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OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON HIGHER EDUCATION & TECHNOLOGY
ON
HOUSE BILL NO. 2051

February 2, 2022
2:00 p.m.
Room 309 and Videoconference

RELATING TO CONSUMER PRIVACY

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 2051 adds a new Chapter to the HRS to be known as the "Hawaii Consumer Privacy Act" to: 1) specify various consumer rights with respect to the collection of personal information by businesses; 2) impose numerous requirements on businesses for the collection, disclosure, sharing, and selling of consumer personal information; 3) authorize the Department of Commerce and Consumer Affairs (DCCA) to adopt rules to enforce this chapter; and 4) appropriate an unspecified amount of general funds for FY 23 to be expended by the DCCA for the purposes of this chapter.

B&F notes that the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and

- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.



**Testimony of
LISA MCCABE
CTIA**

House Bill 2051

**Before the
Hawaii House Committee on Higher Education & Technology
February 2, 2022**

Chair Takayama, Vice Chair Clark, and members of the committee, on behalf of CTIA®, the trade association for the wireless communications industry, thank you for the opportunity to provide this testimony on House Bill 2051, which would establish state regulations to address an inherently national and global issue: the protection of personal data. A state law that sweeps too broadly, as these bills do, will create security risks and presents serious compliance challenges for businesses.

State legislation that sweeps too broadly could have a negative effect. This bill has some commonalities with a California privacy statute initially adopted in 2018, and exemplifies overly broad legislation that is difficult and costly to implement. Bills were passed by the California legislature in an attempt to clarify the statute in 2019 and again in 2020. Then a ballot measure – the California Privacy Rights Act – was passed in November 2020, which further changed the law, imposing new requirements effective 2023. And the statute called for implementing regulations, which have been voluminous, and additional regulations will follow as a result of the new requirements under the ballot measure. Even with the serial changes and extensive regulations, the scope of the statute remains broad and ambiguous, making



compliance difficult and expensive for business. Indeed, an impact study on the implementation of the CCPA found that the total cost of initial compliance with the law would be approximately \$55 billion or 1.8% of the state's gross domestic product¹

In 2021, Colorado and Virginia likewise passed comprehensive privacy laws that have yet to be implemented. We now truly have a patchwork of state laws that will confuse consumers and burden businesses. If enacted, HB 2051 would create even more complexity in this patchwork. Hawaii should not rush to follow other states down this path to the detriment of both consumers and businesses.

Requirements like the ones included in HB 2051 put more burdens on companies in their efforts to prevent unauthorized access to data, which can be an attractive target to identity thieves and cybercriminals. In the United Kingdom, a white hat hacker was able to get his fiancée's credit card information, passwords, and identification numbers by making a false request.² Similar scenarios will likely happen in Hawaii if the state enacts HB 2051.

The practical implications of requirements permitting consumers to delete their data are unclear. These requirements may undermine important fraud prevention activities by allowing bad actors to suppress information. Businesses may also have to delete data that will help them track the quality of service to improve their products.

¹ See Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations, Berkeley Economic Advising and Research, LLC (August 2019).

² Leo Kelion, [Black Hat: GDPR privacy law exploited to reveal personal data](#), BBC (August 8, 2019).



While it is clear that these provisions create risk for consumers and cost for businesses, it is not clear that their benefits outweigh these risks. In Europe, consumers get reams and reams of data when they submit access requests, and they are constantly bombarded with pop-up windows as they browse the internet. Does this enhance their privacy or make their data more secure?

The stakes involved in consumer privacy legislation are high. Being too hasty to regulate could have serious consequences for consumers, innovation, and competition. Regulation can reduce the data that is available for research and for promising new solutions by putting too many constraints on the uses and flow of data. We are starting to see indications of this in Europe, where sweeping new privacy regulations took effect in 2018 and investment in EU technology ventures has declined.³ Similarly, the United States leads Europe in the development of Artificial Intelligence, and experts believe that Europe's new data protection laws will increase this competitive disadvantage.⁴

The broad privacy law in the E.U. has resulted in confusion for both small businesses and consumers. For example, a hairdresser refused to provide a customer with the brand and type of hair color used due concerns over data protection and a paramedic was denied the

³ Jia, Jian and Zhe Jin, Ginger and Wagman, Liad, "[The Short-Run Effects of GDPR on Technology Venture](#)" Investment, *National Bureau of Economic Research* (November 2018).

⁴ Daniel Castro and Eline Chivot, [Want Europe to have the best AI? Reform the GDPR](#), IAPP Privacy Perspectives (May 23, 2019).



medical history of an unconscious patient over privacy law concerns.⁵

Additionally, in order to address some of the unintended consequences of broad privacy regulations, in the U.K., which has a statute similar to that in the E.U., the government recently signaled its intention, following Brexit, to revisit the U.K. General Data Protection Regulation (UK GDPR). The reforms in the U.K. are aimed at reducing barriers to innovation; reducing burdens on businesses and delivering better outcomes for people; boosting trade and reducing barriers to data flows; delivering better public services; and reform of the UK regulator, the Information Commissioner's Office.⁶

Any new state privacy law will contribute to a patchwork of regulation that will confuse consumers and burden businesses that operate in more than one state. Should businesses with operations in multiple states segregate the data of Hawaii citizens?

