



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2254, RELATING TO INTERNET DATING SERVICES.

**BEFORE THE:**

SENATE COMMITTEES ON ECONOMIC DEVELOPMENT AND TECHNOLOGY  
AND ON COMMERCE AND CONSUMER PROTECTION

**DATE:** Wednesday, February 8, 2012                      **TIME:** 1:15 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Stephen H. Levins, Deputy Attorney General

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Chairs Fukunaga and Baker and Members of the Committees:

The Department of the Attorney General (the "Department") provides the following comments.

This bill appears to be modeled after the Texas Internet Dating Safety Act, which became law in Texas on September 1, 2011. In an apparent effort to protect Hawaii consumers from sexual predators, the bill would require an online dating service provider that offers services to Hawaii residents to provide a list of admonitions regarding dangers associated with internet dating, and to clearly and conspicuously disclose whether it conducts criminal background checks. Failure to comply with the bill's mandates would subject violators to injunctive relief, penalties of \$250 per violation, and up to three times the damages allowed if the offender has been found to have engaged in a pattern and practice of violations. As currently drafted, enforcement is limited to the Department.

The current draft of this bill places it in chapter 481B, Hawaii Revised Statutes (HRS), which is a consumer protection chapter (Unfair and Deceptive Practices). If the intent of the Legislature is to treat the matter as consumer protection, it may wish to consider harmonizing the standing and penalty provisions of this bill with the other consumer protections governed by chapter 481B. In this regard, instead of limiting enforcement to the Department, the Legislature may wish to consider authorizing other state governmental entities to enforce its provisions. One way of achieving this would be to make a violation of the new requirements an unfair or deceptive trade practice, as currently reflected in several of the sections of chapter 481B, HRS,

including sections 481B-4, 481B-5.5, 481B-12, and 481B-13. According to their terms, a violation of any of these sections constitutes an unfair or deceptive act or practice in the conduct of any trade or commerce under section 480-2, HRS (Unfair Competition). Under section 480-2, “Any person may bring an action based on unfair methods of competition,” and a consumer, the Attorney General, or the Director of the Office of Consumer Protection may bring an action based upon unfair or deceptive acts or practices. Broadening the enforcement provisions of the bill in this manner would clearly enhance enforcement.

We respectfully request that the Committee consider these recommendations.

Tammy Cota, Executive Director  
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February 8, 2012

Honorable Carol Fukunaga, Chair  
Senate Economic Development and Technology Committee  
Conference Room 16, State Capitol  
415 South Beretania Street  
Honolulu, HI 96813  
[EDTestimony@capitol.hawaii.gov](mailto:EDTestimony@capitol.hawaii.gov)

Dear Senator Fukunaga:

I am the executive director of the Internet Alliance (IA), a national organization of companies that provide goods and services via the Internet. The IA's mission is to build consumer confidence and trust in the Internet so that it may become the leading global marketing medium of this century.

My members include Amazon.com, AOL, Google, eHarmony, Expedia, IAC, Facebook, Match.com, Overstock.com, Yahoo! and others. The IA is writing to express our concerns with SB 2254, the Internet Dating Services; Safety Awareness Notification bill scheduled for a hearing in your committee on Wednesday, February 8 at 1:15 p.m.

IA members recognize the good intentions and concern for consumer safety. IA members of the online dating industry are committed to user safety and already comply with many of the bill's mandates given similar laws enacted in other states, but hope that the committee will allow online dating sites to customize the size and placement of the disclosures:

- (i) So that they appear where they are most likely to be noticed, rather than provide rigid requirements regarding font size and placements that might not translate to how users are currently accessing internet content, often through mobile phones and tablets.
- (ii) So that the notice stays in balance with other important disclosures consumers need to understand, such as disclosures relating to financial safety, physical safety, auto-renewal and the website's privacy policy and terms of service.

We also ask that you make it clear in the bill that it does not create a private right of action, similar to Texas law which contains this language: "NO PRIVATE RIGHT OF ACTION. This chapter does not create a private right of action."

IA members support the sponsor's goal of protecting consumers in the online environment. However, we respectfully request that you consider our amendments to SB 2254. Please do not hesitate to contact me if you have any questions.

Sincerely,

*Tammy Cota*  
Tammy Cota