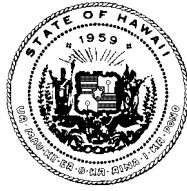JOSH GREEN, M.D.
GOVERNOR
KE KIAʻĀINA

CATHY BETTS
DIRECTOR
KA LUNA HOʻOKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HOʻOKELE

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HOʻOKELE

STATE OF HAWAII
KA MOKUʻĀINA O HAWAIʻI
DEPARTMENT OF HUMAN SERVICES
KA ʻOIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

January 30, 2024

To: The Honorable Representative Amy A. Perruso, Chair
             House Committee on Higher Education & Technology

FROM: Cathy Betts, Director

SUBJECT: HB 2176 – RELATING TO ARTIFICIAL INTELLIGENCE.

             Hearing: January 31, 2024, 2:10 p.m.
                          Conference Room 309, State Capitol & Video Conference

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this measure and provides comments. DHS defers to the Department of Commerce & Consumer Affairs and the Office of Enterprise Technology Services.

PURPOSE: This bill establishes the Office of Artificial Intelligence Safety and Regulation within the Department of Commerce and Consumer Affairs to regulate the development, deployment, and use of artificial intelligence technologies in the State. Prohibits the deployment of artificial intelligence products in the State unless affirmative proof establishing the product's safety is submitted to the Office. Makes an appropriation.

In October 2023, President Joe Biden issued an executive order establishing Artificial Intelligence (AI) safety and security measures, including, amongst other things, requiring developers of the powerful AI systems to share their safety test results and other critical information with the U.S. government aimed to ensure AI systems are safe, secure, and trustworthy before companies make them public. The executive order also requires the National Institute of Standards and Technology to set standards for extensive testing to ensure

safety before public release. On January 29, 2024, the White House issued a [Fact Sheet](#) on steps taken since the October executive order. While DHS appreciates the Legislature's foresight in establishing a State office to regulate the use of Artificial Intelligence in the State, we are awaiting federal guidance and rules on the issue.

Additionally, DHS is participating with the American Public Human Services Association (APHSA), the national affinity group for human services, in developing an AI posture for human services to understand better how AI can assist operational challenges to improve the delivery of human services.

Given the work being doing nationally and federally, DHS suggests a workgroup to assist state entities implement the anticipated federal guidance and regulations.

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

JOSH GREEN, M.D.
GOVERNOR | KE KIAʻĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIAʻĀINA

STATE OF HAWAII | KA MOKUʻĀINA ʻO HAWAIʻI
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA ʻOIHANA PILI KĀLEPA
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NADINE Y. ANDO
DIRECTOR | KA LUNA HOʻOKELE

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HOʻOKELE

Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Higher Education & Technology
Wednesday, January 31, 2024
2:10 p.m.
State Capitol, Conference Room 309 and via videoconference

On the following measure:
H.B. 2176, RELATING TO ARTIFICIAL INTELLIGENCE

Chair Perruso and Members of the Committee:

My name is Nadine Ando, and I am the Director of the Department of Commerce and Consumer Affairs (Department). The Department respectfully opposes the intent of this bill.

The purpose of this bill is to (1) establish the Office of Artificial Intelligence (AI) Safety and Regulation within the Department of Commerce and Consumer Affairs to regulate the development deployment and use of AI technologies in the State; (2) prohibit the deployment of AI products in the State unless affirmative proof establishing the product's safety is submitted to the Office; and (3) makes an appropriation.

While the goal of ensuring responsible development and deployment of AI technologies is laudable, the Department may lack the necessary expertise to effectively oversee this emerging and complex field.

The rapid evolution of AI technologies requires regulatory oversight from a body with a deep understanding of the technical intricacies and potential implications of these innovations. While the Department is competent in its current areas of jurisdiction, may not possess the specialized knowledge and expertise needed to regulate the diverse and rapidly advancing field of AI.

The Department would like to urge the committee to consider placing this responsibility within an entity better equipped to handle the unique challenges posed by AI. The Office of Enterprise Technology Services (ETS) may serve as a more suitable choice due to its existing focus on providing technology services and solutions for State agencies.

In conclusion, while recognizing the importance of AI regulation, I urge the Committee to reconsider the placement of the proposed Office of Artificial Intelligence Safety and Regulation. Placing this responsibility within the Office of Enterprise Technology Services, rather than the DCCA, may better align with the State's goals and ensure that the regulatory framework is well-informed and adaptable to the ever-changing field.