Much of the focus in the privacy debate thus far has been on compliance costs and the impact on larger companies, but regulation impacts business of all sizes. As part of the California Attorney General's regulatory process, the office commissioned an economic impact study.⁷ The study found that the total cost of initial compliance with the law would be

⁵ [Hairdresser told customer she couldn't get details about hair dye due to 'GDPR concerns'](#), Independent.ie, November 19, 2021

⁶ [Significant Changes Proposed to UK GDPR](#), JD Supra, (September 23, 2021).

⁷ See Standardized Regulatory impact Assessment: California Consumer Privacy Act of 2018 Regulations, Berkeley Economic Advising and Research, LLC (August 2019).



approximately \$55 billion or 1.8% of the state’s gross domestic product.⁸

The study further found that “[s]mall firms are likely to face a disproportionately higher share of compliance costs relative to larger enterprises.⁹ These compliance costs include new business practices, operations and technology costs, training requirements, recordkeeping requirements, and other legal fees. It goes on to further state that “conventional wisdom may suggest that stronger privacy regulations will adversely impact large technology firms ... however evidence from the EU suggests that the opposite may be true.”¹⁰ The study found that many smaller firms have struggled to meet compliance costs. The EU regulation of privacy seems to have strengthened the position of the dominant online advertising companies, while a number of smaller online services shut down rather than face compliance costs.

Consumer privacy is an important issue and the stakes involved in consumer privacy legislation are high. State-by-state regulation of consumer privacy will create an unworkable patchwork that will lead to consumer confusion. That is why CTIA strongly supports ongoing efforts within the federal government to develop a uniform national approach to consumer privacy. Taking the wrong approach could have serious consequences for consumers, innovation, and competition in Hawaii. Moving forward with broad and sweeping state legislation would only complicate federal efforts while imposing serious compliance

⁸ *Id* at 11.

⁹ *Id* at 31.

¹⁰ *Id* at 31.



challenges on businesses and ultimately confusing consumers. As we support a comprehensive federal privacy law, we oppose further fragmentation that would also arise from passage of HB 2051.

As mentioned, California is still a moving target and Virginia and Colorado have yet to implement their laws. It is simply not clear that we have found a good formula for regulating privacy. As such, CTIA opposes HB 2051 and respectfully urges the committee not to move this bill.



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Hawaii State Legislature
House Committee on Higher Education and Technology

February 2, 2022

Filed via electronic testimony submission system

RE: HB 2051, Relating to Consumer Privacy - NAMIC's Testimony

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 2, 2022, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation. NAMIC's written comments need not be read into the record, so long as they are referenced as a formal submission and are provided to the committee for consideration.

NAMIC membership includes more than 1,500 member companies. The association supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies write \$323 billion in annual premiums. Our members account for 67 percent of homeowners, 55 percent of automobile, and 32 percent of the business insurance markets. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies

Although NAMIC and its members support the public policy objective of the proposed legislation and have been committed to protecting a consumer's reasonable expectations of privacy and in providing consumers with transparency as to the types of data information companies are collecting and maintaining, we are opposed to HB 2051, as drafted, because of its unnecessarily broad scope and impact on the highly regulated and pro-consumer protection-oriented property and casualty insurance industry.

NAMIC respectfully submits the following comments, concerns, and suggested revisions to the proposed legislation:

- 1) NAMIC believes that consumers in the State of Hawaii are best protected by the adoption of national data privacy protection standards. Specifically, we recommend the adoption of a pre-emptive national data privacy law over a patchwork of federal and state privacy laws and regulations which can be confusing to consumers, costly to businesses, and potentially over-lapping and contradictory.

Since there is no federal data privacy law on point today, NAMIC believes that it makes sense for the state legislature to adopt language that has been considered, debated and revised extensively at the national level and to be mindful of the robust set of laws and regulations which already govern the use of personal information by insurers in the state.

- 2) HB 2051 is unnecessary as it applies to the property and casualty insurance industry that is expressly regulated by the Department of Insurance. The Gramm-Leach-Bliley Act (GLBA), which regulates the insurance industry includes strict privacy provisions to protect consumers in the financial services industry. The GLBA has a number of consumer privacy protection provisions, including an opportunity for the consumer to opt-out of the entity sharing non-public personal information with non-affiliated third parties. The GLBA also requires financial institutions (which includes insurers by definition) to provide customers with privacy disclosures addressing many of the issues raised in the proposed legislation. Of most relevance to this proposed legislation, the GLBA requires regulated entities to also disclose (1) whether and what type of data will be disclosed to affiliated and non-affiliated parties, (2) the categories of data collected, and (3) the methods of protecting confidential data. In effect, the GLBA accomplishes the public policy objectives that HB 2051 seeks to address.

