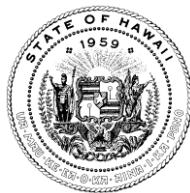


HB2666

HD1 SD1



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION
TO THE COMMITTEE ON JUDICIARY AND LABOR
TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

MARCH 28, 2014
10:00 A.M.

WRITTEN TESTIMONY IN SUPPORT OF H.B. 2666, H.D. 1, S.D. 1 RELATING TO
PERSONAL INFORMATION.

TO THE HONORABLE CLAYTON HEE, CHAIR,
AND TO THE HONORABLE MAILE S. L. SHIMABUKURO, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs appreciates the opportunity to offer written testimony in support of H.B. 2666, H.D. 1, S.D. 1, Relating to Personal Information. My name is Bruce Kim. I am the Executive Director of the Office of Consumer Protection ("OCP").

Section 1 of H.B. 2666, H.D. 1, S.D. 1 amends HRS § 487J-6(a)(2) by deleting the words "the business" and specifying that "if there is a reasonable doubt of . . .", which restores the original objective standard established under Act 191, SLH 2012. It

also makes permanent the change in subsection (a)(2) which states, “. . . the individual having reached the minimum age required for purchasing the age-restricted goods or services” which was added by Act 195, SLH 2013 and removes the “Hawaii” qualifier that previously allowed out-of-state identifications to be scanned without restriction. It makes permanent the technical amendments in HRS § 487J-6(a)(7) referencing the “federal Department of Health and Human Services, parts 160 and 164 of title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996” which were a part of Act 195. Section 2 of H.B. 2666, H.D. 1 repeals the sunset provision created under Act 195, SLH 2013.

Identity theft is a serious crime with lasting negative repercussions for individual victims. Information from a stolen state identification card or driver's license is a valuable source of information for identity thieves. Widespread use of such personal identification numbers make it relatively easy for thieves to access sensitive personal and financial information about their individual victims. Minimizing the exposure of this protected personal information is critical. Imposing reasonable restrictions on the scanning of drivers' licenses and state identity cards promotes the privacy interests of individuals and limits exposure of personal information to identity theft.

Scanning of government-issued identification cards at a point-of-sale (“POS”) terminal by retailers may expose the customer's personal information to identity thieves. These POS terminals are often connected to the business's extended network, which is connected to the Internet. These POS systems have been the target of hackers and

malware attacks in some of the biggest data breaches in recent history. For example, the POS system used by Target Corporation was breached by hackers who installed malware on Target's POS terminals. That malware "scraped" credit and debit card information at Target's POS terminals, which is to say that it read temporary data stored in the POS terminal memory before it was deleted. This allowed the hackers to obtain customer's credit and debit card numbers, PIN numbers and other protected personal and financial information which could be used by an identity thief. The Target breach exposed sensitive personal and financial information belonging to over 121,000 Hawaii residents to cybercriminals as well as tens of millions more consumers across the nation.

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

Whenever a data breach or hacking attack affecting Hawaii consumers occurs, the affected entity is required to notify OCP if the breach involves 1,000 or more Hawaii

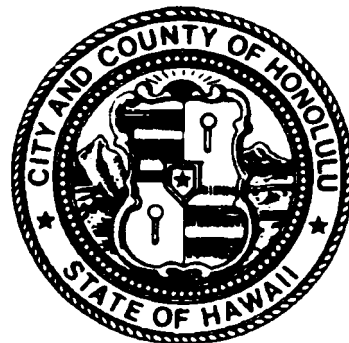
residents (HRS § 487N-2(f)). Since 2007, when OCP began tracking data breaches involving Hawaii residents, a minimum of 228,250, or slightly more than 16% of Hawaii consumers, have been the victim of a data breach. Of that number, 68.2% of the impacted consumers resulted from data breaches to general businesses, including retailers. In general, 83.19% of data breaches are caused by hackers or incidents of unauthorized access to protected data, which is the type associated with the recent data breach at Target.

OCP subscribes to the proposition that any exception to the general rule against the unauthorized use or dissemination of personal identification numbers should be restricted in nature and scope. H.B. 2666, H.D. 1, S.D. 1 returns § 487J-6(a)(2) to the original objective standard of reasonable doubt and makes technical clarifying amendments which enhance the protections afforded under statute.

