

SB 191

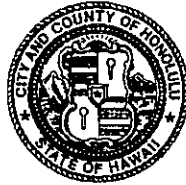
RELATING TO CRIME REDUCTION

Authorizes the chief of police, rather than the dealer, to choose the manner by which pawnbrokers and secondhand dealers submit records of transactions.

PSM/CPN, JDL

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU
801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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KIRK W. CALDWELL
MAYOR



LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. MCCAULEY
DEPUTY CHIEFS

OUR REFERENCE RS-NTK

February 6, 2015

The Honorable Will Espero, Chair
and Members
Committee on Public Safety,
Intergovernmental and Military Affairs
The Honorable Rosalyn H. Baker, Chair
and Members
Committee on Commerce
and Consumer Protection
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Espero and Baker and Members:

SUBJECT: Senate Bill No. 191, Relating to Crime Reduction

I am Captain Richard Schaab of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department strongly supports Senate Bill No. 191, Relating to Crime Reduction.

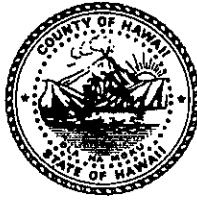
Currently, the law allows the pawn and secondhand dealers to have the option of how they will submit their daily transactions to the chief of police or to the chief of police's authorized representative.

Currently, there are 259 licensed pawn and secondhand dealers who are required to submit their transactions at the end of each business day, either electronically inputted, by fax, email, mail, or by dropping off the transactions at the police station.

To streamline the system, the most appropriate and logical method for the submittal of pawn transaction information is electronically through a single method. This would allow for all information to be maintained and viewed in one database which has been selected by the chief of police. Currently, the preferred method is electronic submittal via Regional Automated Property Information Database (RAPID), hosted by Business Watch International. As of today, 58 of the 259 licensed pawn and secondhand dealers are utilizing RAPID themselves.

Serving and Protecting With Aloha

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

349 Kapi'olani Street • Hilo, Hawai'i 96720-3998
(808) 935-3311 • Fax (808) 961-2389

February 5, 2015

Senator Will Espero
Chair and Committee Members
Committee on Public Safety, Intergovernmental and Military Affairs
Senator Rosalind H. Baker
Chair and Committee Members
Committee on Commerce and Consumer Protection
415 South Beretania Street, Room 229
Honolulu, Hawai'i 96813

Re: SENATE BILL 191 RELATING TO CRIME REDUCTION

Dear Senators Espero and Baker:

The Hawai'i Police Department supports Senate Bill 191, with its purpose being to authorize the chief of police, rather than the dealer, to choose the manner by which pawnbrokers and secondhand dealers submit records of transactions.


The Hawai'i Police Department in conducting proper criminal investigations involving stolen property are obligated to check transactional records submitted by pawnbrokers and secondhand dealers. The checking of these records is intended for recovery of stolen property for the victims; determining who is selling stolen property to the pawnbrokers and secondhand dealers; who may have perpetrated the theft of the stolen property; and lastly, for protection of the pawnbrokers and secondhand buyers who also become victims when they unknowingly sell stolen property.

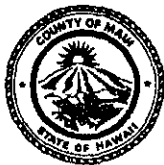
The Hawai'i Police Department believes that in going forward, it is imperative that based on time and manpower constraints the transactional records must be received in a format best suited for a successful outcome in terms of determining who is responsible for the thefts and/or associated crimes.

It is for these reasons, we urge this committee to approve this legislation.

Thank you for allowing the Hawai'i Police Department to provide comments relating to Senate Bill 191.

Sincerely,


MARSHALL K. KANEHAILUA
ACTING POLICE CHIEF



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE

YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

55 MAHALANI STREET
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TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

February 5, 2015

The Honorable Will Espero, Chair
and Members of the Committee on Public Safety,
Intergovernmental and Military Affairs

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

The Senate
State Capitol
Honolulu, HI 96813

RE: Senate Bill No. 191 – RELATING TO CRIME REDUCTION

Dear Chairs Espero and Baker, and Members of the Committees:

The Maui Police Department is in support of S.B. No. 191.

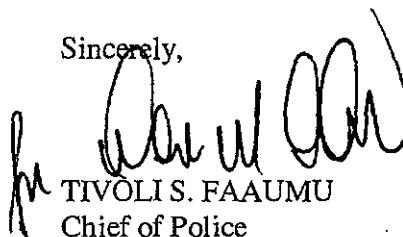
This bill authorizes the Chief of Police, rather than the dealer, to choose the manner by which pawnbrokers and secondhand dealers submit records of transactions.

The Maui Police Department is in support of this bill as it will allow the County's Chief of Police to standardize the submission of records of transactions for all pawnbrokers and secondhand dealers in their jurisdiction. This ability will likely make the process more efficient and give law enforcement more time to recover stolen property.

