

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

ON THE FOLLOWING MEASURE:

S.B. NO. 2646, RELATING TO CONSUMER PROTECTION.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

DATE: Thursday, February 10, 2022 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Via Videoconference

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

Chair Nishihara and Members of the Committee:

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

This bill would create a new section in 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 3, lines 3-5)

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 5, line 3, 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.

It also should be noted that in section 2, page 5, lines 1 and 2, the bill indicates that the publicly available online stolen item database would allow persons to "verify if a bicycle serial number or emblem number has been reported as stolen." To ensure that the serial number or emblem number is documented properly, it is recommended that in section 3, page 5, line 14, through page 8, line 2, that section 486M-2(7), HRS, be amended at page 6, lines 15-17, to specifically state that the serial number or emblem number is required, to read: "~~(6)~~ (7) A complete and accurate description of the article received, including all unique identifying markings, such as serial numbers or emblem numbers, names, initials, and inscriptions;"

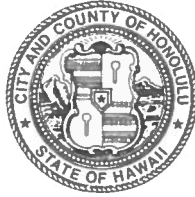
Additionally, in a criminal prosecution under this bill, the prosecution would have to prove not only that the offense occurred in a "county with a population of five hundred thousand or more", but that the person acted intentionally, knowingly, or recklessly as to this attendant circumstance, pursuant 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 consumer protection.

To remedy this, the Department suggests inserting a new subsection (d) on page 5, line 6 (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."

Thank you for the opportunity to provide comments.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU HAWAII 96813
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RADE K VANIC
INTERIM CHIEF

RICK BLANGIARDI
MAYOR

OUR REFERENCE **BM-KK**

February 10, 2022

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety,
Intergovernmental, and Military Affairs
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

SUBJECT: Senate Bill No. 2646, 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 Senate Bill No. 2646, 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, 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 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.

As a point of clarification, Section 3 of the bill would require a record of all transactions to include the fingerprints of the person from whom a pawnbroker or secondhand shop receives articles. Current practice permits fingerprints to be collected



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by businesses when they are conducting a pawn transaction. These fingerprint records remain in the custody of the pawn shop and are not sent to law enforcement as a matter of routine practice. The HPD has no interest or desire to collect fingerprint records for every pawn or secondhand transaction. However, the current practice of allowing a fingerprint record for pawn transactions should be allowed to continue as long as the fingerprint records are not required to be sent to law enforcement. Striking the words, "and the fingerprints" from page 6, line 13 of the bill would absolutely suffice to satisfy our concern.

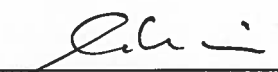
Finally, the HPD would like to request a small change to the implementation schedule set forth in the bill. Section 2 requires the HPD to establish a public database of stolen serial and emblem numbers. Working internally with our Information Technology Division (ITD), work has already begun and we estimate it will take a few weeks for us to create the public-facing database required. However, the creation of an internal system that would meet the needs of Sections 3 and 4 will take substantially more time. In order for us to create, test, and implement an in-house solution, we would like to request an effective date of January 1, 2023, for those sections.

The HPD urges you to support Senate Bill No. 2646, Relating to Consumer Protection, 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

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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STEVEN S. ALM
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FIRST DEPUTY
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**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL AND MILITARY AFFAIRS**

Thirty-first State Legislature

Regular Session of 2022

Deputy Prosecuting Attorney

February 10, 2022

RE: S.B. 2646; RELATING TO CONSUMER PROTECTION.

Chair Nishihara, Vice-Chair DeCoite and members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in **support** of S.B. 2646.

Typically, by the time the Department receives a case involving burglary, robbery, or other types of theft, a defendant has been identified, the victim has provided a written statement, and the Honolulu Police Department (“HPD”) has conducted a thorough investigation into the facts of the case. In many of these cases, however, the actual item(s) that was stolen is never recovered. And while the victim may be entitled to restitution, if the defendant is ultimately convicted, many victims place an intrinsic value on the stolen item(s) that is far beyond any resale or market value. Whether it is an antique instrument, jewelry from a loved one, electronics containing personal work product or photographs, or any number of other things...many victims of theft simply want their item(s) back.

Currently, pawnbrokers and secondhand dealers are allowed to choose between keeping their records in an electronic form or paper form. While the electronic form allows records to be searchable by law enforcement almost immediately upon uploading, but paper forms are delivered by the pawnbroker to HPD and manually inputted by HPD staff, which can take up to a month. Neither of these forms currently requires that photographs be taken of the items.

