



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 COMMITTEES ON CONSUMER PROTECTION & COMMERCE  
AND JUDICIARY

THE TWENTY-SEVENTH  
REGULAR SESSION OF 2014

FEBRUARY 10, 2014  
2:10 PM

TESTIMONY IN SUPPORT OF H. B. 2211, RELATING TO PAWNBROKERS AND  
SECONDHAND DEALERS.

TO THE HONORABLE ANGUS L. K. McKELVEY & KARL RHOADS, CHAIRS,  
AND TO THE HONORABLE DEREK S. K. KAWAKAMI & SHARON E. HAR, VICE  
CHAIRS,  
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs, Office of Consumer  
Protection ("OCP") appreciates the opportunity to appear today and testify in support of  
H. B. 2211, Relating to Pawnbrokers and Secondhand Dealers. My name is Bruce B.  
Kim and I am the Executive Director of OCP.

The intent of the proposed amendments to Hawaii Revised Statutes Chapter  
486M is to upgrade and modernize the current requirements for reporting articles  
received and to retain a record of those articles for a minimum of two years. The bill

also authorizes the chiefs of police of the respective counties to require the use of appropriate software for transmitting forms electronically to the respective departments for pawn transactions no later than the end of each business day.

OCP has no enforcement authority over Chapter 486M. However, OCP supports the intent of the legislation insofar as it upgrades and modernizes the current reporting system for pawn shop transactions by assuring timely transmission of pawn transactions to the county police departments. This would give local law enforcement agencies important information on possible transactions involving personal property stolen during the commission of a crime. This would greatly aid consumers in recovering valuable personal property lost as a result of a crime.

Thank you for allowing me to testify today. If members of the committees have any questions, I would be happy to answer them.

NEIL ABERCROMBIE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



FREDERICK D. PABLO  
DIRECTOR OF TAXATION

JOSHUA WISCH  
DEPUTY DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
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To: The Honorable Angus L.K. McKelvey, Chair  
and Members of the House Committee on Consumer Protection and Commerce

The Honorable Karl Rhoads, Chair  
and Members of the House Committee on Judiciary

Date: Monday, February 10, 2014  
Time: 2:10 p.m.  
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: H.B. No. 2211, Relating to Pawnbrokers and Secondhand Dealers

The Department of Taxation (Department) supports the intent of H.B. 2211 and provides the following comments.

H.B. 2211, in relevant part, amends the reporting requirements for pawnbrokers and second hand dealers. The Department appreciates the effort being made by the Honolulu Police Department to suppress trade in stolen property. The Department also appreciates the effort of the pawnbrokers' and secondhand dealers' industry in reporting on transactions to help suppress trade in stolen property.

Information is very important to any investigation, including an investigation into tax evasion or abuse. The Department supports this effort to increase data collection and reporting, because it could enhance the Department's tax compliance efforts. The Department requests that the Department be granted access to this data for tax compliance efforts.

Thank you for the opportunity to provide testimony.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE KARL RHOADS, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Twenty-Seventh State Legislature  
Regular Session of 2014  
State of Hawai'i**

February 10, 2014

**RE: H.B. 2211; RELATING TO PAWNBROKERS AND SECONDHAND DEALERS.**

Chair Rhoads, Vice-Chair Har, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following in support of H.B. 2211.

H.B. 2211 clarifies the county licensing laws for pawnbrokers and secondhand dealers, including recordkeeping, prohibited acts, exemptions, licensing sanctions, inspections. It also repeals requirements relating to retention of items and appropriates funds.

This bill requires pawnbrokers and secondhand dealers to report articles received and retain records of those articles received. This requirement will help eliminate the sale of stolen property and victims can be reunited with their valuable products.

For the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports H.B. 2211. Thank you for this opportunity to testify on this matter.





ALAN M. ARAKAWA  
MAYOR

OUR REFERENCE  
YOUR REFERENCE

# POLICE DEPARTMENT

## COUNTY OF MAUI

55 MAHALANI STREET  
WAILUKU, HAWAII 96793  
(808) 244-6400  
FAX (808) 244-6411



GARY A. YABUTA  
CHIEF OF POLICE

CLAYTON N.Y.W. TOM  
DEPUTY CHIEF OF POLICE

February 7, 2014

The Honorable Angus L.K. McKelvey, Chair  
And Members of the Committee on Consumer Protection & Commerce  
House of Representatives  
State Capitol  
Honolulu, HI 96813

The Honorable Karl Rhoads, Chair  
And Members of the Committee on Judiciary  
House of Representatives  
State Capitol  
Honolulu, HI 96813

RE: House Bill No. 2211 - Relating to Pawnbrokers and Secondhand Dealers

Dear Chairs McKelvey and Rhoads, and Members of the Committees:

The Maui Police Department supports H.B. No. 2211. The passage of this bill clarifies the county licensing laws for pawnbrokers and secondhand dealers, including recordkeeping, prohibited acts, exemptions, licensing sanctions, inspections. It repeals requirements relating to retention of items and it appropriates funds.

The passage of this bill will help to clarify the laws for the numerous pawnbrokers and secondhand dealers around the state. It will also ultimately assist police to recover and return stolen property to the victims of these property crimes.

The Maui Police Department asks that you support the passage of H.B. No. 2211.

Thank you for the opportunity to testify.

Sincerely,

*A.C.D. Matus*  
for GARY A. YABUTA  
Chief of Police

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
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KIRK W. CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

DAVE M. KAJIHIRO  
MARIE A. McCAULEY  
DEPUTY CHIEFS

OUR REFERENCE

KH--NTK

February 10, 2014

The Honorable Angus L. K. McKelvey, Chair  
and Members  
Committee on Consumer Protection  
and Commerce  
The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs McKelvey and Rhoads and Members:

Subject: House Bill No. 2211, Relating to Pawnbrokers and Secondhand Dealers

I am Richard C. Robinson, Major of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The HPD strongly supports House Bill No. 2211, Relating to Pawnbrokers and Secondhand Dealers, and has suggestions for amendments.

Currently, pawnbrokers and secondhand dealers in Honolulu are regulated by three different sections of the Hawaii Revised Statutes (HRS) and two sections of the Revised Ordinances of Honolulu (ROH).

The changes proposed in this bill would result in needed changes to the regulation of pawnbrokers and secondhand dealers in Hawaii. One of the key points of this bill is the requirement for pawnbrokers and secondhand dealers to utilize an automated pawn management system that would be designated by the Chief of Police.

The Honorable Angus L. K. McKelvey, Chair  
and Members  
The Honorable Karl Rhoades, Chair  
and Members  
Page 2  
February 10, 2014

There are currently 313 pawn shops and secondhand dealers on Oahu. On average, the HPD receives 12,000 handwritten transaction slips per month. All of these tickets have to be manually inputted into our records system. It is no longer possible or feasible for the HPD to keep up with the volume.

Every year, approximately \$10 million worth of jewelry and precious metals are stolen on Oahu. Less than five percent is recovered.

Communities that implemented an automated pawn management system saw a significant increase in the amount of recovered stolen property. Better regulation of pawnbrokers and secondhand dealers in Hawaii is long overdue.


The proposed changes for an amended House Draft 1 is attached and will provide greater clarity, ensure the 30-day holding period for sold items is retained, and provide consistency between the different chapters of the HRS that regulate pawnbrokers and secondhand dealers.

The Honolulu Police Department urges you to support House Bill No. 2211, with *the amendments* and the inclusion on page 20, Relating to Pawnbrokers and Secondhand Dealers.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
\_\_\_\_\_  
LOUIS M. KEALOHA  
Chief of Police

  
\_\_\_\_\_  
RICHARD C. ROBINSON, Major  
Criminal Investigation Division

Attachment

Proposed Amendments to House Bill No. 2211, Relating to Pawnbrokers and Secondhand Dealers

Page 3, lines 16 and 17: Falsify or [intentionally] knowingly fail to complete a transaction form;

The above revision will keep the state of mind consistent throughout the entire bill.

Page 4, lines 21 and 22: Make purchases [or sales] through any business associate not registered in compliance with this chapter.

Page 5, line 1: Applicability would be an amendment to the existing Section 486M-6, not a new section.

Page 11, line 11: Penalties would be an amendment to the existing section 486M-7 not a new section.

Page 11, line 11: Chapter or Chapter 445 shall be guilty of a misdemeanor.

This will provide clarity that both chapters are covered.

Page 17, line 15: into any pawn or purchase transaction, shall immediately complete

Adding the word "immediately" will ensure that the information is entered at the time of the transaction.

Page 19 line 15: remove the quotation mark after chief of police.

On page 20, Section 486M-4, Minimum retention of items, appears to have been inadvertently deleted, and no alternative language was introduced. This section is critical to the successful recovery of stolen property. Add in the alternate language of:

- (1) A dealer shall not sell, barter, exchange, alter, adulterate, use, or in any way dispose of any goods within 30 calendar days of the date of acquisition of the goods. Such holding periods are not applicable when the person known by the dealer to be the person from whom the goods were acquired desires to redeem, repurchase, or recover the goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.
- (2) A dealer must hold goods at the licensed location, or other secure location within the county, during the holding period.

- (3) A dealer must maintain actual physical possession of all goods throughout a transaction. A dealer shall not accept title or any other form of security in goods in lieu of actual physical possession.
- (4) Upon reasonable suspicion that goods held by a dealer are stolen, the police may recover the goods into evidence.
- (5) Section 9 on page 22 makes appropriations to the counties for expenses. An alternative to giving funding to the counties would be to require the vendors to pay a technology fee to the counties to cover the cost of the system the counties acquire. To make those changes, Chapter 445 would need to be amend as follows:

### Chapter 455, Part V, Pawnbrokers

**445-132 Fee.** The treasurer may grant licenses for the period of one year, to suitable persons, to carry on the business of pawnbroking upon payment of the sum of \$100 [,] and a technology fee of \$300 payable to the county to cover the cost of the electronic transaction software.

### Chapter 455, Part VII, Secondhand Dealers

**§445-171 Fee, conditions.** The treasurer may grant licenses to suitable persons to be dealers and traders in secondhand articles, and may ~~revoke such licenses for cause satisfactory to the treasurer~~ suspend licenses pursuant to Chapter 486M. The licensees shall pay to the treasurer an annual fee of \$10[,], and a technology fee of \$300 payable to the county to cover the cost of the electronic transaction software.

Lastly, sections of Chapter 455 relate to pawnbrokers and secondhand dealers. There are potential inconsistencies between those sections and this bill. The following amendments to Chapter 445 would resolve those issues.

### Chapter 455, Part V, Pawnbrokers

**445-136 Breach of condition; penalty.** Every licensed pawnbroker who fails to comply with any of the provisions of this part shall be fined not more than \$2,500 for each violation and shall ~~forfeit the pawnbroker's license~~ have their license suspended pursuant to Chapter 486M.

**445-134.17 Recordkeeping.** A copy of all pawn transactions shall be kept on the pawnshop premises and open to inspection by the proper authorities for a period of ~~one year~~ two years after the maturity date.

## Chapter 455 Part VII Secondhand Dealers

**§445-171 Fee, conditions.** The treasurer may grant licenses to suitable persons to be dealers and traders in secondhand articles, and may ~~revoke such licenses for cause satisfactory to the treasurer~~ suspend licenses pursuant to chapter 486M. The licensees shall pay to the treasurer an annual fee of \$10[, ] and a technology fee of \$300 payable to the county to cover the cost of the electronic transaction software.

Every license granted under this section shall designate the place where the business is carried on and shall continue for one year unless sooner revoked. ~~Every dealer shall keep a book in which shall be written a description of every article received, the name, residence, and a general description of the person from whom, and the time and hour when the article was received. The book, the place where the business is carried on, and the articles of property therein, may be examined at any time by the treasurer, the chief of police, or by any person presenting to such dealer a written authorization so to do from the treasurer or chief of police.~~

**445-172 Prohibitions; penalty.** Every person who engages in the business of buying or selling secondhand articles, or who deals therein, unless licensed therefor according to law, or after notice that the person's license has been revoked, or who, being licensed, neglects to keep the book and make the entries therein prescribed in ~~section 445-171~~ Chapter 486M, or who refuses to allow the inspections in the section prescribed, or who purchases or receives by way of exchange any article from any minor, knowing or having reason to believe that the person is a minor, shall be ~~fin~~ not more than \$100 guilty of a misdemeanor.

