advocated for Act 195, last year. 83.19% of data breaches are due to hackers or unauthorized access to protected data, which is the type of breach noted in the Target incident, above.

In 2005, before OCP started collecting data on this issue, Target, TJ Maxx, and 7-Eleven, Office Max, Dave & Busters, Barnes & Noble, and JC Penny, among others, were breached using techniques similar to the 2013 Target breach. Scanning consumers' government identification exposes them to risk of identity theft via scraping malware, and is unnecessary to prove the legitimacy of a government-issued identification or make a determination as to whether a person is of an age sufficient to purchase age-limited goods.

Due to improvements enacted by the Federal REAL ID Act it is possible to determine whether or not a government identification is real without subjecting

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<sup>1</sup> Due to the nature of data breach reporting, OCP does not always know how many Hawaii consumers are affected by a breach. The statistics represent, at best, a fraction of impacted consumers.

consumers to the risk of having their identification scanned into a business's POS terminals. In last year's testimony on Act 195, Dennis A. Kamimura, Licensing Administrator of the Division of Motor Vehicle, Licensing and Permits Administration, Department of Customer Services, City & County of Honolulu, testified as to the City & County of Honolulu's concerns about allowing businesses to scan the machine readable sections of government identification. If businesses and the liquor commissions are concerned about ensuring that government identifications used to purchase age-limited goods are real, this technology could be utilized to ensure that, provided that the technology is not plugged into a business's POS terminals or network, which would expose any data collected to hacking attacks.

This legislation comes at a very timely moment for OCP, given the collective wake-up call that is the Target breach, and presents the Legislature with an opportunity to act to protect the residents of Hawaii from identity theft and nonconsensual collection of their personal information.

OCP recommends amending this legislation to retain the technical amendments made by Act 195 ("minimum age" and HIPAA name fix), removing the insertion of "the business" from HRS 487J-6(a)(2), and restricting the allowable scanning devices to a device of the type demonstrated by Mr. Kamimura, with a condition that such a device shall not be connected to any POS terminal or corporate network of the business.

OCP would be happy to work with the committee on a redraft of this legislation that retains the best aspects of Act 195, and reaffirms the Legislature's commitment to

Testimony on H. B. 2666  
February 21, 2014  
Page 5

protecting Hawaii consumers from identity theft.

Thank you for the opportunity to submit testimony regarding H. B. 2666. I would be happy to answer any questions members of the committee may have.