While the Department is open to various ideas on precisely what information should be viewable by victims—for examples, only photographs and descriptions of the items, and the date it was brought in to an (unspecified) licensee—or whether victims would need the assistance of a police officer to view the information, the Department strongly agrees that an all-electronic

records system could vastly increase the chances of a victim tracking down their stolen item(s). It is also the Department's understanding that the third party platform that is already used by HPD (for its electronic-option of pawnbroker records), is used by other states for the same purpose. In some cases, this may also provide additional information for criminal investigations—using the same information that pawnbrokers and secondhand dealers are already required to collect—but uploaded in a much timelier manner.

Even the added requirement of taking a photograph of the pawned or secondhand item, and of the person attempting to pawn or sell it, would be relatively easy for pawnbrokers and secondhand dealers to incorporate into their practices, so long as they can purchase or have access to a smartphone, tablet, or laptop, as nearly all of these devices now have basic photo and wifi capabilities. Seeing a photograph of the item(s) would make it much more likely that a victim could recognize their stolen property, over and above the current “item description” that is currently provided in records, which is often as generic as “yellow metal ring.” Without a photograph of the item, it would be virtually impossible for a victim to confirm that the “yellow metal ring” is their personal property. The Department also notes that other record-keeping systems, such as those maintained by safety check inspection sites, are already maintained electronically.

In many cases, an all-electronic recordkeeping system would significantly improve victims' chances of being reunited with their property, and for many victims, reclaiming their property means much more to them personally than a simple dollar amount, or sometimes even more than a conviction.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports passage of S.B. 2646. Thank for you the opportunity to testify on this matter.

February 8, 2022

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Honorable Clarence K. Nishihara, Chair
Honorable Lynn DeCoite, Vice Chair
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Re: Please Do Not Pass Senate Bill SB 2646

Dear Chair Nishihara, Vice Chair DeCoite & Committee Members,

On behalf of the Hawaii Pawnbrokers Association, we respectfully OPPOSE SB 2646 and ask that this Bill NOT be passed.

SB 2646 will require pawnbrokers and secondhand dealers to 1) purchase computers, electronic software, and photography equipment; 2) document each customer's personal information such as name, age, date of birth, address, and government issued ID card number; 3) take a photograph of the customer and detailed photographs of all items involved in a business transaction; 4) document and save all of the aforementioned information on an electronic form and 5) submit the electronic form containing the customer's name, age, date of birth, address, government issued ID card number, photograph of the customer, the amount paid per item and photographs of the items to an internet website that is open for anyone to view.

This Bill violates Federal Law. Under federal law, pursuant to The USA PATRIOT Act [31 U.S.C. § 5312(a)(2)(N) and (O)] and Title V of the Gramm-Leach-Bliley Act [15 U.S.C. § 6801; 12 U.S.C. § 1843], pawnshops and precious metals dealers are financial institutions and all customers of financial institutions are granted specific federal privacy rights. These privacy rights limit the sharing of customers' non-public personal information in business transactions, including pawn transactions, and ensures customers are granted a right of privacy. Submitting an electronic form on the internet containing a customer's personal information, a photograph of the customer, photographs of the customer's personal items, and the price paid for each item is a violation of federal law.

No other State requires pawnbrokers or secondhand dealers to upload personal customer information and photographs of customers and all items involved in business transactions to a public website.

Uploading photographs of items to an online sales platform that is viewable by anyone will result in confusion and people making false claims that their property was stolen.

Many pawnbrokers and secondhand dealers are senior citizens and many of them have disabilities or other medical conditions and therefore are unable to comply with the computer and electronic requirements of this Bill and/or do not have the computer skills to do what is required under this Bill. This Bill inherently takes away the livelihood of many pawnbrokers and secondhand dealers by enforcing more stringent regulations and increases business expenses and overhead costs. It will force many of them out of business because they are unable to comply due to their age and lack of experience with computer technology.

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Honorable Lynn DeCoite, Vice Chair
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This Bill implies that a high volume of stolen property is being sold to pawnbrokers 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 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.

This Bill is nearly identical to other bills from past years that the Hawaii State Legislature and Honolulu City Council refused to pass. Specifically, similar bills came before the Hawaii State Legislature in 2005, 2008, 2014 and 2019, and before the Honolulu City Council in 2013. Each time, the Hawaii State Legislature and the Honolulu City Council decided not to pass these bills due to federal privacy violations, third party involvement with private and consumer information, and the financial burdens placed on small business owners.

In 2014, House Resolution #154 was passed to create a working group to be formed with stakeholders including pawnbrokers, secondhand dealers and law enforcement to resolve the issues present in those bills. Pawnbrokers and secondhand dealers have been willing and ready to meet to discuss and work on the issues in these types of bills but have yet to hear from law enforcement.

