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GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
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STATE OF HAWAII | KA MOKUʻĀINA ʻO HAWAIʻI
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Testimony of the Department of Commerce and Consumer Affairs

Office of Consumer Protection

Before the
House Committee on Higher Education and Technology
Wednesday, February 7, 2024
2:00 PM
Via Videoconference
Conference Room309

On the following measure:
H.B. 1668, RELATING TO PRIVACY

Chair Perusso and Members of the Committee:

My name is Mana Moriarty, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). OCP takes no position on the merits of the bill, but respectfully requests that the bill be amended to remove the OCP as the agency responsible for data broker registration.

Section __-21's requirements that OCP maintain a registry of data brokers and bring administrative actions to enforce violations of the registration requirement do not align with OCP's functions, duties, and powers in our enabling statute, section 487-5, Hawaii Revised Statutes. Unlike the Department's Professional and Vocational Licensing Division, OCP does not currently serve as a registry for any industry. Nor does OCP currently utilize administrative proceedings to enforce laws enacted or rules

adopted for the purpose of consumer protection, since OCP's enabling statute specifically references enforcement by bringing civil actions or proceedings.

Section __-22's requirement that OCP establish an accessible deletion mechanism that meets certain requirements also requires technical expertise that OCP currently lacks. Training available to attorneys and clerical staff does not impart technical expertise necessary to establish an accessible deletion mechanism or implement and maintain security procedures and practices to protect a consumer's personal information.

While the bill establishes the Data brokers' registry special fund in section __-23, it does not allocate any resources to hire additional staff to administer the registry or create a webpage to display information provided by the data brokers to the public.

For the foregoing reasons, we respectfully request that the bill be amended and that responsibility for a data broker registry, if created, be placed with a more appropriate entity.

Thank you for the opportunity to testify on this bill.

SanHi
GOVERNMENT STRATEGIES
A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 7, 2024

TO: Representative Amy A. Perruso
Chair, Committee on Higher Education & Technology

FROM: Mihoko Ito / Matt Tsujimura

RE: **H.B. 1668 – Relating to Privacy**
Hearing Date: Wednesday, February 7, 2024 at 2:00 p.m.
Conference Room: 309

Dear Chair Perruso, Vice-Chair Kapela, and Members of the Committee on Higher Education & Technology:

We offer this testimony on behalf of the Consumer Data Industry Association (CDIA). The Consumer Data Industry Association (CDIA) is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check companies, and others.

CDIA respectfully **opposes** H.B. 1668, which establishes provisions allowing for consumers to request data brokers that maintain their personal information to delete any personal information related to the consumer.

CDIA supports consumer privacy and choice, but there are many unintended consequences of the proposal in this bill to allow for the mass deletion of data. This bill is problematic because, as drafted, the bill would allow a consumer, or third-party authorized agent, to instantly delete data from a diverse set of over 500 companies without adequate protections, like requiring that a consumer request be properly authenticated. Coupled with the real risk of fraudulent activity, this bill could upend vital business to business services and ultimately harm consumers.

A fundamental flaw in this bill is that it attempts to regulate a business model, rather than the use of data in a more comprehensive manner. It also does not consider all existing federal privacy laws to provide necessary exceptions.

For consumer credit companies, a consumer's unintended deletion of data could significantly impact the ability for consumers to prevent fraud and receive expected services. And once data is deleted, consumers do not have the ability to reasonably "fix" an unintended deletion.

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This bill also lacks significant guardrails and could ultimately end up increasing incidents of fraud. There are no protections in the bill to determine if it is a consumer that is requesting deletion or a fraudster. Without guardrails, any person can claim to be an authorized agent and defraud consumers. The legislation would also allow third parties to charge consumers to use the deletion mechanism, incentivizing the creation of a cottage industry built around scamming consumers into paying for a free service. Data brokers provide services to every type of industry and government agencies - unauthorized deletion could significantly impact a consumer.

This bill would monetize and supercharge data deletion services in a way that is reminiscent of "credit repair." The credit reporting industry is all too familiar with this problem and has faced an explosion of paid "credit repair" activity over the past few years. Last year, the Consumer Financial Protection (CFPB) announced a landmark $2.7 billion settlement against these types of companies for harmful consumer practices. It is also important to note that the Federal Trade Commission (FTC) specifically prohibits third-party activity on the National Do Not Call portal, which supporters have cited as a model for this legislation.

