

Testimony Regarding HB 2724
Submitted by John Spiker, Owner – Hawaii Gold and Silver Company

I have been in business for 40 years and I am the President of the Hawaii Pawnbrokers Association.

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 $\frac{1}{10}$ of one percent of stolen property is found at pawn shops and secondhand dealers. That is a national statistic from the National Pawnbrokers Association. Local businesses also report the same low percentage. This statistic has been consistent for many years.

I believe this low percentage is the result of strict guidelines set by State laws that we already follow, such as requiring every customer to provide a government-issued ID card with a picture and number. In addition, we also have to obtain the height, weight, date of birth, hair and eye color, and a fingerprint of each customer and hold the purchased item for a minimum of 30 days.

This bill, which is requiring pawnbrokers and secondhand dealers to electronically file their receipts, will not significantly benefit law enforcement. It does not justify the need for electronic filing. Electronic filing will not have any significant impact on the recovery rate of stolen property because the percentage of stolen property found in pawn shops is less than $\frac{1}{10}$ of a percent.

The businesses that already electronically file their transactions do so for their own business reasons. Some of them reported to me that there has been no increase in the recovery of stolen property. We believe stolen property is being sold to drug houses, gambling rooms and internet fences. These are places where people can dispose of stolen property quickly and anonymously.

On behalf of the Hawaii Pawnbrokers Association, I ask that you do not pass this bill for the following reasons:

- This bill is based on a false and unsupported premise that there is a high volume of stolen property being sold to pawn shops and secondhand dealers.
- The bill provides no statewide uniformity because the Chief of Police in each county can decide on the manner in which pawn shop reports are filed.
- Electronic filing imposes an unnecessary financial burden on those who do not electronically file their transactions.
- 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 imposes a tremendous hardship on our business owners who are elderly and/or have disabilities and are not computer literate. 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.
- The administrative fee of \$1.50 per transaction is a form of pawn tax that increases the financial burden on business owners and customers. Imposing fees and taxes to support additional resources to find stolen property in pawn shops is ineffective.

Practically speaking, HB 2724 is a requirement for electronic reporting. It raises the same problems and concerns regarding computerization that the Hawaii Pawnbrokers Association raised at the Legislature in 2005 and 2008, with the City Council in 2013, and again at the State Legislature in 2014. The Legislators and the City Council looked at the requirement for electronic reporting and rejected it due to the concerns raised by the Hawaii Pawnbrokers Association.

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

Kamaaina Loan and Cash For Gold

February 11th, 2020

Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair
Committee on Consumer Protection & Commerce
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair
Committee on Judiciary
Hawaii State Legislature
Honolulu, HI 96813

Dear Chair Takumi, members of the Committee on Consumer Protection & Commerce, Chair Lee and the members of the Committee on Juiciary,

SUBJECT: HB2724 – RELATING TO A PILOT PROGRAM FOR DAILY ELECTRONIC REPORTING OF PAWNBROKER AND SECONDHAND DEALER TRANSACTIONS

My name is Richard Dan and I have operated Kamaaina Loan And Cash For Gold pawnshop on Maui and statewide for over four decades. I am the Vice President of the Hawaii Pawnbrokers Association. I provided testimony to the Legislature in prior sessions regarding electronic reporting.

Kamaaina Loan and Cash For Gold is the first company in the world to electronically report to the police department (MPD). Back then we used a software transmission program I created called pawnreport.com. Currently, we use a federally funded and administered software transmission program called RISS provided by a Hawaii WSIN Law Enforcement Coordinator.

I fully support voluntary electronic reporting by pawnbrokers and secondhand dealers to the Police Department. I OPPOSE this bill as the way the bill was written is unworkable as it doesn't afford the protections necessary.

I propose the solution to be 2014 HR No. 154 (Attached). HR No. 154 was as result of a consultation with Sen. Roz Baker, who suggested that what is needed is a stakeholder's study group, because there are more ways than one to skin this cat. Her suggestion led to H.R. 154 HD1 2014 which would have established a working group. Regrettably, that resolution failed, apparently largely because it mandated the Office of State Procurement as a member, which OSP thought was beyond the scope of its authorizing legislation.