The Maui Police Department asks for your support for S.B. No. 191.

Thank you for the opportunity to testify.

Sincerely,



TIVOLI S. FAAUMU
Chief of Police

**SENATE COMMITTEE ON
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS**

AND

**SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

February 6, 2015

Senate Bill 193 Relating to Enhanced 911 Surcharges

Chair Espero, Chair Baker, and members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs and members of the Senate Committee on Commerce and Consumer Protection, I am Jim Blundell, Senior Legislative Affairs Manager, T-Mobile USA, Inc.

T-Mobile supports the Legislature's effort to adopt a point of sale method of collection and remittance of the e911 surcharge on prepaid wireless services. The Committee has before it for consideration Senate Bill 193, which would establish such a method. However, the bill as currently passed by the Senate and referred to your Committee raises several areas of concern that T-Mobile feels should be addressed as the Committee considers the bill:

First, the current language provides for remittance of the e911 surcharge to a website—eHawaii.gov—rather than to the 911 Board. The Board is the government agency currently charged with administering the fee. As the Attorney General's Office has pointed out, remittance of the surcharge to multiple entities, especially when one entity is not an agency of state government, is untenable. At a minimum, there are concerns regarding the authority of the website to enforce the law.

Second, the current bill does not recognize the value of the expertise at the central revenue agency for the state, the Department of Taxation. Nearly all prepaid point of sale bills that have passed throughout the country require remittance of the surcharge to the state's central revenue agency. Although the 911 Board currently collects and administers the surcharge, it does not take advantage of the expertise of the Department of Taxation. We are concerned that this approach does not follow best practices and we strongly recommend a role for the Department in advising the Board.

The wireless industry trade association, CTIA, has recommended a set of amendments to SB 193. T-Mobile supports those amendments and strongly recommends the Committee adopt them before reporting the bill out. Those amendments are as follows:

- 1) The e911 surcharge should be remitted to the most appropriate agency for that function, the Department of Taxation. Senate Bill 193, in its current form, would require the e911 surcharge to be remitted to eHawaii.gov. We would respectfully request the surcharge be remitted to the Department of Taxation, the agency in position to be most familiar with administering other taxes and fees in Hawaii. Furthermore, this would streamline the remittance process for retailers who are already submitting Hawaii excise tax to the Department of Taxation. Requiring retailers to remit to two separate agencies not only deviates from the NCSL model bill and the 36 other jurisdictions where E9-1-1 prepaid point-of-sale legislation has been adopted, it would also create administrative complexity and burdens.
- 2) We also respectfully request a reasonable effective date. An effective date of January 2017 is far more realistic for implementation. This will provide both the retailers and the Department of Taxation, if the above amendment is adopted, ample time to prepare for implementation of Senate Bill 193.

T-Mobile actively supports strong public safety measures, including a reliable and fully-funded e911 system in Hawaii. We believe that, with the proposed amendments, SB 193 is an excellent step forward in realizing this goal in Hawaii.

Thank you for the opportunity to provide this testimony in favor of SB 193 and we look forward to working with you on the bill.

Jim Blundell
Senior Legislative Affairs Manager
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Office: 425-383-4469
Mobile: 206-890-3237
Jim.Blundell@T-Mobile.com

Valley Isle Loan LLC dba Kama`aina Loan

February 5, 2015

Senator Will Espero, Chair
Committee on Public Safety, Intergovernmental and Military Affairs

Senator Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection

SUBJECT: **SB 191 – ELECTRONIC REPORTING OF PAWN TRANSACTIONS**

My name is Richard Dan and I have operated Kama`aina Loan And Cash For Gold pawnshop on Maui for 39 years and statewide. I provided testimony to the Legislature last session when two bills with goals similar to S.B 191 were submitted. I oppose SB 191.

Although SB 191 changes only one word in the existing law, when you know the background, it will lead to a host of problems, including hidden dangers to civil liberties, unreasonable costs and possibly incompatibility among the four county police departments, as my testimony will lay out.

I am basing my testimony on the assumption that the first sentence of the proposed bill is in error when it states: "The Legislature finds that it is often difficult to identify stolen property that is sold BY (emphasis added) pawnbrokers and secondhand dealers." SB 191 does nothing at all concerning sales BY pawnbrokers, so I assume it should read SOLD TO, as that is what we are required to report on.

When last year's bills were introduced, I consulted with Sen. Roz Baker, who suggested that what is needed is a stakeholders study group, because there are more ways than one to skin this cat. Her suggestion led to HR 154 HD1 (2014) which would have established a working group. Regrettably, that resolution failed, apparently largely because it mandated the Office of State Procurement (OSP) as a member, which OSP thought was beyond the scope of its authorizing legislation.