Additionally, insurance consumers are also protected by state law on point. Specifically, Haw. Rev. Stat §§ 431:3A-101 to 431:3A-504 addresses privacy protection of non-public personal financial information about Hawaiians by all insurance licensees. The law requires insurers to provide policyholders with a specific notice about their privacy protection policies and practices, establishes limited conditions for when insurers may disclose non-public personal information to affiliated and non-affiliated third parties, and provides methods for policyholders to prohibit disclosing of certain non-public personal information.

- 3) The proposed legislation would create a confusing and overlapping regulatory standard that conflicts with the GLBA. NAMIC appreciates that HB 2051 seeks to create certain exemptions to make the bill consistent with and complimentary to other privacy protection laws; however, the proposed exemption found at Pg. 28, Line 16 to Pg. 29, Line 2 would establish an incomplete, confusing and unworkable exemption, as it would only apply to personal information “collected, processed, sold, or disclosed” subject to the GLBA and its implementing exemptions. The practical implication of the proposed language of this exemption is that it would require an insurer to sort through different types of data collected to determine which regulatory protection standard applies to the particular situation – GLBA, state privacy law, or insurance regulation. This approach would be challenging, burdensome and costly for insurers to implement, would create unnecessary consumer confusion, and be a needless insurance rate cost-driver that provides no meaningful benefit to consumers. Consequently, NAMIC recommends that the exemption be a clear and concise *GLBA covered entity, its affiliates and subsidiaries* based exemption, so that there is no ambiguity or uncertainty that insurance consumers receive the benefits of the GLBA privacy protections.

In closing, NAMIC commends the legislature for introducing consumer privacy protection legislation, because many business industries have not been regulated on point as extensively for the benefit of consumers as the property and casualty insurance industry. However, we believe that HB 2051, should be amended to adopt a full GLBA Entity Exemption, so that the current consumer privacy protections afforded to insurance consumers, which the insurance industry has adopted in custom and practice may be allowed to continue unincumbered by a new regulatory standard that overlaps, conflicts with, and confuses well-established insurance industry consumer privacy protections. **For the aforementioned reasons, NAMIC asks for a No Vote on HB 2051, unless the bill is amended as requested.**

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,



Christian John Rataj, Esq.
NAMIC Senior Regional Vice President
State Government Affairs, Western Region

TESTIMONY OF ALISON UEOKA

COMMITTEE ON HIGHER EDUCATION & TECHNOLOGY
Representative Gregg Takayama, Chair
Representative Linda Clark, Vice Chair

Wednesday, February 2, 2022
2:00 p.m.

HB 2051

Chair Takayama, Vice Chair Clark, and members of the Committee on Higher Education & Technology, my name is Alison Ueoka, President of the Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill. In 2021, the Hawaii Legislature passed a model law from the National Association of Insurance Commissioners (NAIC). This model law called the Insurance Data Security Model Act, was drafted by insurance commissioners from across the nation, specifically to address the privacy concerns of insurers. It is a comprehensive law that includes notification, reporting, and remedies. Thus far, 18 states have adopted the Model Law and more are expected to adopt it in 2022.

If this bill is advanced, Hawaii Insurers Council asks for an amendment to the bill to make the Insurance Data Security Law the exclusive standard applicable to insurance licensees for data security, investigation, notification, and remediation in the event of a cybersecurity breach.

Thank you for the opportunity to testify.



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 1, 2022

TO: Representative Gregg Takayama
Chair, Committee on Higher Education & Technology
Submitted Via Capitol Website

FROM: Matt Tsujimura

RE: **H.B. 2051 Relating to Consumer Privacy**
Hearing Date: Wednesday, February 2, 2022 at 2:00 p.m.
Conference Room: 309

Dear Chair Takayama, Vice Chair Clark, and Members of the Committee on Higher Education & Technology:

I am Matt Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers these comments in opposition to H.B. 2051 to create a new chapter in the Hawaii Revised Statutes designated as the "Hawaii Consumer Privacy Act." The purpose behind the Act appears to be aimed at protecting the consumer's right to privacy by providing transparency into the types of information companies are collecting and control over how that data is used. While State Farm recognizes the important rights the Legislature is hoping to protect, opposes H.B. 2051. Instead, State Farm favors a pre-emptive national data privacy law over a patchwork of federal and state privacy laws and regulations which can be confusing to consumers and costly to businesses.

Recognizing that a national data privacy law is not likely to pass in 2022 and the issue now before the Legislature, State Farm would like to take this opportunity to point out the robust set of laws and regulations which already govern the use of personal information by insurers in Hawaii and **respectfully request that the insurance industry be excluded from the provisions outlined under H.B. 2051.**

HB 2051 Should be Amended to Exempt Entities Regulated by Department of Insurance

The Gramm-Leach-Bliley Act (GLBA), enacted in 1999, includes strict privacy provisions to protect consumers in the financial services industry. The GLBA provides customers with an opportunity to opt-out of sharing non-public personal information with non-affiliated third parties. The GLBA also requires financial institutions to provide customers with privacy disclosures addressing many of the issues raised in HB 2051. Specifically, the GLBA requires financial institutions to disclose (1) whether and what type of data will be disclosed to affiliated and non-affiliated parties, (2) the categories of data collected, (3) the methods of protecting confidential data, and (4) the ability to opt-

out. Exceptions to this general rule exist as it relates to processing transactions and/or reporting information to consumer reporting agencies.

