

**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2022**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1991, H.D. 1, RELATING TO CONSUMER PROTECTION.

**BEFORE THE:**

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

**DATE:** Tuesday, March 1, 2022                      **TIME:** 1:00 p.m.

**LOCATION:** State Capitol, Room 329, Via Videoconference

**TESTIFIER(S):** Holly T. Shikada, Attorney General, or  
Adrian Dhakhwa, Deputy Attorney General

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Chair Johanson and Members of the Committee:

The Department of the Attorney General (Department) submits comments on this bill.

This bill would add a new section to chapter 293, Hawaii Revised Statutes (HRS), to prohibit the sale of any bicycle that has been reported stolen and listed on a publicly available online database in counties with a population of 500,000 or more. The penalty for such a sale is either a \$500 fine, "the listed sale price on the advertisement, or the actual sale price, whichever is greater" (page 4, lines 2-3).

It is unclear from the bill who would be responsible for enforcement, and whether the penalty would be considered criminal, civil, or administrative in nature. The difference is significant because the characterization of the penalty would determine the applicable burden of proof. The Department notes that section 293-1, HRS, states that defacing the serial number on a bicycle "shall be a misdemeanor and shall result in a fine of not more than \$500."

The Department suggests inserting similar wording to clarify that the sale of a reported stolen bicycle under the circumstances stated in this bill would be a misdemeanor. Suggested wording for page 4, lines 1-2, is: "(c) Any person who violates this subsection shall be guilty of a misdemeanor and shall be fined . . . ." This would clarify that a violation of this section would be a criminal offense.

Additionally, in a criminal prosecution under this bill, the prosecution would have to prove not only that the offense occurred in a "county with a population of five hundred thousand or more", but that the person acted intentionally, knowingly, or recklessly as to this attendant circumstance, pursuant to sections 702-204 (State of mind required), 702-205 (Element of an offense), and 702-207 (Specified state of mind applies to all elements), HRS. This could be extremely difficult to prove beyond a reasonable doubt, frustrating this bill's purposes of addressing bicycle theft and consumer protection.

To remedy this, the Department suggests inserting a new subsection (d), as follows, on page 4, line 4 (and redesignating current subsection (d) to subsection (e)):  
"The prosecution need not prove the person's state of mind as to the attendant circumstance of the offense occurring in a county with a population of five hundred thousand or more."

Similarly, it may be difficult to prove beyond a reasonable doubt that the person acted intentionally, knowingly, or recklessly regarding the bicycle being reported as stolen and that the bicycle was listed on the public database. Currently, a person could falsely claim that the person checked the database and did not see the bicycle listed prior to selling the bicycle. The prosecution would then have the impossible burden of disproving this fact beyond a reasonable doubt in order to obtain a conviction.

To remedy this, the Department suggests inserting a new subsection (f) on page 4 to make such a claim an affirmative defense: "It shall be an affirmative defense that the person checked the publicly available online stolen item database and did not see the bicycle listed prior to selling it." The person would then have the burden of proving by a preponderance of evidence that it was more likely than not that the person did check the public database and did not see the bicycle listed prior to selling it.

Thank you for the opportunity to provide comments.

**HB-1991-HD-1**

Submitted on: 2/28/2022 7:57:45 AM

Testimony for CPC on 3/1/2022 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Lisa Reinke	Individual	Support	No

Comments:

The bill will help protect my property and encourage healthy cycling activity and the environment.

2/28/2022

**Testimony Supporting HB 1991 HD1  
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 43 years. I have been the President of the Hawaii Pawnbroker's Association for 20 years. I have been giving testimony at the Hawaii State Legislature since 1981.

**I support HB 1991 HD1 in its current form.**

Thank you.