This Bill provides no statewide uniformity because the Chief of Police in each county can decide on the manner in which pawnshop reports are filed.

This Bill contains ambiguous language that is likely to cause confusion.

The COVID-19 pandemic has made this a very difficult time for many small businesses. Several pawnshops and secondhand dealers have closed down or gone out of business in recent months. Passing this Bill will force many more pawnshops and secondhand dealers to permanently close. These business owners believe the Legislature wants to support small businesses.

For the foregoing reasons, we respectfully request that you do not pass SB 2646.

Very truly yours,



Jonathan E. Spiker

for

KOSHIBA & PRICE

February 8, 2022

To: Senate Public Safety, Intergovernmental, and Military Affairs
From: Richard Dan, manager of Kama'aina Loan and Cash for Gold on Maui
Hearing Date & Time: February 10, 2022, 2:00 pm, Room 325

Re: Testimony opposing SB 2646

My name is Richard Dan. I have been a pawnbroker and secondhand dealer on Maui since 1977 and have been involved in most legislation before this esteemed body throughout the entire span of those 45 years. I support the testimony regarding this bill of both the Hawaii Pawnbroker Association and John Spiker.

Small pawn lenders are recognized as important providers of financial services, including credit in emergencies, to the “unbanked” – people who do not have accounts with a commercial bank. In Hawaii, that is as much as 30% of all residents. At the beginning of the pandemic, most states nationwide and the State of Hawaii specifically declared pawnshops to be an “essential service,” and we certainly did prove to be.

In 2014 a bill came before the legislature which was almost identical to this year's SB 2646 except that it did not include special treatment of bicycles. Instead of acting on that bill, the legislature wisely decided to convene a working group of the stakeholders in order to determine if a statewide electronic reporting system was/is feasible. That working group will be best equipped to determine what information should be posted on the electronic reporting database. The resolution to establish that working group was passed by the legislature in the form of HR No. 154, a copy of which is attached to this testimony. But although the police and pawnbrokers were eager to meet and work on appropriate changes to the current law, the meeting was never held. This was apparently due to a lack of action by the state agencies named in HR 154. The working group should still be convened, prior to any further action by the legislature; it can craft a bill that unlike SB 2646 and its predecessor effectively addresses real rather than theoretical problems.

The overarching problem with the current bill, SB 2646, is that it would impose more and more unnecessary regulation on pawnbrokers while failing to address the ways in which stolen property is actually fenced in today's America – on the internet (Facebook Marketplace, EBay, Craigslist, etc.) and through businesses that

are either unregulated or where regulations are not enforced, like jewelry stores, antique stores, coin shops, swap meets, or at the neighborhood bar. By contrast, we work closely with the police and report all transactions promptly, yet the existing customer screening and reporting laws have been so effective in deterring attempts to fence stolen property, that in the last year I've had only one piece of stolen goods picked up by the police. In such a case I testify in court against the thief who pawned the property. But nowadays the thieves don't bring their loot to a pawn shop, because they know we get their i.d., take their picture and get a thumbprint, and hand over to the police a description of what they have sold us. They know that if the victim has reported the theft it's a sure bet they will be arrested!

Pawnshops are not the problem now. The approach of piling more regulation onto pawnshops and their customers is like the drunk who lost his keys in the gutter but is looking for them under the lamppost, because "that's where the light is." If your goal is to find criminals and recover lost property, look where the criminals go: in the unregulated zones.

Here are four more specific issues, among the numerous flaws in SB 2646:

1. SB 2646 would require free electronic reporting in the City and County of Honolulu but would allow the police departments of the neighbor islands to mandate that pawnbrokers pay for electronic reporting. It is not fair to discriminate against neighbor island pawnbrokers in this way. There should be one statewide electronic reporting program, as contemplated by HR 154.
2. The requirement of SB 2646 that electronic submissions contain pictures of all items would be costly, impractical, and of no significant benefit to the public. There is no software that can economically enable pawnbrokers to upload pictures of pawned merchandise. Some items are of little value and to force us to upload photographs of every single item is out of proportion to any benefit gained and would only mean that we would have to pay the customer less for the item in order to cover the additional administrative costs. And the photograph requirement is very subjective – e.g., how much detail must the pictures show -- is that entirely at the discretion of the police? The bill allows a picture of the serial number, but text on photographs is not searchable. We already include the serial number in our report to the police, which is searchable.
3. Putting pictures of the property on a public website invades the privacy of innocent citizens who have pawned the items. Many items can be easily

identified and associated with an individual, and some bracelets and other items of jewelry even have names inscribed on them.