For these reasons, we respectfully oppose this measure and ask that the Committee defer the bill. Thank you for the opportunity to submit this testimony.

STATE PRIVACY & SECURITY COALITION

February 6, 2024

Representative Amy A. Perruso
Chair, Committee on Higher Education & Technology
Hawai'i State Capitol, Room 444
Honolulu, HI

Representative Jeanne Kapela
Vice Chair, Committee on Higher Education & Technology
Hawai'i State Capitol, Room 420
Honolulu, HI

Re: Hawai'i Delete Act (HB 1668)

Dear Chair Perruso, Vice Chair Kapela, and Members of the Respective Committees,

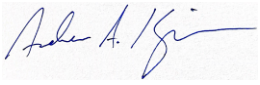
The State Privacy & Security Coalition (SPSC), a coalition of over 30 companies and six trade associations in the retail, telecom, technology, automobile, health care, and payment card sectors, writes in opposition to HB 1668. As currently drafted, HB 1668 would create a duplicative and perplexing regime for a subset of businesses that are already subject to the California Consumer Privacy Act (CCPA) while simultaneously setting a dangerous precedent of segmenting particular types or uses of data and subjecting them to particular controls, rather than taking a comprehensive approach.

Unfortunately, the current version of HB 1688 would create significant operational and compliance concerns for businesses. For instance, the bill creates disclosure requirements and deletion obligations for businesses without providing sufficient exemptions found in California and other laws, such as for publicly available information. It creates unnecessary compliance costs and risks for business that do not have the protections of an interoperable and robust omnibus privacy law.

We have strong concerns about regulating data in a "sectoral," rather than comprehensive fashion. This will lead to annual legislation seeking to regulate different types of data instead of a comprehensive approach that is designed to be a sustainable framework over time that can adapt to evolving technologies and issues that may arise.

We would be happy to discuss this legislation further at your convenience.

Respectfully submitted,



Andrew A. Kingman
Counsel, State Privacy & Security Coalition

CSPRA

COALITION FOR SENSIBLE PUBLIC RECORDS ACCESS

February 6, 2024
To: Members of the Hawaii Legislature
Re: HB 1668

The Coalition for Sensible Public Records Access (CSPRA) is a non-profit organization dedicated to promoting the principle of open public record access to ensure individuals, the press, advocates, and businesses the continued freedom to collect and use the information made available in the public record for personal, governmental, commercial, and societal benefit. Members of CSPRA are just a few of the many entities that comprise a vital link in the flow of information for these purposes and provide services that are widely used by constituents in your state. Collectively, CSPRA members alone employ over 75,000 persons across the U.S. The economic and societal activity that relies on entities such as CSPRA members is valued in the trillions of dollars and employs millions of people. Our economy and society depend on value-added information and services that includes public record data for many important aspects of our daily lives and work and we work to protect those sensible uses of public records.

Summary

- We oppose HB 1668 as currently drafted as it lacks sufficient protections for lawful commercial and consumer uses of information in the public domain and has legal and Constitutional issues for free speech and government oversight.
- We support a clean and standard public records and publicly available information (hereafter PAI) exemption that follows what the Uniform Law Commission and other states have done. PAI already has a privacy regime, laws, and rules and should not be addressed differently in general privacy or data broker laws.
- Government and its vendors should be exempted from general privacy and data broker laws such as this one as government has its own Constitutional restraints, duties, privacy laws and rules, and public policy and administrative needs for information that is different from the private sector.
- We do not support adding "including any conditions associated with the information." This is not a definition issue as the nature of public records do not change because of their regulated uses. This is an enforcement question since the limits already exist in law and contracts for data use. The current laws and contracts have enforcement clauses. A review of them is in order and if they are perceived as inadequate to the purposes for protecting such records and they should be addressed in those laws and contracts and not in this definition related to what data is considered private.
- Hawaii public records provide the public with a ground source of truth about matters that are public or a fact that according to law or judgement applies to the subject of a record. We oppose the language regarding changing the nature of public records after they are accessed and/or otherwise disseminated and privately held. Such data needs to remain

governed by public records and First Amendment law and court cases as it serves many important societal and essential commercial purposes. PAI should not be transformed into private data by the nature of the data with which it is associated or where it is stored and subject to editing and deletion as these records are NOT the property of the subject of the records but of the people of Hawaii and those who have the right to access them.