Thank you for the opportunity to testify on the bill.
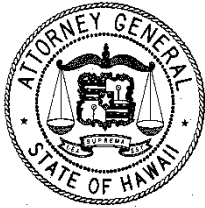
TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024

ON THE FOLLOWING MEASURE:
H.B. NO. 2176, RELATING TO ARTIFICIAL INTELLIGENCE.

BEFORE THE:
HOUSE COMMITTEE ON HIGHER EDUCATION AND TECHNOLOGY

DATE: Wednesday, January 31, 2024 **TIME:** 2:10 p.m.

LOCATION: State Capitol, Room 309 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Christopher T. Han, Christopher J.I. Leong, or Bryan C. Yee,
Deputy Attorneys General

Chair Perruso and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill amends the Hawaii Revised Statutes by adding a new chapter entitled "Artificial Intelligence Safety and Regulation." The new chapter establishes the Office of Artificial Intelligence Safety and Regulation (Office) within the Department of Commerce and Consumer Affairs to regulate the development, deployment, and use of artificial intelligence technologies in the State, while encouraging innovation and advancement of artificial intelligence development. The bill also makes an appropriation to establish the new office.

Among the proposed regulations in the chapter is one that prohibits the deployment of artificial intelligence products in the State unless proof of the product's safety is submitted to the Office. *See* section -4 at page 4, lines 13-17.

We recommend clarifying revisions to:

(1) Add a definition of the term "safe" in section -3, at page 4, line 13;

(2) Explicitly declare that artificial intelligence products require written approval from the Office in section -4 on page 4, lines 13-17;

(3) Explicitly authorize the Office to make these approvals on page 5, line 19;

    (4) Delete a sentence in section   -14, at page 9, lines 4-7, to allow the Office to consider multiple factors rather than increase the burden of proof in undefinable cases of high risk; and

    (5) Correct a typographical error on page 10, line 21.

Specifically, we recommend the following:

In section   -3 on page 3, line 13, to page 4, line 12: add a definition of "safe" as follows: ""<u>Safe" means a determination that considers the level of risk, the level of harm, the potential benefits, and such other facts as the office may prescribe by rule.</u>"

In section   -4 on page 4, lines 13-17: amend the section as follows: "[~~No~~] <u>Notwithstanding any other provision to the contrary in this chapter, no</u> person shall deploy artificial intelligence products in the State without [~~submitting to~~] <u>written approval from</u> the office [~~affirmative proof establishing~~] <u>determining </u>the product's safety."

In section   -13 on page 5, line 19: insert an additional paragraph as paragraph (1) and renumber the subsequent paragraphs: "(1) Approve artificial intelligence products as safe, considering the level of risk, the level of harm, the potential benefits, and such other factors as the office may prescribe by rule;"

In section   -14(a)(2) on page 9, lines 4-7: Delete the following sentence: "[~~A developer of an artificial intelligence product deemed by the office to have a higher potential risk shall have a higher burden of proof to demonstrate the safety of the product before deployment.~~]"

In section   -14(e) on page 10, line 21, the wording appears to be an incomplete sentence and should be deleted, or otherwise corrected if missing wording can be added: "[~~and rules by bringing civil actions or proceedings.~~]"

Thank you for the opportunity to offer comments.

DATE: January 30, 2024

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

FROM: Matt Tsujimura

RE: **H.B. 2176 Relating to Artificial Intelligence**
Hearing Date: Wednesday, January 31, 2024 at 2:10 p.m.
Conference Room: 309

Dear Chair Perruso, Vice Chair Kapela, 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. 2176 which establishes the Office of Artificial Intelligence Safety and Regulation within the Department of Commerce and Consumer Affairs to regulate the development, deployment, and use of artificial intelligence technologies in the State. H.B. 2176 also prohibits the deployment of artificial intelligence products in the State unless affirmative proof establishing the product's safety is submitted to the Office.

State Farm understands and shares the Legislature's concern for protecting the safety, privacy, and fundamental rights of Hawaii's residents by ensuring the responsible and transparent use of artificial intelligence. However, State Farm is concerned that the scope of H.B. 2176 may have unintended consequences for an industry whose business practices are regulated by the Department of Commerce and Consumer Affairs, Insurance Division. Among other things, the proposal would subject insurers to regulation by multiple state agencies who view the issues from a different lens.