If that working group had been established, I feel sure 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 and victims of crime. I am not sure what that proposal would have been, though I have my preferences, but that is exactly why we need a stakeholder's review first.

Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair
Committee on Consumer Protection & Commerce
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair
Committee on Judiciary

HB2724 – RELATING TO A PILOT PROGRAM FOR DAILY ELECTRONIC REPORTING OF PAWNBROKER AND SECONDHAND DEALER TRANSACTIONS

February 11th, 2020

Page 2

My concerns with HB2724 are as follows:

- In the existing 486m definitions it states, ““Dealer” means any person, firm, partnership, corporation, or other entity who engages in a business which includes the buying of previously owned [articles,] and includes any pawnbroker or secondhand dealer”
- This legislation although aimed at pawnbrokers and secondhand dealers, must include antique shops, consignment shops, swap meets, Facebook marketplace, craigslist and internet platform sellers.
- Section 1: Very few items of stolen property are discovered through electronic reporting at legitimate pawnshops. Unregulated on Maui are used as fences. Examples of Unregulated on Maui are: antique shops, consignment shops, swap meets, Facebook market place, craigslist and internet platform sellers.
- Section 1: At the present state of technology, daily reporting would be burdensome.
- Section 8b: Do not remove modem from the options for transmitting records to the police department.
- Section 8b: The method of submittal should be at the option of the dealer not the chief of police as it leads to more confusion and there are many software transmission programs that will integrate with the police departments. Which will provide them all the data they require and in the format that they require. You can license me to drive a car but you can’t tell me what car to drive...
- Section 3 #1: There are a lot of platforms (software transmission programs) available to communicate to the police department that will work with their system. Presently, the primary two being used in Hawaii are BWI (Private Company) and RISS (Federally Funded Quasi Federal Software Transmission Program).
- This goes to the point of the pawnbroker and secondhand dealers or business should be the ones who select the mechanism (software transmission program) used to transmit and protect the data submitted to the police department.

Additionally, The National Pawnbrokers Association has stated its concerns about this bill as well.

Their concerns are as follows:

Hawaii House Bill 2724 would authorize mandatory no-warrant, no-threshold transaction reporting by pawnbrokers and second-hand dealers for as many as five years on the island of Maui.

Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair
Committee on Consumer Protection & Commerce
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair
Committee on Judiciary

HB2724 – RELATING TO A PILOT PROGRAM FOR DAILY ELECTRONIC REPORTING OF PAWNBROKER AND SECONDHAND DEALER TRANSACTIONS

February 11th, 2020

Page 3

Hawaii House Bill 2724 suffers from many problems:

- The bill suggests that pawnbrokers and second-hand dealers are the likely vehicles by which thieves dispose of items of personal property that they have stolen. The bill offers no proof that these categories of business, which Hawaii law already regulates, are locations for disposal of stolen property.
- The pilot program would create an unconstitutional invasion of the rights of consumers who use the services provided by pawnbrokers and second-hand dealers under the Fourth Amendment to the U.S. Constitution. Searches for criminal investigation purposes must be supported by duly authorized warrants or by individualized probable cause. The pilot program would authorize – even if only for a period of years – a no-warrant, no-threshold of probable cause collection of information about consumers, their whereabouts, and their property, which the Fourth Amendment does not permit.
- The pilot program would also initiate an unconstitutional invasion of the rights of pawnbrokers and second-hand dealers for their businesses’ property, records and effects under the reasoning set forth by the United States Supreme Court in 2015 and the prior en banc decision of the United States Court of Appeals for the Ninth Circuit in *City of Los Angeles v. Patel* below. The holdings in both cases apply with full force to legislation and administrative actions in Hawaii.
- The Supreme Court was particularly clear that the Fourth Amendment stands as a permanent reminder that access to records by governments for criminal investigations are “searches” under the Fourth Amendment on a no-warrant, no-threshold basis.
- The pilot program suggested in HB2724 that gathers all transaction records of a business is no different than a local ordinance or a state statute if the program is designed to assist in criminal investigations and does not afford Fourth Amendment protections to the individuals who transact business with pawnbrokers or second-hand dealers.
- The pilot program also fails to afford proper protections to premises, records indemnification, and effects of business owners that would be collected because, as the Ninth Circuit’s en banc decision held business owners have “the right to exclude others from prying into the contents” of their business records.
- As Hawaii House Bill 2724 is proposed, there is no basis on which the pilot program can be authorized as an aid to generalized investigations of property crimes. It would be facially

Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair
Committee on Consumer Protection & Commerce
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair
Committee on Judiciary

**HB2724 – RELATING TO A PILOT PROGRAM FOR DAILY ELECTRONIC REPORTING OF PAWNBROKER AND
SECONDHAND DEALER TRANSACTIONS**

February 11th, 2020

Page 4

unconstitutional as was the city and county ordinance in issue in Patel. Thus, Hawaii House Bill 2724 should not be enacted.

Thank you for your thoughtful consideration of all these points and examples raised. If you have any questions, or if I can be of assistance with regard to this matter, please don't hesitate to call me at Tel: (808) 242-5555.

Sincerely,

Richard Dan

Richard Dan
Kamaaina Loan and Cash For Gold

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.

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

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

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

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

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

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

BE IT RESOLVED by the House of Representatives of the
Twenty-seventh Legislature of the State of Hawaii, Regular

Session of 2014, that the Director of Commerce and Consumer Affairs is requested to convene a working group to examine the feasibility of establishing a unified statewide electronic reporting system for pawn shops; and

BE IT FURTHER RESOLVED that the Director of Commerce and Consumer Affairs or the Director's designee is requested to serve as the chairperson of the working group and to invite the following parties to be members of the working group:

- (1) One member from the State Procurement Office;
- (2) One member from the Office of Information Management and Technology;
- (3) One member from the Department of the Prosecuting Attorney of the City and County of Honolulu;
- (4) Two members of law enforcement agencies, with one member representing the island of Oahu and one member representing a neighbor island;
- (5) Two members who are pawnbrokers, with one member representing the island of Oahu and one member representing a neighbor island;
- (6) One member from the National Pawnbrokers Association; and
- (7) One member from the Hawaii Pawnbrokers Association; and

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

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

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 20 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, Chief Information Officer, Prosecuting Attorney of the City and County of Honolulu, President of the National Pawnbrokers Association, and President of the Hawaii Pawnbrokers Association.

HB-2724

Submitted on: 2/11/2020 12:59:08 PM

Testimony for CPC on 2/12/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jonathan Spiker, Esq.	Hawaii Pawnbrokers Association	Oppose	Yes

Comments:

HB-2724

Submitted on: 2/11/2020 1:59:20 PM

Testimony for CPC on 2/12/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kenneth Tano	Western States Information Network	Support	Yes

Comments:

My name is Kenneth Tano and I support HB 2724. I am the Law Enforcement Coordinator for the State of Hawaii for the Western States Information Network (WSIN) which is one of six regions of the Regional Information Sharing System (RISS).

A liittle bit about our overall program: RISS/WSIN offers secure information sharing and communications capabilities, critical analytical and investigative support services, and event deconfliction to enhance officer safety. RISS supports efforts against organized and violent crime, gang activity, drug activity, terrorism and violent extremism, human trafficking, identity theft, cybercrime, and other regional priorities.

Congress appropriates funds each year for RISS. The Bureau of Justice Assistance (BJA), Office of Justice Programs (OJP), U.S. Department of Justice, administers the RISS Program. BJA provides funding oversight and program management for the RISS Program. Although RISS is congressionally funded, it is locally managed. RISS also partners with other entities on projects that help support and further the RISS mission.

