

JAN 22 2021

S.B. NO. 780

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# A BILL FOR AN ACT

RELATING TO COMPETITION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The purpose of this Act is to:

- (1) Protect and preserve competition within mobile app stores for the benefit of consumers and developers;
- (2) Prevent dominant app stores from distorting competition and exploiting developers and consumers; and
- (3) Promote healthy competition across the entire mobile app ecosystem.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## "CHAPTER

### RELATING TO COMPETITION WITHIN MOBILE APP STORES

§ -1 Short title. This chapter may be cited as the Mobile App Store Competition Act.

§ -2 Definitions. As used in this chapter, unless context clearly requires otherwise:



1 "App store" means a digital distribution platform for  
2 applications and services provided to users on general-purpose  
3 hardware including mobile phones or smartphones, tablets,  
4 personal computers, or other general-purpose devices connected  
5 to the internet, and any person affiliated or acting in concert  
6 with such platform.

7 "Developer" means any creator of software applications made  
8 available for download by users through an app store.

9 "In-app payment system" means an application, service, or  
10 user interface to process the payments from users to developers  
11 for software applications and digital and physical products  
12 distributed through software applications.

13 "Special-purpose app store" means a digital distribution  
14 platform for single or specialized categories of applications,  
15 software, and services provided to users of special purpose  
16 hardware such as gaming consoles, music players, or other  
17 special-purpose devices connected to the internet.

18 § -3 Obligations for ensuring interoperability. (a) An  
19 app store for which cumulative gross receipts from sales on the  
20 app store to customers in this state are in excess of  
21 \$10,000,000 in the previous or current calendar year, shall:



(1) Allow developers and providers of ancillary services fair, reasonable, and non-discriminatory access to, and interoperability with, the same operating system; technical and other information; and hardware and software features that are available or used in the provision of any ancillary services by the app store owner; and

(2) Allow and provide the means for end users to choose third party apps as defaults and to hide or delete apps provided by the app store.

(b) Any agreement containing terms that violate this section shall be unenforceable and deemed a violation of this chapter.

**§ -4 Prohibited acts.** (a) An app store for which cumulative gross receipts from sales on the app store to customers in this State are in excess of \$10,000,000 in the previous or current calendar year, shall not:

(1) Require developers to use a specific app store as the exclusive mode of distribution for an app used on any platform, device, or operating system owned or sold by the owner of the app store;



(2) Require developers to use an in-app payment system as the exclusive mode of accepting payments by users for download of a software application, which may include unlocking features, in-app currency, premium content, or additional functionality; or

(3) Retaliate or take any punitive action against any developer for choosing to use alternative app stores or in-app payment systems;

provided that the prohibitions in this subsection shall not apply to special-purpose app stores.

(b) An app store for which cumulative gross receipts from sales on the app store to customers in this State are in excess of \$10,000,000 in the previous or current calendar year shall not:

(1) Impose restrictions, conditions, or prohibitions on developers from communicating through its app with users or customers of that app, including legitimate business offers or communications;

(2) Use a developer's data, or information derived from the developer or the developer's application, to compete with the developer;



(3) Engage in self-preferencing its own applications or services over those of competing applications or services over those of competing applications; or

(4) Exclude any developer from the app store for reasons other than failing to meet fair, objective, and nondiscriminatory standards for privacy, security, quality, content, and digital safety.

(c) Any agreement containing terms that violate this section shall be unenforceable and deemed a violation of this chapter.

**§ -5 Enforcement.** (a) The attorney general shall receive complaints and investigate violations of this chapter.

(b) The attorney general may bring an action in any court of competent jurisdiction to obtain legal or equitable relief, including injunctive relief to prevent any offending conduct, on behalf of an individual or group of individuals aggrieved by the violations.

(c) In an action described in this section, the court shall impose a civil fine on any violators of this chapter, in an amount of at least \$                      for each day that the



1 violation continues. The fine shall be paid to the person  
2 aggrieved by the violation."

3 SECTION 3. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:                     *Sty L*                    



# S.B. NO. 780

**Report Title:**

Preserve Competition; Mobile App Stores

**Description:**

Preserves competition within mobile app stores by protecting competition for the benefit of consumers and developers by preventing dominate app stores from distorting competition. Promotes healthy competition across the entire mobile app ecosystem.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