State Farm believes enforcement and regulation of technologies used by the insurance industry should be dedicated to the Insurance Division, the state agency in the best position to interpret, apply, and regulate insurers. State Farm requests that language be inserted in H.B. 2176 which would exclude insurers.

For the above reason, we respectfully oppose H.B. 2176. Thank you for the opportunity to submit testimony.

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TECHNET
THE VOICE OF THE INNOVATION ECONOMY

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915 L Street, Suite 1270, Sacramento, CA 95814
www.technet.org | @TechNetSW

January 30, 2024

Representative Amy Perruso
Chair, Higher Education and Technology Committee
Hawaii State Capitol
415 South Beretania Street, Room 444
Honolulu, HI 96813

RE: HB 2176 (Perruso) Artificial Intelligence - <u>Concerns</u>

Dear Representative Perruso,

TechNet has concerns with your bill HB 2176, which would effectively require companies to obtain government approval before deploying artificial intelligence systems in the state.

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, artificial intelligence, e- commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

Our members are concerned about the requirement that companies submit affirmative proof to the state establishing their artificial intelligence system's safety and potential unintended consequences. First, the definition of artificial intelligence could include many low-risk use cases that are already in use and have been for years, including chat bots, product recommendations, and spam filters. It's also unclear what would constitute "affirmative proof".

The bill also vests a tremendous amount of authority in the executive director of the Office of Artificial Intelligence Safety and Regulation, the new state agency the bill seeks to create. The executive director has authority to assess the potential risks with the use of AI systems in the state, develop and enforce regulations on the development and deployment of AI, establish new standards for data privacy, security, and transparency, conduct risk assessments, provide guidance to AI developers, establish and maintain a public reporting system, and conduct investigations and audits of companies. We believe that many of these policy questions are better left with the legislature to determine rather than delegating to a new executive branch department.

Additionally, the enforcement provision states that each day of a violation of the bill or *future rules* is considered a separate violation. This will dramatically increase penalties and fines without companies knowing what rules they're going to be subject to.

Austin • Boston • Chicago • Denver • Harrisburg • Olympia • Sacramento • Silicon Valley • Washington, D.C.

If you have any questions regarding our position, please contact Dylan Hoffman at dhoffman@technet.org or 505-402-5738.

Sincerely,

Dylan Hoffman
Executive Director for California and the Southwest
TechNet

CHAMBER
OF PROGRESS

January 31, 2024

Re: Opposed to HB2176 Relating to Artificial Intelligence

Amy Perruso
Chair, House Committee Higher Education and Technology
House District 46
Hawai'i State Capitol, Room 444

Dear Chair Perruso and members of the Committee,

Chamber of Progress, a tech industry coalition promoting technology's progressive future, would like to express our **opposition to HB 2176**, which would create an Office of Artificial Intelligence Safety and Regulation ("Office") within the Department of Commerce.

The scope of HB 2176 is unclear and worryingly broad
HB 2176 is troublingly unclear on how the Office would function. The Office has seemingly unlimited power to control the deployment of AI technology. The bill, as drafted, "Adopt, amend, or repeal rules" as needed "to carry out the purposes of this chapter." There appears to be no statutory limit on the remit of the Office's ability to limit the deployment of AI in Hawai'i.

Worse still, "deployment" itself is not defined in the text, thus it would appear even posting an application to a website that is accessible from Hawai'i would run afoul of the "deployment" provisions. Furthermore, since there exists a broad spectrum of AI technologies and tools already in use in Hawai'i, it remains to be seen how this bill would impact existing programs like automated decision tools, applications with built-in generative AI functionality like Adobe Photoshop, or even most social media feeds.

HB 2176 would undermine cybersecurity and expose historically-marginalized populations to needless risk
Furthermore, the vague wording of HB 2176 would similarly appear to obligate Google and Apple to seek the Office's permission before allowing developers to

update their apps. Rapid and reliable updates are critical to maintaining cybersecurity as developers identify and mitigate vulnerabilities in their software.

The real world cybersecurity and personal privacy implications of delaying software in this manner are grave: leaving consumers in Hawai'i uniquely vulnerable to cyberstalking and harassment. These threats are acute to groups that historically face the most harassment online: LGBTQ youth, women, and people of color.

The enforcement regime lacks due process
HB 2176 empowers the Office to assess penalties for violations of "any rule adopted by the office" - but it is unclear what, if any, opportunity software developers would have to appeal judgements.