John Spiker  
Hawaii Gold and Silver Company  
President, Hawaii Pawnbrokers Association  
808-735-5188

February 28, 2022

Jonathan E. Spiker, Esq.  
707 Richards Street, Suite 610  
Honolulu, Hawaii 96813  
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Website: koshibalaw.com  
jspiker@koshibalaw.com

Honorable Aaron Ling Johanson, Chair  
Honorable Lisa Kitagawa, Vice Chair  
House Committee on Consumer Protection & Commerce

**Re: House Bill HB1991 HD1**

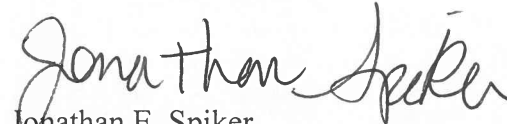
Dear Chair Johanson, Vice Chair Kitagawa & Committee Members,

**On behalf of the Hawaii Pawnbrokers Association, we SUPPORT HB1991 HD1 in its current form.**

Additionally, the Hawaii Pawnbrokers Association and the Honolulu Police Department met and together came up with a proposed version of HB1991. See enclosed.

**The Hawaii Pawnbrokers Association SUPPORTS the enclosed proposed version of HB1991 and asks that this proposed version be passed.**

Very truly yours,



Jonathan E. Spiker  
for  
KOSHIBA & PRICE

Enclosure

**THIS VERSION OF HB1991 WAS FORMULATED AND  
AGREED UPON BY THE HONOLULU POLICE  
DEPARTMENT AND HAWAII PAWNBROKERS  
ASSOCIATION**

SECTION 1. The legislature finds that the theft of personal items may significantly impact a person financially as well as in other ways, such as the loss of work data or school notes on a laptop or the loss of memories on a cellular phone. Bicycle thefts further impact the State's sustainability goals of reducing carbon emissions and utilizing low carbon transportation as residents are inhibited in investing in and using bicycles for transportation. Reducing resale opportunities for these items is one way to decrease the motivation to steal them.

The legislature further finds that while bicycles are required to be registered with the county and the failure to do so subjects the owner to fines, these requirements have been insufficient to stop the theft of bicycles and their resale. The legislature believes that the creation of a publicly available database of stolen bicycle serial and emblem numbers would help deter the theft of bicycles and the resale of stolen bicycles.

The legislature notes that stolen items are [occasionally] ~~often~~ resold through pawnshops, businesses that purchase secondhand items, and online sales platforms. Businesses with a physical presence and monetary transactions in the State must be licensed to operate and are required submit records of transaction to county police departments. However, records of these transactions are currently being submitted in hard

copy. This manual inputting of data by the county police departments creates an unnecessary lag and is an impediment to quickly comparing and identifying potentially stolen items against itemized lists from recent burglaries and thefts.

The legislature also finds that allowing pawnbrokers and secondhand dealers to submit electronic records will enable county police departments to process these records in a more efficient manner and decrease the time frame for record retention. Authorizing electronic submittal for records of transaction would also allow articles to be properly categorized, listed, itemized, and accounted in real time. An electronic submission system that contains detailed descriptions and/or pictures of all markings, inscriptions, serial numbers of bicycles, and serial numbers of electronics would allow detectives to quickly identify stolen items and could be shared to other law enforcement agencies in the State.

~~The legislature additionally finds that establishing this law enforcement database can serve as a first step towards creation of a publicly available searchable portal in the database. This would allow victims of property crime to look for, report, and find their own personal property and possibly kick start investigations where no physical evidence exists. A searchable database would also allow prospective buyers in online sales platforms to check whether the item is listed as stolen~~



~~and would hold sellers to a higher standard of accountability and encourage minimal due diligence to avoid engaging in the sale of stolen property.~~

The purpose of this Act is to:

(1) Prohibit, in counties with a population of five hundred thousand or more, the sale of a bicycle that is reported as stolen and listed on a publicly available online stolen item database;

(2) Require the police department in counties with a population of five hundred thousand or more to establish the publicly available online stolen [bicycle] ~~item~~ database; and

(3) Update the recordkeeping and retention requirements for businesses that buy previously owned articles.