**TESTIMONY OF THE HAWAII POLICE DEPARTMENT**

**HOUSE BILL 2211**

**RELATING TO PAWNBROKERS AND SECONDHAND DEALERS**

BEFORE THE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
AND  
BEFORE THE COMMITTEE ON THE JUDICIARY

DATE : Monday, February 10, 2014

TIME : 2:10 P.M.

PLACE : Conference Room 325  
State Capitol  
415 South Beretania Street

PERSON TESTIFYING:

Acting Police Chief Paul K. Ferreira  
Hawaii Police Department  
County of Hawaii

(Written Testimony Only)



William P. Kenoi  
Mayor



Harry S. Kubojiri  
Police Chief

Paul K. Ferreira  
Deputy Police Chief

## County of Hawai`i

### POLICE DEPARTMENT

349 Kapi`olani Street • Hilo, Hawai`i 96720-3998  
(808) 935-3311 • Fax (808) 961-8865

February 7, 2014

Representative Angus L.K. McKelvey  
Chairman and Committee Members  
Committee on Consumer Protection and Commerce  
Representative Karl Rhoads  
Committee on Judiciary  
415 South Beretania Street, Room 325  
Honolulu, Hawai`i 96813

Dear Representatives McKelvey and Rhoads:

**Re: HOUSE BILL 2211 RELATING TO PAWNBROKERS AND SECONDHAND DEALERS**

The Hawai`i Police Department supports House Bill 2211 with its purpose being to clarify the County licensing laws for pawnbrokers and secondhand dealers, including recordkeeping, prohibited acts, exemptions, licensing sanctions and inspections.

We believe this legislation as written will serve to assist our community in response to the theft of personal property by ensuring a tracking system is in place for those stolen items which are "Pawned" or sold through legitimate secondhand dealers. Our department continues to see property crimes as a major problem for our community and believe passage of this legislation will aid in the faster identification and recovery of stolen property. This faster identification will hopefully serve as both a deterrent to those who may be directly involved in the thefts, as well as for those who may profit as sellers of stolen merchandise.

We also believe this legislation will have the additional benefit of protecting pawnbrokers and secondhand dealers from unwittingly selling stolen merchandise, and from also becoming victimized when stolen merchandise is unknowingly sold by them and they subsequently must re-pay customers from whom the stolen merchandise may be recovered by law enforcement agencies.

It is for these reasons, we urge this committee to approve this legislation.

Thank you for allowing the Hawai`i Police Department to provide comments relating to House Bill 2211.

Sincerely,

PAUL K. FERREIRA  
ACTING POLICE CHIEF

ST:nam



Hawaii Pawnbrokers Association  
c/o Hawaii Gold and Silver Company  
3426 Waialae Ave., Honolulu, HI 96816

February 9, 2014

The Honorable Angus L.K. McKelvey, Chair  
House Committee on Consumer Protection & Commerce  
The Honorable Karl Rhoads, Chair  
House Committee on Judiciary  
Hawaii State Capitol  
415 South Beretania Street, Conference Room 325  
Honolulu, Hawaii 96813

Hearing Date: Monday, February 10, 2014 at 2:10 pm

I will be present to personally deliver my testimony.

**Re: In Opposition to H.B. 2211: Relating to Pawnbrokers and  
Secondhand Dealers**

Dear House Committees on Consumer Protection & Commerce and  
Judiciary,

The Hawaii Pawnbrokers Association (HPA) was formed in 1992. The HPA represents pawnbrokers and secondhand dealers throughout the State of Hawaii. Many members of the HPA have been providing valuable services to Hawaii residents for over fifty (50) years.

The Hawaii Pawnbrokers Association is opposed to H.B. 2211, Relating to Pawnbrokers and Secondhand Dealers, because the bill, as written, is (i) vague and ambiguous, (ii) jeopardizes consumer privacy and personal information, and (iii) threatens the livelihood of pawnbrokers throughout the State of Hawaii. The HPA however, fully supports the intent of the bill, mandatory reporting, and the continued efforts of Hawaii law enforcement, but H.B. 2211 will adversely affect pawnbrokers and consumers as explained below.

**I. BACKGROUND**

Pawnbrokers are one of the highest regulated and scrutinized businesses in the United States and the State of Hawaii.

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*The Honorable Karl Rhoads*

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No other service industry has stricter regulations than pawnbrokers. Many pawnbrokers are sole proprietors or family run businesses. Pawnbrokers provide valuable services throughout the State of Hawaii, especially for those who experience a financial hardship and have an immediate or temporary need for cash.

H.B. 2211 is apparently based on the belief that "stolen property is being sold by pawnbrokers and secondhand dealers." In actuality, the incidence of claims of misappropriated property against items recovered in pawn stores is less than 1/10 of once percent of all items accepted by pawnbrokers nationwide. Many of those claims of ownership, however, are mistaken or never proven.

Additionally, many of the proposed sections of the Bill are already enacted in the law such as, the requirement to retain, submit and report all articles received to the Honolulu Police Department (HPD). Also, detailed personal information about each customer is documented and reported to the HPD. Articles are also retained for 30 - 60 days. Records are retained for one year. Essentially, H.B. 2211 fails to meet its intended purpose.

## **II. REASONS WHY H.B. 2211 SHOULD NOT BE APPROVED BY YOUR COMMITTEES.**

The proposed House Bill should be rejected for the following reasons:

1. The Bill inherently takes away the livelihood of many pawnbrokers and secondhand dealers by enforcing more stringent regulations and increasing business expenses and overhead costs.
2. Proposed section 486M is vague and ambiguous with respect to the phrase "appropriate software." If electronic reporting is mandated then there must be certainty in defining the parameters of "appropriate software." This section also gives the local chief of police unfettered

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discretion in choosing the software provider and/or criteria imbedded in the software.

3. The proposed legislation impinges upon Consumer Privacy and Protection. Sensitive personal data such as photographs, identification of physical traits or scars, height and weight, and other information is made available to any user of the electronic reporting system.
4. The proposed legislation is contrary to Article I, Section 6 of the Constitution of the State of Hawaii, "Right to Privacy," and is subject to challenge as unconstitutional.

**1. Negative Impact on Business**

Many pawnbrokers and secondhand dealers are "mom and pop" or family run businesses. Many of these business owners do not have computers in their stores and are not equipped with the electronic capability to comply with the demand of submission of records contemplated through the legislation. The implementation of this new bill will put many of these owners out of business who cannot afford to pay \$30,000 to \$50,000 for computer equipment and software. In addition, there will be added expenses of monthly licensing fees, and repair and maintenance fees.

The implementation of the new submission of records requirements imposes a needless cost on pawnbrokers. Many pawnbrokers are already self-reporting their customer transactions through an online database.

The proposed legislation will have a disparate impact on elderly pawnbrokers, who do not have computers or the technology to comply with the requirement for submission of records.

**2. Changes to Section 486M**

Section 486M, Submission of records, states that, "If the chief of police authorizes the use of appropriate software by secondhand dealers or pawnbrokers, transaction forms shall be electronically transmitted to the department."

This section creates two (2) main problems. First, the Term "appropriate software" is vague and ambiguous. There are no

*The Honorable Angus L.K. McKelvey*

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technical standards or criteria defining what is "appropriate." Under this proposed legislation, the software could be written to include onerous or burdensome information which pawnbrokers would have to comply with. The failure to comply results in a misdemeanor. Second, this provision gives unfettered discretion to the current chief of police to select the appropriate software company to handle and store these electronic records. If anyone or any company should hold or store these records containing personal information, it should be the State of Hawaii, not a mainland commercial company.

### **3. Impingement on Consumer Privacy and Protection**

The proposed legislation impinges on consumer privacy and personal information.

Electronic reporting of transactions involving customer's personal information is both (i) an undue burden on pawnbrokers and (ii) a major deterrent for customers of pawnshops. The personal information of customers can easily be manipulated and misused in the hands of a third-party vendor or company. Just the thought of having a customer's personal information stored for uncertain purposes and uses by a commercial company is enough to deter potential customers. The threat of "hackers" attacking and infiltrating the computer system containing customer information is a real threat. Identity theft is a serious ongoing problem in the United States.

Please see attached report from the National Pawnbrokers Association identifying the top concerns with electronic reporting of personal information of customers.

As outlined by the report, some of the problems associated with electronic reporting of customers' personal information include:

- The ability to obtain and search customers' pawn information with no warrants, probable cause, or any degree of specific wrongdoing on the customer's part;
- The use of demographic information from pawn transactions, such as age, gender, race, zip

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code, or the frequency of transactions with individual consumers, to profile customers;

- The co-mingling of pawn transaction data with law enforcement criminal databases, which affords accessibility from remote devices such as squad cars and laptop computers;
- The absence of meaningful limitations on the uses of pawn transaction data by law enforcement agencies or by third-party contractors they hire to assist with data collection, storage, and retrieval, or on the length of time that records may be maintained; and,
- The prospect that customers' pawn transaction histories will be reported by law enforcement agencies to potential employers or credit agencies thus resulting in the loss or inability to obtain jobs.

Additional concerns that pawnbrokers have with electronic transaction reports that include customers' personal information are:

- The jurisdiction in which data collected is stored (in-state, out-of-state or out of the country) and the respective privacy protections;
- The absence of protections for pawnbrokers (including indemnification, insurance, and a safe harbor from liability to individual customers) if a data security breach occurs while it is in the possession of a law enforcement agency or its third-party agent;
- The "taking" of or interference with proprietary business assets of pawnbrokers that consist of dollar amounts and terms of transactions, the type of property securing a loan transaction or purchase, and the names and contact information of every pawnbroker's customers, particularly in jurisdictions that employ third-party vendors to collect and store the data;
- Claims by at least one vendor that markets pawn transaction data collection and reporting services to law enforcement that the vendor - not the pawnbroker

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- from whom the data comes or the law enforcement agency that hired the vendor - becomes the "owner" of all data transferred to its custody and control. Thus, there may be no right for the pawnbroker or the law enforcement agency to retrieve the data if a change of vendors occurs or the vendor misuses the data; and,
- The failure of state or local ordinances to require that transaction data be purged by law enforcement agencies or their vendors in a manner complying with or comparable to the federal Fair Credit Reporting Act.

See Attached report from National Pawnbrokers Association entitled, "Top Concerns with Electronic Reporting of Customers Personal Information" dated June 2013.

Any laws requiring pawnbrokers to create digital or other photographs of their customers who engage in pawn transactions and/or transmission of those records to a government or third-party agency is over burdensome to both the pawnbroker and customer. It is a needless cost to the pawnbroker and it "criminalizes" legitimate customers by making them feel like criminals through photographing and reporting sensitive information. H.B. 2211 is overkill and will act as a deterrent to law-abiding citizens from them even stepping foot into the store.

No other class of consumer, financial, or commercial transactions is subject to comparable governmental requirements to transfer transaction details to third-party database vendors.

Please see attached report from National Pawnbrokers Association regarding use of photography on pawn customers and customer items. As outlined by the report, some of the problems associated with proposals to mandate photographs of consumers, their identification, or their property and to require such photographs to be included in suspicion-less transaction reporting are that such proposals:

- Impose needless costs on pawnbrokers and needless violation of their consumers' privacy, without

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enhancing the odds of recovering misappropriated property.

- Exceed Bureau of Alcohol, Tobacco, Firearms and Explosives (BAFTE) requirements and Federal Bureau of Investigation (FBI)/ National Instant Criminal Background Check System (NICS) background check requirements on transactions involving firearms, and, more significantly, enable the creation of a database that is in direct conflict with federal firearms laws.
- Subject pawn consumers to risks of job loss or the inability to advance due to the increased likelihood of their personally identifiable information being included in "criminal intelligence" or "law enforcement" databases.
- Lead to false claims by persons viewing property photographs who have no proof of ownership other than a sense that the item "looks just like mine," or to the mistaken recovery of an item actually belonging to another individual.
- Fail to provide sufficient information for items that have no serial numbers or are not unique in appearance. and, consequently, are indistinguishable from one another; state requirements to record serial numbers and distinguishing marks of property, the identity of pledgors or sellers, and the date and time of transactions are lower-cost and more effective means of identification.

See Attached report from National Pawnbrokers Association entitled, "Opposition to Laws Requiring Photographing of Pawn Consumers, their Tangible Personal Property, and the Inclusion of Such Photography in Electronic Pawn Transaction Reports" dated January 2014.