- We oppose restrictions on one's ability to make inferences from PAI as we find this unconstitutional, impractical, and contrary to the purposes of public records and publicly available information. We should all be free to think, reason, and draw inferences from the information to which we have lawful access.
- The bill focuses only on data brokers while a better practice is to broadly address the general rights of information privacy as many private entities use data in ways that raises privacy issues. Data brokers are just a small part of the overall information economy and they have been illogically singled out for extra regulation.
- Cybercrime continues to dwarf the issues created by the legitimate information industry, but problems created by dark web actors and rogue businesses are being under-resourced and inadequately regulated. Instead, policy makers are over-regulating the legal actors who add billions in value to the economy and on whom millions of jobs depend.

Public Records Exemption Should Be Standard and Consistent with Hawaii Public Records Law

We support clear and more standard public records and publicly available information exemption. The current bill draft has a non-standard definition that does not appear to be used as an exemption to the laws application. The Uniform Law Commission (ULC) model privacy act and other state privacy laws have clean exemptions for lawfully acquired public records. Public records and freedom of information and access acts have their own privacy rules and limits that are under constant review and have laundry lists of well-debated exceptions. For example, Hawaii's Uniform Information Practices Act states the following purpose for making records as available as possible:

> **[§92F-2] Purposes; rules of construction.** In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest.

[§92F-12] Goes on to list items of mandatory disclosure while **[§92F-13-14]** provides limits to that disclosure. This approach reflects **§92F's** statement of intent to, "Balance the individual privacy interest and the public access interest, allowing access unless it would constitute a clearly unwarranted invasion of personal privacy."

The bill also muddies the issue of public records by saying the following use is not part of a direct relationship and so presumably, those so engaged are regulated by the act:

"(3) Providing publicly available information related to a consumer's business or profession; and"

Such services provide exactly the kind of oversight and transparency needed to help the public be informed about the delete those facts from the app. That should not be what this bill enables. It should instead businesses and professions they use. An app that helps a person know about health code violations at a restaurant or nursing home or cases of professional misconduct would be regulated as a data broker. The person committing the violations therefore gets to be encouraging and enabling this kind of consumer information.

To assist with bringing the bill into closer alignment with other states in a way that reduces the cost of compliance and increases the balance sought, here are four "publicly available information" definitions:

ULC Uniform Data Protection Act:
(15) "Publicly available information" means information:
(A) lawfully made available from a federal, state, or local government record;
(B) available to the general public in widely distributed media, including:
(i) a publicly accessible website;
(ii) a website or other forum with restricted access if the information is available to a broad audience;
(iii) a telephone book or online directory;
(iv) a television, Internet, or radio program; and
(v) news media;
(C) observable from a publicly accessible location; or
(D) that a person reasonably believes is made available lawfully to the general public if:
(i) the information is of a type generally available to the public; and
(ii) the person has no reason to believe that a data subject with authority to remove the information from public availability has directed the information to be removed.

Iowa:
Publicly available information - means information that is lawfully made available through federal, state, or local government records, or information that a business has reasonable basis to believe is lawfully made available to the general public through widely distributed media, by the consumer, or by a person to whom the consumer has disclosed the information, unless the consumer has restricted the information to a specific audience.

Virginia:
"'Publicly available information' means information that is lawfully made available through federal, state, or local government records, or information that a business has a reasonable basis to believe is lawfully made available to the general public through widely distributed media, by the consumer, or by a person to whom the consumer has disclosed the information, unless the consumer has restricted the information to a specific audience."

Utah:
(29) "Publicly available information" means information that a person:
(a) lawfully obtains from a record of a governmental entity;
(b) reasonably believes a consumer or widely distributed media has lawfully made available to the general public; or
(c) if the consumer has not restricted the information to a specific audience, obtains from a person to whom the consumer disclosed the information.