SECTION 2. Chapter 293, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§293- Prohibition of sale; stolen.** (a) In any county with a population of five hundred thousand or more, no person may sell [or offer for sale] a bicycle on an online sales platform, at a dealer, or elsewhere if:

(1) The bicycle has been reported as stolen to a county police department; and

(2) The bicycle is listed on a publicly available online stolen item database as provided in subsection (b).

(b) In any county with a population of five hundred thousand or more, the county police department or any other agency as designated by the county shall establish the publicly available online stolen item database that

allows persons to verify if a bicycle serial number or emblem number has been reported as stolen.

(c) Any person who violates this subsection shall be fined either \$500, the listed sale price on the advertisement, or the actual sale price, whichever is greater.

(d) For purposes of this section:

"Dealer" has the same meaning as in section 486M-1.

"Online sales platform" means an internet website or application that:

- (1) Is open to the public;
- (2) Operates in the State; and
- (3) Enables the sale of goods between persons using any medium of facilitation."

SECTION 3. Section 486M-2, Hawaii Revised Statutes, is amended to read as follows:

**"§486M-2 Record of transactions.** (a) Every dealer, or the agent, employee, or representative of the dealer shall, immediately upon receipt of any article, record the following information, on an electronic recordkeeping form or a paper form authorized by the chief of police in each county:

- (1) The name and address of the dealer;
- (2) The name, residence address, date of birth, and the age of the person from whom the article was received;
- (3) The date and time the article was received by the dealer;

(4) The signature of the person from whom the article was received;

(5) The Hawaii ~~[driver's]~~ license number, or if the person does not possess a Hawaii ~~[driver's]~~ license, the number of and description of any government issued identification ~~[which]~~ that bears a photograph of the person from whom the article was received;

(6) A photograph and the fingerprints of the person from whom the article was received;

~~[(6)]~~ (7) Either a complete and accurate description of the article received, including all markings, names, initials, and inscriptions, or photographs accurately depicting the article received, including all markings, names, initials, and inscriptions;

~~[(7)]~~ (8) A reasonable estimate of the fineness and weights of the precious and semiprecious metals and precious and semiprecious gems received; ~~[and]~~

~~[(8)]~~ (9) The price paid by the dealer for each article~~[-];~~ and

(11) A signed copy of any pawn transaction agreement made pursuant to part V of chapter 445, if any.

(b) Upon request and at the discretion of the chief of police of each county, copies of all completed forms required by this section shall be surrendered, mailed, or electronically inputted and transmitted via modem or by facsimile transmittal to the chief of police or to the chief of police's authorized representative. ~~[The method of submittal to the chief of police shall be at the option of the dealer.]~~ The chief of police of each county or the chief of police's authorized representative shall determine the method of submission for recordkeeping, whether the submissions be by electronic forms or paper forms; provided that, in any county with a population of five hundred thousand or more, completed

forms shall be submitted free of charge through a webpage, online service, or online application established by the county police department or any other agency as designated by the county."

(c) The requirements for a photograph of the person from whom the article was received, the submission of recordkeeping by electronic means through a webpage, online service, or online application, and submission of a photograph of the person from whom the article was received shall not apply to any dealer, or dealer's agent, employee, or representative where the dealer has continually held a pawn or second-hand license since January 1, 2002.

SECTION 4. Section 486M-4, Hawaii Revised Statutes, is amended to read as follows:

**"§486M-4 Minimum retention of items.** (a) No dealer, the dealer's agents, employees, or representatives shall alter, melt, deface, break apart, dispose of, or change the character or integrity of the precious or semiprecious metals or precious or semiprecious gems received or purchased for a period of fifteen calendar days [in counties with a population of less than three hundred thousand and thirty calendar days in counties with a population of three hundred thousand or more] after the purchase or possession by the dealer, whichever comes later. Every article received by the

dealer, the dealer's agents, employees, or representatives shall be retained by the dealer in the county where received or purchased for a period of fifteen calendar days [in counties with a population of less than three hundred thousand and thirty calendar days in counties with a population of three hundred thousand or more] after the purchase or possession by the dealer, whichever comes later.

