

February 20, 2021

707 Richards Street, Suite 610
Honolulu, Hawaii 96813
Telephone (808) 523-3900
Facsimile (808) 526-9829
Website: koshibalaw.com
jspiker@koshibalaw.com

Honorable Mark. M. Nakashima, Chair
Honorable Scot Z. Matayoshi, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Re: H.B. 171- RELATING TO PROPERTY CRIMES

Dear Chair Nakashima, Vice Chair Matayoshi & Committee Members,

On behalf of the Hawaii Pawnbrokers Association, we respectfully OPPOSE H.B. 171.

H.B. 171 proposes changing the state of mind required in HRS Section 486M-7 by removing “knowingly.”¹ Removing the knowing state of mind as an element of the offense means a pawnbroker and secondhand dealer will be punished for inadvertently receiving stolen property or for making unintentional and inadvertent clerical errors- all of which can result in **up to a year in prison.**²

For example, HRS Chapter 486M requires every pawnbroker and secondhand dealer to document the name, home address, date of birth, height, weight, eye color, hair color, age, finger print and driver’s license or government issued ID number for all customers. A complete and accurate description of all items purchased or pawned, including all markings, names, initials, and inscriptions, as well as the fineness and weights of the precious metals and gems must also be documented. A price must be listed for every item bought or pawned. This documentation is very extensive and requires 3-4 pages, or more, of paperwork. Once completed, the documentation is required to be transmitted to the police department. Under H.B. 171, if a pawnbroker/secondhand dealer mistakenly forgets to write down any of the aforementioned information, the pawnbroker/secondhand dealer is immediately

¹ H.B. 171 amends HRS Section 486M-7 [by removing “knowingly”] as follows:

§486M-7 Penalties. Any dealer, or any agent, employee, or representative of a dealer who [~~knowingly~~] violates any of the provisions of sections 486M-2, 486M-3, 486M-4, or who refuses to allow the inspection provided for in section 486M-5, and any person who offers or records information which is required under section 486M-2 that the person knows or has reason to know is false, shall be guilty of a misdemeanor. Any dealer, or any agent, employee or representative of a dealer who is convicted for a second violation of any provision of this chapter shall, in addition to the foregoing penalty, be permanently prohibited from engaging in the business of buying or selling of precious or semiprecious metals or precious or semiprecious gems or any article.

² **Two violations of HRS Chapter 486M results in the permanent loss of one’s pawnbroker and secondhand dealer license.**

Honorable Mark. M. Nakashima, Chair
Honorable Scot Z. Matayoshi, Vice Chair
House Committee on Judiciary & Hawaiian Affairs
February 20, 2021
Page 2

charged with a misdemeanor and faces up to a year in prison. It is not the spirit of the law to charge people with a crime for clerical errors and honest mistakes. That is akin to a police officer being charged with a misdemeanor because the police officer forgot to write down the hair color of a person in a police report or a judge being charged with a misdemeanor for misspelling a name in a court document.

H.B. 171 implies that a high volume of stolen property is being sold to pawn shops and secondhand dealers. The intent of this Bill comes from incorrect information, largely based on the Hollywood stereotype of the pawn industry. The fact is that less than $\frac{1}{10}$ of one percent of stolen property is found at pawn shops and secondhand dealers. That is a national statistic from the National Pawnbrokers Association. Local businesses also report the same low percentage. This statistic has been consistent for many years. Local businesses are very transparent and cooperative with law enforcement and there are no problems or issues with local businesses complying with current laws and requirements

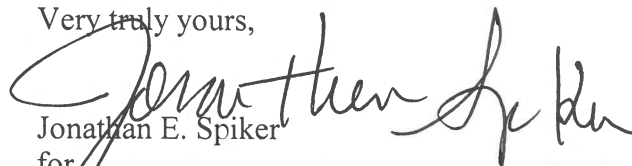
We believe this low percentage is due to strict guidelines set by State laws that pawn shops and secondhand dealers already follow, such as requiring every customer to provide a government-issued ID card with a picture and number. In addition, pawn shops and secondhand dealers also have to get a fingerprint of each customer and hold the purchased item(s) for a minimum of 30 days.