Additionally, insurers offering products and services in Hawaii are subject to Haw. Rev. Stat §§ 431:3A-101 to 431:3A-504. This portion of the Haw. Rev. Stat. sets robust expectations as it relates to the treatment of non-public personal financial information about the people of the state of Hawaii by all insurance licensees. The law requires licensees to provide notice to individuals about privacy policies and practices, establishes conditions for when licensees may disclose non-public personal information to affiliated and non-affiliated third parties, and provides methods for individuals to prevent licensees from disclosing information. (See Haw. Rev. Stat. §431:3A-101.)

H.B.2051 seemingly acknowledges the robust set of laws in place to regulate the collection and use of data by insurers. However, the proposed exemption found at Pg. 28, Line 16 to Pg. 29, Line 2 is not a full exemption, as it would only apply to personal information “collected, processed, sold, or disclosed” subject to the GLBA and its implementing regulations. This exemption would require an insurer to sort through different types of data collected to determine which standard would apply – GLBA, state privacy law, or other requirements. This approach would be challenging to implement, to say the least, and would impose a heavy burden on companies. This requirement also has the potential to leave customers vulnerable and confused, especially as more states look to take on the issue of consumer data privacy. Therefore, **State Farm requests the following amendment at Pg. 28, Line 16 to Pg. 29, Line 2:**

“(d) This chapter shall not apply to a covered entity, including its affiliates and subsidiaries, subject to the federal Gramm-Leach-Bliley Act, title 15 United States Code section 6801 to 6809, as amended, and its implementing regulations, or Hawaii Rev. Stat. §§431:3A-101 to 431:3A:504.

“(e) This chapter shall not apply to personal information collected, processed, sold or disclosed subject to the federal Farm Credit Act of 1971, title 12 United States Code section 2001, et seq., as amended, and its implementing regulations.”[JM1]

H.B. 2051’s Definitions May Unintentionally Interfere with Day-to-Day Business Operations

In addition to the exemption language proposed above, State Farm would like to take this opportunity to address other concerns with H.B. 2051. Specifically, several of the definitions are overbroad and may have practical implications for businesses as they attempt to comply. Some examples are set forth below:

- The definition of “personal information” is very broad. It includes nearly every type of information linked to an individual, including “browsing history,” “interactions with websites” and “inferences drawn from personal information.” This type of information in the definition may require a company to try and identify the person associated with the information which would seem to conflict with the data minimization concepts included in other parts of this proposed law. **The definition of “personal information” should be amended to only reference the natural person and not include pseudonymous information.**

- The definition of “sale” is not limited to transactions for monetary consideration. The definition captures any transaction where personal information is shared for “valuable consideration.” This definition would appear to capture everyday business transactions where a business is providing or receiving a product or service from another organization. **An amendment to definition is needed that would allow businesses to communicate and share information needed to complete the transaction.**

Conclusion

The insurance industry is a long-time leader in the consumer privacy space. It is because of our robust oversight that our industry would be uniquely harmed by H.B. 2051, or any generally applicable law that governs conduct already restricted under the GLBA and Hawaii State law. We appreciate the opportunity to share our concerns and provide recommendations regarding the proposed amendments to H.B. 2051.



**Hawaiian
Electric**

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
HIGHER EDUCATION & TECHNOLOGY**

HB 2051

Relating to Consumer Privacy

February 2, 2022

2:00 p.m., Agenda Item #7

State Capitol, Conference Room 309 & Videoconference

Wendee Hilderbrand
Managing Counsel & Privacy Officer
Hawaiian Electric Company, Inc.

Chair Takayama, Vice Chair Clark, and Members of the Committee:

My name is Wendee Hilderbrand, and I am testifying on behalf of Hawaiian Electric Company, Inc. (Hawaiian Electric) in opposition to HB 2051. Hawaiian Electric is generally supportive of consumer privacy rights legislation; however, such legislation needs to be carefully constructed to ensure that the consumer privacy value to be gained is not outweighed by the compliance costs imposed on Hawai'i businesses, which are bound to flow back to Hawai'i consumers.

Legislation of this type is relatively new, with the first of such laws being passed in California in 2018. Even though the California Consumer Privacy Act ("CCPA") only took effect in 2020, it has already caused enormous disruption in California and national business communities, resulted in numerous amendments and delayed enforcement, and has been projected to cost roughly \$55 billion in business compliance costs.¹

¹ This projection was made by the California Attorney General, which was required to do the projection by California law, due to the significant financial impact of the CCPA. *See* State of Cal. DOJ Office of the Attorney

Since then, consumer privacy legislation has passed in two additional states, Virginia and Colorado. The Virginia Consumer Protection Act (“VCPA”) and the Colorado Privacy Act (“CoPA”) are both modeled after the CCPA. Notably, however, both states made significant modifications to the CCPA model. Both laws retained the basic consumer privacy rights set forth in the CCPA, but they did so in much simpler, more accessible language, and they incorporated several notable changes that significantly ease the compliance burden on local businesses.²

HB 2051 is also modelled after the CCPA. Unfortunately, rather than take the route of simpler, less burdensome legislation, the text of HB 2051 leans the opposite direction. HB 2051 is roughly twice as long as the CCPA, and the origin of the additional text is unknown. The 112-page bill contains redundancies, inconsistencies, cross-references to sections that redirect to other sections, and a 17-page list of additional details to be added by the DCCA by way of regulations.

