

HR 211

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## HOUSE RESOLUTION

CONVENING A DIGITAL GAMING ADVISORY GROUP TO MONITOR PREDATORY  
PRACTICES IN THE DIGITAL GAMING INDUSTRY.

1           WHEREAS, digital and physical variable reward mechanisms  
2 such as casino slot machines and digital loot boxes are designed  
3 to exploit human psychology to cause repetitive consumption  
4 which maximizes player spending; and  
5

6           WHEREAS, on numerous occasions studies have found negative  
7 psychological impact from extended exposure to exploitive  
8 variable reward mechanisms which can lead to addiction, as well  
9 as cognitive developmental problems in particularly vulnerable  
10 youth; and  
11

12           WHEREAS, departments and agencies heavily regulate variable  
13 reward mechanisms in casino games to minimize negative impacts  
14 to mental health and particularly developing youth, as well as  
15 ensure transparency by requiring strict disclosure to consumers  
16 of the odds of winning possible rewards contained within; and  
17

18           WHEREAS, gaming industry developers have begun to employ  
19 variable reward mechanisms such as loot boxes which operate  
20 similarly to slot machines in digital games often marketed to  
21 adults and children of all ages in recent years, through which  
22 players can pay real money for a chance to win randomized  
23 virtual items; and  
24

25           WHEREAS, especially concerning, there is no requirement for  
26 digital game developers and publishers to disclose to consumers  
27 the specific inclusion of variable reward gambling-like  
28 mechanisms in games being sold to the public, including children  
29 of all ages, making it impossible for parents to know which  
30 games contain these mechanisms and which games do not; and  
31

32           WHEREAS, through regular online updates, game developers  
33 and publishers can insert variable reward loot boxes or



1 gambling-like mechanisms into games at any time often without  
2 meaningful player or parental knowledge; and

3  
4 WHEREAS, hiding the odds of winning is not permitted at any  
5 casino, yet there is currently no requirement for digital game  
6 developers and publishers to disclose to consumers the odds of  
7 winning any rewards within variable reward loot boxes and  
8 gambling-like mechanisms, and it has already been discovered  
9 that in some games the odds of winning particular items  
10 frequently advertised to consumers was deceptively just  
11 fractions of a single percent; and

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13 WHEREAS, in 2017 game developers filed patents to further  
14 expand predatory game design by raising or lowering the odds of  
15 winning items within variable reward loot boxes and gambling  
16 mechanisms to match the likelihood that specific players  
17 continue to spend money, potentially lowering the odds of  
18 winning valuable items to players identified as likely to  
19 continue purchasing chances to win; and

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21 WHEREAS, seeing opportunity to further compel in game  
22 purchases, game developers have begun designing games to  
23 increase difficulty, increase time required to achieve in game  
24 objectives, and increasingly stack players of mismatched  
25 strength against one another in multiplayer games to encourage  
26 greater numbers of consumers to purchase variable reward loot  
27 boxes and gambling-like mechanisms to win items that would more  
28 easily enable successful play; and

29  
30 WHEREAS, the American Psychological Association has  
31 identified "internet gaming disorder" in the Diagnostic and  
32 Statistical Manual of Mental Disorders as an emerging diagnosis  
33 that warrants further study; and

34  
35 WHEREAS, the World Health Organization has identified  
36 "gaming disorder" alongside gambling as a pattern of gaming  
37 behavior that appreciably increases the risk of harmful physical  
38 or mental health, and included "hazardous gaming" as a threat to  
39 public health in the latest draft of its International  
40 Compendium of Diseases; and

41 WHEREAS, unlike traditional games of chance, baseball  
42 cards, and other randomized novelties, video games require



# H.R. NO. 211

1 active, lengthy participation during which consumers are exposed  
2 to the psychological manipulation techniques employed by  
3 exploitive variable-reward loot boxes and gambling-like  
4 mechanisms that aggressively compel spending and can lead to  
5 harm; and

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7 WHEREAS, with no requirements for disclosure, transparency,  
8 or basic protection against predatory and exploitive practices,  
9 countless families, individuals, and particularly vulnerable  
10 youth have been harmed by exposure to predatory variable reward  
11 loot boxes and gambling-like mechanisms now aggressively  
12 marketed to all ages on personal computers, gaming consoles, and  
13 the mobile phones in people's pockets; now, therefore,

14  
15 BE IT RESOLVED by the House of Representatives of the  
16 Twenty-ninth Legislature of the State of Hawaii, Regular Session  
17 of 2018, that a Digital Gaming Advisory Group is convened to  
18 examine and assess legislation relating to predatory or  
19 exploitive practices in digital games; and

20  
21 BE IT FURTHER RESOLVED that the working group is requested  
22 to monitor:

- 23
- 24 (1) The effects of inclusion in digital games of variable  
25 reward loot boxes and gambling-like mechanisms that  
26 offer randomized virtual items for purchase using real  
27 currency;
  - 28
  - 29 (2) Digital games that have been designed to be impossible  
30 or unreasonably difficult for a user to complete to  
31 compel the spending of real currency to purchase  
32 additional content;
  - 33
  - 34 (3) Digital games that have been designed to encourage a  
35 user to make purchases using real currency to remain  
36 competitive with other users of the digital game; or
  - 37
  - 38 (4) Other practices deemed by the working group to be  
39 predatory or exploitive, as appropriate; and
- 40

41 BE IT FURTHER RESOLVED that the working group shall consist  
42 of a Chair and Vice-Chair appointed by the Speaker of the House



1 of Representatives, which may include the Chair of the House  
 2 Committee on Consumer Protection and Commerce, and shall include  
 3 the Director of the Department of Health or designee, the  
 4 Director of the Office of Consumer Protection in the Department  
 5 of Commerce and Consumer Affairs or designee, a member with  
 6 experience and background in public education, and at least six  
 7 members selected by the Speaker of the House or Chair of the  
 8 working group who shall have significant experience in digital  
 9 gaming, and who serve without compensation; and

10  
 11 BE IT FURTHER RESOLVED that the Legislative Reference  
 12 Bureau is requested to provide staff support and administrative  
 13 support to the working group, including clerical and research  
 14 services, as needed; and


15  
 16 BE IT FURTHER RESOLVED that any action taken by the working  
 17 group shall be approved by a simple majority, with three members  
 18 of the working group constituting a quorum to do business; and

19  
 20 BE IT FURTHER RESOLVED that the working group is requested  
 21 to submit a report of its findings and recommendations not later  
 22 than twenty days prior to the convening of the Regular Session  
 23 of 2019; and

24  
 25 BE IT FURTHER RESOLVED that the working group cease to  
 26 exist on January 1, 2021; and

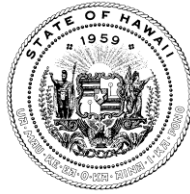
27  
 28 BE IT FURTHER RESOLVED that certified copies of this  
 29 Resolution be transmitted to the Governor, Director of Commerce  
 30 and Consumer Affairs, the Director of the Office of Consumer  
 31 Protection, and the Director of the Legislative Reference  
 32 Bureau.

33  
 34  
 35

OFFERED BY:  \_\_\_\_\_

MAR 09 2018





DAVID Y. IGE  
GOVERNOR

DOUGLAS S. CHIN  
LIEUTENANT GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310  
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HONOLULU, HAWAII 96809  
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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE**

**TWENTY-NINTH LEGISLATURE  
Regular Session of 2018**

Thursday, March 22, 2018  
2:00 P.M.

**TESTIMONY ON HOUSE RESOLUTION NO. 211, CONVENING A DIGITAL GAMING  
ADVISORY GROUP TO MONITOR PREDATORY PRACTICES IN THE DIGITAL  
GAMING INDUSTRY.**

TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.R. 211, Convening a Digital Gaming Advisory Group to Monitor Predatory Practices in the Digital Gaming Industry. My name is Stephen Levins and I am the Executive Director of the Department’s Office of Consumer Protection (“OCP”). The Department supports this resolution, which is a companion to H.C.R. 244, and offers the following comments.

This resolution convenes a Digital Gaming Advisory Group, administered by the Legislative Reference Bureau, to examine and assess legislation relating to predatory or exploitive practices in digital video games.

As video games have increased in popularity, discussions about their impact on society have also increased. Recent trends in gaming include games that contain features known as “pay to win.” In most video games, players earn credits that can be used to unlock “loot boxes” containing random rewards that enhance a player’s

effectiveness and advancement in the game. Video games with “pay to win” features also allow players to advance quickly by giving them the option to purchase credits to unlock a “loot box.” Recently, mental health professionals have raised concerns that predatory mechanisms, such as “loot boxes,” can present the same psychological, addictive, and financial risks as gambling. Social commentators have also remarked that paying real money to unlock “loot boxes” without knowing what kind of reward is inside has all the indicia of gambling.

The Department acknowledges the serious issues concerning video games and appreciates the opportunity to serve on the Digital Gaming Advisory Group to examine the issues relating to the effects of video games on consumers, particularly children.

Thank you for the opportunity to testify on H.R. 211. I would be happy to answer any questions the Committee may have.

**HR-211**

Submitted on: 3/21/2018 1:33:51 PM

Testimony for CPC on 3/22/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments:



# HAWAII YOUTH SERVICES NETWORK

677 Ala Moana Boulevard, Suite 904 Honolulu, Hawaii 96813

Phone: (808) 489-9549

Web site: <http://www.hysn.org> E-mail: [info@hysn.org](mailto:info@hysn.org)

Rick Collins, President

Judith F. Clark, Executive Director

Bay Clinic

Big Brothers Big Sisters of  
Hawaii

Bobby Benson Center

Child and Family Service

Coalition for a Drug Free Hawaii

Domestic Violence Action Center

EPIC, Inc.