If that working group had been established, it is very likely that I would be before you today testifying about a proposal that would work for all agencies, businesses and – let's not forget who really is the point of any changes – consumers. I am not sure what that proposal would have been, though I have my preferences, but that is exactly why we need a stakeholders review first. Whatever the Legislature does, it needs to do it uniformly statewide.

Senator Will Espero, Chair
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Committee on Commerce and Consumer Protection

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The reporting problem is really just a Honolulu Police Department (HPD) problem. Electronic reporting is not an issue for Maui police because they are already receiving reports electronically from us and have been for over a decade. Although the state statute mandated electronic reporting, until last year HPD did not set itself up to receive reports electronically. It's no wonder HPD has a pile of written reports, what else were the pawnbrokers to do?

When HPD began using electronic reporting, it chose a foreign private commercial vendor that is extremely expensive, compared to alternatives, that has been embroiled in litigation in its home country over privacy violations and that declares itself under no obligation to submit to US regulations. So you can see why pawnbrokers would like to explore alternatives, of which there are many.

Since last year, we and several other pawn shops on Maui and Hawaii Island have teamed up with the Maui and Hawaii Police Departments to start using a nationwide, audited and – best of all, perhaps – free reporting software made available from RISS, the Regional Information Sharing System, (WWW.RISS.NET) which, despite its name, is really national.

Whether a working group would recommend RISS I cannot say, but it would surely be imprudent for the Legislature or any one county police agency to go forward without carefully considering the advantages of this system or a state-run system. (Kenneth Tano, the Hawaii WSIN Law Enforcement Coordinator, informs me that 1,341 pawn shops are participating in Connecticut, Illinois, Maine, New York, Pennsylvania, Tennessee, Massachusetts, New Hampshire, Rhode Island and Vermont, as well as Hawaii.)

All of the objections we had to the bills last session still apply to SB 191, which does nothing to address them. Here is a brief summary of those objections (we submitted much fuller testimony and evidence last year):

1. Bill sponsors claimed confidential information would be “protected and secured” by using electronic reporting, which is a) a dubious, even unlikely, claim in the era of Internet hacking; and b) fixes a “problem” that does not exist since pawn shops have been required to report for years without – so far as anybody knows – any leakage of confidential information.

Senator Will Espero, Chair
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2. I do not support any system that passes the information to foreign businesses or stores the information on servers which neither the originating pawn shops nor the police control; or that requires reporting of purely business information that would not assist the police but could assist competitors.
3. The BWI system (and some others) effectively criminalizes all pawn customers, by, for example, flagging frequent customers for scrutiny (without any evidence) that they are doing something wrong.
4. If the intent is to either catch criminals or recover property, bill missed the mark by a mile by ignoring all the places where stolen property is fenced, such as garage sales, flea markets, etc.; or by using the Internet. All these places are either unregulated, or if minimally regulated, virtually uninspected. The current pawn reporting law works to deter thieves from resorting to pawn shops, as demonstrated by the small number of stolen items found, despite the free access and complete records. Furthermore, there are mysterious exemptions within the existing legislation, such as golf clubs and exercise equipment.

There appears to be no rational reason for not treating consignment shops the same as secondhand dealers, and the law should encompass coin dealers, in fact, all dealers in secondhand goods, including retail jewelry stores that take old gold as part payment for new items.

5. Requiring a listing of the amount paid for each item is unrealistic when pawnshops often will offer a batch price for a collection of items: Think of a stamp collection; its value as a collection may be higher or lower than its breakup value, but in any case, it will be nearly impossible to assign a price to each item in it as received.

There is another bill this year, SB 515, whose text does in some fashion acknowledge the concerns that we and others raised, but without really dealing with them, and if that bill moves to a hearing, I will provide testimony, but let's consider the dangers hidden in the simple change proposed by SB191.

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Committee on Public Safety, Intergovernmental and Military Affairs

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Committee on Commerce and Consumer Protection

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HPD, which is the moving spirit behind the change, has signed a contract with a Mainland, third-party vendor of electronic information-gathering software. We, the National Pawnbrokers Association and several State Attorney Generals have identified serious dangers lurking in this apparently routine approach.

These include privacy threats, lack of security and conflicts with federal laws and the Constitution.

Naturally enough, commercial providers of software are eager to recruit police departments to their account and in Hawaii HPD is the biggest prize, because that would inevitably put pressure on the rest of the state to adopt the same provider.

Even though HPD, unlike MPD, has never till now set itself up to accept electronic reports, and many small pawnbrokers still prefer to use handwritten pawn tickets. It is the same principle that says the government can require me to get a license for my car but cannot tell me to buy a Ford instead of a Chevy.

These private software providers are principally in the business of data collection, data mining and selling personal information to the highest bidder. We are most concerned about surrendering our information and the confidential personal financial information about our customers to these offshore – even out-of-country (BWI, the firm selected by HPD) – and unregulated businesses.