Furthermore, these omnibus privacy laws recognize that we have adopted numerous context-specific national privacy laws and that those statutes should govern regulation and rights within those fields. These include **Gramm-Leach-Bliley Act (GLBA), Fair Credit Reporting Act FCRA), Drivers Privacy Protection Act (DPPA), Federal Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA),** and others. Any data broker laws and regulations should adopt the same approach and exempt all these areas (the current draft only covers some) as well as any lawfully acquired PAI.

Finally, government and its vendors helping it conduct the people's business should be clearly exempted from the bill's application. Government has a unique position as an information steward and has fiduciary responsibilities to use information for the public good. If there are concerns about government use of information, they should be addressed directly.

Do Not Confuse the Definition of Public Records with Enforcement of a Lawful Use Provision

We do not support such language in the bill that contains this limit by adding "including any conditions associated with the information." This is not a definition issue as the nature of public records do not change because of their use by a person who has lawfully received them. Complying with the restrictions or terms placed on use is an enforcement question. Current laws and contracts have enforcement clauses. A review of them is in order and if inadequate to the purposes for protecting such records, they should be addressed there and not in this definition related to what data is considered private and subject to such rights as deletion.

Information in public records from local, state, and federal government sources is **owned by the People of Hawaii**, not the person who is the subject of the record. Public records laws already redact selected personally identifiable information and include limits on a records availability to selected parties for selected purposes. Best practice beyond this is to directly address any questionable behaviors in the use of public and private data that should be banned, regulated, or criminalized. Degrading the value and use of public records harms beneficial uses, undermines trust, is unlikely to stop the bad behavior, and will lead to a lot of pointless and wasteful litigation without any corresponding benefit.

Persons Rights to Make Inferences from Publicly Available Information and Public Records Should Not Be Infringed Upon

Making inferences from PAI needs to be preserved as a matter of free speech and one of the critical uses that Constitution, States, and local governments intend when they provide public information and the right to free speech about it. We need our citizenry and businesses making inferences from this information to make our society work. To put limits on lawful inferential uses of such information effectively nullifies their public nature and use. The purpose of getting public records is not just to disseminate them but to use them. One cannot use information without making inferences about what the information says.

For example, an if elected official owns property and the roads in front of the property received improvements and maintenance that were outside normal procedures, a citizen should be allowed to make the inference that the elected official was receiving special treatment. Another example is where a person has several judgements and liens against them for non-payment of debts and unpaid court ordered payments to successful plaintiffs and owns property. A third party who has been asked to extend credit to this person should be able to infer they are a bad credit risk. There are thousands of inferences made from public records every day that are lawful and part of the reason we make public records available for public use. Saying the members of the public cannot make inferential judgements about the information they receive not only violates their rights of free speech, but it also violates their right to have thoughts.

Public Records Are an Essential Part of Our Information Infrastructure and Are of Great Value to the Residents of Hawaii

Many persons and entities access and add value to the records they receive from public sources that is comingled with covered data. They use this comingled data for a variety of personal, socially desirable, and essential civic and governmental purposes. We have attached an infographic that summarizes the benefits and uses of public information in the everyday lives of your residents and businesses. You will see that the information in the public record is foundational to many important life events and transactions of your constituents. Value-added services such as risk management, property title protection, news, protection of vulnerable populations, the administration of justice, law enforcement, monitoring government spending and corruption, enforcement of court orders and child support collection, and economic forecasting are just a few of the uses of comingled public and private data. Consumers depend on the services that access, combine, and add value to public and private data almost every day and in ways that benefit all residents of Hawaii whether they are aware of it or not.

Many institutions like the free press as well as businesses and services rely on combinations of public and private records to function, and we all benefit. For example:

- Public and private data is used to monitor government for waste, fraud, and corruption.
- Data is used to find parents delinquent on child support.
- Combined public and private mapping data are used for locations, safety, consumer protection, and ratings of restaurants and retail stores.