Family Programs Hawaii

Family Support Hawaii

Friends of the Children of  
West Hawaii

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Children's Action  
Network

Hawaii Student Television

Ho'ola Na Pua

Kahi Mohaa

Kokua Kalihi Valley

Maui Youth and Family Services

P.A.R.E.N.T.S., Inc.

Parents and Children Together  
(PACT)

Planned Parenthood of the  
Great Northwest and  
Hawaiian Islands

PHOCUSED

Salvation Army Family

Intervention Services

Sex Abuse Treatment Center

Susannah Wesley Community  
Center

The Catalyst Group

March 21, 2018

To: Representative Roy Takumi, Chair  
And members of the Committee on Consumer Protection and  
Commerce

**TESTIMONY IN SUPPORT OF HR 211 CONVENING A DIGITAL  
GAMING ADVISORY GROUP TO MONITOR PREDATORY  
PRACTICES IN THE DIGITAL GAMING INDUSTRY.**

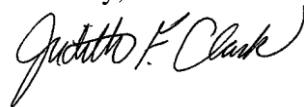
Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports HR 211.

Video games that contain variable-reward mechanisms (called loot boxes) are widely and easily available to consumers. Children and youth who play these games are introduced to the thrills of gambling at an age when their brains are not fully developed. They are vulnerable to developing behavioral addiction to gambling, and do not have the maturity and knowledge to recognize the risks they encounter. Parents and other responsible adults are often unaware of these features in the games their children are using.

It is important to review and consider the potential risks of these games and consider regulation to protect consumers.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH  
Executive Director



## **ENTERTAINMENT SOFTWARE RATING BOARD**

420 LEXINGTON AVENUE SUITE 2240 NEW YORK, NY 10170 | 212 759 0700 | FAX 212 759 2223  
WWW.ESRB.ORG

**Written Testimony of the  
Patricia Vance, President  
Entertainment Software Rating Board  
Presented for the Record to  
Committee on Consumer Protection and Commerce  
March 22, 2018**

Chair Persons Takumi, Ichiyama and members of the Committee on Consumer Protection and Commerce:

On behalf of the Entertainment Software Rating Board (ESRB), thank you for the opportunity to submit testimony in opposition of House Resolution 211, a resolution seeking to convene an advisory group to monitor predatory practices in the video game industry. The ESRB is the non-profit, self-regulatory body that assigns ratings for video games and apps so parents can make informed choices.

First, we appreciate the opportunity to engage in thoughtful and meaningful conversation

For almost 25 years ESRB has been providing consumers, especially parents, with effective tools with which to make informed purchase decisions about video games. Age rating categories suggest the age appropriateness of a game and content descriptors provide parents with a quick peek into the types of content that their child may encounter in the game. These ratings appear on all packaging, promotional websites, advertising and online retailers. For parents who want greater detail and context, we provide rating summaries for all physical or boxed games on our website and mobile app. The overwhelming majority of parents are aware of ESRB ratings and regularly check them prior to purchasing video games, 84% and 71% respectively.

Another key part of our self-regulatory activities is the Advertising Review Council (also known as ARC), a division of the ESRB responsible for monitoring compliance with a wide range of industry-adopted advertising guidelines, including but not limited to how ratings are displayed, to whom ads are targeted, and restrictions on the type of content permissible in ads. Unique among media rating systems, the ESRB has an enforcement system that sanctions companies for non-compliance with its guidelines, including fines where warranted.

The ESRB has also been proactive with retailers to help ensure that unaccompanied children cannot purchase games rated for mature audiences. In fact, according to the last Federal Trade Commission (FTC) mystery shop audit, children were stopped almost 9 out of every 10 attempts to purchase a Mature-rated game. This rate of enforcement is significantly higher than similar audits performed measuring a child's ability to purchase R-rated movie tickets, R-rated DVD's and music CD's displaying a Parental Advisory label.

We're proud of our record in self-regulation but there is never time to rest on our laurels. The video game industry moves at a rapid pace, and ESRB is constantly reviewing its rating process, policies,

messaging and more, to ensure that we adapt to market trends and consumer demands. To that end, we conduct annual research with parents to measure awareness and use of ratings, as well as learn about their concerns.

In fact, we recently announced the creation of a new label “In-Game Purchases” for physical games, which discloses to parents when there are in-game offers to purchase digital goods or premiums with real world currency. In-game purchases can take many different forms, such as bonus levels, skins, surprise items (such as item packs, loot boxes, mystery awards), music, virtual coins and other forms of in-game currency, subscriptions, season passes and upgrades (e.g., to disable ads). The In-Game Purchases interactive element will begin appearing on video game boxes this spring.

