



**Written Testimony of the
Entertainment Software Association
Presented for the Record to
Senate Committee on Judiciary
February 27, 2018**

Chair Persons Taniguchi and Rhoads as well as members of the Committee on Judiciary:

On behalf of the Entertainment Software Association (ESA) and its members¹, thank you for the opportunity to submit testimony in opposition of Senate Bill 3024 SD1, legislation introduced to prohibit the sale of video games to persons under the age of 21 that contain a randomized reward or rewards. The ESA is the U.S. trade association representing the publishers of computer and video game consoles, personal computers, mobile devices, and the Internet.

First, we 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 are the most essential component of the video game industry's success, and their awareness and trust is paramount to our business. We believe strongly that the industry's robust, self-regulatory body, the Entertainment Software Rating Board (ESRB) remains the most efficient and effective way to address these important issues without overly restrictive state legislation. The ESA and the ESRB look forward to sharing more information regarding the industry's ongoing efforts related to interactive elements as they become public.

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.

¹ 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.

The declaratory statements included in this legislation are identical to the language contained within four other pieces of legislation introduced by members of the Hawaii Legislature on January 24. Many of these statements are sensationalist opinions rather than scientific facts. Their inclusion in legislation undermines 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 increased attention around video games and their in-game components has spurred a valuable dialogue around emerging technologies and business practices in which, as an industry, we are actively engaged. It is our desire to help educate committee members and other members of the legislature on the intricacies of the video game industry, its ratings system, its commitment to all consumers, and its ongoing efforts to address emerging issues as quickly and appropriately as possible.

It would be helpful for the Committee to have a comprehensive understanding of the in-game mechanisms this legislation is seeking to address. Loot boxes are an optional feature in certain games to provide gamers another way to acquire virtual items for use in that game. Like opening a package of baseball cards, customers might not know exactly what they are getting until they open the loot box, but they are guaranteed to get something. Loot boxes may reward the gamer with a sought-after virtual item (*e.g.*, a hard-to-find object) or a more pedestrian item (*e.g.*, an animated emoji). However, players always get something for use within the game, not outside the game. All loot boxes contain virtual items. As with other virtual items, often loot boxes can be earned through game play or purchased using virtual currency. Players like to collect virtual items, such as cosmetic features for their avatars, and loot boxes help meet this desire in an entertaining way.

It is important to note that is not necessary or required for players to acquire or purchase loot boxes to advance within a game. A gamer can play through an entire video game successfully without buying any loot boxes. Like other in-game features, players can choose to use them or not. Some or most of the same items found in loot boxes can often be obtained through routine game play (*e.g.*, defeating an enemy) or by using game points. In some cases, loot boxes have elements that help a gamer progress (*e.g.*, tools or different equipment). In others, they are merely cosmetic.

SB 3024 inaccurately states that video games allow players to “purchase chances at winning rewards within games, similar to a slot machine.” 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. In general, for an activity to constitute gambling, it must meet three elements: *staking* something of value (consideration) for a *chance* to win something of *value* (a prize). If one of the elements is lacking, it is not gambling. Loot boxes do not satisfy those elements. For instance, there is no “prize” because you cannot win something of value in the real world. Whatever worth those virtual items have, it is limited to within a virtual universe. These items cannot be removed from the game. Nor can one cash them out legally as the terms of service prohibit it. So, the virtual items found in loot boxes have no “value” in the real world.

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 are currently working to address the game mechanisms in question.

The Entertainment Software Association

601 Massachusetts Avenue, NW □ Suite 300 West □ Washington, D.C. 20001 □ Tel: (202) 223-2400 □ Fax: (202) 223-

The most effective tool available to consumers today in managing unwanted content are the parental control features available on all devices used for playing video games. The parental controls allow parents to limit their children's video game use, block games by rating category, regulate the amount of time a child can play, limit or prohibit in-game purchases and restrict access to the Internet. In addition to the intuitive set-up capabilities provided by the hardware manufacturers, the industry provides easy step-by-step instructions on setting parental controls.

In addition, the ESRB, established in 1994, is the non-profit, self-regulatory body that independently assigns ratings for video games and apps so parents can make informed choices. The ESRB rating system includes: Rating Categories, which suggest age appropriateness; Content Descriptors, which indicate content that may have triggered a particular rating and may be of interest or concern; and Interactive Elements, which inform about the interactive aspects of a game or app, including the ability to make in-game purchases, interact with other players or share a user's location with other users. In fact, when the U.S. Supreme Court, in *Brown v. Entertainment Merchants Association*, 564 U.S. 786 (2011), struck down efforts to ban the sale of violent video games to minors on First Amendment grounds, it noted that the ESRB ratings served as an effective tool for parents in their purchasing decisions.

As Maureen K. Ohlhausen, Acting Chairman of Federal Trade Commission (FTC) put best, "self-regulation, such as that done by the Entertainment Software Rating Board for video games, is an effective way for companies to modify their behavior to protect consumers where the government could or should not act...The electronic game industry continues to have the strongest self-regulatory code and enforcement of restrictions on marketing, advertising and selling mature-rated games to younger audiences."

The industry continues to evolve around the technology used to deliver games, so too does the ESRB and the tools it provides parents to make informed decisions. To address the growing mobile game market, the ESRB established the International Age Rating Coalition (IARC) in conjunction with other international rating organizations. The IARC rating system streamlines the process for assigning age and content ratings to the high volume of digitally delivered games and apps coming into the market today. IARC administers ESRB ratings for games and apps featured in Google Play, Nintendo eShop, the Microsoft Store for the Xbox and PC, and the Oculus VR Store in the U.S. Additional storefronts are expected to deploy the IARC rating system this year.