#### **4. Fundamental Right to Privacy Protected by the Constitution of the State of Hawaii**

The proposed legislation is contrary to Article I, Section 6 of the Constitution of the State of Hawaii, "Right to Privacy," and is unconstitutional and subject to attack in the courts.



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*The Honorable Karl Rhoads*  
*February 9, 2014*  
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Article I, Section 6 of the Constitution of the State of Hawaii, provides that,

The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

The pending proposed legislation completely ignores the constitutional protection. There is no compelling state interest and, even if one is demonstrated, H.B. 2211 takes no affirmative steps to protect a citizen's fundamental right to privacy. Indeed, H.B. 2211 needlessly exposes private citizens' sensitive personal information to distribution to third parties and government agencies without any protection whatsoever.

As aforementioned, the proposed bill requires a customer to provide a greater amount personal information than required under current law, which private information will then be transferred and stored by a third-party vendor. As such, the proposed bill not only fails to affirmatively protect consumers' right of privacy, but it is directly contrary to Article I, Section 6 of the Constitution of the State of Hawaii, and places consumers' personal and private information at a greater risk of being stolen or misused.

### **III. CONCLUSION**

Please reject H.B. 2211. We thank you for your consideration.

Very truly yours,

/S/ Mark G. Valencia

Mark G. Valencia, Esq.  
On behalf of the Hawaii  
Pawnbrokers Association

Encl.





National Pawnbrokers Association\*

## **Top Concerns with Electronic Reporting of Customers Personal Information**

**June 2013**

NPA members frequently ask for talking points on electronic reporting of pawn consumers' personal information to law enforcement that they can use in discussions with these agencies, elected officials, and their lawyers. This document mentions the concerns most often identified.

Electronic reporting of transactions when consumers' personal information is included allows:

1. The ability to obtain and search customers' pawn information with no warrants, probable cause, or any degree of specific wrongdoing on the customer's part;
2. The use of demographic information from pawn transactions, such as age, gender, race, zip code, or the frequency of transactions with individual consumers, to profile customers;
3. The co-mingling of pawn transaction data with law enforcement criminal databases, which affords accessibility from remote devices such as squad cars and laptop computers;
4. The absence of meaningful limitations on the uses of pawn transaction data by law enforcement agencies or by third-party contractors they hire to assist with data collection, storage, and retrieval, or on the length of time that records may be maintained; and,
5. The prospect that customers' pawn transaction histories will be reported by law enforcement agencies to potential employers or credit agencies thus resulting in the loss or inability to obtain jobs.

Additional concerns that pawnbrokers have with electronic transaction reports that include customers' personal information are:

1. The jurisdiction in which data collected is stored (in-state, out-of-state or out of the country) and the respective privacy protections;
2. The absence of protections for pawnbrokers (including indemnification, insurance, and a safe harbor from liability to individual customers) if a data security breach occurs while it is in the possession of a law enforcement agency or its third-party agent;
3. The "taking" of or interference with proprietary business assets of pawnbrokers that consist of dollar amounts and terms of transactions, the type of property securing a loan transaction or purchase, and the names and contact information of every pawnbroker's customers, particularly in jurisdictions that employ third-party vendors to collect and store the data;
4. Claims by at least one vendor that markets pawn transaction data collection and reporting services to law enforcement that the vendor – not the pawnbroker from whom the data comes or the law enforcement agency that hired the vendor – becomes the "owner" of all data transferred to its custody and control. Thus, there may be no right for the pawnbroker or the law enforcement agency to retrieve the data if a change of vendors occurs or the vendor misuses the data; and,
5. The failure of state or local ordinances to require that transaction data be purged by law enforcement agencies or their vendors in a manner complying with or comparable to the federal Fair Credit Reporting Act.

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National Pawnbrokers Association

## **Opposition to Laws Requiring Photographing of Pawn Consumers, their Tangible Personal Property, and the Inclusion of Such Photography in Electronic Pawn Transaction Reports**

**January 2014**

The NPA opposes laws that require pawnbrokers to create digital or other photographs of (a) their consumers who engage in pawn transactions, (b) their consumers' government issued identification, (c) any property securing pawn loans or (d) any property sold to pawnbrokers. The NPA opposes the transmission of any such photographs to law enforcement agencies or to their third-party contractors who provide transaction record storage and profiling services. Transaction reporting requirements violate consumers' federal financial privacy rights under Title V (Privacy) of the 1999 Gramm-Leach-Bliley Act for "non-public, personally identifiable information," infringe upon pawnbrokers' proprietary business records rights, and impose extra compliance expenses that exceed any likely public benefit.

Pawnbrokers' best business practices include special precautions to avoid entering into transactions involving suspicious property and individuals. The incidence of misappropriated property items recovered in pawn stores is less than 1/10 of one percent of all items accepted by pawnbrokers nationwide. Reports of transactions in which consumers repaid loans and redeemed their collateral, at the very least, should be expunged promptly because only true owners repay loans and redeem their property.

Laws requiring photography will enable the creation of vast, perpetual third-party profiling databases of everyday persons and their consumer credit or commercial transactions with state and locally licensed providers. Proposals to mandate photographs of consumers, their identification, or their property and to require such photographs to be included in suspicionless transaction reporting also will:

- Impose needless costs on pawnbrokers and needless violation of their consumers' privacy, without enhancing the odds of recovering misappropriated property.
- Exceed BATFE requirements and FBI/NICS background check requirements on transactions involving firearms, and, more significantly, enable the creation of a database that is in direct conflict with federal firearms laws.
- Subject pawn consumers to risks of job loss or the inability to advance due to the increased likelihood of their personally identifiable information being included in "criminal intelligence" or "law enforcement" databases.
- Lead to false claims by persons viewing property photographs who have no proof of ownership other than a sense that the item "looks just like mine," or to the mistaken recovery of an item actually belonging to another individual.
- Fail to provide sufficient information for items that have no serial numbers or are not unique in appearance. and, consequently, are indistinguishable from one another; state requirements to record serial numbers and distinguishing marks of property, the identity of pledgors or sellers, and the date and time of transactions are lower-cost and more effective means of identification.

No other class of consumer, financial, or commercial transactions is subject to comparable government dragnets or requirements to transfer transaction details to third-party database vendors. No other consumer group partaking of financial products or services transactions is required to submit to being photographed in order to participate in a presumptively lawful financial transaction with a licensed provider. No empirical justification exists for treating pawnbrokers and pawn consumers differently from others in second-hand goods transactions, including those with jewelers or antique stores.

Suspicionless reporting requirements of consumers' pawn transactions urged by law enforcement agencies reflect their outdated stereotypes and prejudices. Over the past decade, millions more middle-class consumers and small business owners have used pawn transactions to meet credit needs that commercial banks are unable to serve in many communities. We would like to believe that no responsible local or state elected official would vote in favor of unnecessarily burdensome and dangerous laws requiring photographs of consumers, their identification documents, or their property, or of laws directing suspicionless reporting of transaction records to law enforcement agencies or their third-party profiling database vendors.

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## **TESTIMONY OF ALISON POWERS**

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### **COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

Rep. Angus L.K. McKelvey, Chair  
Rep. Derek S.K. Kawakami, Vice Chair

### **HOUSE COMMITTEE ON JUDICIARY**

Representative Karl Rhoads, Chair  
Representative Sharon E. Har, Vice Chair

Monday, February 10, 2014  
2:10 p.m.

### **HB 2211**

Chair McKelvey, Chair Rhoads, Vice Chair Kawakami, Vice Chair Har and members of the Committees, my name is Alison Powers, Executive Director of the Hawaii Insurers Council, a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately one third of all property and casualty insurance premiums in the state.

This bill seeks to mandate an electronic reporting system for pawnbrokers and second-hand dealers in order to more easily track stolen items. Hawaii Insurers Council supports the intent of this bill. The system of tracking items at pawn shops and second-hand dealers in Hawaii is a manual paper system and does not provide for timely recovery of stolen items and to the extent that this measure would create an efficient process and perhaps increase recovery of stolen items, we support it.

Thank you for the opportunity to testify.

**Comments of the Entertainment Merchants Association  
on House Bill 2211**

**February 10, 2014**

The Entertainment Merchants Association (EMA), the national trade association for the retailers of Blu-ray Discs, DVDs, and video games, has a concern about proposed House Bill 2211, which would impose new recordkeeping and reporting requirements on the dealers of secondhand articles.

Many Blu-ray Discs, DVD, and video game retailers engage in “buy/sell/trade” of used Blu-ray Discs, DVDs, and video games. This market allows consumers to dispose of titles they no longer wish to own and use the proceeds to buy new titles, and also permits persons who cannot afford to buy new Blu-ray Discs, DVDs, and video games to purchase used goods at a discount.

EMA retailers understand the motivation for regulation of the secondhand articles trade and have no desire to facilitate the selling of stolen goods. We are concerned, however, that proposed section 486M-2(b)(4) of HB 2211 would require that retailers photograph the secondhand goods purchased.

To the extent that the proposed law would apply to purchases of used Blu-ray Discs, DVDs, and video games, EMA opposes the photographing of secondhand goods.

While the photographing of secondhand goods purchased may be reasonable when applied to individually identifiable items that can be easily traced by their physical characteristics (and we take no position on that application), it is unduly burdensome when applied to fungible items such as Blu-ray Discs, DVDs, and video games. The value to law enforcement of photographs of each secondhand Blu-ray Disc, DVD, and video game purchased by a retailer is questionable, as each copy of a title is identical to all others.

We also note that the photographing requirement would require retailers to purchase and maintain specialized equipment and storage media to meet the requirement. For a retailer that does not specialize in secondhand goods, these costs may make secondhand goods dealing uneconomical.

We encourage the Committee to ensure that photographing of secondhand Blu-ray Discs, DVDs, and video games purchased by a retailer is not required.

EMA would also like to express its support for proposed section 486M-\_\_(14) [Applicability], which would create special rules for certain video and video game retailers that engage in buy/sell/trade.

Thank you for your attention to our concerns.

Anthony L. Ranken  
Attorney at Law  
222 N. Church St.  
Wailuku, Hawaii 96793  
tel.: (808) 244-7011

February 9, 2014

**Testimony of Anthony L. Ranken, attorney for Kamaaina Loan**  
**Regarding: House Bill No. 2211, Relating to Pawnbrokers and Secondhand Dealers**

Dear Chair and Members of the CPC and Judiciary Committees:

I am submitting this testimony on behalf of my client Kamaaina Loan, a family-owned pawn shop and secondhand goods store in Maui, Hawaii. Richard Dan, one of the owners and the manager of the business, will also be submitting written testimony individually, and testifying orally at the hearing.

While we support electronic reporting of pawn and secondhand goods transactions, we find that H.B. 2211 is deeply flawed in its implementation of that goal. Moreover it is unnecessary, as electronic reporting is already provided for under current law and has been used by the Maui Police Department for the last 18 years.

Many of the changes proposed by H.B. 2211 would do more harm than good for both the customers of pawn shops and the victims of theft.

**THE STATED PURPOSES OF THE BILL WOULD NOT BE SERVED BY ITS  
PASSAGE**

The bill claims “stolen property is being sold by pawnbrokers and secondhand dealers,” without any evidence that this is a special problem, and it fails to note that, when this does happen, the thief has to leave his name, address, driver’s license and thumbprint (and usually a surveillance video), which ought to make police apprehension the easiest of all collars. In a sense, legislators should hope that thieves DO try to sell to pawn shops, because their chance of being caught is better than at any other place. If the intent is to either catch criminals or recover property, the proposed bill misses the mark by a mile by exempting all the places where stolen property is fenced, such as garage sales, flea markets, or any other “conglomerate” of sellers; or by using the Internet. All these places are either unregulated, or if minimally regulated, virtually uninspected. The current pawn reporting law works to deter thieves from resorting to pawn shops, as demonstrated

by the small number of stolen items found, despite the free access and complete records. The revisions amount to directing thieves to places where they can operate without fear.

The bill states that its purpose is “to create a requirement for pawnbrokers and secondhand dealers to report articles received and retain a record of those articles received.” Yet those requirements are already in full force under existing law, specifically HRS chapters 445V and 486M.