Consumer privacy rights are important, and Hawaiian Electric stands by its record and practices in supporting customer privacy. If Hawai'i consumers are asking for the right to know what information businesses have and to request copies, corrections, and deletions, Hawaiian Electric will support such rights. However, HB 2051 would enact those rights at an enormous compliance expense on all Hawai'i businesses.

Legislation with this level of impact is far too important to be passed without balancing consumer **and** business interests. There are other bills introduced this

General Report, “Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations,” prepared by Berkley Economic Advising & Research, LLC (August 2019).

² *E.g.*, exempting employment, candidate, and vendor records out of the scope of the legislation greatly eases the burden on businesses, while having nominal impact on consumer privacy rights.

session (namely, HB 2341, SB 2428, and SB 2797) that are simpler, less burdensome, and which accomplish roughly the same consumer objectives as HB 2051. Hawaiian Electric is eager to engage in discussion over those alternative bills.

For these reasons, Hawaiian Electric opposes HB 2051. Thank you for the opportunity to provide testimony.



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Presentation to The
Committee on Higher Education & Technology
Wednesday, February 2, 2022, 2:00 PM
State Capitol Conference Room 309 & Videoconference

Testimony on HB 2051 In Opposition

TO: The Honorable Gregg Takayama, Chair
The Honorable Linda Clark, Vice Chair
Members of the Committee

My name is Neal K. Okabayashi, Executive Director of the Hawaii Bankers Association (HBA). HBA represents seven Hawai'i banks and three banks from the continent with branches in Hawai'i.

HBA opposes this bill because banks are already subject to numerous federal laws and regulations on consumer privacy and adding to that structure will only lead to a myriad of duplicative, redundant, and potentially conflicting laws which will result in preemption issues and litigation.

Foremost, since the enactment of the Gramm-Leach Bliley Act ("GLBA", financial institutions, among others, have been required to protect consumer private information. The four prudential banking regulators have enacted rules (which have the force and effect of law) to further protect the privacy of consumers, including consumer financial data. For example, Subparts B and C of Regulation P (12 CFR sections 1016.10-1016.15) implements the GLBA provisions. The FDIC rule is found in 12 CFR Part 332, which includes restrictions on sharing information on nonaffiliated third parties.

Additionally, there is the TCPA (Telephone Consumer Protection Act) and CAN-SPAM (Controlling the Assault of Non-Solicited Pornography and Marketing Act).

The banks are examined by their respective regulators to ensure compliance with the privacy law and rules, and also, the Consumer Financial Protection Bureau has the authority to enforce privacy law and rules.

In addition, SB 2292 on Privacy, amending the language on personal information in HRS Chapter 487N on security breach, passed out of the Senate Committee on Commerce and Consumer Protection,

Thank you for the opportunity to submit this testimony in opposition to HB 2051. Please let us know if we can provide further information.

Neal K. Okabayashi
(808) 524-5161



**Testimony of
Dylan Hoffman
Executive Director, CA and the Southwest
TechNet**

House Bill 2051

**Before the
Hawaii House Committee on Higher Education & Technology
February 2, 2022**

Chair Takayama, Vice Chair Clark, and members of the committee, on behalf of TechNet, thank you for the opportunity to provide this testimony on House Bill 2051, which seeks to establish new state rules for the protection of personal data. While well intended, HB 2015 will likely result in security risks for consumers and significant compliance costs for local businesses.

TechNet has previously urged the 21st Century Privacy Law Task Force not to rush the process of studying and examining appropriate laws and regulations related to privacy. We shared successful models in other states that are thoughtfully studying complicated issues, many of which are included in this bill, and including input from industry and other stakeholders. We have seen the detrimental effect of broad, rushed legislation in states like California, which continues to evolve. Since the California Consumer Privacy Act passed in 2018, California has amended the statute twelve times and gone through five series of regulatory rulemakings. Hawaii should not rush to follow. HB 2051 would impose significant costs on Hawaiian businesses at precisely the wrong time.

Additionally, there remain extremely broad and overly prescriptive requirements that do not reflect mainstream privacy and data security protocols. As the state privacy landscape evolves, businesses of all sizes and consumers of varying levels of internet facility need understandable guidelines. However, HB 2051 further complicates this landscape as businesses that have worked to comply with California's laws will have to expend additional resources to comply with this bill's unique requirements. A patchwork of hasty, overbroad state laws will cost Hawaii, its businesses, and its consumers hundreds of millions of dollars, with the brunt of that borne by small businesses.

We strongly urge you not to move forward with HB 2051 and work with stakeholders on the breadth of issues this bill is attempting to regulate. TechNet member companies place a high priority on consumer privacy, but moving forward with broad privacy regulation will have a negative impact on business, consumers, and innovation in Hawaii.