OCP submits that the Legislature should seriously consider whether allowing private businesses to scan the machine readable sections of government identifications, should be allowed at all, until such time as businesses can demonstrate their commitment to adoption of security best practices to protect the data they can collect from the customers, from unauthorized access by hackers.

Thank you for the opportunity to offer written testimony in support of H.B. 2666, H.D. 1., S.D. 1. I would be happy to answer any questions the committee may have.

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



KIRK CALDWELL
MAYOR

SHERI T. KAJIWARA
DIRECTOR

PRESTON P. H. K. KO
ACTING LICENSING ADMINISTRATOR

TESTIMONY OF PRESTON KO, ACTING LICENSING ADMINISTRATOR
CITY AND COUNTY OF HONOLULU, DEPARTMENT OF CUSTOMER SERVICES
Friday, March 28, 2014, 10:00 a.m., Conference Room 016

HOUSE Bill 2666 HD1SD1, "RELATING TO Personal Information"

Position: Comments

TO: The Honorable Clayton Hee, Chair
and Members of the Committee on Judiciary and Labor

The City and County of Honolulu is concerned with HB No. 2666 HD1 SD1 which will allow a business to scan a Hawaii driver license or identification card.

We continue to be concerned with the security of the information that is being stored. The recent Target security issue is a good example of a more secured credit card information storage system that resulted in the unauthorized release of personal and credit card information. The information contained on the driver license and identification card contains more personal information as compared to the information released in the Target's credit card problem.

If a business requires the storage of personal information, they should be able to obtain only the minimum essential personal information rather than all the information contained on the machine readable barcode printed on the reverse side of these cards. The action of reading the barcode with the personal information other than on a standalone device is another cause for concern. As was in the case of Target, the information was stolen when the card was swiped. We do not understand why a business would require the unique card number (similar to a person's social security number). We recommend that subsections (D) on lines 9 and 19 on page 2 be deleted.

For the purchase of age-restricted goods or services, Hawaii's cards are printed in a horizontal format for an individual who is 21 years of age or older and in a vertical format for an individual who is under 21 years of age. In addition, the vertical format does indicate the date when the individual reaches 18 and 21 years of age. For age restricted purchases, we recommend that no data be collected but the computer program provides a "red light – green light" designation to determine whether the identification card or driver license is valid and whether the person is the minimum age to purchase certain age-restricted products.

Sincerely,

A handwritten signature in black ink, appearing to read "Preston P. H. K. Ko".

Preston P. H. K. Ko
Acting Licensing Administrator



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Friday, March 28, 2014, 10:00 a.m.
Place: Room 016
Re: Testimony of the ACLU of Hawaii in opposition to H.B. 2666, H.D. 1, S.D. 1, Relating to Personal Information

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

The ACLU of Hawaii writes in opposition to H.B. 2666, H.D. 1, S.D. 1, which seeks to make permanent the current exception to the law limiting when a private business may scan a driver's license barcode.

H.B. 2666, H.D. 1, S.D. 1 is inappropriate and unnecessary, and gives businesses unfettered access to government-issued identification barcodes for age-related transactions. Businesses concerned about fraud can refuse to serve the customer (as was the practice prior to last year's addition of an exception to HRS § 487J-6(a)) or seek the barcode information under the other exceptions allowed by law.

Scanning by private businesses raises serious privacy concerns: Hawaii driver's licenses contain bar codes with significant personal information, including name, address, date of birth, hair color, eye color, height, weight, gender, license expiration date, organ donor status, driver's license number, fingerprint, medical indicators and driver classification code. As more personal information is amassed in more databases, the likelihood that the information will be misused or stolen increases. Individuals cannot protect the accuracy or distribution of their personal information when others hold it.

Session Laws of Hawaii 2012 Act 191, which restricts driver license scanning, already includes many exceptions to the limits on obtaining this personal information. H.B. 2666, H.D. 1, S.D. 1 seeks to make permanent another exception – namely, to allow any private business to swipe driver's license barcodes to verify age (regardless of the reasonableness of doing so). This would effectively allow any private business to scan the license of anyone who sought to buy an age-restricted purchase, including alcohol, Nicorette gum, mature video games, and compressed air and cold medicines, among others.