The bill claims confidential information would be “protected and secured” by using electronic reporting. This is a dubious, even unlikely claim in the era of internet hacking, especially when the data would not be going directly to the police but rather through a third party. Moreover it fixes a “problem” that does not exist since pawn shops have been required to report for years without – so far as anybody knows – any leakage of confidential information. The pre-selected software vendor, BWI, is a private business. Even if they sign an agreement that they will not sell or otherwise divulge the information furnished to them, there is no guarantee that such an agreement would be complied with. For example, what if they go out of business or sell the business and its assets?

Finally, the bill states that it “will not ‘criminalize’ customers of pawnbrokers and secondhand dealers,” but in fact that is just what it would do. Imagine how a pawn customer would feel if upon trying to pawn their item they have to give not only their thumbprint but their height and weight, and then stand there at the counter while the pawn shop clerk examines them visually and notes on the form all of their visible tattoos. This is exactly what would be required by H.B. 2211. People are not proud of having to sell or pawn their possessions, and this legislature certainly doesn't want to humiliate them further.

## **THE BILL WOULD RUN AFOUL OF FEDERAL FINANCIAL PRIVACY LAWS**

Although it is not mentioned anywhere in the proposed bill, the Honolulu Police Department does not intend to collect data from pawnbrokers directly but rather plans to have its pawn reporting system implemented and managed using both the software and the administrative operations of an outside vendor. This vendor has already been chosen by HPD, which in doing so has circumvented the normal procurement process – incorrectly in our view. Thus H.B. 2211 would, in effect, require Honolulu pawnbrokers to disclose, to the Canadian-owned BWI corporation, financial information about pawn transactions that is confidential and personal information that is entrusted to pawnbrokers by their customers. The



problem is that for a pawnbroker to transmit this information to BWI would run afoul of Federal privacy laws, notably the Gramm Leach Bliley Act of 1999 (GLBA). Title V of the GLBA makes it unlawful for any financial institution to disclose “nonpublic personal information” to a “nonaffiliated third party” unless the consumer is first given notice and an opportunity to opt out. 15 U.S.C § 6802 (b). Pawnbrokers are financial institutions within the meaning of the law, because they are in the business of extending credit and loans and are significantly engaged in financial activity. See 15 U.S.C. § 6802 (b); 16 C.F.R. 313.3 (k)(2).

In a nutshell the proposed legislation requires pawnbrokers to disclose to a foreign corporation information collected from U.S. citizens during financial transactions. This would be inconsistent with both the letter and the policy of the federal law (GLBA), which recognizes that “each financial institution has an affirmative and continuing obligation to respect the privacy of its customers.” §6801.

Moreover, the proposed legislation (H.B. 2211) does not contain any provisions to restrict the dissemination of such information by the third parties, or to ensure that the information is protected from disclosure. The mailing list of pawn customers, possibly even including information about their transactions, could be sold for profit by the company administering the pawn database.

As a state law inconsistent with federal law, H.B. 2211 would be preempted by the GLBA and will be subject to court challenge and unenforceability.

Moreover, the required reporting of transactions, no matter how small, is one of several ways in which the bill would criminalize pawn customers. By contrast, under federal law the reporting of cash financial transactions is not required until the amount goes over the threshold of \$10,000. That threshold reporting standard aligns with at least reasonable suspicion. By contrast, the electronic reporting requirement created by this bill would amount to a dragnet.

## **THERE IS NO REASON TO CHANGE THE PROVISIONS OF THE CURRENT LAW REGARDING THE HOLDING PERIOD FOR PAWNS OR SECONDHAND GOODS**

Under current law, secondhand goods must be held unaltered by the dealer for 30 days before they can be sold, and pawned property must be held for 60 days – 30 for the original pawn period and 30 more after the item is forfeited to the dealer. But current law allows those periods to be reduced by 15 days if the dealer reports transactions to the police electronically. This makes sense because it not only

provides the dealer an incentive to report electronically but it also speeds up the police department's ability to match stolen goods with the reported transactions.

The current law also reduces the holding period by 15 days for counties with a population under 300,000. There is good reason for that – on Maui there are only about one-tenth the number of pawn shops as on Oahu, so that makes the job of the police easier and they don't need as long a holding period. It is strange that a provision like that, which was the product of a reasoned effort by a prior legislature, would just be stricken from the law without explanation.

H.B. 2211 would eliminate both of the options for 15-day reductions in the holding period, and impose instead an across-the-board 30-day hold period. This would be a mistake. A longer holding period increases costs to the dealer, which means they will offer less money to the consumer. The proponents of this bill have not made any showing that a longer holding period would have countervailing benefits – i.e., that it would help combat crime.

### **THE REQUIREMENT TO PHOTOGRAPH ALL GOODS PURCHASED OR PAWNED IS UNNECESSARILY BROAD AND REQUIRES ADDED PROTECTIONS**

The requirement that the pawnbroker or dealer take a photograph of all goods at the time of each pawn or purchase is unnecessary. If the police are investigating a theft and they suspect that the stolen item may be one that is described in the dealer's transaction report, then a photograph of the goods can be requested at that time. (At this point the goods are securely in the hands of the pawnbroker or secondhand dealer and thus available to be viewed or photographed, by either the dealer or the police.)

Nevertheless, the requirement to photograph goods, even at the time of the transaction, is not something we have any firm objection to, provided that certain protections are provided for pawnbrokers and their customers. First, the photograph should stay in Hawaii and not be disseminated to a third party over the internet. Second, no photographs should be published in any public database online, because the uniqueness of many items would enable people to identify who had pawned their goods. And third, an equipment malfunction or the inadvertent failure of a pawnbroker or a clerk in a secondhand goods store to obtain a photograph should not subject the employee to license suspension or criminal penalties, as this law would do.



## **THIS BILL IS BASED ON THE INAPPROPRIATE PRE-SELECTION OF A PRIVATE COMPANY TO ADMINISTER THE PAWN REPORTING PROGRAM**

The Honolulu Police Department (which is promoting this bill) has already selected its software vendor and administrator of the electronic reporting scheme, namely the BWI corporation of Canada.

If some mandatory scheme – as opposed to a mandatory requirement – for reporting is to be imposed, it must be statewide. Businesses – especially pawn businesses that do thousands of transactions for a few dollars each – cannot bear the cost of a system in which each county imposes different requirements.

If a scheme is imposed, it cannot start by greasing the skids for a favored vendor even before the Legislature or any county considers, much less enacts a statute. Yet the HPD has already chosen its favored vendor. There has been no evaluation of competing systems, no public assessment, no competitive bidding. If such a scheme is contemplated then the state must publish an RFP that is free, open and not secretly tailored to a particular vendor.

If electronic reporting is to be mandatory, then let the State develop a unified statewide pawn and second hand dealer database determined by a board of stakeholders.

Alternatively, this bill should provide that the police chief must create a list of appropriate software programs, provided that there must be at least one option on the list which will be made available at no cost to the dealer for purchase, use, or licensing, and provided further that the list shall include any software currently in use or accepted by any police department in Hawaii.

There is no need for the data to be received and managed by a company outside of government and outside the State of Hawaii. Under this bill, the police would have the power to dictate the “design and format” of the transaction form which must be filled out for each transaction. The form will contain the various fields of information that the police wish to have reported to them. All that needs to happen is for a dealer to give the data to the police on an Excel spreadsheet with those exact fields. Such a spreadsheet can easily be imported into the police department’s database.

How much would the pre-selected third-party vendor (the BWI corporation) charge pawnbrokers and secondhand dealers for the use or licensing of their software?

There appears to be no requirement that the police departments make it available to the shop owners, therefore it looks like the shop owners would have to purchase it. They would be at the mercy of BWI, which would probably charge an annual fee for a subscription in addition to an upfront cost. Again, this is a charge that would end up being passed along to consumers. That in turn would encourage customers to go elsewhere (to the unregulated), and might also be experienced as a direct and significant blow to the finances of smaller pawnbrokers.

At a minimum, an amendment is needed to H.B. 2211: the law must state, first, that any specialized software which the police require to be used will be provided free of charge to the pawnbroker or dealer, and second, that they shall not be obligated to report electronically unless the County requiring the electronic report executes an indemnification agreement with the pawnbroker or dealer so as to shield him or her from any liability should a customer's personal or financial information fall into the wrong hands.

## **ELECTRONIC REPORTING RAISES A HOST OF PRIVACY CONCERNS**

Electronic reporting of transactions when consumers' personal information is included allows:

1. The ability to obtain and search customers' pawn information with no warrants, probable cause, or any degree of specific wrongdoing on the customer's part;
2. The use of demographic information from pawn transactions, such as age, gender, race, zip code, or the frequency of transactions with individual consumers, to profile customers;
3. The co-mingling of pawn transaction data with law enforcement criminal databases, which affords accessibility from remote devices such as squad cars and laptop computers;
4. The absence of meaningful limitations on the uses of pawn transaction data by law enforcement agencies or by third-party contractors they hire to assist with data collection, storage, and retrieval, or on the length of time that records may be maintained; and,
5. The prospect that customers' pawn transaction histories will be reported by law enforcement agencies to potential employers or credit agencies thus resulting in the loss or inability to obtain jobs.

Additional concerns that pawnbrokers have with electronic transaction reports that include customers' personal information are:

1. The jurisdiction in which data collected is stored (in-state, out-of-state or out of the country) and the respective privacy protections;

2. The absence of protections for pawnbrokers (including indemnification, insurance, and a safe harbor from liability to individual customers) if a data security breach occurs while it is in the possession of a law enforcement agency or its third-party agent;
3. The “taking” of or interference with proprietary business assets of pawnbrokers that consist of dollar amounts and terms of transactions, the type of property securing a loan transaction or purchase, and the names and contact information of every pawnbroker’s customers, particularly in jurisdictions that employ third-party vendors to collect and store the data;
4. Claims by at least one vendor that markets pawn transaction data collection and reporting services to law enforcement that the vendor – not the pawnbroker from whom the data comes or the law enforcement agency that hired the vendor – becomes the “owner” of all data transferred to its custody and control. Thus, there may be no right for the pawnbroker or the law enforcement agency to retrieve the data if a change of vendors occurs or the vendor misuses the data; and,
5. The failure of state or local ordinances to require that transaction data be purged by law enforcement agencies or their vendors in a manner complying with or comparable to the federal Fair Credit Reporting Act.

### **A FINANCIAL APPROPRIATION IS NOT NECESSARY**

H.B. 2211 provides for a legislative appropriation to fund the alleged cost of the law and the corresponding increase in regulation of pawnbrokers and secondhand dealers. No evidence has been presented why increased pawn regulation would be a priority for the expenditure of the tax dollars of the people of Hawaii. And it is not at all clear why the general fund has to be raided for this scheme, when electronic reporting is actually designed to save time for the police department and thus ought to cost less, not more, than the present system of receiving reports. Police departments ought to be easily able to fund the allegedly more effective system out of current budgets.

### **THE PENALTIES PROVIDED BY THE BILL ARE DRACONIAN, INTERNALLY INCONSISTENT, AND DEPRIVE SHOP OWNERS OF DUE PROCESS**

The bill adds several new requirements – more hoops for the pawnbroker or secondhand dealer to jump through with every transaction. The legislature should keep in mind that under this law any knowing violation is a misdemeanor offense and even unknowing violations can lead to a temporary closing of a pawn shop. So every time that a new requirement is added it increases the chances that a secondhand dealer or pawnbroker, through mere inadvertence (a malfunctioning

camera or a lost receipt for a year-old transaction), will face the loss of her business or a criminal accusation.

There are some glaring inconsistencies and ambiguities regarding the penalty provisions of H.B. 2211. Page 9 of the bill (subparagraph (e)) says that the treasurer may suspend or revoke a license for any violation of chapter 486M or chapter 445, but the very next section instead provides a specific schedule of penalties for violations, which does not leave the treasurer with any discretion.

Moreover there is no mention of how the treasurer would make the determination of a violation, or whether it is reviewable. If it is made without full administrative protections and/or a judicial finding of a violation (which appears to be the case since criminal penalties for violation are in a completely separate section), then the deprivation of a pawn shop's ability to do business would violate the constitutional guarantee of due process.

As a penalty for non-criminal (even unwitting) violations of the many new requirements, the Act provides (on pages 9-10) that the pawnbroker's license be suspended for 1 to 14 days. If a pawn shop is unable to conduct new business and thus closes its doors during the period of suspension, customers with pawns will not be able to redeem them. (This is one of many areas in which it is evident that this bill has not benefitted from the input of those in the pawnbroker business. That failure to consult with the people who know the business is unfortunate, and it should be corrected before the legislature contemplates any action in this realm.)