At a minimum, we ask you to make clear that software developers have an opportunity to cure apparent violations before any monetary penalties are assessed.

An even more effective strategy would be to establish a 'safe harbor' provision. This approach would detail explicit requirements and benchmarks for companies developing, implementing, and using AI. Meeting these criteria should then exempt the companies from liability. This approach provides clear guidelines and a structured framework for AI development, encouraging compliance while reducing the risk of broadly applied punitive measures.

These collaborative approaches foster cooperation and incentivize continuous improvement of responsible AI practices, ultimately benefiting both developers, providers, and users of AI technologies.

A harms-based approach would better protect the people of Hawai'i
As drafted, HB 2176 employs a "risk-based approach" and the Office would "*Strategically allocate its resources into its efforts to address high-priority artificial intelligence applications that pose significant risks to human health, safety, or fundamental rights.*"

We thank the authors for their commendable attention to fundamental rights. Historically marginalized groups have faced discrimination in such areas as lending, hiring, or health care delivery. We strongly encourage the authors to

instead pursue legislation that strengthens existing anti-discrimination law to protect the public from harms whether online or offline. For these reasons we remain opposed to the bill as written, but would be excited to work with the authors on a more robust and effective piece of legislation.

Sincerely,

Robert Singleton
Director of Policy and Public Affairs, US West

JOSH GREEN, M.D.
GOVERNOR
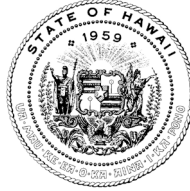
DOUGLAS MURDOCK
CHIEF INFORMATION
OFFICER

OFFICE OF ENTERPRISE TECHNOLOGY SERVICES

P.O. BOX 119, HONOLULU, HI 96810-0119
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ETS.HAWAII.GOV

Written Testimony of
DOUGLAS MURDOCK
Chief Information Officer
Enterprise Technology Services

Before the
HOUSE COMMITTEE ON HIGHER EDUCATION & TECHNOLOGY
WEDNESDAY, JANUARY 31, 2024

HOUSE BILL 2176
RELATING TO ARTIFICIAL INTELLIGENCE

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

The Office of Enterprise Technology Services (ETS) **opposes** this bill that prohibits the deployment of artificial intelligence (AI) products in the State unless affirmative proof establishing the product's safety is submitted to the new Office of Artificial Intelligence Safety and Regulation within the Department of Commerce and Consumer Affairs.

First, the broad definition of AI contained in this bill could stop many uses that state government, citizens and businesses are already using that are low risk. Some forms of AI have been in use for decades and do not need regulation. Discussion around AI risk is mostly about Generative AI or Artificial General Intelligence. At a minimum, the bill should be limited to GenAI and AGI. We recommend you allow the agency to determine what to regulate.

Second, AI is already widely used and embedded in everyday items such as smart phones, cars, and appliances, on web browsers and web sites such as Microsoft, Google and Zoom, and by almost every industry including banking, transportation, and services. Companies are racing to include more Generative AI in every product or service they offer. Regulation may be appropriate in some situations, but it will take years to catch up to existing use.

Finally, the regulatory process is bound to be very slow and there are not enough qualified AI experts to staff this new office. AI deployment will be changing constantly. Any filing with the agency will need to be updated daily or weekly or monthly.

ETS believes it would be better to require anyone deploying GenAI or AGI to submit their internal controls sand governance process for review and to create strict liability for anyone distributing AI products that cause harm.

Thank you for the opportunity to provide testimony on this measure.

HB-2176
Submitted on: 1/29/2024 1:58:32 PM
Testimony for HET on 1/31/2024 2:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Cards Pintor	Individual	Support	Written Testimony Only

Comments:

Aloha,

I support this bill.

Mahalo nui,

Cardenas Pintor

Testimony on HB2176 Relating to Artificial Intelligence

Rep. Amy A. Perruso, Chair
Rep. Jeanne Kapela, Vice Chair

DATE: Wednesday, January 31, 2024
TIME: 2:10 p.m.
PLACE: Conference Room 309

Dear Representatives,

This testimony is **commenting** on the current draft of HB2176 legislation, and proposes amendments to provide more accurate definitions on Artificial Intelligence, and provide specifications on where it's allowed. These modifications are critical to both A) ensuring that Hawaii retains the opportunity to employ and develop modern technology, and B) that Hawaii doesn't cut itself off from reasonable access to technology which will soon become critical to the lives of every human on the planet.