Beyond that, although SB 191 does not deal with it, the provider the HPD has already contracted with promotes its ability to provide police agencies with the ability to “electronically stop-and-frisk” pawn customers, to send alerts to police cruisers telling them that an individual has entered a pawnshop and other so-called “services” that ought to raise the back hairs of anybody concerned about civil liberties.

I am not just speculating about the readiness of people to use the electronic records of pawn transactions for purposes that have nothing to do with recovery of stolen property. Last year, the Hawaii director of taxation told the Legislature:

“The Department supports this effort to increase data collection and reporting, because it could enhance the Department’s tax compliance efforts. The Department requests that the Department be granted access to this data for tax compliance efforts.”

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While reporting of pawn transactions to police investigators is a good idea and electronic reporting makes lots of sense, let's remember that crooks are not uniformly stupid. A burglar who brings loot to a pawnbroker has to give his name and address (verified by photo ID), and phone number and leave a thumb print and, at least in our pawn shop, be recorded by video surveillance cameras.

The most minimally akamai crook will prefer to dispose of his swag at a swap meet, an unregulated second-hand dealer, an unregulated Internet site like Craigslist or anywhere else but a pawnshop.

Lastly, when the electronic reporting bills were introduced last year, part of the justification was the property crimes in Hawaii were increasing at an alarming rate. In fact, they are not, and your own Attorney General reported that in 2011 property crimes fell to the lowest levels in history.

Data since then do not indicate that the trend has changed direction. So while we like electronic reporting – our firm was the first anywhere to make reports that way – we think there is time to do it right.

Kama`aina Loan continues to advocate for a working group study first before inaugurating a system, and for a statewide system rather than a patchwork of piecemeal approaches. Kama`aina Loan believes a stakeholders working group – which we would want to be a member of -- could quickly arrive at a satisfactory, economical and practical reporting regime that would suit both pawn businesses, their customers and the interests of the public through law enforcement.

For these reasons I OPPOSE SB191.

Sincerely,

Richard Dan

Richard Dan
Operations Manager
Kama`aina Loan

Valley Isle Loan LLC dba Kama`aina Loan

February 5, 2015

Senator Will Espero, Chair
Committee on Public Safety, Intergovernmental and Military Affairs

Senator Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection

SUBJECT: SB 191 – ELECTRONIC REPORTING OF PAWN TRANSACTIONS

My name is Harry Eagar, and I am the social media director at Kama`aina Loan and Cash For Gold. Part of my job is to inform people, through blog posts, Facebook and the like, what the pawn business is really like. I oppose SB191.

But I can hardly do better than adapt the statement earlier this week of Rep. Karl Rhoads, who you all know, concerning stereotyping and discrimination against applicants for Section 8 housing. At Kama`aina Loan we are concerned with stereotyping of pawn customers.

In the Associated Press report on Representative Rhoad's bill, Hakim Ouansafi, executive director of the Hawaii Public Housing Authority, was quoted as saying, "There is a stigma that comes with Section 8. There is a lot of misunderstanding that the people who get Section 8 will ruin your place, and they will not take care of it and they're a bunch of drunks. These are plain and simple good folks that are having a hard time paying the rent."

That's a good description of Kama`aina Loan's customers. Our active account list numbers about 9,000, and there are not 9,000 thieves and burglars in Maui County. Our customers are not bringing in gold chains they stole out of a tourist's backpack. They bring in gold chains they bought when times were better for them. They bring them in because they need food, or diapers, or money to pay Maui Electric or gasoline so they can get to work.

The bad guys know us and they leave us alone, because they know we take their picture and get a thumbprint, and a description of what they have. Almost all of them know they are better off disposing of their loot over Craigslist, eBay, at a swap meet or in a bar.

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Committee on Public Safety, Intergovernmental and Military Affairs

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Committee on Commerce and Consumer Protection

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I used to be a news reporter. Occasionally, not every week and not every month, but occasionally you will see a news story about police recovering stolen property from a pawn shop. You know why you see that story? Because the property was recovered. When was the last time you saw a story in the Star-Advertiser or The Maui News about police recovering stolen property that was sold in a saloon? Never, because that doesn't happen.

But people remember the recovery they read about from the pawn shop and they link pawn shops with stolen goods. Your approach is like the drunk who lost his keys in the gutter somewhere but is looking for them under the lamppost, because "that's where the light is." If your goal is to recover lost property and find criminals, look where the criminals go: in the unregulated zones.

For these reasons I OPPOSE SB191.

Sincerely,



Harry Eagar - Social Media Director
Kama`aina Loan

Hawaii Pawnbrokers Association
c/o Hawaii Gold and Silver Company
3426 Waialae Avenue
Honolulu, Hawaii 96816

February 5, 2015

The Honorable Will Espero, Chair
Committee on Public Safety, Intergovernmental & Military Affairs
The Honorable Rosalyn H. Baker, Chair
Committee on Commerce & Consumer Protection
Hawaii State Capitol
415 South Beretania Street, Conference Room 229
Honolulu, Hawaii 96813

Hearing Date: Friday, February 6, 2015 at 10:15 a.m.