The penalties, including license suspension for up to 14 days based on a clerical mistake or a misfiled document, are excessive. For non-criminal violations, the pawnbroker or secondhand goods dealer should be given the option of a fine.

**MANY OTHER IMPROVEMENTS ARE NEEDED IN THIS BILL WHICH CAN BEST BE WORKED OUT IN DISCUSSIONS BETWEEN STAKEHOLDERS INCLUDING THOSE INVOLVED IN AND KNOWLEDGEABLE OF THE TRADE**

There are many other amendments that should be made to H.B. 2211 before it is advanced toward passage. We believe these matters can be worked out in the discussions which should take place between members of the committee of stakeholders. A partial list of examples would include:

1. A complete and accurate description of all articles is a practical impossibility in the case of lots of small pieces of precious metals, so an exception would be desirable.
2. Requiring a listing of the amount paid for each item is unrealistic when pawnshops offer a batch price for a collection of items. Think of a stamp collection; its value as a collection may be higher or lower than its breakup value, but in any case, it is nearly impossible to assign a price to each item in it as received. A complete and accurate description of all articles is a practical impossibility in the case of lots of small pieces of precious metals, so an exception would be desirable. Similarly, it would be ruinously costly for a business operator to estimate the fineness and weights of metal or jewels in intact jewelry pieces; or even to assert that a stone is, for example, a natural ruby or diamond. Without costly testing, such assertions are speculative. For now, the risk of making a wrong estimation is wholly on the business if it buys a coin that, on closer inspection, turns out counterfeit. It serves no very helpful purpose to report speculative estimations to police officers who, on average, will have less skill in spotting fakes or misrepresentations than an experienced broker – and even brokers are fooled from time to time. It would be better to get away altogether from Mainland-based algorithms and adopt reporting requirements that are attuned to local practices and do not shame customers or require pawnbrokers to act like TSA screeners.
3. As the bill would require pawnbrokers to retain original records for a longer period, it should give them the option of turning over those records to police custody rather than themselves being burdened with holding them for so long.
4. The many exemptions on pages 5 through 8 of the bill are too broad and would undermine the goal of closing the avenues for fencing of stolen property. For example, garage sales can be held at the same location up to twenty weekends (40 days) a year, without any limitations on whether they can buy property as well as sell it. This appears to be an open invitation for a fencing operation.
5. An effective date of July 1, 2014, is unreasonable, especially inasmuch as each county is being required to create its own pawn transaction form (page 17 of proposed bill). The start date should be pushed well into the future, considering as well as the likelihood of legal and constitutional challenges.

**WGM INC. dba WAIPAHU HAWAII PAWN**  
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**TRANSMITTED VIA FAX 808-586-8437**  
**TOTAL NO. OF PAGES 02**  
February 9, 2014

Hawaii State Legislature  
House of Representatives  
**Attn: Committee on Consumer Protection & Commerce**  
**Committee on Judiciary**  
Hawaii State Capitol  
Honolulu, Hawaii 96813

**RE: "A Bill for An Act" – H.B. NO. 2211 – Concerns & Suggestions**

Dear Representatives:

I wish to submit the following as written testimony in regard to the proposed House Bill no. 2211:

1. **SECTION 1 –**

- (1) "The legislature finds that stolen property is being sold by pawnbrokers and secondhand dealers" should be eliminated. The statement implies that pawnbrokers and secondhand dealers knowingly accept and/or sell stolen property, which is inflammatory and slanderous. The legislature and the counties have never produced any quantitative evidence to support making a statement to this effect.
- (2) "The legislature also finds that it is difficult to identify stolen property that is sold by pawnbrokers or secondhand dealers" is incorrect. Hawaii Revised Statute sections 445-134.11, 486M-1 (4) and 486M-2 address the information required to be recorded with respect to the property. Note--The Hawaii Revised Statute nor the counties appear to have set forth any requirement for the claimant. The claimant should also be held to the same standard and be required to produce documentation to support ownership of said property as required in Hawaii Revised Statute 445 and 486-M.
- (3) "Moreover, confidential information required by this Act will be protected and secured if electronic transmission is chosen as the preferred method of reporting". The statement should include written and electronic transmission.



Hawaii State Legislature  
House of Representatives

**Attn: Committee on Consumer Protection & Commerce  
Committee on Judiciary**

**RE: "A Bill for An Act" – H.B. NO. 2211 – Concerns & Suggestions**

February 9, 2014

Page 2 of 2

**2. SECTION 2 -**

- (1) **"Submission of records", Paragraph (a)** –The option of electronically transmitting the transaction forms is currently available via Oregon Police Department (as per HPD), but is not always available ("system busy"). If daily submission is required, then the system should also be capable of accepting the transmission in a timely manner.
- (2) **"Submission of records", Paragraph (b)** - Transaction forms can currently be submitted by way of facsimile transmission or by physically dropping off at the designated HPD substation, **and** should be included in this provision.
- (3) **"Submission of records", Paragraph (c)** – Should be changed to read, "the dealer shall deliver this form to the law enforcement agency on the **next business day** following the request".
- (4) **"Submission of records", Paragraph (d)** - The retention of the electronic image should be subject to a stated period of time; **two years** following the date of the transaction.
- (5) **"License Required", Paragraph (b)** – Pawnbrokers and secondhand dealers are currently licensed by the counties. Is it the intent of this section to eliminate the fees paid to the county and/or to duplicate the licensing requirement?

**3. SECTION 3 - Hawaii Revised Statute 486M-2, "Record of Transactions" (7),** should be amended to require photograph, only. The requirement of paragraph (9) in addition to the photograph should be sufficient identification. Further, it is not our responsibility to determine the gender of an individual.

**4. SECTION 9 –** Should be removed in its entirety. At this time, there is no apparent increase in the duties imposed upon the counties with regard to the licensing of pawnbrokers and secondhand dealers. This proposed legislation appears to broaden the definitions as set forth in Hawaii Revised Statutes 486M and 445, but did **not** increase the duties of the counties. The pawnbrokers have been submitting the copies of the transaction forms for a number of years, therefore, the counties should have exhibited fiscal responsibility and budgeted accordingly.

I respectfully request your consideration of my concerns and suggestions.

Sincerely,

*Robyn L. Akahoshi*

Robyn L. Akahoshi  
President

To the Committee:

My name is Jimi Gwinn and I live in Kihei. I have been a pawnbroker on Maui for nearly 20 years and am the pawn shop manager at Kamaaina Loan. Every good and bad thing that can happen at a pawn counter, I have experienced.

Let me try to bring home to you the real consequences of even a small increase in our costs that the bill HB 2211 would cause. This is a made-up example but things like it happen in reality every day. Suppose you are Joe Smith, and your truck is in the shop. You need \$300 to get it back and go to work.

You don't have \$300, because you haven't been able to work while your truck was being repaired. Your last resource is your surfboard, and you bring it to me. It's to Kamaaina Loan's advantage to get you to \$300, but not if we have to take an unacceptable risk to capital. Maybe under the current law we can offer Joe \$300, but maybe under HB 2211, if it passes, the most we can do is \$290.

\$290 is as good as nothing for Joe, because he doesn't get his truck back until he gets \$300, and if he doesn't get the truck, he doesn't go to work and he falls even further into the hole.

For some of our customers – not all, but the ones in the most difficult pinches – a pawn loan really is a game of inches.

Now, the sponsors of HB 2211 will say, but what about the wider public's interest in recovering stolen property?

First, legislation is not necessary to have electronic reporting. At Kamaaina Loan, we have reported our transactions electronically for almost 10 years. Does it work to assist in recoveries? Yes, it does.

But not all that often, because of all the places where a thief can unload his loot, pawn shops are the only ones where he has to leave his name, address, Hawaii driver's license with photo and thumbprint. It is safer for him to go to an unregulated venue, like a swap meet or Craigslist, where he is completely anonymous.

And face it, for an island state, for the most experienced thieves and the most valuable loot, the game is to move the goods to another island. That is why if you are going to change the law, the change should be in the direction of a statewide, uniform, simple and reliable electronic reporting method. Like the one Kamaaina Loan already uses.

Since we already are reporting electronically, the Neighbor Island hold period of 15 days for buys and 60 days for pawns is adequate for police to make inquiries and recoveries. Longer hold periods would raise



costs and have the same effect on the Joe Smiths of Maui as the higher costs of making us buy unnecessary third-party software.

If it ain't broke, don't fix it. My suggestion would be that other pawn shops be invited to adopt our proven system rather than needlessly expensive third-party systems of dubious security.

Now, I want to mention the use of this more elaborate software to profile and embarrass our Joe Smiths. Most of our customers are working people. We already collect enough information about them for the police to make their investigations. They are decent people and they do not need to be treated as if they were all fences.

Put yourself in my position if I am required to record "any other visible identifying marks of the person from whom the goods were acquired." Am I supposed to say, "Hold on, Joe. I need to write up those tattoos on your arms in case the police want to talk to you?"

It would be embarrassing for me and humiliating for Joe. You wouldn't come back if your bank did that to you, would you?

I hope I have raised some doubts in your minds about the usefulness – or even workability – of this legislation, and I would be pleased to explain in depth how electronic reporting works now, without legislation.

To the Committee:

My name is Harry Eagar and I live at 305 Mokuahi Street in Makawao. I am the social media director at Kamaaina Loan, but before I retired in 2012, I was the business reporter at The Maui News for 25 years. As part of my job in monitoring social media, I have for more than a year been following the experiences of places using electronic reporting of pawn transactions.

Legislation is not required to get electronic reporting, as proven by the fact that Kamaaina Loan already reports that way. If police departments prefer electronic reports, they can ask and most pawn shops will comply. The problem, on Oahu, has been that the police were not able to receive electronic reports, which is strange since the much smaller Maui department has had no difficulty.

If you must legislate, I propose that you add one line to Sections 486M and 445: "County police departments will make arrangements to receive electronically the transaction information mandated by Section 486M."

The committee should consider the experiences of jurisdictions like Florida and California that are providing statewide databases rather than mandating third-party vendors for electronic reports.

As what the federal government considers a "bank-like institution," pawn shops are required to comply with the anti-money laundering reporting provisions of the Bank Secrecy Act. Since 2013, FINCEN, the agency that receives these reports, has required them to be filed electronically. However, FINCEN does NOT force private businesses to buy software from one provider, as the Honolulu Police Department tried to get the City and County to force on Oahu pawn businesses.

Rather, it provides a list of approved providers, and bank-like institutions can choose the one they like, or – for small operations like ours and most pawn businesses in Hawaii – FINCEN allows direct reporting via the Internet, not requiring any software at all.

We know this works because we have had a close relationship with the Maui Police Department for years. Other Maui operations also report electronically, using their own preferred methods. There is no justification for forcing companies to use expensive, intrusive, possibly insecure third-party software.

The proposal to require pawnbrokers to record any distinguishing marks of their customers is especially troubling. In this state, there is unfortunately a long history of degrading and insulting impositions on working people, and as a reporter I often heard – during public testimonies – pleas to consider the dignity of ordinary citizens.

People who use banks for their financial needs are not required to submit to a recording of their tattoos, nor are they treated as if they were fences of stolen goods just because they are in a pinch. All the members of this committee can reach into their pockets for a piece of plastic if they need a hundred

bucks. But according to statistics from the Federal Reserve Bank of St. Louis, close to 30 percent of Americans have no relationship with a bank, or are underbanked. These are our customers and they deserve as much aloha and respect as the well-to-do.

My last point concerns the underlying rationale of HB 2211. The Senate bill, SB 2385, says flatly in its first sentence that "The legislature finds that the impact of property crimes, specifically theft and burglary, is increasing at an alarming rate in Hawaii."