For these reasons, TechNet respectfully opposes HB 2051 and asks the committee not to move this bill forward.

STATE PRIVACY & SECURITY COALITION

February 1, 2021

The Honorable Gregg Takayama
Chair, House Higher Education and Technology Committee
Hawaii State Capitol, Room 404
Honolulu, HI 96813

The Honorable Linda Clark
Vice Chair, House Higher Education and Technology Committee
Hawaii State Capitol, Room 303
Honolulu, HI 96813

Re: Concerns with Hawaii HB 2051

Dear Chair Takayama and Vice Chair Clark,

The State Privacy and Security Coalition, a coalition of 7 trade associations and 30 leading communications, media, technology, retail, payment and automotive companies, writes to explain why Hawaii HB 2051 should not move forward.

We recognize that the bill is well-intentioned. However, its current language would be detrimental to both consumers and businesses, creating confusion for Hawaii residents and needlessly imposing significant compliance costs due to outdated definitions and requirements that would not meaningfully advance consumer privacy. This is because many of its elements are taken directly from the California Consumer Privacy Act (CCPA), instead of looking to the updated language in Virginia and Colorado—two states that learned from the unintended consequences in California.

First, the definitions mostly mirror the vague and overbroad language in California, which has led to significant confusion among the business community and consumer advocates alike in that state.

- For example, “personal information” covers all information that is “reasonably capable of being associated with” or even simply “relates to” or “describes” a consumer or household, even if that consumer or household is not identifiable. This overbroad, unnecessary scope of covered data does not enhance consumers privacy protections because it covers data unrelated to privacy rights.
- Similarly, the definition of “sell” includes activities that are not sales and creates more questions than answers. The phrase “or other valuable consideration” is unnecessary to prevent loopholes in a bill that already discusses targeted advertising, but it is so vague that it would render it difficult for consumers to understand their rights and for businesses to comply. As drafted, it would also wrap in disclosures to a business’s own affiliates.

STATE PRIVACY & SECURITY COALITION

- The definition of “consent” is similarly overbroad and the language “for a narrowly-defined particular purpose” would lead to perpetual notice fatigue on the part of consumers, who would be forced to face a wave of consent requests depending on this vaguely-defined purpose.

The bill also adds new, confusing definitions to the California structure. Among others, these include the definition of “dark patterns,” which as written could arguably apply to any user interface, and is unnecessary since dark patterns would already violate the definition of “consent.” The bill’s references to multiple new definitions applying to advertising, including “advertising and marketing” and “commercial purpose,” are similarly unnecessary to guarantee consumers a right to opt-out of targeted advertising, and only serve to muddy the waters. Even the new definition of “minor child” is unnecessary to effectuate the bill’s intent, and would be better aligned with the “known child” definition in Virginia.

Furthermore, the bill’s enforcement provisions would create a “moving target” for compliance similar to what we have seen in California. This would dramatically increase compliance costs with little corresponding privacy benefit to consumers, as businesses would be forced to continuously adapt to an ever-expanding set of rules and regulations. It would also delay effective compliance and hamstring the bill’s intent by preventing businesses from implementing existing protocols in Hawaii with any confidence that this places them in compliance for the foreseeable future.

This moving target is particularly problematic for highly technical and operational compliance requirements such as the consumer opt-out signal. Addressing the shifting requirements to opt consumers out on a business’s own website is difficult enough, but requiring that the rules state that businesses must comply with a global opt-out signal is technically unfeasible and would actually undermine consumer choice. For example, it would lead to potentially conflicting signals between consumers who select the global opt-out and proceed to opt-in—or simply wish to enable disclosure of personal information on a particular site without permitting this for others.

Finally, the bill deviates significantly from the existing Virginia and Colorado laws in ways that would create outlier requirements and significant problems down the line. These include:

- The internal operations and security, fraud and malicious conduct exemptions are currently applied only to consumer rights, but really should be applied to the entirety of the bill.
- It is important to clarify that a controller shall not process data from a known child unless processed in accordance with COPPA, but that parental consent obtained pursuant to COPPA is sufficient consent under the bill.
- The bill would require companies to publicly disclose internal decision-making via the requirement to describe retention methods. We recommend striking this provision.
- The bill does not currently guarantee that a controller may offer a different price, rate, level, quality of selection of goods or services when this requires personal data that the

STATE PRIVACY & SECURITY COALITION

controller does not collect or maintain, which would prevent Hawaii consumers from accessing “freemium” products and services.

- The current language would force controllers to comply with a consumer request even when that consumer does not exercise the request through his or her own account. This is operationally unworkable.
- The bill would create a constructive knowledge standard for the minor opt-out right, which is also unworkable and unnecessary to guarantee protections. It also conflicts with the penalties for this provision, which are based on actual knowledge.

These are not the only problems posed by the new and often vague requirements in this bill. But they provide sufficient reason why we urge you to instead follow the privacy approaches we have seen recently enacted in Virginia and Colorado. Of course, we would be happy to discuss any of these issues further with you, if helpful.