I will be present to personally deliver my testimony.

Re: In Opposition to S.B. 191: Relating to Pawnbrokers and Secondhand Dealers

Dear Senate Committees on Public Safety, Intergovernmental & Military Affairs and Commerce & Consumer Protection:

The Hawaii Pawnbrokers Association (HPA) was formed in 1992. The HPA represents pawnbrokers and second-hand dealers throughout the State of Hawaii. Many members of the HPA have been providing valuable services to Hawaii residents for over fifty (50) years.

The HPA is opposed to S.B. 191, Relating to Pawnbrokers and Secondhand Dealers, because the bill, as written, is (i) based upon a false premise that there is a high volume of stolen property being sold by pawnshops and secondhand dealers, (ii) jeopardizes consumer privacy and personal information, (iii) provides no statewide uniformity, (iv) threatens the livelihood of pawnbrokers throughout the State of Hawaii, and (v) does not follow the past precedent of establishing a working group to resolve these issues. The HPA however, fully supports the intent of the bill, mandatory reporting, and the continued efforts of Hawaii law enforcement but, S.B. 191 will adversely affect pawnbrokers and consumers as explained below.

The HPA respectfully requests that this matter be referred to a working group, consistent with the attached 2014 H.R. 154, which had at least eleven sponsors.

I. BACKGROUND

Pawnbrokers are one of the highest regulated and scrutinized occupations in the United States and the State of Hawaii.

No other service industry has stricter regulations than pawnbrokers. Many pawnbrokers are family run businesses. Pawnbrokers provide valuable services throughout the State of Hawaii, especially for those who experience a financial hardship.

During the 2014 Legislative Session, H.R. 154 was offered to establish a working group to “examine the feasibility of establishing a statewide electronic working system.” Unfortunately, the resolution did not pass. Still, the use of a working group is the right path and should be used by your committees.

II. REASONS WHY S.B. 191 SHOULD NOT BE APPROVED BY YOUR COMMITTEES.

The proposed Senate Bill should be rejected for the following reasons:

1. The Bill is based on the false and unsupported premise that there is a high volume of stolen property being sold by pawnshops and secondhand dealers.
2. The proposed legislation impinges on Consumer Privacy and Protection.
3. The Bill provides no statewide uniformity.
4. The Bill inherently takes away the livelihood of many pawnbrokers and secondhand dealers by enforcing more stringent regulations and increasing business expenses and overhead costs.
5. A working group should be formed to establish and implement a proper uniform reporting system.

1. Based upon False Information

S.B. 191 is based on the misguided belief that “stolen property is being sold by pawnbrokers and secondhand dealers.”

Section 1 of S.B. 191 states that,

The legislature finds that it is often difficult to identify stolen property that is sold by pawnbrokers and secondhand dealers. The purpose of this Act is to reduce or eliminate the sale of stolen property by authorizing the chief of police, rather than the dealer, to choose the manner by which pawnbrokers and secondhand dealers must submit records of transactions required under section 486M-2, Hawaii Revised Statutes, upon request by the chief of police.

The bill assumes that there is a high volume of stolen property being sold by pawnshops and secondhand dealers, when in reality there is no evidence to support this premise. The

incidence of claims of misappropriated property against items recovered in pawn stores is less than 1/10 of once percent of all items accepted by pawnbrokers nationwide. Many of those claims of ownership, however, are mistaken or never proved.

2. Negative Impact on Business

Many pawnbrokers and secondhand dealers are “mom and pop” or family run businesses. Many of these business owners do not have computers in their stores and are not equipped with the electronic capability to comply with the demand of submission of records contemplated through the legislation. The implementation of this new bill would put many of these owners out of business who cannot afford to pay up to \$30,000 to \$50,000 for computer equipment and software. In addition, there will be added expenses of monthly licensing fees, and repair and maintenance fees.

The implementation of the new submission of records requirements imposes a needless cost on pawnbrokers. Many pawnbrokers are already self-reporting their customer transactions through an online database.

The legislation may have a disparate impact on elderly pawnbrokers, who do not have computers or the technology to comply with the requirement for submission of records.

3. No Uniformity Between the Counties

Any reporting system should be uniform statewide. The proposed legislation gives the chief of police of each county unfettered discretion to select the method of submittal of records and personal information. Any method of reporting information should be uniform statewide.

4. Impingement on Consumer Privacy and Protection

The proposed legislation impinges on consumer privacy and personal information.

