

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Commerce and Consumer
Protection**

February 10, 2021

S.B. No. 397: RELATING TO PROPERTY CRIMES.

Chair Baker, Vice Chair Chang, and Members of the Committee:

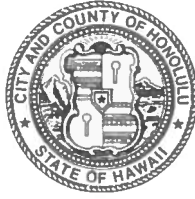
The Office of the Public Defender opposes S.B. No. 397.

This measure removes the knowing state of mind as an element of the offense where a pawnbroker or secondhand dealer may inadvertently receive stolen property. We are concerned that removal of the requirement that the broker or dealer must know that goods are stolen will put some honest and law-abiding businesses and their employees at risk of criminal prosecution. We understand that a criminal may use deception when conducting business with a broker or dealer, but we believe this measure lumps all brokers and dealers together with criminals and puts them in a precarious position which could substantially impact their risk of being prosecuted from criminal acts when they did not have knowledge that property was stolen. We submit that this change would impact legitimate businesses and a means for law-abiding citizens living in poverty to quickly pawn or sell property to make ends meet in times of financial crisis.

Thank you for the opportunity to comment on this measure.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE

PO-KK

February 10, 2021

The Honorable Rosalyn H. Baker, Chair
and Members
Committee on Commerce
and Consumer Protection
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 229
Honolulu, Hawaii 96813

Dear Chair Baker and Members:

SUBJECT: Senate Bill No. 397, Relating to Property Crimes

I am Paul Okamoto, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 397, Relating to Property Crimes.

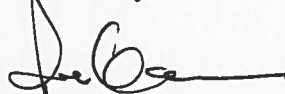
Currently, officers are unable to conduct any meaningful enforcement when secondhand dealers purchase stolen goods. Most enforcement actions have been recently unsuccessful in court, as the state of mind of determining "knowingly" has been a high burden. Unscrupulous buyers use unwitting surrogates to conduct illegal transactions and avoid prosecution by claiming ignorance. Therefore, they have no incentive to do their due diligence to scrutinize the item for sale since there are no legal repercussions.

The high frequency of burglaries and vehicle break-ins in our state are fueled in part by the ease in which stolen items are trafficked. Changing the state of mind required for Section 486M-7 of the Hawaii Revised Statutes will allow the HPD to better serve the victims of property crimes by closing off the potential pathways for criminals to exchange stolen goods for money. Without this bill, it will continue to be nearly impossible to conduct meaningful enforcement in this area.

The Honorable Rosalyn H. Baker, Chair
and Members
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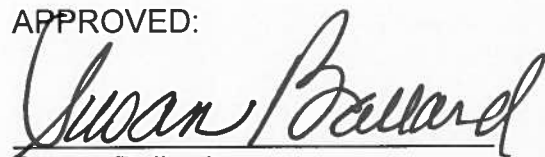
Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Okamoto", with a long horizontal flourish extending to the right.

Paul Okamoto, Captain
Criminal Investigation Division

APPROVED:

A handwritten signature in black ink, appearing to read "Susan Ballard", written in a cursive style.

Susan Ballard
Chief of Police

January 29, 2021

707 Richards Street, Suite 610
Honolulu, Hawaii 96813
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Honorable Rosalyn H. Baker, Chair
Honorable Stanley Chang, Vice Chair
Senate Committee on Commerce and Consumer Protection

Re: **S.B. 397- RELATING TO PROPERTY CRIMES**

Dear Chair Baker, Vice Chair Chang & Committee Members,

On behalf of the Hawaii Pawnbrokers Association, we respectfully OPPOSE S.B. 397.

S.B. 397 proposes changing the state of mind required in HRS Section 486M-7 to intentionally, knowingly, or recklessly.¹ However, that is misleading and inaccurate. In actuality, this Bill removes the state of mind required in HRS Section 486M-7 and makes *any* violation of HRS Chapter 486M an automatic misdemeanor **punishable by up to a year in prison.**² In other words, S.B. 397 imposes criminal strict liability for any violation of HRS Chapter 486M including unintentional and inadvertent clerical errors.

For example, HRS Chapter 486M requires every pawnbroker and secondhand dealer to document the name, home address, date of birth, height, weight, eye color, hair color, age, finger print and driver's license or government issued ID number for all customers. A complete and accurate description of all items purchased or pawned, including all markings, names, initials, and inscriptions, as well as the fineness and weights of the precious metals and gems must also be documented. A price must be listed for every item bought or pawned. This documentation is very extensive and requires 3-4 pages, or more, of paperwork. Once completed, the documentation is required to be transmitted

¹S.B. 397 amends HRS Section 486M-7 [by removing "knowingly"] as follows:

§486M-7 Penalties. Any dealer, or any agent, employee, or representative of a dealer who [~~knowingly~~] violates any of the provisions of sections 486M-2, 486M-3, 486M-4, or who refuses to allow the inspection provided for in section 486M-5, and any person who offers or records information which is required under section 486M-2 that the person knows or has reason to know is false, shall be guilty of a misdemeanor. Any dealer, or any agent, employee or representative of a dealer who is convicted for a second violation of any provision of this chapter shall, in addition to the foregoing penalty, be permanently prohibited from engaging in the business of buying or selling of precious or semiprecious metals or precious or semiprecious gems or any article.