Respectfully submitted,

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COALITION FOR GENETIC DATA PROTECTION

February 1, 2022

The Honorable Rep. Gregg Takayama, Chair
The Honorable Rep. Linda Clark, Vice Chair
House Committee on Higher Education and Technology
Hawaii House of Representatives
415 South Beretania St.
Honolulu, HI 96813

RE: House Bill 2051 (Consumer Privacy) – REQUEST AMENDMENT

Dear Chair Takayama and Vice Chair Clark –

On behalf of The Coalition for Genetic Data Protection^[1], a national coalition of the leading consumer genetic testing companies including 23andMe and Ancestry – we are writing to request an amendment to House Bill 2051.

Our companies continue to carefully consider the privacy and data protection issues incumbent with genetic data, and we continue to support having safeguards in place that ensure consumers are aware of our privacy practices, have control over their data, and have the opportunity to provide affirmative consent before their data is shared.

Future of Privacy Forum: *Privacy Best Practices for Consumer Genetic Testing Services*

We worked with the Future of Privacy Forum, a leading privacy think tank in Washington, DC, to develop the *Privacy Best Practices for Consumer Genetic Testing Services* in 2018. Our companies immediately adopted those *Best Practices*. As states have begun considering legislation to regulate the direct-to-consumer genetic testing industry, we have worked with legislators to translate the *Best Practices* into legislation. So far, three states – Arizona, California, and Utah – have passed laws based on the *Best Practices*, which we supported. Those bills ensure that the consumer is always in control of their genetic data, and require all of the following:

- Separate express consent before DNA is extracted from a biological sample and analyzed.
- Separate express consent before a biological sample is stored.



- Separate express consent for genetic data to be used for scientific research purposes.
- Separate express consent for genetic data to be shared with a third party.
- Separate express consent for genetic data to be used for marketing purposes.
- Genetic testing companies to not share genetic data with employers or providers of insurance for any reason.
- Genetic testing companies to provide consumers with a means to delete their genetic data from their database and close their accounts without unnecessary steps.
- Genetic testing companies to destroy a consumer's biological sample within 30 days of a request.
- Genetic testing companies to provide clear and complete information about their privacy practices and protocols.

HB 2051 (Consumer Privacy) – Concerns

While we support consumer privacy protections for genetic data as outlined in the Privacy Forum's Best Practices, we have one notable concern with HB 2051

Biometric Data Definition

Biometric information and genetic data are different forms of data and should be regulated separately. Biometric data in its various uses (fingerprints, facial images, physical gait, etc.) can be used to *immediately* identify an individual – often without their knowledge or consent. Genetic data, on the other hand, requires a biological sample from the individual and our companies, as noted above, go to great lengths to ensure that the consumer understands how their data will be used and provides consent to all uses of their genetic data.

If biometric information remains in the bill, we urge an amendment to the definition to exclude DNA and genetic data. So far, the three legislatures that have passed biometric information privacy acts (Illinois, Texas, and Washington) have excluded DNA in their definition. Additionally, Sen. Jarrett Keohokalole has introduced a standalone bill to regulate genetic data privacy in Hawaii this session – SB 2032. The protections for genetic data in that bill are aligned with the *Best Practices* as detailed above and go much further than what is contemplated in HB 2051.

Conclusion

Our companies are proud of the work we have undertaken to provide our customers with straightforward privacy policies that empower them to control how their genetic data is used. We urge an amendment to the definition of biometric



data to exclude DNA as stronger privacy protections for genetic data are being considered in SB 2032.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Eric Heath". The signature is stylized, with the first name "Eric" written in a cursive-like script and the last name "Heath" in a more blocky, capital-letter style.

Eric Heath
Chief Privacy Officer
Ancestry

A handwritten signature in black ink that reads "Jacquie Cooke Haggarty". The signature is highly stylized and abstract, featuring several overlapping loops and a long horizontal stroke extending to the right.

Jacquie Cooke Haggarty
VP, Deputy General Counsel & Privacy Officer
23andMe

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

February 2, 2022

Rep. Gregg Takayama, Chair
Rep. Linda Clark, Vice Chair
and members of the House Committee on Higher Education & Technology
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **H.B. 2051 (Consumer Privacy)**
Hearing Date/Time: Wednesday, February 2, 2022, 2:00 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA offers comments and a proposed amendment.

This Bill does the following: (a) Establishes the Hawaii consumer privacy act; (b) Specifies various consumer rights with respect to the collection of personal information by businesses; (c) Outlines the obligations on businesses with respect to the collection, disclosure, sharing, and selling of consumer personal information; (d) Specifies the requirements for administration and enforcement by the department, including adoption of rules; and (e) Appropriates funds.

This Bill lists various exemptions in § -3 (Exemptions) beginning on page 24. In § -3(d) beginning on page 28, line 16, there is a data-level exemption for data collected under the federal Gramm-Leach-Bliley Act (“federal GLBA”):

(d) This chapter shall not apply to personal information collected, processed, sold, or disclosed subject to the federal Gramm-Leach-Bliley Act, title 15 United States Code sections 6801 to 6809, as amended, and its implementing regulations, or the federal Farm Credit Act of 1971, title 12 United States Code section 2001, et seq., as amended, and its implementing regulations.