Mandatory reporting of transactions involving customer’s personal information is both an undue burden on pawnbrokers and a major deterrent for customers of pawnshops. The personal information of customers can easily be manipulated and misused in the hands of a third-party vendor or company. Just the thought of having their personal information stored for uncertain purposes and uses by a commercial company for selling goods is enough to deter potential customers. The threat of “hackers” attacking and infiltrating the computer system containing customer information is a real threat.

Please see attached report from the National Pawnbrokers Association identifying the top concerns with electronic reporting of customers’ personal information.

As outlined by the report, some of the problems associated with electronic reporting of customers' personal information include:

- The ability to obtain and search customers' pawn information with no warrants, probable cause, or any degree of specific wrongdoing on the customer's part;
- The use of demographic information from pawn transactions, such as age, gender, race, zip code, or the frequency of transactions with individual consumers, to profile customers;
- The co-mingling of pawn transaction data with law enforcement criminal databases, which affords accessibility from remote devices such as squad cars and laptop computers;
- The absence of meaningful limitations on the uses of pawn transaction data by law enforcement agencies or by third-party contractors they hire to assist with data collection, storage, and retrieval, or on the length of time that records may be maintained; and,
- The prospect that customers' pawn transaction histories will be reported by law enforcement agencies to potential employers or credit agencies thus resulting in the loss or inability to obtain jobs.

Additional concerns that pawnbrokers have with electronic transaction reports that include customers' personal information are:

- The jurisdiction in which data collected is stored (in-state, out-of-state or out of the country) and the respective privacy protections;
- The absence of protections for pawnbrokers (including indemnification, insurance, and a safe harbor from liability to individual customers) if a data security breach occurs while it is in the possession of a law enforcement agency or its third-party agent;
- The "taking" of or interference with proprietary business assets of pawnbrokers that consist of dollar amounts and terms of transactions, the type of property securing a loan transaction or purchase, and the names and contact information of every pawnbroker's customers, particularly in jurisdictions that employ third-party vendors to collect and store the data;
- Claims by at least one vendor that markets pawn transaction data collection and reporting services to law enforcement that the vendor – not the pawnbroker from whom the data comes or the law enforcement agency that hired the vendor – becomes the "owner" of all data transferred to its custody and control. Thus, there may be no right for the pawnbroker or the law enforcement agency to retrieve the data if a change of vendors occurs or the vendor misuses the data; and,

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- The failure of state or local ordinances to require that transaction data be purged by law enforcement agencies or their vendors in a manner complying with or comparable to the federal Fair Credit Reporting Act.

See Attached report from National Pawnbrokers Association entitled, "Top Concerns with Electronic Reporting of Customers Personal Information" dated June 2013.

No other class of consumer, financial, or commercial transactions is subject to comparable governmental requirements to transfer transaction details to third-party database vendors.

5. Formation of a Working Group

The formation of a working group comprised of various interested and effected parties should arrive at a satisfactory, economical and practical reporting regime that would suit pawnbrokers, customers, law enforcement, and the general public. A report from this working group would help the Legislature adopt a feasible and complete approach to tackle the important issues at hand, rather than a piecemeal approach.

III. CONCLUSION

Please reject S.B. 191 and refer this matter to a working group consistent with H.R. 154. We thank you for your consideration.

Very truly yours,

/s/ Mark G. Valencia
Mark G. Valencia, Esq.
On behalf of the Hawaii Pawnbrokers
Association

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,



H.R. NO. 154

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

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

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Director of Commerce and Consumer Affairs, Administrator of the State Procurement Office, Prosecuting Attorney of the City and County of Honolulu, President of the National Pawnbrokers Association, and President of the Hawaii Pawnbrokers Association.

OFFERED BY:

[Handwritten signatures and names follow]

John M. [Signature]
Cindy Evans
Tou Br
Kal Rhoad
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]





National Pawnbrokers Association*

Top Concerns with Electronic Reporting of Customers Personal Information

June 2013

NPA members frequently ask for talking points on electronic reporting of pawn consumers' personal information to law enforcement that they can use in discussions with these agencies, elected officials, and their lawyers. This document mentions the concerns most often identified.

Electronic reporting of transactions when consumers' personal information is included allows:

1. The ability to obtain and search customers' pawn information with no warrants, probable cause, or any degree of specific wrongdoing on the customer's part;
2. The use of demographic information from pawn transactions, such as age, gender, race, zip code, or the frequency of transactions with individual consumers, to profile customers;
3. The co-mingling of pawn transaction data with law enforcement criminal databases, which affords accessibility from remote devices such as squad cars and laptop computers;
4. The absence of meaningful limitations on the uses of pawn transaction data by law enforcement agencies or by third-party contractors they hire to assist with data collection, storage, and retrieval, or on the length of time that records may be maintained; and,
5. The prospect that customers' pawn transaction histories will be reported by law enforcement agencies to potential employers or credit agencies thus resulting in the loss or inability to obtain jobs.