H.B. 171, will not benefit law enforcement. ***Rather, this Bill will result in owners and employees of small businesses being charged with misdemeanors and facing a year in prison for clerical errors and honest mistakes in paperwork. This Bill creates a crime when none exists.*** H.B. 171 does nothing to help identify the source of stolen property and will not have any impact on the recovery rate of stolen property because it is written in a way that punishes a person who makes an inadvertent clerical error and this has nothing to do with stolen property or the recovery of stolen property.

We believe the Hawaii State Legislature supports small businesses. We support law enforcement but H.B. 171 does not significantly benefit law enforcement, pawn shops or consumers in any way.

For the foregoing reasons, we respectfully request that you do not pass H.B. 171.

Very truly yours,



Jonathan E. Spiker
for
Hawaii Pawnbrokers Association

Testimony Opposing HB171
Submitted by John Spiker, Owner – Hawaii Gold & Silver Company

My name is John Spiker. I am the owner of Hawaii Gold & Silver Company and have been in business for over 40 years. I am the President of the Hawaii Pawnbroker's Association. I have been giving testimony at the Hawaii State Legislature since 1981.

I oppose HB171.

HB171 implies that large amounts of stolen property are sold to pawnshops and secondhand dealers. This is very misleading and inaccurate. Pawnshops and secondhand dealers are one of the most heavily regulated industries in the country. Less than $\frac{1}{10}$ of one percent of stolen property is found at pawnshops and secondhand dealers. That is a national statistic from the National Pawnbrokers Association. Local businesses also report the same low percentage. This statistic has been consistent for many years.

The current state of mind in HRS 486M-7 of "knowingly" is fair and just. It does not make sense to add "recklessly" to the state of mind in HRS 486M-7. In other contexts, it makes sense. For instance, someone that is driving 90 mph in a 25-mph zone and causes an accident that hurts or kills someone is clearly exhibiting reckless behavior.

To change the state of mind to reckless for small businesses will easily and often result in small business owners being prosecuted for innocent and harmless clerical errors or a simple typo. These errors have nothing to do with identifying a criminal or identifying and recovering stolen property. Extensive information and details are recorded about each customer and the property pawned or sold to our business. If some information is missing or misspelled, it does not affect law enforcement's ability to identify a person selling property and the identification of the property sold because of the amount of detailed personal and merchandise information that is recorded. Pawnshops and secondhand dealers are very helpful and cooperate with law enforcement.

Applying the reckless standard can result in a small business owner being arrested for a clerical error, spending a year in prison and the loss of his business. The arrest and punishment have nothing to do with stolen property. There is no incentive for a small business to buy stolen property. Stolen property is recovered by the police with no compensation to the business owner. In over 40 years of business and 30,000 to 40,000 transactions, I have only encountered 8 stolen items. The heavy burden **HB171** places on business owners is not rationally related to a decrease in property crime sought by this Bill.

I respectfully submit this testimony and thank you for your serious consideration to not pass this Bill which unfairly affects our struggling pawn and secondhand dealers' industry that provides a much-needed service to our community. Thank you for always supporting small businesses.

Sincerely,

John Spiker



Kamaaina Loan

February 21, 2021

Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair
and Members of the House Committee on
Judiciary and Hawaiian Affairs

FROM: Richard Dan

Dear Chair Nakashima, Vice Chair Matayoshi, and Members of the House Committee on Judiciary and Hawaiian Affairs

SUBJECT: **HB171 - RELATING TO PROPERTY CRIMES.**

My name is Richard Dan and I operate Kamaaina Loan and Cash for Gold, the oldest pawnshop in the state, a locally-owned community business. I would like to provide some background on HB171.

I **OPPOSE HB171 - RELATING TO PROPERTY CRIMES.**

The idea that pawnbrokers could be liable to imprisonment if they are victimized by a criminal raises the most serious questions of fairness and decent behavior. So, I strongly recommend not removing the word “**knowingly**” from the existing law.

Our governor has included pawnshops as essential businesses during this pandemic, because in Hawaii 30% of citizens are un-bankable and do not have a conventional bank account. When they need financial support, they often turn to a trusted pawn lender.