- Real estate facts like square footage derived from public databases are key to buying and selling houses and provide consumers with accurate information.
- Vehicle registration data is used for safety recalls and helping forecast car sales data on which stock markets and manufacturing suppliers rely.
- Public information originally collected for a variety of purposes is used to find missing persons, witnesses, and suspects.

The Big Problem in Need of More Attention Is Cybercrime and Rogue Actors

We continue to see that one of the most damaging and costly problems of the digital age is cybercrime and rogue actors who do not follow the laws we already have. Cybercrime cost billions and ruins many lives but does receive adequate resources to combat it. Instead, we see government reaching to regulate an illogically formed category within the lawful information industry called data broker. These regulations often harm the benefits we get from the information age but do little or nothing to address the massive harms coming from cybercriminal and rogue companies and governments. Ironically as well, many of the complaints about data use are coming from users who ARE in a direct relationship with the data holder, but they are exempt from this bill and many data broker laws. We suggest the need to focus more on cybercrime and all behaviors of concern and less on a subset of the information industry.

Thank you for your consideration of our input. We welcome the opportunity to work with you further on developing practical solutions to protect privacy that benefit consumers, ensure businesses can comply, protect the value of public records, and respect Constitutional rights. However, we must regretfully oppose HB 1668 for the reasons outlined above.

Richard J. Varn
Executive Director
Coalition for Sensible Public Records Access
San Antonio, TX
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A non-profit organization dedicated to promoting the principle of open public records access to ensure individuals, the press, advocates, and businesses the continued freedom to collect and use the information made available in the public record for personal, commercial, and societal benefit.

February 6, 2024

SIIA Written Testimony on HB 1668

We are writing to express the Software & Information Industry Association's (SIIA's) opposition to HB 1668 because of its First Amendment shortcomings. SIIA is a trade association representing roughly 375 companies reflecting the broad and diverse landscape of digital content providers and users in academic publishing, education technology, and financial information; creators of software and platforms used by millions worldwide; and companies specializing in data analytics and information services. Our mission is to protect the three prongs of a healthy information environment essential to that business: creation, dissemination and productive use.

When California considered its signature consumer privacy law, the original version would have violated the First Amendment because it prevented entities from collecting, processing, and disseminating certain types of publicly available information (PAI). This is because the Supreme Court has made clear that "the creation and dissemination of information is speech for First Amendment purposes."[1] A state may not infringe these rights to protect a generalized interest in consumer privacy.[2] These speech-related concerns were raised by SIIA and others, and since then, every piece of enacted state consumer privacy legislation provides an exemption for PAI as well as statutory exemptions to enable critical public functions. Without that language, these privacy laws would be facially unconstitutional.

HB 1668 has the same basic defects. A vibrant, free-flowing public domain where people can obtain accurate, timely information is essential to a functioning democracy and enables a variety of important activities. As drafted, it would produce unintended and unworkable policy outcomes, enabling bad actors to veto their inclusion in databases and publications that businesses and non-profits provide to customers and others who use it for legitimate purposes such as finding missing children, conducting corporate due diligence, figuring out if a Walmart order is being placed fraudulently, or engaging in investigative journalism. The incomplete exemption for publicly available information (PAI) in HB 1668 threatens to undermine all of these societally beneficial uses.

HB 1668 defines "publicly available" as "available information from federal, state, or local government records, including any conditions associated with the information." The public domain that the First Amendment protects, however, encompasses information that is widely available in private hands, such as databases of newspapers and other articles, professional l directories, and web sites like IMDB.com. As explained above, this approach is a marked departure from comparable state privacy laws and creates implementation challenges. In addition, the approach to PAI in the bill renders it content discriminatory, and unconstitutional.

[1] *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011).

[2] See generally *E. Volokh, Freedom of Speech and Information Privacy: The Troubling Implications of a Right to Stop People from Speaking About You*, 52 Stan. L. Rev. 1049, 1081 (2000).

Protection of privacy is a legitimate legislative priority, but must be balanced against constitutionally guaranteed speech interests. We thank you very much for your consideration, and would be happy to discuss any of these issues further with you, if helpful.