The RISS Centers operate their intelligence system under the Criminal Intelligence Systems Operating Policies (28 Code of Federal Regulations [CFR] Part 23). All RISS member agencies have agreed to comply with the requirements of 28 CFR Part 23 with respect to any criminal information they submit into an applicable RISS Criminal Intelligence Database (RISSIntel). RISS has adopted a comprehensive privacy policy to protect individual privacy, civil rights, civil liberties, and other protected interests.

In Hawaii we have 54 agencies and task forces that we support with our resources. The four county police departments and most of the Hawaii federal agencies have policy requiring the use of our RISSafe Deconfliction System and RISSIntel Database when conducting drug investigations. That is the biggest part of my responsibilities in Hawaii.

We were approached by Maui Police Department to assist them with our electronic RISSProp Pawn database. Based on the lack of a mandatory electronic reporting requirement we had to ask the pawn shops to voluntarily participate. I will have statistics on the use of the system and examples of how we conduct analysis on the data which is presented to the Maui Police Property Crime Section at the hearing on 02-11-2020. Didn't have enough time to complete the report today. Mahalo-Kenneth Tano

Testimony Regarding HB 2724
Submitted by John Spiker, Owner – Hawaii Gold and Silver Company

I have been in business for 40 years and I am the President of the Hawaii Pawnbrokers Association.

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 $\frac{1}{10}$ of one percent of stolen property is found at pawn shops and secondhand dealers. That is a national statistic from the National Pawnbrokers Association. Local businesses also report the same low percentage. This statistic has been consistent for many years.

I believe this low percentage is the result of strict guidelines set by State laws that we already follow, such as requiring every customer to provide a government-issued ID card with a picture and number. In addition, we also have to obtain the height, weight, date of birth, hair and eye color, and a fingerprint of each customer and hold the purchased item for a minimum of 30 days.

This bill, which is requiring pawnbrokers and secondhand dealers to electronically file their receipts, will not significantly benefit law enforcement. It does not justify the need for electronic filing. Electronic filing will not have any significant impact on the recovery rate of stolen property because the percentage of stolen property found in pawn shops is less than $\frac{1}{10}$ of a percent.

The businesses that already electronically file their transactions do so for their own business reasons. Some of them reported to me that there has been no increase in the recovery of stolen property. We believe stolen property is being sold to drug houses, gambling rooms and internet fences. These are places where people can dispose of stolen property quickly and anonymously.

On behalf of the Hawaii Pawnbrokers Association, I ask that you do not pass this bill for the following reasons:

- This bill is based on a false and unsupported premise that there is a high volume of stolen property being sold to pawn shops and secondhand dealers.
- The bill provides no statewide uniformity because the Chief of Police in each county can decide on the manner in which pawn shop reports are filed.
- Electronic filing imposes an unnecessary financial burden on those who do not electronically file their transactions.
- 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 imposes a tremendous hardship on our business owners who are elderly and/or have disabilities and are not computer literate. 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.
- The administrative fee of \$1.50 per transaction is a form of pawn tax that increases the financial burden on business owners and customers. Imposing fees and taxes to support additional resources to find stolen property in pawn shops is ineffective.

Practically speaking, HB 2724 is a requirement for electronic reporting. It raises the same problems and concerns regarding computerization that the Hawaii Pawnbrokers Association raised at the Legislature in 2005 and 2008, with the City Council in 2013, and again at the State Legislature in 2014. The Legislators and the City Council looked at the requirement for electronic reporting and rejected it due to the concerns raised by the Hawaii Pawnbrokers Association.