I understand a number of bills have been introduced in the Aloha State to regulate loot boxes, more specifically. Our research shows that over two-thirds of parents don’t know what a loot box is, and only a third of those who say they do, cannot correctly define it. Moreover, when we explain what a loot box is, their #1 concern by far is their child’s ability to spend money. This is why we think introducing the In-Game Purchases notice for all games rated by the ESRB is an effective measure to address loot boxes, especially for parents.

But we’re not stopping there. We recently launched a new website [ParentalTools.org](http://ParentalTools.org) and a PSA campaign to raise awareness of parental controls, embedded in every game device, that enable parents to manage the games their children play, including how much they spend both in time and money. Available on our website are easy-to-use, step-by-step instructions on how to set up the controls, including purchase alerts, for many of the devices on which children play games. We believe that the combination of upfront disclosure about the availability of in-game purchases combined with activating parental controls is a quick and effective way to address many of the concerns these bills have raised.

ESRB will also continue to work with the industry to determine what more can be done to ensure that consumers can make informed purchase decisions. The conversation with developers, publishers, gamers and parents is an ongoing one. ESRB will continue to adapt as the industry and consumer demand evolves. ESRB’s priority is, always has been and always will be providing parents with the tools they need to make informed decisions for their family. We’re proud to be part of an industry that is fully committed to supporting that mission.

Thank you.



**Written Testimony of  
Tom Foulkes, Vice President  
Entertainment Software Association  
Presented for the Record to  
Committee on Consumer Protection and Commerce  
March 22, 2018**

Chair Persons Takumi, Ichiyama and members of the Committee on Consumer Protection and Commerce:

On behalf of the Entertainment Software Association (ESA) and its members<sup>1</sup>, thank you for the opportunity to submit testimony in opposition of House Resolution 211 that seeks to convene a digital gaming group to examine and assess legislation related to the business practices of the computer and video game industry. The ESA is the U.S. trade association representing the publishers of computer and video game consoles, personal computers, mobile devices, and the Internet.

We greatly appreciate the opportunity to engage in thoughtful and meaningful conversation around today's video games, their evolving in-game mechanisms and technology, as well as the information available to help consumers and parents make informed decisions regarding the content of the games they play. Video game players remain the most essential component of the video game industry's success, and their awareness and trust is paramount to our business.

Today, we hope clarify a few important facts on the issue of in-game mechanisms or "loot boxes" as they are commonly referred by the gamer community. Loot boxes are optional features in certain games that can be earned through game play or purchased using virtual currency. It is not necessary or required for players to acquire or purchase loot boxes to advance within a game. And lastly, loot boxes do not constitute gambling under U.S. law. In fact, no legislative or regulatory bodies in the US have found loot boxes to constitute gambling as they do not meet three required elements: *staking* something of value (consideration) for a *chance* to win something of *value* (a prize). Loot boxes do not satisfy those elements. For instance, there is no "prize" because you cannot win something of value in the real world. These items cannot be removed from the game, or cashed out legally as the terms of service clearly prohibit it.

We believe strongly that the industry's robust, self-regulatory body, the Entertainment Software Rating Board (ESRB), in conjunction with a responsive global marketplace, remain the most efficient and effective way to address these important issues without overly restrictive state legislation. For

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<sup>1</sup> ESA's members: 505 Games; Activision Blizzard, Inc.; Bandai Namco Entertainment Inc.; Bethesda Softworks, Capcom USA, Inc.; Deep Silver; DeNA; Disney Interactive Studios, Inc.; Electronic Arts; Epic Games, Inc.; Focus Home Interactive; Gearbox Publishing; Grey Box; GungHo Online Entertainment American, Inc.; Konami Digital Entertainment; Legends of Learning; LEVEL-5 Inc.; Magic Leap; Microsoft Corporation; Natsume Inc.; Nexon America, Inc.; Nintendo of America Inc.; NVIDIA; Phosphor Studios; SEGA of America, Inc.; Sony Computer Entertainment of America; Square Enix, Inc.; Take-Two Interactive Software, Inc.; Tencent, Inc.; THQ Nordic; Triseum; Ubisoft Entertainment, Inc.; Warner Bros. Interactive Entertainment Inc.; and XSEED Games.

that reason we would encourage members of the committee to vote to hold this resolution and allow the industry to continue its ongoing work to address consumer concerns related to in-game mechanisms and purchases.