Respectfully submitted,

Anton van Seventer
Counsel, Privacy and Data Policy
Software & Information Industry Association

February 6, 2024

Representative Amy A. Perruso
Chair of the House Higher Education & Technology Committee
House District 46
Hawai'i State Capitol, Room 444
415 S Beretania St.
Honolulu, HI 96813

Representative Jeanne Kapela
Vice Chair of the House Higher Education & Technology Committee
House District 5
Hawai'i State Capitol, Room 418
415 S Beretania St.
Honolulu, HI 96813

RE: Hawaii HB 1668 – Oppose

Dear Introducers of HB 1668, Chair Perruso, and Vice Chair Kapela:

On behalf of the advertising industry, we write to oppose HB 1668,[1] and below we provide our non-exhaustive list of concerns with this legislation. The bill would stand up a data broker registry in the state and require all registered data brokers to observe a centralized data deletion mechanism to be maintained by the Hawaii Department of Commerce's Office of Consumer Protection ("Office"). As described in more detail below, the proposed deletion mechanism would impede Hawaiians from receiving beneficial services and severely harm small businesses' ability to remain viable. We ask the House Committee on Higher Education & Technology ("Committee") to decline to advance the bill any further in the legislative process.

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies across the country. These companies range from small businesses to household brands, long-standing and emerging publishers, advertising agencies, and technology providers. Our combined membership includes more than 2,500 companies that power the commercial Internet, which accounted for 12 percent of total U.S. gross domestic product ("GDP") in 2020.[2] By one estimate, nearly 20,000 jobs in Hawaii are related to the ad-subsidized Internet.[3] We would welcome the opportunity to engage with the Committee further on the non-exhaustive list of issues with HB 1668 that we outline here.

[1] Hawaii HB 1668 (2024 Leg. Sess.), located here.
[2] John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 15 (Oct. 18, 2021), located at https://www.iab.com/wp-content/uploads/2021/10/IAB_Economic_Impact_of_the_Market-Making_Internet_Study_2021-10.pdf (hereinafter, "Deighton & Kornfeld 2021").
[3] *Id*. at 125.

I. HB 1668 Would Decimate Hawaii Small Businesses' Ability to Enter Markets and Remain Viable

Services provided by data brokers help to create a more level economic playing field so small, mid-size, and start-up companies, many of which are minority and women-owned, can attract customers and compete in the marketplace with larger players. Third-party data sets provided by data brokers are a key data asset that smaller entities use to reach and generate new audiences for their offerings. HB 1668's data broker requirements would virtually ensure that the smallest of Hawaiian companies lose a vital resource for attracting and interacting with a customer base. The bill would stifle the vibrant Hawaiian economy by eliminating datasets that small businesses depend on to enter markets and remain viable. In addition, HB 1668 would severely limit Hawaiians' exposure to new products and services from niche and small businesses that may interest them.

II. HB 1668 Would Hinder Hawaiians' Access to Vital Data Broker Services

HB 1668 would require the Office to maintain an accessible deletion mechanism through which an individual may request that all registered data brokers delete any personal information processed about the individual.[4] The bill also prohibits the sharing of personal information associated with the consumer after the consumer has submitted such a deletion request. [5] The proposed data broker deletion mechanism would negatively impact Hawaii consumers and businesses that rely on data broker services. Mass deletion of data from all data brokers through the click of a button would stifle entities' ability to deliver vitally important products, services, and public benefits to Hawaii citizens, such as anti-fraud and identity verification services, marketing services and loyalty programs, cybersecurity services, public interest research, risk management services, state benefit programs, beneficiary location, and more.

Even though the bill provides certain exemptions to the deletion requirement, such as an exemption for use of data for security and integrity purposes, that exemption does not extend to the bill's prohibitions on sharing personal information after submission of a deletion request. Many beneficial data broker services—particularly those that further security and integrity efforts such as anti-fraud mechanisms—depend on the transfer or "sharing" of personal information in order to authenticate consumer identities and root out fraud. As a result, even if a data broker that provides vital anti-fraud services is not required to delete personal information after submission of a request through the Office's mechanism, that data broker will be functionally prohibited from providing critical anti-fraud services the consumer benefits from due to the bill's terms. This result is just one example of the many negative downstream impacts Hawaiians will suffer if HB 1668 is enacted. In addition, the bill as drafted does not provide sufficient protections to prevent entities or individuals from fraudulently making requests purported to be on behalf of consumers.