Having that data-level exemption in this Bill is a good start because that exemption refers to the federal GLBA. However, this Bill should be amended to add an entity-level exemption to cover banks and other financial institutions and which references the federal GLBA.

Federal laws have long recognized the importance of privacy for financial institutions and their customers. These federal laws and regulations have established a meaningful framework and corresponding oversight that include strong privacy protections.

State privacy legislation, such as this Bill, should recognize these existing federal frameworks and the strong privacy and data standards that are already in place for the financial sector under the federal GLBA and other financial privacy laws. This can be accomplished by amending this Bill to provide an entity-level exemption for financial institutions that are subject to the federal GLBA.

Specifically, this Bill should be amended to include a provision that this Bill does not apply to any financial institution that is subject to the federal GLBA. This approach, with an entity-level exemption, is in the recently enacted 2021 laws of Virginia and Colorado.

Accordingly, and to mirror the Virginia law, **we offer the following amendment to be appropriately inserted in this Bill:**

This chapter shall not apply to financial institutions or data subject to Title V of the federal Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.).

Additionally, we incorporate by reference the testimony of the Hawaii Bankers Association.

Thank you for considering our testimony.


MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association



To: Representative Gregg Takayama, Chair
Representative Linda Clark, Vice Chair
House Committee on Higher Education and Technology

From: Mark Sektnan, Vice President

Re: **HB 2051 – Relating to Consumer Privacy**
APCIA Position: Oppose, request Amendments

Date: Wednesday, February 2, 2022
2:00 p.m., Room 309

Aloha Chair Takayama, Vice Chair Clark and Members of the Committee:

The American Property Casualty Insurance Association of America (APCIA) is in opposition to the bill as written and request amendments to HB 2051. Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

Gramm-Leach-Bliley Exemption

Insurers are already subject to a stringent set of state and federal privacy rules that were enacted two decades ago pursuant to the Federal Gramm-Leach-Bliley Act (GLBA). GLBA established privacy standards for financial institutions, including insurers. Enforcement against insurers was left to state insurance regulators, all of which have laws or regulations on the books that comply with GLBA. The existing legal framework of insurance privacy laws is robust and addresses issues related to: (1) transparency; (2) consumer notice; (3) correction; and (4) sharing permissions. Existing insurance privacy laws work well and, most importantly, they protect consumers in such a way that it is easy for them to understand what insurers do with their data and what their rights are.

Consumer complaints are taken seriously by the insurance industry. Every state insurance regulator has a market conduct program that examines and monitors insurers' business practices. Complaint analysis is an important part of market regulation. APCIA is not aware of significant consumer complaints about the industry's privacy practices.

For these reasons, other states have included an entity-level GLBA exemption, rather than (or in addition to) a data-level exemption. This exempts all entities subject to GLBA rather than just specific data. This means that insurance consumers will be subject to a *single* set of privacy rules, rather than a patchwork of differing state and federal rules. This prevents complications and confusion as definitions of personal information in state laws of general application may change and evolve over time. Virginia and Colorado have both adopted entity-level GLBA exemptions. They have widespread industry support while also helping make it easier for consumers to understand the strong privacy rules that protect the data their insurers maintain. We commend the language adopted by Virginia and Colorado, and would be pleased to offer our assistance in drafting a workable GLBA definition for Hawaii.

Effective Date

Any new set of privacy laws or regulations will take time for companies to understand and implement. Existing processes and IT systems need to be revamped to accommodate the new rules. Moreover, passage of a new state law may be only the beginning of the compliance challenge, as often implementing regulations will come later. For this reason, APCA recommends that any new privacy laws should allow for at least a two-year implementation period before becoming effective.

For these reasons, APCA asks the committee to amend the bill in committee.



DATE: February 2, 2022

TO: Representative Gregg Takayama
Chair, Committee on Higher Education and Technology

FROM: Tiffany Yajima

RE: **H.B. 2051 – Relating to Consumer Privacy**
Hearing Date: Wednesday, February 2, 2022 at 2:00 p.m.
Conference room: Via Videoconference

Dear Chair Takayama, Vice Chair Clark, and Members of the Committee on Higher Education and Technology:

On behalf of the Alliance for Automotive Innovation (“Auto Innovators”) we submit this testimony in **opposition** of H.B. 2051.

The Alliance for Automotive Innovation is the singular, authoritative and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents the manufacturers producing nearly 99 percent of cars and light trucks sold in the U.S. Members include motor vehicle manufacturers, original equipment suppliers, technology, and other automotive-related companies and trade associations.

While well-intentioned, this measure proposes outdated definitions that are vague and overbroad and would have the unintended consequence of raising compliance costs without meaningfully advancing consumer privacy.

We understand that this bill draws language from the California Consumer Privacy Act (CCPA) that was signed into law in 2018. Since then, Virginia and Colorado have both adopted consumer privacy bills that contain updated language and reflect consensus among all stakeholders.

We urge the committee to amend H.B. 2051 bill to reflect the suggestions offered by the State Privacy and Security Coalition.

We appreciate the opportunity to share our concerns. Thank you for the opportunity to submit this testimony.