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

February 11, 2020

707 Richards Street, Suite 610
Honolulu, Hawaii 96813
Telephone (808) 523-3900
Facsimile (808) 526-9829

Honorable Roy M. Takumi, Chair
Honorable Linda Ichiyama, Vice Chair
Committee on Consumer Protection and Commerce

Honorable Chris Lee, Chair
Honorable Joy A. San Buenaventura, Vice Chair
Committee on Judiciary

**Re: H.B. 2724, RELATING TO A PILOT PROGRAM FOR DAILY
ELECTRONIC REPORTING OF PAWNBROKER AND SECONDHAND
DEALER TRANSACTIONS**

Date: Wednesday, February 12, 2020
Time: 2:00 p.m.
Place: House Conference Room 325

On behalf of the Hawaii Pawnbrokers Association ("HPA"), we respectfully submit the following testimony in **OPPOSITION** to H.B. 2724.

H.B. 2724 is labeled as a pilot program for daily electronic reporting of pawnbroker and secondhand dealer transactions on Maui county. However, that is misleading and inaccurate as this Bill proposes changes in the current law that affect all Hawaii counties and can result in electronic reporting requirements for all counties, not just Maui county. H.B. 2724 allows the chief of police in each county to determine the manner and method in which pawnshops and secondhand dealers must submit receipts to their respective police department. If the chief of police requires electronic reporting and submittal of records for pawnshops and secondhand dealers, then pawnshops and secondhand dealers will be forced to spend thousands of dollars to computerize and purchase, support, and maintain electronic reporting software chosen by the chief of police. Altogether, this will be unduly burdensome and a great expense to pawnshops and secondhand dealers which are small, family run businesses. Furthermore, H.B. 2724 assesses a mandatory \$1.50 fee per transaction for pawnshops and secondhand dealers that are unable to afford a computer and electronic reporting software.

We believe a Hawaii State or Federal court would hold that the electronic reporting requirements proposed by H.B. 2724 violate constitutional and privacy rights of pawn customers, pawnshop owners, and secondhand dealers. Pawn customers deserve the same rights and constitutional protections as bank customers. Information taken from pawnshop and secondhand dealer customers is reported regularly to police departments and in turn, that information is put into a criminal database. This information can be profiled by race, age, gender, zip code and frequency of borrowing money. The customer's information can be accessed and searched by law enforcement with no warrants, probable cause or suspicion of wrongdoing. Such personal information can be misused. In essence, this Bill authorizes unreasonable searches in violation of the Fourth

Honorable Roy M. Takumi, Chair
Honorable Linda Ichiyama, Vice Chair
Committee on Consumer Protection and Commerce

Honorable Chris Lee, Chair
Honorable Joy A. San Buenaventura, Vice Chair
Committee on Judiciary
February 11, 2020
Page 2

Amendment of the United States Constitution. For pawnshop owners and secondhand dealers, this Bill allows unfettered access by police departments to customer, business, and financial records and constitutes an unconstitutional invasion of privacy.

H.B. 2724 also removes the provision that allows pawnshops and secondhand dealers to submit receipts to the police department by fax. Fax is an electronic and instantaneous way to submit receipts to police departments. It is fast, secure, reliable and unlike computers and electronic reporting software, will not cost hundreds or thousands of dollars to maintain and support. The Honolulu Police Department previously requested that receipts be faxed to them on a daily basis. This Bill takes away this option and requires pawnshop owners and secondhand dealers to close their businesses, drive to the police station and deliver their receipts- several times a week. Refusing to allow submission of receipts to police departments by fax is unduly burdensome and will not have any significant impact on the recovery of stolen items. Many pawnshops and secondhand dealers have only a few transactions per day and the costs for computerization and electronic reporting would put them out of business. We believe the Hawaii State Legislature supports small businesses.

In 2014, House Resolution 154 was proposed to create a working group to examine the feasibility of establishing a uniform, statewide electronic reporting system for pawnshops. HPA offered to be a part of this working group and is still in favor of establishing a working group to examine the feasibility of establishing a uniform, statewide electronic reporting system.

We support law enforcement but H.B. 2724 does not significantly benefit law enforcement, pawnshops or consumers in any way.

For the foregoing reasons, we respectfully request that you do not pass H.B. 2724.

Very truly yours,

/s/ *Jonathan Spiker*

Jonathan E. Spiker
for
Hawaii Pawnbrokers Association