As you may be aware, the video game industry is now a \$36 billion American success story that continues to grow substantially year over year—and our consumer base continues to be one of the most diverse. Sixty percent of Americans play video games every day. Sixty-seven percent of American households own a device used to play video games. Gamers age 18 or older represent 72 percent of the video game-playing population, and the average gamer today is 35 years old. Forty-nine percent of gamers are women; and adult women represent a significantly greater portion of the video game-playing population (31 percent) than boys under age 18 (18 percent). Twenty percent of Americans over the age of 50 play video games at least once a week. Additionally, 67 percent of parents play video games with their children at least once a week. In short, video games are enjoyed by hundreds of millions of Americans, often by entire families playing together across generations.

The industry strongly objects to the broad characterizations of video games contained within this resolution and similar language contained within five other pieces of legislation, and three other resolutions introduced by members of the Hawaii Legislature this session. Many of these statements are sensationalist opinions rather than scientific facts. Their inclusion in legislation and resolutions seeks only to undermine the value and reputation of the video game industry while eliciting an emotional response to garner greater support for this legislation.

Today's video game industry remains committed to creating the most technologically advanced, and compelling, interactive storytelling the world has ever known because gamers will accept nothing less. The industry is held to an exceptionally high standard by its players and prefers it that way. No industry is more receptive or capable to address, in real time, its customers' demands than video games.

The video game industry understands and appreciates the increasing challenges parents and other caregivers face today in determining the appropriateness of content children view through entertainment devices. As an industry, we take this responsibility very seriously and continue our work in addressing the game mechanisms in question to the satisfaction of the video game community.

It is the hope of ESA and its members that the information provided today helps provide a better understanding of the intricacies of the video game industry, its commitment to all consumers, and its ongoing efforts to address emerging issues as quickly and appropriately as possible. While we strongly encourage members of the Committee on Consumer Protection and Commerce to vote against further consideration of this resolution, I have attached suggested amendments to my testimony that we believe will help to focus the advisory group's mission and purpose while also ensuring it relies on provable science and verifiable facts.

Thank you.

STATE OF HAWAII

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## HOUSE RESOLUTION

CONVENING A DIGITAL GAMING ADVISORY GROUP TO MONITOR PREDATORY PRACTICES IN THE DIGITAL GAMING INDUSTRY.

1           WHEREAS, ~~digital and physical variable reward mechanisms~~  
2 ~~such as casino slot machines and digital loot boxes are designed~~  
3 ~~to exploit human psychology to cause repetitive consumption~~  
4 ~~which maximizes player spending~~ the video game industry is a  
leading economic sector in the United States, generating more than  
220,000 jobs and \$36 billion in revenue in 2017; and

5

6           WHEREAS, on numerous occasions studies have found negative  
7 psychological impact from extended exposure to exploitive  
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32 ~~Statistical Manual of Mental Disorders as an emerging diagnosis~~  
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35 ~~WHEREAS, the World Health Organization has identified~~  
36 ~~"gaming disorder" alongside gambling as a pattern of gaming~~  
37 ~~behavior that appreciably increases the risk of harmful physical~~  
38 ~~or mental health, and included "hazardous gaming" as a threat to~~  
39 ~~public health in the latest draft of its International~~  
40 ~~Compendium of Diseases; and~~

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42 cards, and other randomized novelties, video games require



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17 of 2018, that a Digital Gaming Video Game Advisory Group is  
convened to

18 ~~examine and assess legislation issues relating to predatory or~~  
19 ~~exploitive practices in game purchases within digital video~~  
games; and

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21 BE IT FURTHER RESOLVED that the working group is requested  
22 to ~~monitor study~~:

23  
24 (1) The effects of inclusion in digital video games of  
25 ~~variable reward loot boxes purchased using real~~  
26 ~~currency and gambling-like mechanisms that offer~~  
27 ~~randomized disclose the specific~~ virtual items ~~for only~~  
28 ~~after the purchase using real currency;~~

29 (2) ~~Digital games that have been designed to be impossible~~  
30 ~~or unreasonably difficult for a user to complete to~~  
31 ~~compel the spending of real currency to purchase~~  
32 ~~additional content;~~

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34 (3) ~~Whether~~ Digital video games ~~that have been designed~~  
35 ~~to~~ encourage a user to ~~make purchases~~ loot boxes using  
36 real currency to remain competitive with other users  
37 of the digital video game; ~~or~~ and

38 (4) ~~Whether~~ the disclosure practices associated with loot  
39 boxes are sufficient

40  
41 ~~Other practices deemed by the working group to be~~  
42 ~~predatory or exploitive, as appropriate;~~ and

BE IT FURTHER RESOLVED that the working group shall consist  
of a Chair and Vice-Chair appointed by the Speaker of the House