[(b) At the discretion of the chief of police of each county, the holding period may be reduced to fifteen calendar days; provided that the dealer has computerized record-keeping and transmittal capabilities acceptable to the chief of police or the chief of police's authorized representative.]

(c) ~~(b)~~ Notwithstanding subsection (a) to the contrary, a secondhand dealer operating an automated recycling kiosk shall retain previously owned consumer handheld electronic cellular phone devices for a total period of thirty calendar days from the date they were received or purchased; provided that the secondhand dealer operating an automated recycling kiosk may store the previously owned consumer handheld electronic cellular phone devices at a business location outside the county where the devices were received or purchased; provided further that[7] upon request by law enforcement within the thirty-day retention period, a secondhand dealer operating an automated recycling kiosk shall

promptly return any requested devices no later than five business days from the date of the request at no cost to the requesting law enforcement agency."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. Section 2 of this Act shall take effect on January 1, 2023. Sections 3 and 4 of this Act shall take effect on January 1, 2024.

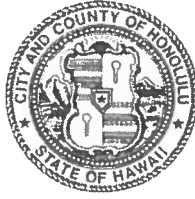
POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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

**LATE**

RADE K. VANIC  
INTERIM CHIEF

RICK BLANGIARDI  
MAYOR



OUR REFERENCE **BM-KK**

March 1, 2022

The Honorable Aaron Ling Johanson, Chair  
and Members  
Committee on Consumer Protection  
and Commerce  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 329  
Honolulu, Hawaii 96813

Dear Chair Johanson and Members:

**SUBJECT: House Bill No. 1991, H.D. 1, Relating to Consumer Protection**

I am Benjamin Moszkowicz, Major of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 1991, H.D. 1, Relating to Consumer Protection. This bill would provide not only the opportunity for much-needed public education on the topic but a tool that law enforcement could use to help recover stolen items and potentially prevent property theft.


Currently, the HPD and individual pawnbrokers and secondhand dealers contract with a third-party vendor to facilitate the type of information exchange required under statute. However, by developing our own customized computer program, we can not only internally facilitate information flow more quickly and effectively, but also distribute the solution free-of-charge to those businesses that require it. While there is a cost associated with the development of such a computer program, the HPD views this as an investment in the future that we are absolutely willing to make now.

The Honorable Aaron Ling Johanson, Chair  
and Members  
March 1, 2022  
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During previous hearings on this bill, several members of Hawaii's pawn and second-hand industry expressed concerns regarding access to and ease of use for the type of technology that would be required to implement a statewide electronic reporting system. I met with several of the stakeholders and developed language that we all feel comfortable supporting. The full text of our suggestions was sent to your office through Representative Lisa Marten.

The HPD urges you to support House Bill No. 1991, H.D.1, Relating to Consumer Protection, by passing it as amended, and we appreciate the committee's consideration on these concerns. Thank you for the opportunity to testify.

Sincerely,

  
Benjamin Moszkowicz, Major  
Criminal Investigation Division

APPROVED:

  
\_\_\_\_\_  
Rade K. Vanic  
Interim Chief of Police



**LATE**

**HB-1991-HD-1**

Submitted on: 2/28/2022 1:55:16 PM

Testimony for CPC on 3/1/2022 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
RICHARD DAN	Kamaaina Loan	Support	Yes

Comments:

I support HB1991 HD1 as written.

**HB-1991-HD-1**

Submitted on: 3/1/2022 12:22:53 PM

Testimony for CPC on 3/1/2022 1:00:00 PM



<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Marcy	Individual	Support	No

Comments:

As a bike rider and lifelong Hawai'i resident I'm disheartened to see bike thefts continue in our community. I strongly support this bill and hope that it will stem the ongoing crime we have experienced.