² Two violations of HRS Chapter 486M results in the permanent loss of one's pawnbroker and secondhand dealer license.

Honorable Rosalyn H. Baker, Chair
Honorable Stanley Chang, Vice Chair
Senate Committee on Commerce and Consumer Protection
January 29, 2021
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to the police department. Under S.B. 397, if a pawnbroker/secondhand dealer mistakenly forgets to write down any of the aforementioned information, the pawnbroker/secondhand dealer is immediately charged with a misdemeanor and faces up to a year in prison. It is not the spirit of the law to charge people with a crime for clerical errors and honest mistakes. That is akin to a police officer being charged with a misdemeanor because the police officer forgot to write down the hair color of a person in a police report or a judge being charged with a misdemeanor for misspelling a name in a court document.

S.B. 397 implies that a high volume of stolen property is being sold to pawn shops 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. Local businesses are very transparent and cooperative with law enforcement and there are no problems or issues with local businesses complying with current laws and requirements

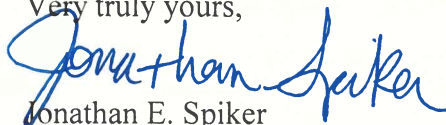
We believe this low percentage is due to strict guidelines set by State laws that pawn shops and secondhand dealers already follow, such as requiring every customer to provide a government-issued ID card with a picture and number. In addition, pawn shops and secondhand dealers also have to get a fingerprint of each customer and hold the purchased item(s) for a minimum of 30 days.

S.B. 397, which imposes strict criminal liability for violations of HRS Chapter 486M, will not benefit law enforcement. ***Rather, it will result in owners and employees of small businesses being charged with misdemeanors and facing a year in prison for clerical errors and honest mistakes in paperwork. This Bill creates a crime when none exists.*** S.B. 397 does nothing to help identify the source of stolen property and will not have any impact on the recovery rate of stolen property. The Bill is written to punish a person who makes an inadvertent clerical error and this has nothing to do with stolen property or the recovery of stolen property.

We believe the Hawaii State Legislature supports small businesses. We support law enforcement but S.B. 397 does not benefit law enforcement, pawn shops or consumers in any way.

For the foregoing reasons, we respectfully request that you do not pass S.B. 397.

Very truly yours,



Jonathan E. Spiker

for

Hawaii Pawnbrokers Association

Testimony Opposing SB397
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 40 years. I am the President of the Hawaii Pawnbroker's Association. I have been giving testimony at the Hawaii State Legislature since 1981.

I oppose SB397.

SB397 implies that large amounts of stolen property are sold to pawnshops and secondhand dealers. This is very misleading and inaccurate. Pawnshops and secondhand dealers are one of the most heavily regulated industries in the country. Less than $\frac{1}{10}$ of one percent of stolen property is found at pawnshops 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.

The current state of mind in HRS 486M-7 of "knowingly" is fair and just. It does not make sense to add "recklessly" to the state of mind in HRS 486M-7. In other contexts, it makes sense. For instance, someone that is driving 90 mph in a 25-mph zone and causes an accident that hurts or kills someone is clearly exhibiting reckless behavior.

To change the state of mind to reckless for small businesses will easily and often result in small business owners being prosecuted for innocent and harmless clerical errors or a simple typo. These errors have nothing to do with identifying a criminal or identifying and recovering stolen property. Extensive information and details are recorded about each customer and the property pawned or sold to our business. If some information is missing or misspelled, it does not affect law enforcement's ability to identify a person selling property and the identification of the property sold because of the amount of detailed personal and merchandise information that is recorded. Pawnshops and secondhand dealers are very helpful and cooperate with law enforcement.

Applying the reckless standard can result in a small business owner being arrested for a clerical error, spending a year in prison and the loss of his business. The arrest and punishment have nothing to do with stolen property. There is no incentive for a small business to buy stolen property. Stolen property is recovered by the police with no compensation to the business owner. In over 40 years of business and 30,000 to 40,000 transactions, I have only encountered 8 stolen items. The heavy burden SB397 places on business owners is not rationally related to a decrease in property crime sought by this Bill.