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1 of Representatives, which may include the Chair of the House  
 2 Committee on Consumer Protection and Commerce, and shall include  
 3 the Director of the Department of Health or designee, the  
 4 Director of the Office of Consumer Protection in the Department  
 5 of Commerce and Consumer Affairs or designee, a member with  
 6 experience and background in public education, and at least six  
 7 other stakeholder members selected by the Speaker of the House in  
consultation with the ~~or~~ Chair of the working group and who shall  
~~have significant experience in digital~~  
 8 gaming include representatives of the video game industry,  
representatives of the video game industry ratings bodies, and  
other affected stakeholders and who serve without compensation;  
 and

10  
 11 BE IT FURTHER RESOLVED that the Legislative Reference  
 12 Bureau is requested to provide staff support and administrative  
 13 support to the working group, including clerical and research  
 14 services, as needed; and

15  
 16 BE IT FURTHER RESOLVED that any ~~action~~ recommendation taken  
 by the working  
 17 group for further legislative action shall be approved by a  
 simple majority, with ~~three~~ five members  
 18 of the working group constituting a quorum to do business; and

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33  
 34  
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OFFERED BY: \_\_\_\_\_





**TESTIMONY OF TINA YAMAKI  
PRESIDENT  
RETAIL MERCHANTS OF HAWAII  
March 22, 2018**

**Re: HR211 CONVENING A DIGITAL GAMING ADVISORY GROUP TO MONITOR PREDATORY PRACTICES IN THE DIGITAL GAMING INDUSTRY**

Good afternoon Chair Takumi and members of the House Committee on Consumer Protection and Commerce. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) is a statewide not-for-profit trade organization committed to supporting the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

The Retail Merchants of Hawaii **OPPOSES** HR211 Convening A Digital Gaming Advisory Group To Monitor Predatory Practices In The Digital Gaming Industry.

Retailers consider consumer protection to be a top priority. However, this resolution seems to ignore the existing industry safeguards and policies that are already in place. In particular, the Entertainment Software Rating Board (ESRB) has a rating system to ensure game products are clearly labeled for appropriate ages. They also work with retailers across the country to help ensure minors cannot purchase mature rated game titles without an accompanying adult. In addition, they recently announced they will include a new disclosure label for "In-Game Purchases" to address recent concerns by consumers about this feature.

There are clear steps the industry is taking to protect consumers. We are concerned that the establishment of an advisory group for digital gaming in Hawaii would potentially propose policies that may be burdensome and unenforceable for local retailers. In addition we feel that a dedicated advisory group for this industry may set a dangerous precedent for other forms of entertainment including movies, books or toys that the legislature may think utilizes "predatory practices".

Furthermore we are concerned that members of this advisory group would not provide a balanced perspective if members from the business community like retailers or the Retail Merchants of Hawaii are not mandated to be included, especially given the potential impacts the group's action may have upon our industry.

We urge you to hold this measure.

Mahalo for this opportunity to testify.

**HR-211**

Submitted on: 3/21/2018 9:57:37 AM

Testimony for CPC on 3/22/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nathan Hutchinson	Individual	Support	No

Comments:

Aloha,

I am in support of this bill because I want to be protected from predatory gaming companies. Our psychology is being exploited by companies to take time and money from us in insidious ways, such as "micro-transactions" . We have protections against Casino games, and I want the same protections for video games.

Having an advisory group made of video game subject matter experts is needed to inform legislators about what we, as consumers, should be protected against.

Thank you,

Nathan

**HR-211**

Submitted on: 3/21/2018 9:52:42 AM

Testimony for CPC on 3/22/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dr. Paul Ryan	Individual	Support	No

## Comments:

The video game industry is constantly evolving, and a more recent trend is to pay money in-game ("microtransactions") for a randomized chance to be rewarded with certain items that are not made available when the game was originally purchased. I believe this unfairly targets individuals with a propensity to develop gambling addictions, and children who have not yet developed an understanding of the value of money. Consumers should be able to clearly tell when a video game they are purchasing has hidden costs like these, or might encourage behavior similar to gambling. Convening an advisory group would be a good step in this direction.

**HR-211**

Submitted on: 3/21/2018 3:13:27 PM

Testimony for CPC on 3/22/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Edward White	Individual	Support	No

Comments:

Aloha to the members of the legislature. I am submitting testimony on behalf of myself, as a resident of Honolulu, a life-long gamer, and a student of the practices described in this bill.

I wish to submit my support for SB2471, which creates a Hawaii Digital Gaming Commission to oversee and monitor video game business practices for predatory and exploitative practices.

It is unfortunate that we find ourselves at this point, and I regret having to support this bill, but I feel that the ESRB and the ESA have abdicated their responsibilities towards their customers with their recent positions towards lootboxes, leading to the need for government monitoring of the gaming industry's business practices.

