



July 18, 2012

Re: Notice of Passage of Hawaii Revised Statutes § 487J, Regarding Driver's License Scanning

To whom it may concern:

The ACLU of Hawaii would like to inform your establishment of the passage of Hawaii Revised Statutes ("H.R.S.") § 487J, which puts limitations on the scanning and retention of personal information located in the machine-readable zone of a driver's license or state identification card.

The machine-readable zone of a driver's license or state identification card contains personal and private information about the cardholder, including name, address, date of birth, hair color, eye color, height, weight, gender, license expiration date, organ donor status, driver's license number, fingerprint, medical information, and the driver classification code. Many businesses use driver's license and state-identification scanners to verify the authenticity of an identification card or to verify the identity of a customer returning, exchanging, or paying for a product with a method other than cash. However, some businesses are now using these scanners to collect customer's private information, retaining and selling this information to third parties for marketing, advertising, or promotional activities.

The unregulated scanning, retention, and dissemination of the information contained in a driver's license or state identification card jeopardizes customers' security by making customers much more susceptible to identity theft. In order to protect the privacy and security of your customers, H.R.S. § 487J places limitations on the usage and retention of driver's license information. Under H.R.S. § 487J, your business may not scan, retain, transmit, or sell the information in the machine-readable zone of a driver's license or ID card except:

1. to verify the authenticity of the identification (in order to verify the identity of the customer) if the customer pays for something with a method other than cash, or if a customer returns, exchanges, or requests a refund for an item;
2. to verify a customer's age if s/he is buying age-restricted goods or services, like cigarettes, alcohol, Nicorette gum, mature video games, or cold medicines, and the employee has reasonable evidence to believe that the customer is underage;
3. to prevent fraud or other criminal activities if a customer wants a refund or wants to exchange an item and the business uses a fraud prevention company or service;
4. to establish or maintain a contractual relationship;

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5. to record, retain, or transmit information if so required by state or federal law;
6. to transmit information to a consumer reporting agency, financial institution, or debt collector to be used as designated by the federal Fair Credit Reporting Act, Gramm-Leach-Bliley Act, or the Fair Debt Collection Practices Act; or
7. to record, retain, or transmit information by a covered entity governed by the medical privacy and security rules designated by the federal Department of Health and the Human Services' Code of Federal Regulations.

The only information that can be scanned under these circumstances is the customer's name, address, date of birth, and license number or ID card number, and adherence to the provisions of H.R.S. § 487J will help protect your customer's privacy and security. Any business that violates H.R.S. § 487J is subject to the penalties outlined in chapter 487J of the Hawaii Revised Statutes, which include a fine up to \$2,500 for each violation in addition to damages sustained by the injured party.

Should you have additional questions about this legislation and its impact on your business, please consult an attorney; the information contained in this letter is not intended as legal advice. Thank you very much for your time and attention to this matter.

Sincerely,



Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

About the American Civil Liberties Union of Hawaii

The American Civil Liberties Union of Hawaii ("ACLU") has been the state's guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii.

The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy.

The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.

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