The Legislature will embarrass itself if it does find that, since the state's own Crime Prevention and Justice Assistance Division reports that property crimes reached a record low in 2011, and fell still further to another record low in 2012." (See: <http://ag.hawaii.gov/cpja/rs/cih/crime-in-hawaii-2011-annual/>)

John Spiker- Opposes HB2211

Diane Solso- Opposes HB2211

Dan Reardon- Opposes HB2211



Jonathon Wong- Opposes HB2211

## kawakami3-Benigno

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 07, 2014 3:17 PM  
**To:** CPCtestimony  
**Cc:** dreammauiinc@gmail.com  
**Subject:** Submitted testimony for HB2211 on Feb 10, 2014 14:10PM

### HB2211

Submitted on: 2/7/2014

Testimony for CPC/JUD on Feb 10, 2014 14:10PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jason Schwartz	Individual	Comments Only	No

Comments: My name is Jason Schwartz, and I am an entrepreneur and businessman who has lived on Maui since 1988. I am a friend and a customer of Richard Dan at Kamaaina Loan, where I buy and sell silver and gold. He was telling me about HB 2211, and there is a provision in it that I find alarming and insulting. The last time I sold Rich a silver bar, I gave him my name, address, driver's license and thumbprint, just like always. I would not like to stand in front of his counter to be looked over for "distinguishing marks" like I was some sort of police suspect; and I don't think Richard's other customers would like it, either. Do you intend to require banks to check over all their customers for distinguishing marks, or is it just pawn customers you intend to force to submit to this demeaning tactic? I am a real estate agent. Do you expect me to give my clients a similar once-over? What really is the point of this legislation other than to tell one group of Hawaii citizens that their personal dignity is not up to the standards of other groups?

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**LATE**


Richard I. Dan

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February 9, 2014

To: Angus L. K. McKelvey, Chair  
And Members of the House Committee on  
Consumer Protection and Commerce

Karl Rhoads, Chair  
And Members of the House Committee on Judiciary

From: Richard I. Dan 

Dear Chairmen McKelvey, Rhoads and Members of the Committees:

I am opposed to HB 2211.

I have been a pawnbroker and secondhand dealer on Maui and Statewide for over 38 years. I've been involved in crafting the present laws concerning pawnbrokers and secondhand goods dealers (HRS chapter 486M and 445), from their inception. I am a board member of the Hawaii Pawnbrokers' Association, and serve as their liaison to the National Pawnbrokers' Association. I am the Electronic Pawn Reporting Consultant to the Hawaii Pawnbrokers Association.

This testimony is submitted on my own behalf and on behalf of Kama'aina Loan.

I am a hundred percent in support of electronic reporting. For 18 years, I have been reporting my store's transactions to the Maui Police Department electronically. I use my own software, [www.pawnreport.com](http://www.pawnreport.com), and submit the data over the internet. The police on Maui are happy with this method of reporting and have solved thefts with it. Another Maui pawnshop uses a different software program and gives the data to the police department on a DVD; I understand that works fine for the Maui Police Department too. I'm not sure why the Honolulu Police Department does not accept electronic reporting, even though a large percentage of Honolulu pawn shops have the capability of reporting via the internet or disc. It's not rocket science; it's as simple as an Excel spreadsheet, database file (DBF), or other standard computer file set up with fields which can be imported into the police department's database. The law is already set up to provide an incentive

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for pawn shops and secondhand dealers to submit their reports electronically. I think the HPD should try it first before outsourcing the job to an international company as they are planning to do.

A problem with this bill is it would authorize each of the four counties to adopt their own requirements for reporting transactions and software requirements. If I run a statewide business I would have to install four different software programs and have my staff input pawn data in four different formats. And why require me to change my software at all when it works just fine for MPD? I don't believe it's necessary, but if you do want to standardize the reporting system used by dealers, then that should be done on a statewide basis, not county by county. Other states including California and Florida are implementing statewide systems, and they are doing it in house instead of through third party vendors.

The main reason I'm opposed to this bill is because it would hurt our customers. First, it would significantly increase costs for the pawnbroker, and these costs will be passed on to the customers as a form of "pawn tax," which means they would get less money. These are people who need the money immediately. Second, the customers would be criminalized when we have to take down their height, weight, and tattoos. And third, the bill would put their private information at risk.

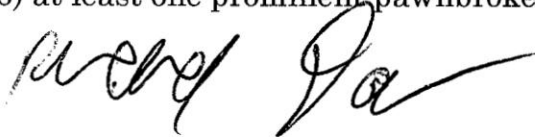
The bill would also hurt the victims of crime by lessening their chances of recovering stolen property. It would drive more business away from the spotlight of pawn shops and secondhand dealers into the shadows of the unregulated consignment shops, jewelry stores, coin shops, swap meets, and above all mainland companies operating over the internet. These companies are already picking up about half of the gold and jewelry sales from Hawaii. This bill with all its exclusions would overregulate the people who are already regulated, and not regulate at all the others who should be.

In conclusion, we have a strong regulatory scheme in place already, it's a good law, it allows electronic reporting, and there's no need to change anything. If you do want to look at possible changes then they should be discussed between the stakeholders so that the problems with the current bill and law can be ironed out and we can have a system that will work for the customers and businesses in the real world of pawns and secondhand goods. The BWI Corporation, which wants to sell its software and management services to HPD, is in litigation in Sacramento California accused of engineering legislation to gain an advantage over their

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competitor. They have been pre-selected by HPD to provide the software and run HPD's electronic pawn reporting system, and I believe they were probably involved in the drafting of H.B. 2211. In any case, the bill is not in touch with the needs of Hawaii. I know that despite my own extensive long term involvement in pawn legislation, I was not consulted on this bill. Before the legislature contemplates any action, a committee should be formed to study this issue and arrive at appropriate recommendations. Representatives of the following should be invited to participate in that committee:

- (1) each county's police department and prosecutor's office;
- (2) the State Attorney General's office;
- (3) the Hawaii Department of Commerce and Consumer Affairs;
- (4) the Hawaii Pawnbrokers' Association;
- (5) the Hawaii delegate to the National Pawnbrokers' Association;
- (6) at least one prominent pawnbroker or secondhand dealer from each island



**LATE**

**National Pawnbrokers Association**

**P.O. Box 508**

**Keller, TX 76244**

February 9, 2014

Angus L.K. McKelvey, Chair, Consumer Protection and Commerce Committee  
Derek S.K. Kawasami, Vice Chair  
Representatives Della Au Belatti, Tom Brower, Romy M. Cachola, Richard Creagan, Cindy Evans,  
Sharon E. Har, Ken Ito, Chris Lee, Mark M. Nakashima, Marcus R. Oshiro, Clift Tsuji, Ryan I. Yamane,  
Bob McDermott, and Cynthia Thielen  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Via [http://www.capitol.hawaii.gov/measure\\_indiv.aspx?billtype=HB&billnumber=2211&year=2014](http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=2211&year=2014)

Re: Opposition to House Bill 2211

Dear Chairman McKelvey, Vice Chair Kawakami, and Honorable Members of the Committee:

The National Pawnbrokers Association (NPA), the only nationwide trade association for the pawn industry, urges this Committee and the House not to enact HB 2211, which would authorize electronic surveillance of consumers' financial transactions with pawnbrokers and which lacks a sufficient empirical basis to justify enactment. The NPA also supports the positions taken by the Hawaii Pawnbrokers Association and by individual members of the pawn industry in Hawaii against enactment of House Bill 2211.

HB 2211 raises federal and state constitutional, federal statutory and other public policy concerns similar to those pointed out by Hawaii pawnbrokers in connection with the Honolulu City Council's consideration of two similar ordinances in August 2013. The Honolulu City Council did *not adopt the proposed ordinances*.

This letter offers additional reasons why the Committee should not report out HB 2211 and we respectfully request its inclusion in the record of the Committee's consideration.



## I. Overview of Concerns with HB 2211

HB 2211 authorizes local law enforcement agencies to engage in a dragnet collection of transaction records of presumptively lawful financial transactions between ordinary consumers and licensed lenders operating under Hawaii's statewide pawn law without any individualized suspicion that either the pledgor or seller or the property item(s) have been involved in a crime. Lay persons might just describe dragnets as "fishing expeditions" or *snooping*. HB 2211 appears to stem from outdated stereotypes of pawnbrokers and pawn customers that some law enforcement agencies still hold.

In reality, during more than 25 years since the NPA was founded, the professionalism of the pawn industry has increased tremendously, particularly with respect to procedures to avoid dealing with property that might not belong to the pledgor or seller. As a result, we are proud to mention that less than 1/10th of one percent of pawn transactions nationwide involve items that someone *claims to have been misappropriated*.<sup>1</sup> We have no information that the situation in Hawaii is any different from our industry's nationwide progress. In fact, media reports in your State suggest that property crimes generally have been *decreasing in Hawaii over the past several years*. We also note that *claims* about ownership often cannot be substantiated<sup>2</sup> and the number of items that *courts order returned to true owners is an even smaller percentage*. It is important to distinguish between claims of misappropriation and actual court rulings when discussing the need for new law enforcement tools that pertain to pawn transactions.

HB 2211 would allow law enforcement to collect in electronic form information including the consumer's choice of provider of short-term credit, the unique number associated with and type of consumer's identification, non-public personally identifiable information about the pledgor or seller such as their date of birth (enough to commit identity theft if accessed without authorization), intricate details

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<sup>1</sup> Local law enforcement agencies should have records of how many items of property are covered by claims of misappropriation, of how many items courts ordered returned to someone other than the pawnbroker, and how many items ended up sitting for long periods in police property holds with no determination. Only a few states issue annual reports covering pawn transactions. Their reports over the past decade support our position that pawnbrokers seldom are found to have taken misappropriated property in pawn or purchased it outright.

<sup>2</sup> False claims do arise when an individual mistakenly identifies a relatively common item as theirs only to have the consumer holding the pawn ticket return to repay the cash advance and redeem their property. Also, although perhaps less commonly, false claims may arise if the person who deals with the pawnbroker and the alleged "true owner" of the item colluded to defraud the pawnbroker.

about the consumer's property used as collateral for a loan or outright sale, and the amount of cash advanced. Electronically transmitted information is much easier to manipulate for profiling individuals.

Since 2008, the cross-section of consumers using pawnbrokers for their short-term credit needs expanded to include more affluent persons and small business owners who require short-term credit that banks are not providing. It is no longer uncommon for the pawn customer base to include professionals such as physicians, dentists, teachers and police officers. Hollywood stereotypes of pawnbrokers and their customers are outdated and, frankly, unjustified.

Dragnets – like giant trawlers fishing with huge nets – capture more than they need. They violate citizens' basic rights lodged in the First, Fourth and Fifth Amendments to the United States Constitution and that State Constitutions either repeat or strengthen. HB 2211 would allow routine, suspicion-less and process-less electronic capture of pawn transactions and unfettered use of the information. Hawaii voters should be outraged. HB 2211 also decreases financial privacy rights that consumers who obtain financial products and services from banks, securities firms, insurance – and, indeed, pawnbrokers – are entitled to under federal law, Title V (Privacy) of GLBA, 12 U.S.C. §§ 6801-6823. GLBA allows states to grant more protection to their citizens, but preempts state laws that decrease protection as HB 2211 would do.

Pawnbrokers who do not comply with GLBA's requirements or with the Federal Trade Commission (FTC) regulations that implement it (for non-depository providers such as pawnbrokers) are subject to FTC enforcement actions. The GLBA prescribes what information may be shared and what due process rights protect consumers from unjustified sharing. GLBA Sections 501 and 502 limited the sharing of consumers' non-public personal information given to providers of consumer financial products and services (including pawnbrokers) not only with unrelated third parties, but also with law enforcement. Limitations in subsections 502(e) (2), (5), and (8) (12 U.S.C. § 6802(e)(5) & (8)) support our position that pawn consumers deserve protection of their non-public personally identifiable information from both law enforcement and most third parties.

Moreover, there is no demonstrable basis for such a broad “fishing expedition” because pawnbrokers generally provide significant assistance to law enforcement agencies that are investigating property crimes and other violations. Hawaii’s pawnbrokers are no exception as existing State law requires certain information to be collected by pawnbrokers, which is made available to law enforcement upon request in connection with investigation of a property crime.

## **II. Specific Concerns about HB 2211 That Relate to Consumers’ and Pawnbrokers’ Rights**

HB 2211 should not be reported out of the Consumer Protection and Commerce Committee or enacted by the legislature for many reasons, including:

1. Recent laws at the federal and state levels generally have **reduced, not expanded**, the collection of personal information, and restrict the collection of certain non-public personal information, such as Social Security or drivers’ license numbers, because of their potential to enable identity theft. The more information included in any electronic record, the greater the likelihood that an unauthorized user could commit identity theft successfully, as the recent penetration of Target’s credit and debit card transaction systems demonstrated.
2. HB 2211 authorizes each county to operate an electronic reporting system. As noted elsewhere, the Honolulu Police Department had awarded a contract to a Canadian third-party profiling database vendor<sup>3</sup> to collect this sensitive information directly from pawnbrokers and store it.