My support stems from the increasing use of predatory practices in digital micro-transactions, particularly lootboxes, which use variable reward operant conditioning that is known to induce addiction through experiments and in practice in slot machines. Furthermore, there is evidence of large publishers seeking to use the power of game systems to coerce consumers into additional purchases, such as the recording of the EA CEO describing to investors how moments of frustration are channeled into additional purchases. All evidence points to these abuses getting worse, and the use of addictive techniques suggests that normal market pressures may not help slow down the rollout of these lucrative business practices.

I believe the key to blunting the influence of these business practices is to reintroduce the pressure that led to the creation of the ESRB in the first place--government attention, and the threat of government oversight and regulation. The Digital Gaming Commission creates a means of maintaining ongoing pressure on the video games industry to maintain ethical business practices.

This is particularly important given the scale of video games today, and the speed with which they change. As the ESA itself points out, the video game industry now dwarfs the movie industry in terms of size and influence. Modern video games have access to our pockets, living rooms, and now wallets in ways the movie and casino industries could only dream of. That additional power should come with additional responsibilities to the consumer, which the ESA and ESRB are shirking.



Particularly troubling is the ESA's and ESRB's use of a narrow definition of gambling to defend the use of lootboxes, which is the most prominent of a very few statements made about the issue and is included in other testimony submitted by these bodies. Saying that lootboxes are not gambling because you cannot win something of value "in the real world" is a distinction without a difference. The comparison to gambling is entirely driven by a comparison to slot machines, which use variable reward operant conditioning to cause addiction--a phenomenon which is well-documented.

As a side note, I would argue that lootbox microtransactions do have all the legal components of gambling, as the player is paying in actual money (consideration) for a chance (probabilistic reward) to obtain something of value. The fact is that players often have goals in mind when they buy lootboxes, and that goal has value to them, leading to excess purchases on the chance they can obtain that digital item of value--the "jackpot." As someone who deals in intellectual property, I find the thought laughable that a digital item could have no value, especially considering the peer-to-peer market for digital items in games such as second life, team fortress 2, and World of Warcraft. There is a hat in Team Fortress 2 that people will pay \$5,500 for a key to, in real-world money.

I would say that the disingenuous arguments submitted by the ESA to our very own legislature are themselves evidence of why this oversight body is necessary.

This oversight body is also necessary because of the nuance of the issues involved. As I've pointed out, few gamers would say that lootboxes aren't gambling in some way, but also few gamers would say that trading card games are as damaging as lootboxes, since the randomness of booster packs is designed to actually create an incentive for disparate players to come together--a positive, rather than predatory outcome.

Lastly, as evidenced in China (where Blizzard tokenized their money to buy booster packs, arguably a worse outcome), digitally distributed games are able to change and evolve much faster than the law, and large game publishers that rely on lootboxes are incentivized to take advantage of loopholes to maintain their business model. Establishing the commission would allow Hawaii to keep up with the game industry as it develops.

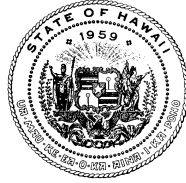
There may be some concern about the burden placed on the industry as a result of these actions, but I actually think it can benefit the market, given that in the last 10 years, AAA publishers have gone from launching 60 games a year to only 5-10, all while maintaining the same levels of profitability. The use of lootboxes and micro-transactions are a driver in this level of market distortion, and seeking to end or manage the incentives caused by predatory practices may actually reintroduce options to the consumer.

Notably, EA has reintroduced microtransactions to Star Wars Battlefront II, the title that sparked calls for regulation in the first place, and the new system would be legal under proposed legislation and generally considered fair by the gaming community, showing

that it is possible for game companies to come up with post-launch revenue schemes that are not abusive, and that the gaming community can recognize it as such, suggesting the legislation is a reasonable reflection of what is possible and what the community itself desires.

In an industry that has adopted the term "whales" from the casino industry to describe big spenders, in an environment where you have an increasing number of stories of people spending thousands of dollars in micro-transactions, often as the result of knowingly and openly-discussed coercive design practices that are deployed on a scale that some of our most famous industries haven't achieved, this commission seems necessary to help safeguard consumers in Hawaii and beyond.

Mahalo for your consideration.



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**Testimony in SUPPORT of HR211  
CONVENING A DIGITAL GAMING ADVISORY GROUP TO MONITOR  
PREDATORY PRACTICES IN THE DIGITAL GAMING INDUSTRY.**

REP. ROY M. TAKUMI, CHAIR  
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Hearing Date: March 22, 2018                      Room Number: 329

1    **Fiscal Implications:** N/A.

2    **Department Testimony:** The Department of Health acknowledges the potential for addictive or  
3    compulsive behavior related to alleged predatory and manipulative practices by the video game  
4    industry. From a public health perspective, video games and related entertainment activities are  
5    often associated with a sedentary lifestyle for youth and young adults. The department endorses  
6    the evidence-based “Hawaii 5210” initiative that advocates for no more than two hours’ worth of  
7    screen time per week to promote a healthy lifestyle.