4. The proposed legislation contains a special focus on bicycles, but in addition to all the other protections contained in the existing pawnbroker reporting requirements, bicycles already enjoy a special protection under existing law, in that it is illegal to sell an unregistered bicycle and notice must be given to the Director of Finance of the applicable County upon transfer of a registered bicycle. (HRS §§ 249-14.2 and 249-14.6). So further requirements intended to prevent the sale of stolen bicycles to pawnbrokers are superfluous – stolen bicycles are not being sold to or purchased by pawnbrokers.

As already required by this legislature, please allow the pawnbrokers, police departments, and State agencies to work together on this matter so we can address the interests of the public effectively and efficiently, instead of attempting to impose recycled and poorly-conceived measures that will only create more unnecessary regulations at a cost to the State, the taxpayers, and affected members of the public.

HOUSE RESOLUTION

REQUESTING THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS TO
CONVENE A WORKING GROUP TO EXAMINE THE FEASIBILITY OF
ESTABLISHING A STATEWIDE ELECTRONIC REPORTING SYSTEM FOR
PAWN SHOPS.

1 WHEREAS, transactions with pawnbrokers frequently allow
2 thieves to convert stolen property into cash; and
3

4 WHEREAS, while existing law empowers the chief of police in
5 each county to require that pawn transaction information be
6 electronically submitted to the police department, no unified
7 statewide system for the electronic filing of this information
8 currently exists; and
9

10 WHEREAS, generally, records of pawn transactions are
11 manually prepared and submitted to the police, which results in
12 thousands of paper reports per month on Oahu alone; and
13

14 WHEREAS, the manual reporting system hampers law
15 enforcement investigations by creating waiting periods to gain
16 access to needed information; and
17

18 WHEREAS, the introduction of an electronic reporting system
19 for pawn shops would reduce recovery time for stolen items,
20 increase the speed by which information is transferred to law
21 enforcement agencies, and allow law enforcement officials to
22 inspect and track transactions in a more timely manner; and
23

24 WHEREAS, a unified statewide electronic database of pawn
25 transactions would increase the probability of solving stolen
26 property crimes and aid in the recovery of stolen property; now,
27 therefore,



1
2 BE IT RESOLVED by the House of Representatives of the
3 Twenty-seventh Legislature of the State of Hawaii, Regular
4 Session of 2014, that the Director of Commerce and Consumer
5 Affairs is requested to convene a working group to examine the
6 feasibility of establishing a unified statewide electronic
7 reporting system for pawn shops; and

8
9 BE IT FURTHER RESOLVED that the Director of Commerce and
10 Consumer Affairs is requested to serve as the chairperson of the
11 working group and to invite the following parties to be members
12 of the working group:

- 13
14 (1) One member from the State Procurement Office;
15
16 (2) One member from the Department of the Prosecuting
17 Attorney of the City and County of Honolulu;
18
19 (3) Two members of law enforcement agencies, with one
20 member representing the island of Oahu and one member
21 representing a neighbor island;
22
23 (4) Two members who are pawnbrokers, with one member
24 representing the island of Oahu and one member
25 representing a neighbor island;
26
27 (5) One member from the National Pawnbrokers Association;
28 and
29
30 (6) One member from the Hawaii Pawnbrokers Association;
31 and
32

33 BE IT FURTHER RESOLVED that the Department of Commerce and
34 Consumer Affairs is requested to provide any necessary
35 administrative, professional, technical, and clerical support to
36 the working group; and
37

38 BE IT FURTHER RESOLVED that the members of the working
39 group shall receive no compensation for their services, but may
40 be reimbursed for incidental expenses, including travel costs,
41 necessary for the performance of their duties; and
42



1 BE IT FURTHER RESOLVED that the working group be exempt
2 from the requirements of chapter 92, Hawaii Revised Statutes;
3 and
4

5 BE IT FURTHER RESOLVED that the Director of Commerce and
6 Consumer Affairs is requested to submit a report of the working
7 group's findings and recommendations, including any proposed
8 legislation, to the Legislature no later than twenty days prior
9 to the convening of the Regular Session of 2016; and
10

11 BE IT FURTHER RESOLVED that certified copies of this
12 Resolution be transmitted to the Director of Commerce and
13 Consumer Affairs, Administrator of the State Procurement Office,
14 Prosecuting Attorney of the City and County of Honolulu,
15 President of the National Pawnbrokers Association, and President
16 of the Hawaii Pawnbrokers Association.
17
18
19

OFFERED BY:

[Handwritten signature]
John M. [unclear]
Cindy Evans
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Testimony Opposing SB 2646
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 oppose SB 2646.