The deletion mechanism proposed in HB 1668 would also threaten the sustainability of the ad-supported Internet model, which subsidizes the largely free and low-cost availability of online resources, products, and services that Hawaiians enjoy today. According to one study, the free and low-cost products and services consumers access today—due in large part to data processed by data brokers—provides $30,000 in value to each consumer every year, measured in 2017 dollars.[6] This significant cost-savings to Hawaii residents would be eliminated if HB 1668 is enacted as presently drafted.

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[4] HB 1668, § -22(a)(2), (b)(1).
[5] *Id.* at -22(e).
[6] J. Howard Beales & Andrew Stivers, *An Information Economy Without Data*, 21 (2022), https://www.privacyforamerica.com/wp-content/uploads/2022/11/Study-221115-Beales-and-Stivers-Information-Economy-Without-Data-Nov22-final.pdf.

* * *

To avoid the unintended consequences to consumers and small businesses that HB 1668 would create, we respectfully ask the Committee to decline to advance the bill any further in the legislative process. Thank you in advance for your consideration of this letter.

Sincerely,

Christopher Oswald
EVP for Law, Ethics & Govt. Relations
Association of National Advertisers
202-296-1883

Alison Pepper
EVP, Government Relations & Sustainability
American Association of Advertising Agencies, 4A's
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Lou Mastria, CIPP, CISSP
Executive Director
Digital Advertising Alliance
347-770-0322

CC: Introducers of HB 1668
Members of the House Higher Education & Technology Committee

Mike Signorelli, Venable LLP
Allie Monticollo, Venable LLP

SanHi
GOVERNMENT STRATEGIES
A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 7, 2024

TO: Representative Amy A. Perruso
Chair, Committee on Higher Education & Technology

FROM: Mihoko Ito

RE: **H.B. 1668 – Relating to Privacy**
Hearing Date: Wednesday, February 7, 2024 at 2:00 p.m.
Conference Room: 309

Dear Chair Perruso, Vice-Chair Kapela, and Members of the Committee on Higher Education & Technology:

We submit this testimony on behalf of the Hawaii Bankers Association (HBA). HBA represents seven Hawai`i banks and one bank from the continent with branches in Hawai`i.

HBA submits **comments** regarding H.B. 1668, which establishes provisions allowing for consumers to request data brokers that maintain their personal information to delete any personal information related to the consumer.

We appreciate that this measure is aimed at addressing privacy in a comprehensive manner, but are concerned that the bill might be difficult for businesses to comply with as currently drafted. For financial institutions, we would note that this bill does contain a Gramm Leach Bliley Act (GLBA) exemption, which typically covers personal information that is collected by financial institutions. However, in its current form, the bill only covers "nonpublic personal information" as defined in the Gramm-Leach-Bliley Act. We believe that this definition needs to be expanded to specifically include financial institutions, including affiliates that are subject to the GLBA and utilize data for legitimate purposes.

We would suggest that, with the many complexities of this bill and significant impact on business operations and consumers, it is imperative to discuss these details with stakeholders involved to make sure that the obligations are workable and do not result in unintended consequences.

Thank you for the opportunity to submit this testimony.

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February 6, 2024

Representative Amy Perruso
Chair, Committee on Higher Education and Technology
Hawai'i State Capitol, Room 444
Honolulu, HI

Re: HB 1668 (Tam) – Data Brokers - OPPOSE

Dear Chair Perruso and Members of the Committee,

TechNet respectfully submits this letter in opposition to HB 1668, regarding data brokers.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.2 million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

Our member companies place a high priority on consumer privacy. The technology industry is fully committed to securing privacy and security for consumers and engages in a wide range of practices to provide consumers with notice, choices about how their data are used, and control over their data. TechNet supports a federal standard that establishes a uniform set of rights and responsibilities for all Americans. However, in the absence of federal action, our members have worked with legislators in over a dozen states to pass comprehensive data privacy legislation.

