

HB2666



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 SENATE COMMITTEES ON TECHNOLOGY AND THE ARTS
AND
ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

TUESDAY, MARCH 18, 2014
1:45 P.M.

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

TO THE HONORABLE GLENN WAKAI AND ROSALYN H. BAKER, CHAIRS,
AND TO THE HONORABLE CLARENCE K. NISHIHARA AND BRIAN T.
TANIGUCHI, VICE CHAIRS, AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs appreciates the opportunity to testify in support of H.B. 2666, H.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 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. 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. 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.D. 2666, H.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 suggests an additional minor change to HRS § 487J-6(a) in section 1 of H.D. 1 by deleting the word "Hawaii" before the phrase "identification card" in the first sentence of the section to reflect that the section applies to all driver's licenses and state identification cards not just those from Hawaii.

Thank you for the opportunity to testify on H.D. 2666, H.D.1. I would be happy to answer any questions the committee may have.

Bernard P. Carvalho, Jr.
Mayor

Nadine K. Nakamura
Managing Director



Gerald T. Rapozo
Director

DEPARTMENT OF LIQUOR CONTROL
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite 120, Lihu'e, Hawai'i 96766
TEL (808) 241-4966 FAX (808) 241-6585

March 13, 2014

Senator Glenn Wakai, Chair
Senator Clarence K. Nishihara, Vice Chair
Committee on Technology and the Arts

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Committee on Commerce and Consumer Protection

Hearing: Tuesday, March 18, 2014
1:45 p.m.; Room 414

Position: Support HB2666 Relating to Personal Information

Dear Chairs Wakai & Baker and Members:

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

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

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

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

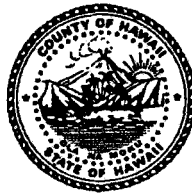
Respectfully Submitted,


GERALD T. RAPOZO
Director

An Equal Opportunity Employer

William P. Kenoi
Mayor

Walter K.M. Lau
Managing Director



Gerald A. Takase
Director

County of Hawai'i

Department of Liquor Control

Hilo Lagoon Centre, 101 Aupuni Street, Unit 230, Hilo, Hawai'i 96720-4261
(808) 961-8218 • Fax (808) 961-8684

March 14, 2014

Honorable Glenn Wakai, Chair
Honorable Clarence K. Nishihara, Vice-Chair
Committee on Technology and the Arts

Honorable Rosalyn H. Baker, Chair
Honorable Brian T. Taniguchi, Vice Chair
Committee on Commerce and Consumer Protection

The Senate
Hawai'i State Capitol
415 S. Beretania Street
Honolulu, Hawai'i 96813

Dear Legislators:

Re: Support of HB 2666, HD1 Relating to Personal Information
Hearing – March 18, 2014 -- 1:45 p.m.

We support HB 2666, HD1, relating to personal information, which is being heard by your Committees on March 18, 2014, at 1:45 p.m.

HB 2666, HD1 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 as is currently required under Section 487J-6(a)(2), Hawai'i Revised Statutes, as amended (HRS), which we feel was an oversight when the legislation was originally passed.

We require our licensees to check identification to prevent the sale of intoxicating liquor to minors. While, Section 487J-6(a)(2) created an exemption for age-restricted goods and services, the proviso of restricting it, where there is a reasonable doubt of the individual having reached the age of 18 years of age or older, has created some interpretation problems for licensees and whether they have the right to use their business equipment to scan for ages. Even with the efforts currently afforded to Hawai'i Driver's Licenses and Hawai'i State Identification Cards with the vertical formats and listing of the 18th and 21st birthdates to prevent calculation errors in our compliance checks, we still find unacceptable numbers of licensees still selling to minors.

Honorable Glenn Wakai, Chair, et al.

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March 14, 2014

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

Many of the licensees have gone through the time and expense of acquiring systems that will not only scan IDs to verify age and authenticate these IDs, but will lock their cash registers to prevent an underage sale from being made. Because of Section 487J-6, HRS, they are being thwarted from using this technology to help them curb this problem. A reasonable balance between using personal information and protecting personal information needs to be struck and the modifications proposed in HB 2666 HD1 should strike that balance.

Please support the efforts by businesses to prevent the sale of liquor and cigarettes to minors by passing HB 2666 HD1.