SB 2646 implies that a high volume of stolen property is being sold to pawnbrokers and secondhand dealers. This is very misleading and inaccurate. The intent of this bill comes from a false and unsupported premise and stereotype that there is a high volume of stolen property sold to pawnshops and secondhand dealers.

The pawnshops that already electronically file their transactions do so for their own reasons. Many of them reported that there has been no increase in the recovery of stolen property. We believe stolen property is being sold to unregulated places, internet fences, drug houses, and gambling sites where items can be sold anonymously.

We do not provide a fast and easy way for criminals to sell stolen property. We carefully protect our business by questioning and scrutinizing the people we deal with. Under the current law, sellers are not anonymous and must go through strict regulations to sell or pawn personal property such as providing their name, date of birth, address and a fingerprint. All that information is given to the police department.

The impact of this bill would be devastating to an already struggling industry. Computerization will not provide a solution to a problem that does not exist. Computerization presents a technological and financial hardship that many pawnshops and secondhand dealers cannot accommodate due to their lack of computer skills and abilities. A bill that puts seniors with disabilities and small businesses owners out of business is not progress.

If a pawnshop purchases \$20,000 worth of items and is required to post photographs of these items online as well as personal information about the customer, then both the pawnshop owner and customer become potential targets for robberies.

We are honest hard-working people supporting our families. Our customers include teachers, waiters, construction workers, first responders, lawyers, doctors, and many seniors and retired professionals. We are respected business owners who provide a financial option to honest clientele. Would you want your parents subjected to the requirements of SB 2646?

The Hawaii Pawnbrokers Association believes this Legislature wants to support small businesses.

I ask that you do not pass this bill. Our industry works with and supports our law enforcement but does not feel that requiring computerization is a fair and proper way to regulate our business.

If you feel you must pass this bill, then please “grandfather” and exempt pawnshop owners and secondhand dealers that are 65 years and older from this bill or give us five to seven years before this bill is implemented and takes effect.

I respectfully submit this testimony and thank you for your attention to this bill, which affects our struggling pawn and secondhand dealers’ industry that provides a much-needed service to our community. Thank you.

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



National Pawnbrokers Association

Statement for the Record

by Fran Bishop, Past President, on behalf of

The National Pawnbrokers Association

For the Hearing on SB 2646

Before the Senate Committee on Public Safety, Intergovernmental and Military Affairs

The Honorable Clarence K. Nishihara, Chair

The Honorable Lynn DeCoite, Vice Chair

And Other Honorable Members of the Committee

February 10, 2022

My name is Fran Bishop, and I am representing the National Pawnbrokers Association (“NPA”) and its Hawaii members. I am a past president of the NPA. I currently serve as the NPA’s Government Relations Liaison. In this capacity, I am familiar with legislation being considered across the United States, current state laws governing pawnbrokers and pawn transactions, and the federal laws that apply to pawnbrokers and pawn transactions.

The National Pawnbrokers Association is the only national trade association serving pawnbrokers and their consumer customers on a nationwide basis. We work with pawnbrokers and state pawnbroker associations. The National Pawnbrokers Association thanks the Chair of the Committee for allowing us to submit comments for the record and the Committee’s February 10, 2022, hearing.

We oppose enactment of SB2646 for a variety of reasons described in the balance of this Statement. These include significant legal and policy concerns about SB2646’s mandatory electronic transaction reporting of pawn consumer’s non-public personally identifiable information to local law enforcement because that proposal violates pawn consumers’ rights under federal financial privacy laws. This requirement also infringes generally applicable due process protections that every American should enjoy including the requirement that at least “reasonable suspicion” or particularized investigations into crimes precede law enforcement’s access to individuals’ private information. We also agree with representatives of the Hawaii Pawnbrokers Association that SB2646’s requirement that photographs of all pawned items and the amount the pawnbroker disbursed to the pledgor adds to the privacy invasion that enactment will cause and likely will result in a proliferation of false ownership claims for law enforcement agencies to resolve.

The balance of this prepared statement covers these concerns and offers perspective from our nationwide vantage point. First, we address the issues raised by the Hawaii Pawnbrokers Association (“HPA”). Next, we discuss additional concerns not raised by the HPA. Finally, we reiterate our position that SB2646 not be enacted.

I. *Concerns Raised by the HPA with Which the NPA Concurs*

A. The NPA Agrees with the Hawaii Pawnbrokers Association that SB2646 Will Cause Violations of Federal Consumer Credit Privacy Laws

Under Title X of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 (“GLBA”), codified at 15 U.S.C. §§6801-6821, pawnshops must comply with specific consumer privacy protection requirements and their customers enjoy statutorily protected privacy rights. We agree that mandatory reporting of consumers’ personally identifiable information, including photographs of consumers who pledge or sell property to pawnbrokers and the dollar amounts pawnbrokers disburse to their customers, violates the Title X protections that all consumers of financial products and services are granted. The provisions of SB2646, if enacted, would make pawnbrokers vulnerable to actions by federal consumer financial protection agencies and state attorneys general for violations of Title X.