We encourage the legislature to move forward comprehensive data privacy legislation rather than bills like HB 1668. We worked with the legislature last year on SB 974 (Lee), which with some amendments would have provided consumers in Hawaii with strong data protections, greater control of their data, and aligned with other states' privacy laws.

HB 1668 as a standalone privacy measure doesn't align with other standards as its deletion and opt-out requirements would make Hawaii an outlier on data privacy. For example, HB 1668 is missing many of the exemptions found in California and other laws including for the federal Drivers Privacy Protection Act (DPPA) and for publicly available information. Privacy laws across the country exempt government

data such as property records from their scope. Failing to do so will impede the work that government agencies and their vendors do to provide needed services to constituents. For example, law enforcement agencies may use data brokers' services to serve subpoenas or to identify and locate witnesses and suspects. Welfare agencies can use the service to find parents evading child support awards and private businesses use their records to detect and prevent fraud.

Thank you for your consideration. If you have any questions regarding TechNet's position on this bill, please contact Dylan Hoffman at dhoffman@technet.org or 505-402-5738.

Sincerely,

Dylan Hoffman
Executive Director for California and the Southwest
TechNet

Hawaii Credit Union League
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Testimony to the House Committee on Higher Education & Technology
Wednesday, February 7, 2024, at 2:00 PM
Conference Room 309

Comments re: HB 1668, Relating to Privacy

To: The Honorable Amy Perusso, Chair
The Honorable Jeanne Kapela, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 47 Hawaii credit unions, representing over 864,000 credit union members across the state.

HCUL offers the following comments regarding HB 1668, Relating to Privacy. This bill establishes provisions allowing for consumers to request data brokers that maintain their personal information to delete any personal information related to the consumer.

While we understand the intent of this bill, we have some concerns. Currently, credit unions and other financial institutions are already required to safeguard sensitive data and financial information via the Gramm-Leach-Bliley Act (GLBA). While the GLBA is covered in HB 1668, we would ask for additional clarity by specifying that financial institutions be exempt in order to avoid possible unintended consequences for our members.

Thank you for the opportunity to provide comments on this issue.

HB-1668
Submitted on: 2/5/2024 9:24:10 PM
Testimony for HET on 2/7/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael EKM Olderr	Individual	Support	Written Testimony Only

Comments:

I support this bill. Our online data is out there and is dangerously easy to access. We see in some states on the continent and the EU that this kind of data protection is available and do-able.

February 6, 2024

HB 1668 Relating to Privacy
Committee: House Committee on Higher Education & Technology
Hearing Date/Time: Wednesday, February 7, 2024 at 2:00 PM
Place: Conference Room 309, Hawaii State Capitol, 415 South Beretania Street

Dear Chair Perruso, Vice Chair Kapela, and members of the Committee:

I write in **support** of HB 1668 Relating to Privacy.

As a privacy expert, I have worked in the field of data privacy for 20 years and was a member of the Hawaii State Legislature's 21st Century Privacy Law Task Force, created in 2019 by HCR 225.

Most people don't spend a whole lot of time thinking about data brokers. The Federal Trade Commission said:

> "Because data brokers generally never interact directly with consumers, consumers are typically unaware of their existence, much less the variety of ways they collect, analyze, and sell consumer data."

How many data brokers are buying and selling our data? In 2018, Vermont passed a data broker law, and **838 data brokers** have since registered with their state. Vermont is smaller than Hawaii, having half the population we have. So that number is a good a guess for how many data brokers might be buying and selling the data of residents of Hawaii.

> NOTE: a full list of data brokers that registered in Vermont can be found at https://bizfilings.vermont.gov/online/DatabrokerInquire/DataBrokerSearch

We rely on government, both state and federal, to do the things we cannot do as individuals. This is true whether it's building the streets in front of our homes or setting national foreign policy. Most people don't have the resources and time to sue a data broker. That's even if we knew these shadow companies existed in the first place. So if anything is going to be done about the hundreds of data brokers operating in the shadows buying and selling the data of Hawaii residents, it's up to you.

Thank you for your consideration and the opportunity support this legislation.

Kelly McCanlies

Kelly McCanlies
Fellow of Information Privacy, CIPP/US, CIPM, CIPT
International Association of Privacy Professionals