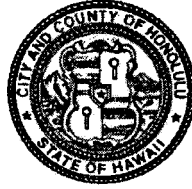
Sincerely,


GERALD TAKASE
Director

GT:de

LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU
711 KAPIOLANI BOULEVARD, SUITE 600 • HONOLULU, HAWAII 96813-5249
PHONE: (808) 768-7300 or (808) 768-7355 • FAX: (808) 768-7311
E-mail address: liquor@honolulu.gov • INTERNET: www.honolulu.gov/liq

KIRK CALDWELL
MAYOR



March 14, 2014

MICHAEL S. YAMAGUCHI
CHAIRMAN

IRIS R. OKAWA
VICE CHAIR

WESLEY F. FONG
COMMISSIONER

JOSEPH V. O'DONNELL
COMMISSIONER

JOSEPH M. MAGALDI, JR.
COMMISSIONER

ANNA C. HIRAI
ACTING ADMINISTRATOR

Senator Glenn Wakai, Chair
Senator Clarence K. Nishimura, Vice Chair
Committee on Technology and the Arts

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Committee on Commerce and Consumer Protection

Hearing: Tuesday, March 18, 2014
1:45 p.m.; Room 414

Position: Support HB2666 HD1, Relating to Personal Information

Dear Committee Chairs, Vice Chairs, and Members:

The Liquor Commission, City and County of Honolulu ("Commission"), supports House Bill 2666 HD1, Relating to Personal Information.

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

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

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

The Liquor Commission urges your support of House Bill 2666 HD1, Relating to Personal Information. Thank you for the opportunity to testify.

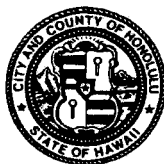
Respectfully submitted,


ANNA C. HIRAI
Acting Administrator

ACH:

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
Tuesday, March 18, 2014, 1:45 p.m., Conference Room 414

HOUSE Bill 2666 HD1, "RELATING TO Personal Information"

Position: Oppose

TO: The Honorable Glenn Wakai, Chair
and Members of the Committee on Technology and The Arts

The Honorable Rosalyn H. Baker, Chair
And Members of the Committee on Commerce and Consumer Protection

The City and County of Honolulu is opposed to HB No. 2666 HD1 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 bar code printed on the reverse side of these cards. For example, we do not understand why a business would require the unique card number (similar to a person's social security number). 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.

The City and County of Honolulu urges that H.B. No. 2666 HD1 be held.

Sincerely,

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

Preston P. H. K. Ko
Acting Licensing Administrator



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

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

TO:
SENATE COMMITTEES ON TECHNOLOGY AND THE ARTS and COMMERCE AND CONSUMER PROTECTION
Senator Wakai and Senator Baker, Chairs
Senator Nishihara and Senator Taniguchi, Vice Chairs

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: March 18, 2014
TIME: 1:45pm
PLACE: Conference Room 414

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.

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

While we appreciate the amendment in the HD1 which removes the requirement that "the business has reasonable doubt", it still leaves a vague standard that could hamper efforts to prevent the sale of liquor and cigarettes to minors by preventing business from applying uniform standards to age verification.

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 17, 2014

Honorable Glenn Wakai, Chair
Honorable Clarence K. Nishihara, Vice-Chair
Committee on Technology and the Arts
Honorable Rosalyn H. Baker, Chair
Honorable Brian T. Taniguchi, Vice-Chair
Committee on Commerce and Consumer Protection
The Senate
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

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

Dear Chair Wakai, Chair Baker, Vice-Chair Nishihara, Vice-Chair Taniguchi and Committee Members:

Seven-Eleven Hawaii, Inc., respectfully submits this testimony in strong support of House Bill No. 2666, House Draft 1, relating to personal information, which is being heard by your Committees on Technology and the Arts, and Commerce and Consumer Protection, on Tuesday, March 18, 2014 at 1:45 p.m.

House Bill No. 2666, House 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, 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.

Honorable Glenn Wakai, Chair
Honorable Clarence K. Nishihara, Vice-Chair
Committee on Technology and the Arts
Honorable Rosalyn H. Baker, Chair
Honorable Brian T. Taniguchi, Vice-Chair
Committee on Commerce and Consumer Protection
March 17, 2014
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We note that we have met with the State of Hawaii Office of Consumer Protection (“OCP”) and understand that OCP is supportive of making permanent the change in the reference in section 487J-6(a)(2), HRS, from 18 years of age to “the minimum age required” as provided in House Bill 2666, House Draft 1. We also have discussed with OCP exploring in the future various technological options that may provide alternative means of attaining our respective goals.

In considering House Bill No. 2666, House 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.

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, 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.

Honorable Glenn Wakai, Chair
Honorable Clarence K. Nishihara, Vice-Chair
Committee on Technology and the Arts
Honorable Rosalyn H. Baker, Chair
Honorable Brian T. Taniguchi, Vice-Chair
Committee on Commerce and Consumer Protection
March 17, 2014
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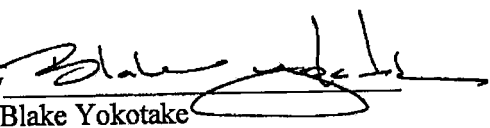
We ask that the Legislature support efforts to prevent the sale of age restricted products, such as tobacco and alcoholic beverages to under-aged customers. We take this obligation very seriously and we hope that the Legislature will support the efforts of all businesses to rigorously enforce the law in this area.

Thank you for your consideration of our testimony.

Sincerely,

SEVEN-ELEVEN HAWAII, INC.

By


Blake Yokotake

Human Resources Manager