Under Title X, pawn consumers enjoy the same consumer privacy rights and protections that are available to customers of banks, credit unions, insurance companies, and stockbrokers. Pawn customers are not given lesser rights or protections; they are treated equally.

Requiring pawnbrokers to upload pawn customers’ personal information to a public website exaggerates the risks that their personal information will be misused by others. These risks include identity theft (because so much nonpublic personal information will be publicly available) and, as mentioned above, risks associated with defending false claims that the pledged property was misappropriated.

Second-hand dealers, including jewelers and antique shops, are not “financial institutions” governed by Title X of the GLBA. Their customers are not eligible for the protections that the GLBA provides to pawn consumers. Yet, jewelers and antique shops are venues through which stolen goods may travel, just as are flea markets, eBay, and Facebook marketplace.

B. The NPA Agrees that SB2646 Falsely Portrays Pawnbrokers as Venues for Stolen Property

SB2646 perpetuates unfounded stereotypes of pawnbrokers and pawn consumers. As Jonathan Spiker’s comment for the HPA states the bill “implies that a high volume of stolen property is being sold to pawnbrokers” We concur that nationwide less than 1/10 of one percent of items pledged or sold to pawnshops are found to be stolen. We are not surprised that the same low percentage is found in Hawaii.

There are good reasons why such small numbers of items pledged or sold to pawnbrokers are found to be stolen. Pawnbrokers have been regulated in most jurisdictions of the United States for decades and, in some jurisdictions, for more than a century. The laws governing pawn transactions require pawnbrokers to collect and maintain extensive information about the consumer pledgor-seller and the items of personal property pledged or sold. These records are available to local law

enforcement agencies as well as to the agencies that license and supervise pawnbrokers at the state and local levels.

Pawnbrokers do not have the same capital-markets access that other consumer financial services providers services enjoy. We loan our own money. If the property our customers pledge or sell to us turns out to be misappropriated, the pawnbroker loses both the collateral and the funds disbursed to the customer. Pawnbrokers would not be in business long if they suffered many such double losses on transactions. Thus, as longstanding businesses, pawnbrokers have operational protocols that help us protect our livelihood and the general public.

Pawnbrokers know their customers on a face-to-face basis. Some of our customers use the same items of personal property to secure loans on more than one occasion. Thieves do not pawn the same items multiple times. They sell items, take the proceeds and disappear.

We are curious whether other marketplaces available – whether local or Internet-based – can demonstrate the same good record of keeping stolen items out of their hands as pawnbrokers have shown over many years.

C. The NPA Agrees that SB2646 Will Not Provide the Statewide Uniformity It Purports to Seek

SB2646 allows the Chiefs of Police in each county to decide the manner by which pawnshop will file reports. If the goal is uniformity, then Section 3 of SB2646 is misplaced. There is no guarantee of uniformity.

Additionally, Section 3 opens the door to for-profit vendors of database services to pitch their products to Chiefs of Police -- with attendant costs that SB2646 does not fund and that could end up causing costs to be levied on pawnbrokers unfairly. Instead, if the Hawaii legislature enacts an electronic reporting mandate – which we oppose -- the state itself should operate and cover the costs associated with running a single statewide system in order to assure it will be operated with appropriate data-security procedures. Moreover, allowing the Chiefs to select from multiple for-profit vendors increases the risks that pawnbrokers will be held responsible for data-security breaches that may befall the vendors, and are outside pawnbrokers' control. This provision should not stand.

II. *Additional Concerns Not Raised Directly by Comments for the HPA*

A. Pawn Consumers Tend to Be Regular, Middle-Class Americans

The Federal Reserve Board and Federal Deposit Insurance Corporation have reported that 40 per cent of Americans do not have savings to cover a \$400 unexpected expense. This translates to millions of Americans. These consumers do not deserve fewer protections from unreasonable surveillance by state and local governments than more affluent Americans have.

Pawnbrokers' customers are ordinary people working in a variety of jobs such as teachers, firefighters and police officers, waiters, construction company owners and laborers, and gig-economy workers. Some are unbanked or underbanked individuals. Others are just busy people whose work schedules do not coincide with business hours and locations offered by banks and credit unions or whose need for funds cannot wait, such as consumers needing medications not covered by insurance or emergency car repairs.