Additional concerns that pawnbrokers have with electronic transaction reports that include customers' personal information are:

1. The jurisdiction in which data collected is stored (in-state, out-of-state or out of the country) and the respective privacy protections;
2. The absence of protections for pawnbrokers (including indemnification, insurance, and a safe harbor from liability to individual customers) if a data security breach occurs while it is in the possession of a law enforcement agency or its third-party agent;
3. The "taking" of or interference with proprietary business assets of pawnbrokers that consist of dollar amounts and terms of transactions, the type of property securing a loan transaction or purchase, and the names and contact information of every pawnbroker's customers, particularly in jurisdictions that employ third-party vendors to collect and store the data;
4. Claims by at least one vendor that markets pawn transaction data collection and reporting services to law enforcement that the vendor – not the pawnbroker from whom the data comes or the law enforcement agency that hired the vendor – becomes the "owner" of all data transferred to its custody and control. Thus, there may be no right for the pawnbroker or the law enforcement agency to retrieve the data if a change of vendors occurs or the vendor misuses the data; and,
5. The failure of state or local ordinances to require that transaction data be purged by law enforcement agencies or their vendors in a manner complying with or comparable to the federal Fair Credit Reporting Act.

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National Pawnbrokers Association®

Statement for the Record on Senate Bill 191

by Ben Levinson, President,

The National Pawnbrokers Association

Before the

Committee on Public Safety, Intergovernmental and Military Affairs

The Honorable Will Espero, Chairman

The Honorable Rosalyn Baker, Vice Chairman

The Honorable Brickwood Galuteria, The Honorable Gilbert S.C. Keith-Agaran, and

The Honorable Sam Slom, Members of the Committee

February 4, 2015

My name is Ben Levinson and I am the President of the National Pawnbrokers Association. The National Pawnbrokers Association thanks the Chair of the Committee for allowing us to submit comments for the record. The National Pawnbrokers Association (NPA) is the only national trade association serving pawnbrokers and their consumer customers on a nationwide basis. We work with pawnbrokers and with state pawnbroker associations in nearly every state.

Directors of the Association, our staff, and consultants have reviewed SB191 at the request of the Hawaii Pawnbrokers Association. We have significant policy concerns that we describe below in that mandatory transaction reporting of pawn consumer's non-public personally identifiable information violates pawn consumers' rights under federal financial privacy laws and infringes privacy and generally applicable "reasonable suspicion" and other legal process protections.

Top Concerns with Mandatory Reporting of Pawn Transactions if the Reporting Requires Inclusion of Pawn Customers' Personal Information

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.

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") protected by the United States Constitution and Bill of Rights. Additionally, mandatory transaction reporting of non-public personally identifiable information infringes upon federally granted consumer financial privacy rights and possibly additional State laws and State Constitutions.

These concerns are 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.

Special Consumer Protection Concerns: Issues with mandatory transaction reporting when no threshold requirement of reasonable suspicion about a specific individual exists include:

- The absence of constitutionally required forms of legal process such as warrants or judicial exceptions to warrants like probable cause, or a degree of reasonable suspicion of wrongdoing by the consumer;
- The availability for use in profiling of non-public demographics about pawn consumers, such as age, gender, race, residential zip code, or the number and frequency of their pawn transactions;
- The prospect of pawn consumers' personal and transaction information being commingled with other databases, in particular with law enforcement criminal databases, without any link to a suspected property crime, and the damage potential for failing employment background checks or obtaining insurance;
- The high 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,
- The issue of whether the jurisdiction, in which the collected data is stored, possibly out of the state or country, affords the same federal and state protection of their non-public personal information as in the location where the pawn consumer resides.

Additional Burdens Imposed on Small Businesses: Mandatory electronic transaction reports that contain consumers' non-public personal information also involve:

- 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;
- 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 are used to collect and store the data; and,
- The necessity of buying computer equipment, software and internet service suitable to meet the electronic transaction reporting requirements without the ability to recoup these required expenses.

A better balance between law enforcement agencies, on the one hand, and consumers' privacy rights and pawnbrokers' compliance responsibilities under federal consumer financial privacy laws, on the other hand, is to omit all non-public personally identifiable information about the consumer involved in the transaction from mandatory reporting requirements, whether made in paper form or electronically. 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 or other legal process from a court of competent jurisdiction.

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. Transaction records in which consumers repaid loans and redeemed their collateral, at the very least, should be expunged promptly from the reported data because only true owners repay loans and redeem their property.

Conclusion

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 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.

Given what we understand to be (1) a miniscule number of items pledged or sold by consumers to pawnbrokers that are ever connected to thefts or burglaries in Hawaii, as well as nationwide; (2) the serious infringement of pawn consumers' privacy rights that would accompany electronic reporting that contained consumers' non-public personally identifiable information; and (3) the added compliance costs and specific risks imposed on pawnbrokers that we describe above that Senate Bill 191 or similar legislation would cause, we believe that there are no sound policy reasons for enacting the proposed amendments contained in Senate Bill 191 or in any other legislation on these subjects that has been introduced.