ESRB ratings, when conspicuously placed with its recognizable and trusted icons and other descriptors, allow parents to quickly and easily identify in-game features they may not want their children to access, including digital purchases. As the market evolves, the ESRB will continue to adjust and expand to meet new and emerging issues of concern.

It is the hope of ESA and its members the information provided helps clarify the attributes of the in-game mechanics SB 3024 seeks to prohibit. We strongly encourage members of the Committee on Judiciary to vote against further consideration of this legislation and work closely with the ESA and ESRB to gain a better understanding of the video game industry and its most valuable asset—its passionate gamer community.



DAVID Y. IGE
GOVERNOR
DOUGLAS S. CHIN
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON JUDICIARY

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Tuesday, February 27, 2018
9:30 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 3024, S.D. 1, RELATING TO CONSUMER PROTECTION.

TO THE HONORABLE BRIAN T. TANIGUCHI, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on S.B. 3024, S.D. 1, Relating to Consumer Protection. My name is Stephen Levins, and I am the Executive Director of the Department’s Office of Consumer Protection. The Department takes no position on this bill, which is a companion to H.B. 2686, but provides the following comments.

This bill adds a new section to Hawaii Revised Statutes (“HRS”) chapter 481B that: (1) prohibits retailers from selling video games that allow players to purchase a randomized reward to anyone under the age of twenty-one years; and (2) defines the terms “retailer” and “video game.” S.D. 1 amends S.B. 3024 by inserting a definition of “randomized reward.”

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, several commentators and mental health professionals have raised concerns 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 these types of video games but lacks the expertise to determine whether the games’ “pay to win” features constitute gambling. Accordingly, the Department defers to criminal law enforcement authorities for that determination.

Thank you for the opportunity to testify on S.B. 3024, S.D.1. I would be happy to answer any questions the Committee may have.

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

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 Mohala

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

February 26, 2018

To: Senator Donovan Dela Cruz, Chair
And members of the Committee on Ways and Means

TESTIMONY IN SUPPORT OF SB 3024 SD 1 RELATING TO CONSUMER PROTECTION

Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports SB 3024 SD 1 Relating to Consumer Protection.

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.

Regulating the sale to minors of video games that contain variable-reward mechanisms is prudent and sensible

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

California and the Southwest
915 L Street, Suite 1270, Sacramento, CA 95814
www.technet.org | @TechNetUpdate

**Written Testimony of TechNet
Presented for the Record to
Senate Judiciary Committee
February 26, 2018**

Chairman Taniguchi, Vice Chairman Rhoades, and members of Senate Judiciary Committee:

On behalf of TechNet, I write in respectful opposition to SB 3024. This measure would prohibit the sale of video games to persons under the age of 21 that contain a randomized reward or rewards. TechNet member companies include breakthrough startups and the most storied, life-changing technology companies on the planet; we as an industry keep America's innovation economy growing and creating more good-paying jobs.

First, we 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 are the most essential component of the video game industry's success, and their awareness and trust is paramount to our business.

The types of in-game mechanisms SB 3024 is seeking to prohibit are not new. Loot boxes use a technique similar to the one used for many years with baseball cards. Customers might not know exactly what they are getting until they open the package, but they are guaranteed to get something. Sometimes you find the hologram card of an MLB All-Star; other times it might be a middling rookie. Similarly, loot boxes may reward the gamer with a sought-after virtual item (*e.g.*, a hard-to-find object) or a more pedestrian item (*e.g.*, an animated emoji). However, players always get something for use within the game, not outside the game. All loot boxes contain virtual items.

Loot boxes are an optional feature in certain games to provide gamers another way to acquire virtual items for use in that game. As with other virtual items, often loot boxes can be earned through game play or purchased using virtual currency. Players like to collect virtual items, such as cosmetic features for their avatars, and loot boxes help meet this desire in an entertaining way. These items cannot be removed from the game. Nor can one cash them out legally as the terms of service prohibit it. So, the virtual items found in loot boxes have no "value" in the real world.

It is important to note that is not necessary or required for players to acquire or purchase loot boxes to advance within a game. A gamer can play through an entire video game successfully without buying any loot boxes. Like other in-game features, players can choose to use them or not. Some or most of the same items found in loot boxes can often be obtained through routine game play (e.g., defeating an enemy) or by direct purchase. In some cases, loot boxes have elements that help a gamer progress (e.g., tools or different equipment). In others, they are merely cosmetic.

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. The industry takes this responsibility very seriously, which is why parental control allowing parents to limit their children's video game use, block games by rating category, and limit or prohibit in-game purchases by the product manufacturer.

The video game industry is now a \$36 billion American success story that continues to grow substantially year over year—and its consumer base continues to be one of the most diverse. Sixty-seven percent of American households own a device used to play video games. Video games are enjoyed by scores of millions of Americans, often by entire families playing together across generations.

The increased attention around video games and their in-game components has spurred a valuable dialogue around emerging technologies and business practices in which industry is actively engaged. It is industry's desire to help educate committee members and other members of the legislature on 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.

It is the hope of TechNet and its members the information provided helps clarify the attributes of the in-game mechanics SB 3024 seeks to prohibit.

For these reasons, we respectfully ask the members of the Commerce, Consumer Protection, and Health Committee to vote "NO" on this measure.

Sincerely,



Executive Director