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Chair Hee and Members of the Committee
on Judiciary and Labor
March 28, 2014
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Ensuring that private businesses do not sell age-restricted products to minors should not come at the expense of our privacy (and the very real risk of identity theft). The law as it existed before last year adequately balances those concerns, and the exception written into the law last year should be allowed to expire.

Sincerely,

Daniel Gluck
Senior Staff Attorney
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org



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Stanley Brown, ConAgra Foods - Chairperson
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Lauren Zirbel, Executive Director

1050 Bishop St. PMB 235
Honolulu, HI 96813
Fax : 808-791-0702
Telephone : 808-533-1292

TO:
SENATE COMMITTEE ON JUDICIARY AND LABOR
Senator Hee, Chair
Senator Shimabukuro, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: March 28, 2014
TIME: 10am
PLACE: Conference Room 016

RE: HB 2666

Position: Support

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

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

Businesses selling liquor, cigarettes or other age-restricted products should be allowed to scan the identification of all customers for the purpose of verifying age. The 18-year-old threshold makes no sense when applied to the sale of liquor, which by law is restricted to 21 year olds and older.

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



SEVEN-ELEVEN HAWAII, INC.
7-ELEVEN Stores

March 26, 2014

Honorable Clayton Hee, Chair
Honorable Maile S. L. Shimabukuro, Vice-Chair
Committee on Judiciary
The Senate
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Re: Testimony in Support of House Bill No. 2666, House Draft 1, Senate Draft 1, relating to personal information

Dear Chair Hee, Vice-Chair Shimabukuro and Committee Members:

Seven-Eleven Hawaii, Inc., respectfully submits this testimony in strong support of House Bill No. 2666, House Draft 1, Senate Draft 1, relating to personal information, which is being considered for decision making by your Committee on Judiciary, on Friday, March 28, 2014 at 10:00 a.m.

House Bill No. 2666, House Draft 1, Senate Draft 1, will make permanent *one* of the changes made by Act 195, 2013 Sessions Laws of Hawai'i ("Act 195"), to section 487J-6(a), Hawai'i Revised Statutes ("HRS").

Specifically, House Bill No. 2666, House Draft 1, Senate Draft 1, will permit a business to scan the identification of a purchaser of age-restricted goods, such as cigarettes or alcohol, if there is a reasonable doubt that the purchaser has reached the minimum age required for purchasing the age-restricted goods.

Prior to the amendment, section 487J-6(a)(2), HRS, required that there be a reasonable doubt that the purchaser had reached 18 years of age or older.

The prior version of section 487J-6(a) (2), HRS, was inappropriate on its face for the sale of alcoholic beverages, for which the minimum required age for purchase is 21 years, because if there is a reasonable doubt that a customer is over 18 but under 21 years of age, the business would have been barred from scanning the customer's identification card or driver's license. Even in the case of sales of tobacco, FDA regulations require retailers to verify the age of purchasers 26 years and younger. *See* 21 Code of Federal Regulations § 1140.14.

In considering House Bill No. 2666, House Draft 1, Senate Draft 1, it is important to keep in mind that under section 487J-6(a)(2), HRS, a business which scans a customer's identification card or driver license for the purpose of verifying age for the purchase of age-restricted products may *not* store or retain any data from the scan, nor sell such data to any third party. Thus, the scan is solely for the purpose of verifying the age of the customer.

Honorable Clayton Hee, Chair
Honorable Maile S. L. Shimabukuro, Vice-Chair
Committee on Judiciary
March 26, 2014
Page 2

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

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

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

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

The annual cost of underage drinking in the State of Hawaii has been estimated by the Underage Drinking Enforcement Training Center to be over \$300 million in 2010. In addition to the monetary cost is incalculable pain and suffering. House Bill 2666, House Draft 1, Senate Draft 1, would help to combat underage consumption of alcohol and tobacco products, and reduce those costs, while protecting the privacy of those persons whose identifications are scanned by continuing the prohibition on collecting any data from such scanning.

We ask that the Legislature support efforts to prevent the sale of age restricted products, such as tobacco and alcoholic beverages to under-aged customers. We take this obligation very seriously and we hope that the Legislature will support the efforts of all businesses to rigorously enforce the law in this area. For the foregoing reasons, we support House Bill 2666, House Draft 1, Senate Draft 1.

Thank you for your consideration of our testimony.

Sincerely,

SEVEN-ELEVEN HAWAII, INC.

By 
Blake Yokotake
Human Resources Manager