Thank you for receiving our prepared statement. Should you have questions about the positions taken in this prepared statement, please contact Ms. Fran Bishop, former NPA President, and current Government Relations Liaison for the NPA at fbishopdp1@gmail.com.

Respectfully submitted,



Ben Levinson
President

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 05, 2015 3:20 PM
To: PSMTestimony
Cc: doreenrodrigues@hawaii.rr.com
Subject: Submitted testimony for SB191 on Feb 6, 2015 10:15AM

SB191

Submitted on: 2/5/2015

Testimony for PSM/CPN on Feb 6, 2015 10:15AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Doreen	Hawaii Check Cashing	Oppose	No

Comments: I am in opposition of S.B.191: Relating to Pawnbrokers and Secondhand Dealers
S.B.191 Jeopardizes consumer privacy and personal information to the extreme. Also it has no statewide uniformity. A working group should be formed to establish and implement a proper uniform reporting system.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email
webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]
Sent: Thursday, February 05, 2015 12:20 AM
To: PSMTestimony
Cc: jonathanspiker@gmail.com
Subject: Submitted testimony for SB191 on Feb 6, 2015 10:15AM

SB191

Submitted on: 2/5/2015

Testimony for PSM/CPN on Feb 6, 2015 10:15AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
John Spiker	Individual	Oppose	No

Feb. 5 Testimony regarding SB 191 submitted by John Spiker, Owner, Hawaii Gold and Silver Company I have been in business for 37 years. I am currently the President of the Hawaii Pawnbrokers Association (HPA). Practically speaking, SB 191 is a requirement for electronic reporting. The problems the HPA raised regarding computerization at the Legislature in 2005 and 2008, at the City Council in 2013, and at the State Legislature in 2014 still exist with SB 191. The Legislature and City Council looked at the requirement for electronic reporting and rejected it due to the concerns raised by the HPA. This bill imposes significant financial burden on small businesses by requiring pawnbrokers and second hand dealers to spend thousands of dollars on computers, software, internet service, anti-virus protection, technical support and administrative fees in order to transmit our receipts electronically. We would also be required to pay fees to a private company from Canada for their services. We would have no control over the rising costs involved with doing business with the private Canadian company. This bill raises significant personal privacy issues. Private companies would have access to our customer's private personal information, which is protected by federal law. The impact of this bill would be devastating and put many small business owners out of business. Many of the older pawnshops and second hand dealers do not own computers and are not computer literate. Many of them will not be able to comply because of their age and lack of experience with computer technology. If something goes wrong with the hardware or software and we are unable to transmit information, we would be charged with a criminal offense. Many of us have been in business for decades. We are honest, hardworking people who have done nothing wrong. Many store owners are middle-aged and older. Our industry believes the current Legislature wants to support small businesses. However, this bill will destroy many of our businesses and force us out of business because of the strict requirements and mandatory use of computerization. Another concern I have is that I am unsure of the integrity of the system in terms of corruption of data. Federal laws protect my customers' personal private information. My customers' personal information, which is protected by federal law, would be at risk for identity theft. This bill implies that a large number of criminals are using pawnshops to convert stolen property into cash. This is incorrect. My customers include professionals such as physicians, dentists, attorneys, teachers, businessmen, and police officers. Old Hollywood stereotyping of pawn dealers is unjust. We are honest, hard working small business owners. We provide a much needed and valuable service to our community. We are respected business owners. Because we require identification and record personal information during a transaction, someone who is trying to sell stolen property is very highly unlikely to deal with licensed pawnbrokers and secondhand dealers because the sellers cannot

remain anonymous. According to recent statistics from the National Pawnbrokers Association, less than 1/10 of 1% of stolen property is found in pawnshops. After talking with local pawn dealers, they report the same - less than 1/10 of 1% of items in their shop was found to be stolen. This small percentage has been consistent for years. I believe this low percentage is the result of strict guidelines and laws that I already follow - such as requiring every customer to provide a government issued ID, fingerprinting each customer, and holding purchased items for a minimum of 30 days. Pawn customers deserve, but do not currently receive, the same privacy rights and constitutional protections as bank customers. Last year in 2014, the House recommended that a working group be formed with stakeholders to examine the feasibility of a unified state electronic reporting system for pawn shops - House Resolution #154. I submitted a letter volunteering to serve on that committee. I am still in favor of working with others on such a committee to resolve the issues. I ask that you do not pass this bill. I emphatically support law enforcement but do not feel that requiring computerization is a fair and proper way to regulate our business. I respectfully submit this testimony and thank you for your attention to this bill, which affects our struggling pawn and second hand dealers' industry that provides a much needed service to our community.