The proposed changes are as follows:

1. Page 4 (lines 13-14) Remove section 4 *Deployment of artificial intelligence products; 14 prior written approval required*
2. Modify modify the definition of Artificial Intelligence
3. Modify the definition of what "Deployment in Hawaii" means

Modifying the Definition of AI

The core of this testimony is the acknowledgement that there is a real thing that this legislation is trying to prevent, but that thing isn't captured by this definition. As it stands the definition of AI is so broad that arguably a calculator meets definition of AI. This technology is critical to providing daily tools, not just for high-functioning citizens, but also provides tools that support people of disabilities and other protected classes. This is the definition as written for 15 USC 9401:

(3) Artificial intelligence
    The term "artificial intelligence" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to-
        (A) perceive real and virtual environments;
        (B) abstract such perceptions into models through analysis in an automated manner; and

(C) use model inference to formulate options for information or action.

This definition leaves far too much up to interpretation for what constitutes perception of a virtual environment. All current digital technology reduces information to a combination of 1's and 0's, and then manipulates that information. If the criteria for perception of a digital environment is met by simply being able to read bits, and output information, then by this definition, a basic four function calculator can be defined as AI. Even with a more restrictive definition of perceiving an environment, the following useful technologies all meet the definition of AI:

1. Arts technology like digital cameras with auto-focus
2. Disability assistive technology like screen readers for the blind
3. Scientific technology like projection modeling used to predict hurricanes and tsunamis
4. Auto-guidance capabilities on every aero-space technology spanning from auto-pilot on airlines to target tracking on missile defense systems

These are just a few examples of critical technologies which already meet an overly broad definition of AI. This is largely due to the fact that what people call AI is mostly predicated on matrix algebra and multi-variable calculus. Where the real danger comes in, is when developers start creating technology that is intended to push new boundaries beyond the scope of a narrowly defined set of actions.

If what the legislation attempts to prevent are dystopic scenarios as portrayed in media like Terminator and The Matrix, then there are a couple additions to the definition that would go a long way.

1. (D) Software/robotics which have the ability to take actions beyond the scope of what the developer can reasonably enumerate
2. (E) Have the ability to gain access to information outside of the control of the developer

Adding these definitions moves the bar away from every-day technologies critical to our daily actions, and into the realm of what is currently called Artificial General Intelligence or (AGI).

Modify What the Definition of Deployment In Hawaii Means

Similarly to the definition of AI, this restriction on AIs deployment in Hawaii is incredibly vague and needs clarification before being enacted. Most digital technology associated with Machine Learning and AI these days developed and deployed remotely, with little to no regard for location. I can sit in my living room in Hawaii and develop AI that will be deployed in California, which will then run on datasets coming out of Hawaii, and the applications are used by people in Hawaii. So if the intent is to protect the people of Hawaii from AI, then this legislation verbiage does little to nothing to prevent access to critical systems or information within the state.

Justification for Removal of Section 4

For the aforementioned reasons, this author strongly advises simply removing section 4, and letting the new director determine the restrictions to be established. As written this bill is not

ready to be enacted due to the inherent over-regulation in unenforceable ways that would not effectively accomplish the goals that the original author intends.

I appreciate the opportunity to provide this testimony, I am available for contact if you have any questions.

Pierce Young
Technology professional with 10 years experience in Data and Machine Learning technologies
pierce@kailuatech.com

HB-2176
Submitted on: 1/30/2024 2:10:32 PM
Testimony for HET on 1/31/2024 2:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Tam Hunt	Individual	Support	Written Testimony Only

Comments:

I strongly support this bill.

HB-2176
Submitted on: 1/30/2024 5:36:03 PM
Testimony for HET on 1/31/2024 2:10:00 PM

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

Comments:

I support this bill. The benefits of Artificial Intelligence are countered only by the horrors it can produce. We already see what happened with Taylor Swift on the website formally known as Twitter, and we have witnessed the threat it poses to the film industry with all the strikes from this past summer. The political implications of Deep fakes and Voice generations are already at our doorstep, as shown during the lead-up to the New Hampshire primaries, where a republican scammer created a fake message of Joe Biden urging people not to vote. There is more at stake with AI than the idea of recreating Skynet (an issue most AI theorists think won't happen in at least three lifetimes), damage is being done right now. And we have to do something.