Other middle-class and more affluent consumers can use their personal property to secure funds they need to borrow. Members of the JHA may have used their securities holdings, automobiles, or homes to obtain credit. There is something wrong about treating individuals using their personal property – family jewelry or silverware, for example – to secure advances of funds so differently from those using securities, cars, boats, or real estate. None of the latter group are required by state laws to give fingerprints each time they borrow against their property, and none will be required by SB2646 to be photographed or have their transactions uploaded to a publicly viewable database. This is not right.

Many of our customers are repeat users of pawn transactions. This fact, as noted above, supports respecting them and protecting the privacy of their financial transactions – just as consumer privacy protections work for customers of other providers of consumer financial services. To do otherwise subjects these valuable community members to surveillance and profiling that threshold-less transaction reporting, particularly by electronic means, will allow. This is not right.

B. SB2646 Ignores Other Venues for Second-hand Property Transactions and So Treats Main Street Businesses More Harshly Than Internet-based Businesses or Even Local Jewelers and Antique Stores

SB2646 ignores the reality that second-hand goods can be sold through many venues. These include Internet-based businesses including Facebook Marketplace and locally operated jewelers and antique stores. None of these venues qualifies as a provider of consumer financial services subject to Title X of the GLBA, as noted above. But they are options for the disposal of stolen goods and are more open opportunities than pawnshops because they do not have the same, state-mandated transaction record-keeping requirements as do pawnbrokers – the collection of so much personal information and fingerprinting to which pawn consumers are subjected every time they do a pawn transaction. Requiring photographs of pawn consumers only adds to this imbalance without public or consumer benefits.

C. Mandatory Electronic Reporting of Pawn Consumers’ Nonpublic Personal Information Deprives Pawn Consumers of Constitutionally Protected Rights to Due Process and Freedom from Unreasonable Searches

Mandatory reporting of pawn transactions that includes the non-public personally identifiable information about pawn consumers allows for data collection and profiling without the protections of duly authorized warrants or other legal process with court supervision. There will be no warrants or reliance upon judicially recognized exceptions to the warrant requirement such as probable cause or reasonable suspicion of wrongdoing. There is no blanket exception recognized by the United States Supreme Court, as reaffirmed by the Court recently in *City of Los Angeles v. Patel*, 135 S. Ct. 2443 (2015) with limited provisions for customers of “closely regulated” businesses, which the Court determined did not include pawn customers. We note that since *Patel* the Supreme Court has been expanding protections against unreasonable searches and seizures, including by electronic means.

This form of data collection practice should not be allowed or required by State legislatures as it violates limitations on the use of “writs of assistance” (aka “general warrants”) that were among the Colonists’ main objections to continued rule by Britain and that are protected against by the Bill of Rights. Additionally, mandatory transaction reporting of non-public personally identifiable information infringes upon provisions of State Constitutions.

Infringement of constitutional protections is magnified when the mandatory pawn transaction reporting program:

- is administered through electronic means;
- involves reporting to or via a third-party, private-sector company serving as an agent of one or more government units or agencies;
- imposes additional costs on the consumer using the pawn transaction as a source of short-term, small-dollar credit, obviously further harming the financial situation of those that can least afford it;
- fails to impose meaningful limits on the use or re-use of the information obtained by the government unit or agency requiring its collection, on access by their employees, or on its use or re-use by any third-party agent; or,
- does not specify requirements for the proper disposal of obsolete information about consumer pawn transactions from prior years.

Additionally, mandatory reporting of transactions that is accomplished by electronic means and that contains non-public information about consumers – including non-public demographics about pawn consumers, such as age, gender, race, residential zip code, or the number and frequency of their pawn transactions – enhances the prospect of

- (1) profiling of pawn consumers,
- (2) commingling of consumers' personal and transaction information with other databases, in particular with law enforcement criminal databases, without any link to a suspected property crime, and the potential damage to consumers whose employment requires background checks or who are applying for insurance;
- (3) enhancing the risk of a data breach and the identity theft potential incurred by disclosing non-public personally identifiable information and pawn transaction details particularly if made available via remote devices and laptops in squad cars; and,
- (4) losing control of the data because the consumer has no control of where the collected data is stored, including storage out of the state or country, and accompanying loss of federal and state protection of their non-public personal information as the location where the pawn consumer resides otherwise would provide.