Pawnbrokers, however, would have no authority to supervise third-party vendors hired by county law enforcement agencies to the extent the GLBA requires without being at risk of a federal enforcement action against them. The FTC’s “Safeguard Rule” that implements GLBA’s requirements for non-depository providers such as pawnbrokers<sup>4</sup> describes the

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<sup>3</sup> The Canadian vendor under contract with the Honolulu Police Department requires use of different software than most pawnbrokers use and insofar as we understand its business operations system does not use encryption to protect transaction records in transit. Thus, the chances of identity theft of our customers’ non-public personally identifiable information will grow if the legislature enacts HB 2211 and this vendor gets data about Hawaiians.

<sup>4</sup> 16 C.F.R. Part 313 (eff. May 23, 2003).

requirements necessary to supervise and safeguard the data shared with third party vendors that contains consumers' non-public personal information.

3. Pawnbrokers also have responsibilities under the federal Fair and Accurate Credit Transactions Act of 2003 and the FTC's "Disposal Rule" that implements it for non-depository providers.<sup>5</sup> The FTC Rule covers all pawnbrokers' transaction records that include our consumer customers' information in order to prevent identity theft and other privacy intrusions. HB 2211 will hamper pawnbrokers' ability to comply.
4. To the best of our information, the third-party vendor hired by the Honolulu Police Department is not a Hawaii business. In fact, although it claims to have operations inside the United States, its home base actually is in Saskatchewan, Canada. If this vendor is allowed to collect non-public personal information about Hawaii pawn customers, and stores it in Canada, the Canadian federal privacy act does not afford foreigner's personal information the same protections that apply to Canadian residents.

HB 2211 does not assume liability for security breaches that might occur when data is in transit to the counties or third-party vendors or after its receipt. The legal responsibility to guard consumers' non-public personal information should reside expressly with the person or entity that allows data security breaches to happen on their watch. Thus, at the very least, this Committee should amend HB 2211 to require the state, county, or law enforcement's chosen vendor to indemnify and reimburse pawnbrokers for any data security breaches occurring during transmission to them or their database vendors or while in the agencies' or vendors' possession.

5. HB 2211 ignores the proprietary intellectual property rights of pawnbrokers to their own transaction records to which business owners believe they are otherwise entitled. Transaction records contain customer lists, information about personal property pledged as collateral for cash advances, inventory items that may be for resale to the public, and information specific

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<sup>5</sup> 16 C.F.R. Part 682 (eff. June 1, 2005).

to how each pawnbroker values specific personal property collateral. A requirement for pawnbrokers to share their business records with third parties would constitute a “taking” of their intellectual property without compensation that the United States and Hawaii Constitutions protect against. The prospect of being required to share proprietary business records, with a third-party, or foreign, vendor with whom pawnbrokers will have no privity of contract is more disturbing. *Would Committee members, as proprietors of businesses, want to be subject to such requirements? We doubt it, so do not make Hawaii’s pawnbrokers subject to them.*

6. There is no empirical evidence that pawnshops *are engaged in the taking of stolen property to any significant extent as to justify the huge new compliance costs that HB 2211 would impose on pawnbrokers* or the intrusion on the financial privacy rights of pawn customers. The low percentage of misappropriated property claims is the result of strict guidelines and laws *that Hawaii pawnbrokers already follow* – such as requiring a government-issued ID whose number we record, fingerprinting each customer, and a hold period on collateral and purchased items.

*Thieves do not go where they have to show identification or provide thumbprints as Hawaii law already requires; they frequent unregulated outlets to dispose of stolen property.* Additionally, many pawn consumers repeatedly use the same items of collateral to secure pawn loans, and the rates at which our customers repay loans and redeem their property are high. True owners redeem collateral and use it again to support future loans. Thieves do not.

Redeemed property is evidence of a completely lawful transaction that should be expunged from any permanent record (after administrative record-retention periods), and neither law enforcement nor their hired vendor should be allowed to hold it for more than a short period following redemption.

Pawnbrokers lose money in the few times when goods are determined to be stolen -- both the cash advanced and the confiscated property, often without recourse against or reimbursement from the pledgor or seller. Prudent, successful pawnbrokers employ procedures to be as confident as possible that they are dealing with the true property owner. Thus, we suspect that someone is exaggerating the need for the proposed electronic transaction reporting and requirements to photograph property.

7. In most cases, there is no utility in requiring pawnbrokers to photograph the collateral. State law already requires Hawaii pawnbrokers to record a detailed description of the property. Mass-manufactured items rarely contain serial numbers or unique identifying information; thus, one gold rope chain of a certain length and weight is visually indistinguishable from another. So are most hammers and hand saws.
8. HB 2211 also imposes disproportionate and unjust fines and potential criminal penalties for non-compliance, for example if reports are not turned in on time (which any electrical outage or hurricane might cause) or if a pawnbroker makes an innocent error (such as transposing digits of serial numbers) in any report.
9. HB 2211 only appropriates funds to pay for counties' electronic systems for one year. Thus, a question arises about *who will pay for these systems after the state funding expires*. If the sponsors of HB 2211 expect pawnbrokers or pawn consumers to pay for these systems thereafter, it will require a new tax increase on pawnbrokers and consumers. Does Hawaii law generally tax businesses or individuals for regular law enforcement functions normally funded out of general tax revenues? If not, HB 2211 – if enacted – should be funded by the state or at least specify that no pawnbroker or consumer will ever have to support it by a specific tax or fee.
10. HB 2211 imposes significant new costs on the pawn industry, which reflects an anti-business attitude that may prevent new businesses from locating in Hawaii.



11. Pawnbrokers are deemed “financial institutions” under many federal laws passed in and since the late 1990’s. No other “financial institution” or “provider of consumer credit products and services” in the United States is required to obtain fingerprints and take photographs of credit customers and their personal property, let alone submit them to law enforcement without any legal process or suspicions of wrongdoing, share them with third parties over whom they have no control, or limitations on re-use. Imagine the voter uproar if you tried to impose a comparable set of requirements on state-chartered banks and credit unions!

### **III. Conclusion**

With respect to sponsors of HB 2211, the NPA joins with the Hawaii Pawnbrokers Association in urging the Consumer Protection and Commerce Committee not to report out HB 2211. Voters will see HB 2211 as a deeply flawed bill that would allow law enforcement to engage in unrestricted snooping on Hawaii citizens and visitors, depriving them of federally mandated consumer financial protections and constitutionally protected legal process and privacy rights, including freedom of association.

The NPA shares the concerns of Hawaii Pawnbrokers that electronic transaction reporting will cause our consumers’ non-public personal information to be commingled without reason with “law enforcement databases” – which it should not be – and, as a result, our customers could fail “criminal background checks”, lose jobs they currently have, or fail to gain employment. We disagree with the “findings” that HB 2211 will not “criminalize” pawn transactions and customers. It certainly will.

HB 2211 will not create a magic means of solving “property crimes” or be likely to increase recovery of property from pawnbrokers sufficient to justify the expenditure of public and private funds needed to sustain its system of electronic reports of pawn transactions. Sufficient records are already available to law enforcement agencies in Hawaii, as in other States, if some level of suspicion exists.

With all due respect to its sponsor in the House, HB 2211 is not good public policy. It decreases consumer financial privacy protections and conveys an anti-consumer or anti-small-business attitude to

those who otherwise might choose to come to Hawaii or open new businesses there. We urge Committee members and the full House, if the bill is reported out of committee, to take a firm stand against over-reaching by law enforcement and profit-seeking by third-party profiling database vendors.

Respectfully submitted,

Ben Levinson

President

**LATE**

Hawaii Pawnbrokers Association  
c/o Hawaii Gold and Silver Company  
3426 Waialae Ave., Honolulu, HI 96816

February 9, 2014

The Honorable Angus L.K. McKelvey, Chair  
House Committee on Consumer Protection & Commerce  
The Honorable Karl Rhoads, Chair  
House Committee on Judiciary  
Hawaii State Capitol  
415 South Beretania Street, Conference Room 325  
Honolulu, Hawaii 96813

Hearing Date: Monday, February 10, 2014 at 2:10 pm

I will be present to personally deliver my testimony.

**Re: In Opposition to H.B. 2211: Relating to Pawnbrokers and  
Secondhand Dealers**

Dear House Committees on Consumer Protection & Commerce and  
Judiciary,

The Hawaii Pawnbrokers Association (HPA) was formed in 1992. The HPA represents pawnbrokers and secondhand dealers throughout the State of Hawaii. Many members of the HPA have been providing valuable services to Hawaii residents for over fifty (50) years.

The Hawaii Pawnbrokers Association is opposed to H.B. 2211, Relating to Pawnbrokers and Secondhand Dealers, because the bill, as written, is (i) vague and ambiguous, (ii) jeopardizes consumer privacy and personal information, and (iii) threatens the livelihood of pawnbrokers throughout the State of Hawaii. The HPA however, fully supports the intent of the bill, mandatory reporting, and the continued efforts of Hawaii law enforcement, but H.B. 2211 will adversely affect pawnbrokers and consumers as explained below.

#### **I. BACKGROUND**

Pawnbrokers are one of the highest regulated and scrutinized businesses in the United States and the State of Hawaii.

*The Honorable Angus L.K. McKelvey*  
*The Honorable Karl Rhoads*  
*February 9, 2014*  
*Page 2*

No other service industry has stricter regulations than pawnbrokers. Many pawnbrokers are sole proprietors or family run businesses. Pawnbrokers provide valuable services throughout the State of Hawaii, especially for those who experience a financial hardship and have an immediate or temporary need for cash.

H.B. 2211 is apparently based on the belief that "stolen property is being sold by pawnbrokers and secondhand dealers." In actuality, the incidence of claims of misappropriated property against items recovered in pawn stores is less than 1/10 of once percent of all items accepted by pawnbrokers nationwide. Many of those claims of ownership, however, are mistaken or never proven.

Additionally, many of the proposed sections of the Bill are already enacted in the law such as, the requirement to retain, submit and report all articles received to the Honolulu Police Department (HPD). Also, detailed personal information about each customer is documented and reported to the HPD. Articles are also retained for 30 - 60 days. Records are retained for one year. Essentially, H.B. 2211 fails to meet its intended purpose.

## **II. REASONS WHY H.B. 2211 SHOULD NOT BE APPROVED BY YOUR COMMITTEES.**

The proposed House Bill should be rejected for the following reasons:

1. The Bill inherently takes away the livelihood of many pawnbrokers and secondhand dealers by enforcing more stringent regulations and increasing business expenses and overhead costs.
2. Proposed section 486M is vague and ambiguous with respect to the phrase "appropriate software." If electronic reporting is mandated then there must be certainty in defining the parameters of "appropriate software." This section also gives the local chief of police unfettered

*The Honorable Angus L.K. McKelvey*

*The Honorable Karl Rhoads*

*February 9, 2014*

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discretion in choosing the software provider and/or criteria imbedded in the software.

3. The proposed legislation impinges upon Consumer Privacy and Protection. Sensitive personal data such as photographs, identification of physical traits or scars, height and weight, and other information is made available to any user of the electronic reporting system.
4. The proposed legislation is contrary to Article I, Section 6 of the Constitution of the State of Hawaii, "Right to Privacy," and is subject to challenge as unconstitutional.

**1. Negative Impact on Business**

Many pawnbrokers and secondhand dealers are "mom and pop" or family run businesses. Many of these business owners do not have computers in their stores and are not equipped with the electronic capability to comply with the demand of submission of records contemplated through the legislation. The implementation of this new bill will put many of these owners out of business who cannot afford to pay \$30,000 to \$50,000 for computer equipment and software. In addition, there will be added expenses of monthly licensing fees, and repair and maintenance fees.

The implementation of the new submission of records requirements imposes a needless cost on pawnbrokers. Many pawnbrokers are already self-reporting their customer transactions through an online database.

The proposed legislation will have a disparate impact on elderly pawnbrokers, who do not have computers or the technology to comply with the requirement for submission of records.

