Honolulu, Hawaii

March 24 , 2016

RE: S.B. No. 2107

Honorable Joseph M. Souki Speaker, House of Representatives Twenty-Eighth State Legislature Regular Session of 2016 State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred S.B. No. 2107 entitled:

"A BILL FOR AN ACT RELATING TO PEN REGISTERS,"

begs leave to report as follows:

The purpose of this measure is to include cellular networks, cellular telephones, and other modern communication devices in relevant provisions of Hawaii's electronic eavesdropping law.

Specifically, this measure:

- (1) Amends the definition of "pen register" to include cell phones and other modern communication devices among those from and to which transmitted telephone numbers may be recorded; and
- (2) Clarifies that a judge may issue an order authorizing the Attorney General or a county prosecuting attorney to attach a pen register or a trap or trace device to a cellular telephone, electronic device, or service.

Your Committee received testimony in support of this measure from the Police Department and the Department of the Prosecuting Attorney of the City and County of Honolulu.

Your Committee finds that the existing definition of "pen register" uses outdated references to devices attached to telephone lines or impulses transmitted through telephone lines.

SB2107 HSCR LRB 16-1839.doc

Your Committee recognizes that Hawaii residents increasingly use cellular devices and Internet-based forms of communication, rather than telephone land lines. This measure makes the definition of "pen register" technology-neutral by including devices that do not use a landline to make phone calls, such as cellular telephones and electronic devices that make phone calls via the Internet or software applications. Your Committee notes that this measure does not change the "probable cause" standard or burden of proof that law enforcement needs to meet to obtain an order for a pen register.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2107 and recommends that it pass Second Reading and be referred to your Committee on Judiciary.

Respectfully submitted on behalf of the members of the Committee on Consumer Protection & Commerce,

ANGUS L.K. McKELVEY, Chair

State of Hawaii House of Representatives The Twenty-eighth Legislature **MC2 1201-16**

Record of Votes of the Committee on Consumer Protection & Commerce

| Bill/Resolution No.: | Committee Referral: | | Date: | |
|---|---------------------|---------------------------------------|---------|----------|
| 5B 2107 | CPC, E | 7UD | 5-1 | 2-16. |
| ☐ The committee is reconsidering its previous decision on the measure. | | | | |
| The recommendation is to: Pass, unamended (as is) Pass, with amendments (HD) Hold Pass short form bill with HD to recommit for future public hearing (recommit) | | | | |
| CPC Members | Aye | s Ayes (W | R) Nays | Excused |
| 1. McKELVEY, Angus L.K. (C) | | | | |
| 2. WOODSON, Justin H. (VC) | . 1 | | | |
| 3. BELATTI, Della Au | | | | |
| 4. BROWER, Tom | 1 | | | |
| 5. CREAGAN, Richard P. | | | | |
| 6. HAR, Sharon E. | \ | | | 1 |
| 7. HASHEM, Mark J. | | | | |
| 8. KAWAKAMI, Derek S.K. | | \ | | |
| 9. LEE, Chris | | | | |
| 10. NAKASHIMA, Mark M. | | | | \ |
| 11. OSHIRO, Marcus R. | | | | |
| 12. SAN BUENAVENTURA, Joy A. | | \ | | |
| 13. TAKAYAMA, Gregg | | \ | | |
| 14. YAMANE, Ryan I. | | | | |
| 15. FUKUMOTO CHANG, Beth | | \ | | |
| 16. McDERMOTT, Bob | | \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ | | |
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| TOTAL (16) | 1 | 5. (| | <i> </i> |
| The recommendation is: Adopted If joint referral, did not support recommendation. cognittee acronym(s) | | | | |
| | | | | |
| Vice Chair's or designee's signature: | | | | |
| Distribution: Original (White) - Committee Duplicate (Yellow) - Chief Clerk's Office Duplicate (Pink) - HMSO | | | | |