I respectfully submit this testimony and thank you for your serious consideration to not pass this Bill which unfairly affects our struggling pawn and secondhand dealers' industry that provides a much-needed service to our community. Thank you for always supporting small businesses.

Sincerely,

John Spiker



Kamaaina Loan

February 8^h, 2021

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
And Members of the Senate Committee on
Commerce and Consumer Protection
Hawaii State Legislature
Honolulu, HI 96813

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice-Chair
And Members of the Senate Committee on
Judiciary
Hawaii State Legislature
Honolulu, HI 96813

FROM: Richard Dan

Dear Chair Baker, Vice Chair Chang and Members of the Senate
Committee on Commerce and Consumer Protection & Chair Rhoads, Vice Chair
Keohokalole and Members of the Senate Committee on Judiciary

SUBJECT: SB 397 - RELATING TO PROPERTY CRIMES.

My name is Richard Dan and I operate Kamaaina Loan and Cash for Gold, the oldest pawnshop in the state, a locally-owned community business. I would like to provide some background on SB 397.

I oppose SB 397 - RELATING TO PROPERTY CRIMES.

The idea that pawnbrokers could be liable to imprisonment if they are victimized by a criminal raises the most serious questions of fairness and decent behavior. So, I recommend not removing **“knowingly”** from the existing law.

Our governor has included pawnshops as essential businesses during this pandemic, because in Hawaii 30% of citizens are un banked and do not have a conventional bank account. When they need financial support, they often turn to a trusted pawn lender.

In my case, I am also a licensed second-hand dealer. Probably most second-hand transactions today are not conducted by licensed agents, so the HB171 attack on pawnbrokers is misguided at best.

SB 397 - RELATING TO PROPERTY CRIMES

February 8, 2021

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Many of the clients of Kamaaina Loan are well-known to us; some are the third generation in a family to trust us.

Even when we are not personally familiar with a customer, we collect a large amount of information, included thumbprint, copy of driver's license, telephone number and address.

If someone should be so bold as to try to pass off stolen goods, it is comparatively simple for the police to track them with the information we provide (including video of transactions).

Contrast this with transactions in stolen goods mediated over social media, which is certainly now the most usual method of fencing loot. The sponsors of this bill seem not to have offered any statistics to back up their assertions about stolen property and pawnshops.

These are just a few comments leading to my opposition of this bill. If I can be of assistance in crafting more equitable, accountable and safe legislation as it relates to the matter of small short-term loans and/or payday lending, please contact me at Tel: (808) 242-5555.

These are just a few comments leading to my **opposition** of this bill. If I can be of assistance in crafting more equitable, accountable and safe legislation. please contact me at Tel: (808) 242-5555.

Sincerely,

Richard Dan

Kamaaina Loan

SB-397

Submitted on: 2/8/2021 1:47:01 PM

Testimony for CPN on 2/10/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dan reardon	Testifying for west maui gold and loan corp	Oppose	No

Comments:

My name is Dan Reardon , owner of West Maui Gold and loan located in Lahaina for over 30 years. The governor has included Pawnshops as an essential business during this pandemic , because in Hawaii 30% of citizens do not have a conventional bank account when they need financial support they often turn to a trusted pawn dealer in my case I'm also a licensed secondhand dealer probably most secondhand transactions today or not conducted by licensed agents so the S3 95 and HP 171 attack on pawnbrokers is misguided at Best. West Maui Gold And Loan ensures even when not personally familiar with the customer to collect a large amount of information. thumbprint , copy of drivers license, telephone number and address. If someone should try and sell some stolen goods to us, it is simple for the police to track them with the information we provide including video surveillance of the transaction.

Now contrast this with the transactions of stolen goods dealt over social media which is now probably the most used method of dealing stolen items. For sponsors of this bill, seem not to have offered any statistics to back up their assertions about stolen property and pawnshops and secondhand dealers. The idea that pawnbrokers could be liable for imprisonment if they are victimized by criminals raises the most serious question of fairness and decent behavior. So I recommend not removing "knowingly" from the existing law.

I have lived in West Maui for 35 years, my children and grandchildren live here as well. Everyday we are trying to make them proud of our family business and definitely do our best not to "knowingly" contribute to crime here on Maui. For over 30 years we have helped MPD every time we get a chance. This bill is not reasonable as we work to be part of the solution, not the problem

Respectfully

Dan Reardon, Owner of West Maui Gold and loan

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Lahaina , HI 96761

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SB-397

Submitted on: 2/10/2021 9:58:54 AM
Testimony for CPN on 2/10/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Testifying for Maui Police Department	Support	No

Comments:

MPD is in support of this bill. We believe that it will bring about more targeted accountability.