**2. Changes to Section 486M**

Section 486M, Submission of records, states that, "If the chief of police authorizes the use of appropriate software by secondhand dealers or pawnbrokers, transaction forms shall be electronically transmitted to the department."

This section creates two (2) main problems. First, the Term "appropriate software" is vague and ambiguous. There are no

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technical standards or criteria defining what is "appropriate." Under this proposed legislation, the software could be written to include onerous or burdensome information which pawnbrokers would have to comply with. The failure to comply results in a misdemeanor. Second, this provision gives unfettered discretion to the current chief of police to select the appropriate software company to handle and store these electronic records. If anyone or any company should hold or store these records containing personal information, it should be the State of Hawaii, not a mainland commercial company.

### **3. Impingement on Consumer Privacy and Protection**

The proposed legislation impinges on consumer privacy and personal information.

Electronic reporting of transactions involving customer's personal information is both (i) an undue burden on pawnbrokers and (ii) a major deterrent for customers of pawnshops. The personal information of customers can easily be manipulated and misused in the hands of a third-party vendor or company. Just the thought of having a customer's personal information stored for uncertain purposes and uses by a commercial company is enough to deter potential customers. The threat of "hackers" attacking and infiltrating the computer system containing customer information is a real threat. Identity theft is a serious ongoing problem in the United States.

Please see attached report from the National Pawnbrokers Association identifying the top concerns with electronic reporting of personal information of customers.

As outlined by the report, some of the problems associated with electronic reporting of customers' personal information include:

- The ability to obtain and search customers' pawn information with no warrants, probable cause, or any degree of specific wrongdoing on the customer's part;
- The use of demographic information from pawn transactions, such as age, gender, race, zip



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code, or the frequency of transactions with individual consumers, to profile customers;

- The co-mingling of pawn transaction data with law enforcement criminal databases, which affords accessibility from remote devices such as squad cars and laptop computers;
- The absence of meaningful limitations on the uses of pawn transaction data by law enforcement agencies or by third-party contractors they hire to assist with data collection, storage, and retrieval, or on the length of time that records may be maintained; and,
- The prospect that customers' pawn transaction histories will be reported by law enforcement agencies to potential employers or credit agencies thus resulting in the loss or inability to obtain jobs.

Additional concerns that pawnbrokers have with electronic transaction reports that include customers' personal information are:

- The jurisdiction in which data collected is stored (in-state, out-of-state or out of the country) and the respective privacy protections;
- The absence of protections for pawnbrokers (including indemnification, insurance, and a safe harbor from liability to individual customers) if a data security breach occurs while it is in the possession of a law enforcement agency or its third-party agent;
- The "taking" of or interference with proprietary business assets of pawnbrokers that consist of dollar amounts and terms of transactions, the type of property securing a loan transaction or purchase, and the names and contact information of every pawnbroker's customers, particularly in jurisdictions that employ third-party vendors to collect and store the data;
- Claims by at least one vendor that markets pawn transaction data collection and reporting services to law enforcement that the vendor - not the pawnbroker

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from whom the data comes or the law enforcement agency that hired the vendor - becomes the "owner" of all data transferred to its custody and control. Thus, there may be no right for the pawnbroker or the law enforcement agency to retrieve the data if a change of vendors occurs or the vendor misuses the data; and,

- The failure of state or local ordinances to require that transaction data be purged by law enforcement agencies or their vendors in a manner complying with or comparable to the federal Fair Credit Reporting Act.

See Attached report from National Pawnbrokers Association entitled, "Top Concerns with Electronic Reporting of Customers Personal Information" dated June 2013.

Any laws requiring pawnbrokers to create digital or other photographs of their customers who engage in pawn transactions and/or transmission of those records to a government or third-party agency is over burdensome to both the pawnbroker and customer. It is a needless cost to the pawnbroker and it "criminalizes" legitimate customers by making them feel like criminals through photographing and reporting sensitive information. H.B. 2211 is overkill and will act as a deterrent to law-abiding citizens from them even stepping foot into the store.

No other class of consumer, financial, or commercial transactions is subject to comparable governmental requirements to transfer transaction details to third-party database vendors.

Please see attached report from National Pawnbrokers Association regarding use of photography on pawn customers and customer items. As outlined by the report, some of the problems associated with proposals to mandate photographs of consumers, their identification, or their property and to require such photographs to be included in suspicion-less transaction reporting are that such proposals:

- Impose needless costs on pawnbrokers and needless violation of their consumers' privacy, without

enhancing the odds of recovering misappropriated property.

- Exceed Bureau of Alcohol, Tobacco, Firearms and Explosives (BAFTE) requirements and Federal Bureau of Investigation (FBI)/ National Instant Criminal Background Check System (NICS) background check requirements on transactions involving firearms, and, more significantly, enable the creation of a database that is in direct conflict with federal firearms laws.
- Subject pawn consumers to risks of job loss or the inability to advance due to the increased likelihood of their personally identifiable information being included in "criminal intelligence" or "law enforcement" databases.
- Lead to false claims by persons viewing property photographs who have no proof of ownership other than a sense that the item "looks just like mine," or to the mistaken recovery of an item actually belonging to another individual.
- Fail to provide sufficient information for items that have no serial numbers or are not unique in appearance. and, consequently, are indistinguishable from one another; state requirements to record serial numbers and distinguishing marks of property, the identity of pledgors or sellers, and the date and time of transactions are lower-cost and more effective means of identification.

See Attached report from National Pawnbrokers Association entitled, "Opposition to Laws Requiring Photographing of Pawn Consumers, their Tangible Personal Property, and the Inclusion of Such Photography in Electronic Pawn Transaction Reports" dated January 2014.

**4. Fundamental Right to Privacy Protected by the Constitution of the State of Hawaii**

The proposed legislation is contrary to Article I, Section 6 of the Constitution of the State of Hawaii, "Right to Privacy," and is unconstitutional and subject to attack in the courts.

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Article I, Section 6 of the Constitution of the State of Hawaii, provides that,

The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

The pending proposed legislation completely ignores the constitutional protection. There is no compelling state interest and, even if one is demonstrated, H.B. 2211 takes no affirmative steps to protect a citizen's fundamental right to privacy. Indeed, H.B. 2211 needlessly exposes private citizens' sensitive personal information to distribution to third parties and government agencies without any protection whatsoever.

As aforementioned, the proposed bill requires a customer to provide a greater amount personal information than required under current law, which private information will then be transferred and stored by a third-party vendor. As such, the proposed bill not only fails to affirmatively protect consumers' right of privacy, but it is directly contrary to Article I, Section 6 of the Constitution of the State of Hawaii, and places consumers' personal and private information at a greater risk of being stolen or misused.

### **III. CONCLUSION**

Please reject H.B. 2211. We thank you for your consideration.

Very truly yours,

/S/ Mark G. Valencia

Mark G. Valencia, Esq.  
On behalf of the Hawaii  
Pawnbrokers Association

Encl.



National Pawnbrokers Association\*

## **Top Concerns with Electronic Reporting of Customers Personal Information**

**June 2013**

NPA members frequently ask for talking points on electronic reporting of pawn consumers' personal information to law enforcement that they can use in discussions with these agencies, elected officials, and their lawyers. This document mentions the concerns most often identified.

Electronic reporting of transactions when consumers' personal information is included allows:

1. The ability to obtain and search customers' pawn information with no warrants, probable cause, or any degree of specific wrongdoing on the customer's part;
2. The use of demographic information from pawn transactions, such as age, gender, race, zip code, or the frequency of transactions with individual consumers, to profile customers;
3. The co-mingling of pawn transaction data with law enforcement criminal databases, which affords accessibility from remote devices such as squad cars and laptop computers;
4. The absence of meaningful limitations on the uses of pawn transaction data by law enforcement agencies or by third-party contractors they hire to assist with data collection, storage, and retrieval, or on the length of time that records may be maintained; and,
5. The prospect that customers' pawn transaction histories will be reported by law enforcement agencies to potential employers or credit agencies thus resulting in the loss or inability to obtain jobs.

Additional concerns that pawnbrokers have with electronic transaction reports that include customers' personal information are:

1. The jurisdiction in which data collected is stored (in-state, out-of-state or out of the country) and the respective privacy protections;
2. The absence of protections for pawnbrokers (including indemnification, insurance, and a safe harbor from liability to individual customers) if a data security breach occurs while it is in the possession of a law enforcement agency or its third-party agent;
3. The "taking" of or interference with proprietary business assets of pawnbrokers that consist of dollar amounts and terms of transactions, the type of property securing a loan transaction or purchase, and the names and contact information of every pawnbroker's customers, particularly in jurisdictions that employ third-party vendors to collect and store the data;
4. Claims by at least one vendor that markets pawn transaction data collection and reporting services to law enforcement that the vendor – not the pawnbroker from whom the data comes or the law enforcement agency that hired the vendor – becomes the "owner" of all data transferred to its custody and control. Thus, there may be no right for the pawnbroker or the law enforcement agency to retrieve the data if a change of vendors occurs or the vendor misuses the data; and,
5. The failure of state or local ordinances to require that transaction data be purged by law enforcement agencies or their vendors in a manner complying with or comparable to the federal Fair Credit Reporting Act.

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National Pawnbrokers Association

## **Opposition to Laws Requiring Photographing of Pawn Consumers, their Tangible Personal Property, and the Inclusion of Such Photography in Electronic Pawn Transaction Reports**

**January 2014**

The NPA opposes laws that require pawnbrokers to create digital or other photographs of (a) their consumers who engage in pawn transactions, (b) their consumers' government issued identification, (c) any property securing pawn loans or (d) any property sold to pawnbrokers. The NPA opposes the transmission of any such photographs to law enforcement agencies or to their third-party contractors who provide transaction record storage and profiling services. Transaction reporting requirements violate consumers' federal financial privacy rights under Title V (Privacy) of the 1999 Gramm-Leach-Bliley Act for "non-public, personally identifiable information," infringe upon pawnbrokers' proprietary business records rights, and impose extra compliance expenses that exceed any likely public benefit.

Pawnbrokers' best business practices include special precautions to avoid entering into transactions involving suspicious property and individuals. The incidence of misappropriated property items recovered in pawn stores is less than 1/10 of one percent of all items accepted by pawnbrokers nationwide. Reports of transactions in which consumers repaid loans and redeemed their collateral, at the very least, should be expunged promptly because only true owners repay loans and redeem their property.

Laws requiring photography will enable the creation of vast, perpetual third-party profiling databases of everyday persons and their consumer credit or commercial transactions with state and locally licensed providers. Proposals to mandate photographs of consumers, their identification, or their property and to require such photographs to be included in suspicionless transaction reporting also will:

- Impose needless costs on pawnbrokers and needless violation of their consumers' privacy, without enhancing the odds of recovering misappropriated property.
- Exceed BATFE requirements and FBI/NICS background check requirements on transactions involving firearms, and, more significantly, enable the creation of a database that is in direct conflict with federal firearms laws.
- Subject pawn consumers to risks of job loss or the inability to advance due to the increased likelihood of their personally identifiable information being included in "criminal intelligence" or "law enforcement" databases.
- Lead to false claims by persons viewing property photographs who have no proof of ownership other than a sense that the item "looks just like mine," or to the mistaken recovery of an item actually belonging to another individual.
- Fail to provide sufficient information for items that have no serial numbers or are not unique in appearance. and, consequently, are indistinguishable from one another; state requirements to record serial numbers and distinguishing marks of property, the identity of pledgors or sellers, and the date and time of transactions are lower-cost and more effective means of identification.

No other class of consumer, financial, or commercial transactions is subject to comparable government dragnets or requirements to transfer transaction details to third-party database vendors. No other consumer group partaking of financial products or services transactions is required to submit to being photographed in order to participate in a presumptively lawful financial transaction with a licensed provider. No empirical justification exists for treating pawnbrokers and pawn consumers differently from others in second-hand goods transactions, including those with jewelers or antique stores.

Suspicionless reporting requirements of consumers' pawn transactions urged by law enforcement agencies reflect their outdated stereotypes and prejudices. Over the past decade, millions more middle-class consumers and small business owners have used pawn transactions to meet credit needs that commercial banks are unable to serve in many communities. We would like to believe that no responsible local or state elected official would vote in favor of unnecessarily burdensome and dangerous laws requiring photographs of consumers, their identification documents, or their property, or of laws directing suspicionless reporting of transaction records to law enforcement agencies or their third-party profiling database vendors.

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