There are more concerns from the perspectives of the small businesses that dominate the pawn industry. For example, mandatory electronic transaction reports that contain consumers' non-public personal information also involves:

- (1) No protections for pawnbrokers, including indemnification, insurance, and safe harbor from liability to individual customers, if a breach occurs while the consumer's data is in the possession of a law enforcement agency or its third-party agent;
- (2) The "taking" of and interference with proprietary business assets of pawnbrokers, including dollar amounts and transaction terms, types of property pledged or purchased, and the names and contact information of each pawnbroker's customers, particularly when third-party vendors may be used to collect and store the data; and,
- (3) The necessity for small businesses to buy computer equipment, software, and internet service suitable to meet the electronic transaction reporting requirements without the ability to recoup these required expenses either from the state or local government or from their customers.

III. *Conclusions*

Pawn transaction reporting reflects outdated stereotypes about consumers who obtain short-term, small-dollar credit from pawnbrokers. Over the past decade, millions more middle-class consumers and small business owners have used pawn transactions to meet credit needs that commercial banks and even credit unions are unable to serve in most communities. No local or state elected official should vote in favor of unnecessarily burdensome laws, which would also impose needless compliance costs on small business owners. SB2646 would exaggerate these stereotypes to the detriment of pawn consumers and Hawaii-based small pawn businesses.

Pawnbrokers' best business practices include precautions to avoid transactions involving suspicious property and individuals. The incidence of misappropriated property items recovered in Hawaii pawn stores and nationwide is consistently less than 1/10 of one percent. Thus, the data do not support enactment of SB2646.

If a person or business claiming ownership of the property item(s) sold or pledged to a pawnbroker files a police report, then law enforcement can obtain access to the pledgor's or seller's non-public personally identifiable information from the transaction records that the pawnbroker is required to maintain pursuant to Hawaii law. We suggest that any new legislation that may be enacted condition law enforcement's access to the consumer's non-public personally identifiable information on obtaining a duly authorized warrant from a court of competent jurisdiction or the employment of recognized exceptions to the warrant requirements of the Fourth Amendment to the United States Constitution.

As noted earlier, putting all the information from pawn transactions, including comprehensive non-public personal information relating to the pawn consumer, photographs of the pawn consumer and the items used as collateral or sold to the pawnbroker, and the amount of proceeds disbursed to the consumer is bad public policy. It subjects pawn consumers to public scrutiny not imposed on any other users of consumer financial services. It subjects pawn consumers and pawnbrokers to undue expenses in defending their rights to property pledged or sold to pawnbrokers against false property claims. It facilitates identity theft and even targeting by thieves of some pawn consumers whose property will be viewable on the public website. These consequences are not fair to impose on ordinary Americans or the small businesses that serve their small-dollar needs.

We see no public policy benefits of enacting SB2646 and many reasons not to do so. The NPA certainly does not believe that legislation such as SB2646 can be designated as "consumer protection."

Thank you for receiving our prepared statement.

Respectfully submitted,



Fran Bishop

SB-2646

Submitted on: 2/9/2022 1:35:22 PM

Testimony for PSM on 2/10/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Katie Hillstead	Individual	Comments	No

Comments:

Why focus efforts on stolen bikes but do nothing about inflation or support for local families!?

Aloha,

My name is Katie Hillstead. I am a resident of Makakilo and an educator on the leeward coast of Oahu.

I am writing to you as a concerned educator and resident of Hawaii. The Hawaii State Teachers contract has essentially frozen teacher pay for the next school year, additionally teachers took a paycut with the loss of the 21 hours of job embedded professional development.

This concerns me, as inflation is causing daily expenses to rise. As you're aware, the cost of living in Hawaii was already high, but more so now with inflation. My bi-weekly costco run for my family is now totaling over 400\$ each trip, whereas just a few months ago it was only 300\$. **If you have seen a Times ad recently, you will notice that meat that was 5.99\$ a pound is now 7.99\$ a pound. A box of frozen chicken thighs is now 6.99 instead of 5.99 (on sale, might I add). What was once 2 for 5\$, is now 2 for 7\$ and things that were 2 for 6 are now 2 for 8\$. My paycheck is not going as far as it used to,** and I fear I may have to leave my home if this trend continues.

Hawaii cannot afford to lose more teachers. On the coast, several schools are experiencing teachers quitting after semester 1, and leaving the profession all together.

I ask, as a concerned resident and Educator, what are you doing at the legislature to combat inflation for our local families? As well increase teacher pay?

What actions are you taking to support salary compression relief for educators?

What actions are you taking to help local families deal with this inflation?

In my humble opinion, the legislature needs to approve direct payments to families (like stimulus), continue P-EBT to help low-income families afford the now higher priced food items, and encourage the Governor to restore the 21 hours of job-embedded professional development as well as negotiate step movements and across the board raises for all educators to reflect rising inflation.

Mahalo for your time, and I look forward to your response.

Aloha,

Katie Hillstead

Leeward Educator, Parent, concerned resident

808-364-0601