In my case, I am also a licensed second-hand dealer. Probably most second-hand transactions today are not conducted by licensed agents, so the HB171 attack on pawnbrokers is misguided at best.

Many of the clients of Kamaaina Loan are well-known to us; some are the third generation in a family to trust us.

Even when we are not personally familiar with a customer, we collect a large amount of information, including thumbprint, copy of driver’s license, telephone number and address.

If someone should be so bold as to try to pass off stolen goods, it is comparatively simple for the police to track them with the information we provide (including video of transactions).

Contrast this with transactions in stolen goods mediated over social media, which is certainly now the most usual method of fencing loot. The sponsors of this bill seem

SB 397 - RELATING TO PROPERTY CRIMES

February 8, 2021

Page 2

not to have offered any statistics to back up their assertions about stolen property and pawnshops.

These are just a few comments leading to my opposition of this bill. If I can be of assistance in crafting more equitable, accountable and safe legislation as it relates to the matter of small short-term loans and/or payday lending, please contact me at Tel: (808) 242-5555.

These are just a few comments leading to my **opposition** of this bill. If I can be of assistance in crafting more equitable, accountable and safe legislation. please contact me at Tel: (808) 242-5555.

Sincerely,

Richard Dan

Kamaaina Loan

HB-171

Submitted on: 2/22/2021 11:31:21 AM

Testimony for JHA on 2/23/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Maui Police Department	Support	No

Comments:

We support this measure.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on Judiciary & Hawaiian Affairs**

February 23, 2021

H.B. No. 171: RELATING TO PROPERTY CRIMES.

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Office of the Public Defender opposes H.B. No. 171.

By removing the knowingly state of mind, this measure essentially will criminalize anyone who recklessly violates any of the provisions of HRS §§ 486M-2, 486M-3, and 486M-4. We are concerned that including the reckless state of mind will place honest and law-abiding businesses and their employees (especially inexperienced employees) at risk of criminal prosecution.

We understand that an unscrupulous individual may use deception when conducting business with a broker or dealer, but this measure lumps all brokers and dealers together with criminals and places them in a precarious position which could substantially impact their risk of being prosecuted from criminal acts when they did not have knowledge that property was stolen. A diligent employee who makes a clerical error could be subject to criminal prosecution for receiving property that they had no personal knowledge was stolen property.

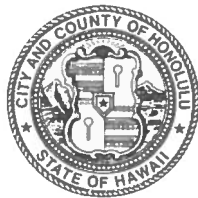
In addition, we are concerned that this proposed change would impact legitimate businesses and jeopardize a means for law-abiding citizens living in poverty to quickly pawn or sell property to make ends meet in times of financial crisis.

Finally, if this committee is inclined to pass this measure, the language should be amended to clearly reflect that the state of mind required for HRS § 486M-7 is intentionally, knowingly or recklessly.

Thank you for the opportunity to comment on this measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



RICK BLANGIARDI
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE PO-KK

February 23, 2021

The Honorable Mark M. Nakashima, Chair
and Members
Committee on Judiciary
and Hawaiian Affairs
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members:

SUBJECT: House Bill No. 171, Relating to Property Crimes

I am Paul Okamoto, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 171, Relating to Property Crimes.

Officers are unable to conduct any meaningful enforcement when secondhand dealers purchase stolen goods and mostly all enforcement actions have been recently unsuccessful in court, as the state of mind of determining "knowingly" has been a high burden. Unscrupulous buyers use unwitting surrogates to conduct illegal transactions and avoid prosecution by claiming ignorance. Therefore, they have no incentive to do their due diligence to scrutinize the item for sale.

Changing the state of mind required for Section 486M-7, Hawaii Revised Statutes, will allow the HPD to better serve the victims of property crimes and the community by closing off pathways in which stolen good are sometimes trafficked.

The HPD urges you to support House Bill No. 171, Relating to Property Crimes, and thanks you for the opportunity to testify.

APPROVED:


Susan Ballard
Chief of Police

Sincerely,


Paul Okamoto, Captain
Criminal Investigation Division