8    However, with regard to the specific mechanic of “loot boxes” data are not yet available to guide  
9    public policy or parental decision-making, and more specifically to “provide oversight and  
10    monitoring.” As a result, a working group may enrich community discussion and awareness,  
11    however, the department respectfully suggests that “monitoring” will be beyond an unfunded  
12    task force’s means and recommends replacing “monitoring” with “studying.”

13    **Offered Amendments:**

14    Page 3, Lines 21-22: “BE IT FURTHER RESOLVED that the working group is requested to  
15    [~~monitor:~~] study:

16        (1) The effects of inclusion in digital games...” (*edited for brevity*)

Robert J. Bidwell, M.D.

6264 Keokea Pl., Honolulu, Hi. 96825 Tel. 808-428-4545

**LATE TESTIMONY**

**Date:** March 22, 2018  
Conference Room 329 (2:00 PM)  
State Capitol

**To:** Rep. Roy Takumi, Chair (Consumer Protection and Commerce Committee)  
Rep. Linda Ichiyama, Vice-Chair (Consumer Protection and Commerce Committee)

**From:** Robert J. Bidwell, M.D.

**Re:** HR 211 “Convening a Digital Gaming Advisory Group to Monitor Predatory Practices in the Digital Gaming Industry”

**Position:** **Strong Support**

**Dear Committee Chair, Vice-Chair, and Committee Members:**

**I am presenting this testimony in strong support of HR 211 “Convening a Digital Gaming Advisory Group to Monitor Predatory Practices in the Digital Gaming Industry.” In order to protect the health and well-being of our islands’ children and youth, I believe that the establishment of a digital gaming advisory group is essential to monitor and eliminate the predatory practices of the online gaming industry targeting the most vulnerable members of our community.**

Over the past 25 years, through my position as Assistant Professor and later Associate Professor of Pediatrics and Director of Adolescent Medicine at the UH John A. Burns School of Medicine (1988-2012), I have provided health care and counseling to many of Hawai’i’s children and youth. I have continued to provide such care in my present position as Associate Clinical Professor of Pediatrics (2013-present). In all these positions I have had the opportunity to provide health care and counseling to children and youth in a variety of settings including the Adolescent Clinic at Kapi’olani Medical Center for Women and Children (KMCWC), the Sex Abuse Treatment Center (KMCWC), and the health clinics at both the Hawai’i Youth Correctional Facility in Kailua and the Juvenile Detention Facility in Kapolei. Many of these young people have faced both personal and family issues of addiction in its many forms, including gambling. Also, far too many have been victims of many forms of predation that have taken advantage of their youth, inexperience, still-developing cognitive abilities, and often disadvantaged life circumstances. The online gaming industry, particularly through the insinuation of “variable-reward mechanisms” (such as “loot boxes”) into its gaming products, has become a partner in that predation, yet is virtually unregulated compared to other forms of gambling.

The great majority of American youth have engaged in gaming activities in varying degrees. Many spend hours a day gaming. A 2011 study by R. Gentile in the journal *Pediatrics* found in a prospective study of over 3000 adolescents that 9% met criteria for "pathologic gaming." Youth who were considered most vulnerable to becoming pathologic gamers were those who spent more hours gaming, who had lower social competence, and who were more impulsive by nature. The outcomes associated with being a pathologic gamer included increased depression, anxiety, social isolation and lower school performance. These results demonstrated the very real vulnerability of a significant percentage of youth to becoming pathologic gamers and the serious psychological, emotional and social consequences resulting from this. The effects on youth of online gaming buttresses the concerns of the American Medical Association, the American Psychiatric Association and the World Health Organization that pathologic online gaming likely represents a very real public health concern, not to mention its toll on individual health and well-being. It should be noted that the above study on youth gaming was conducted *before* the addition of "variable-reward mechanisms" into online gaming products. These mechanisms were introduced to games, at least in significant part, for the specific purpose of exploiting the cognitive and developmental vulnerabilities of children and youth. Common sense tell us, though the research has not yet been completed, that the addition of the addictive "variable-reward mechanisms" to online games can only increase the vulnerability of children and young people to pathologic levels of gaming and magnify its already proven negative effects, with the added negative consequence of significant financial loss incurred by youth and their families. We already have established strict regulation of the gambling industry, in large part to ensure that young people are shielded from its negative influences and effects. It only makes sense that we take similar strict measures to provide oversight and monitoring of the gaming industry in our state to assure that the vulnerability of our young people cannot be exploited.

It is for the above reasons that I respectfully encourage members of your Committee to vote in favor of HR 211.

Thank you so much for the opportunity to share my testimony with you.

Respectfully yours,

Robert J. Bidwell, MD