

LATE

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION
ON H.B. No. 591**

RELATING TO DIGITAL MEDIA Gives various types of fiduciaries access to the digital assets of the principal.

BEFORE THE HOUSE COMMITTEE ON HIGHER EDUCATION & TECHNOLOGY

DATE: Wednesday, February 3, 2021, at 2:00 p.m.

PERSON TESTIFYING: BLAKE OSHIRO
Commission to Promote Uniform Legislation

Chair Takayama, Vice-Chair DeCoite, Members of the House Committee on Higher Education & Technology:

My name is Blake Oshiro, and I am a member of the State of Hawai'i Commission to Promote Uniform Legislation. Thank you for this opportunity to submit this testimony with comments to House Bill No. 591, which deals with a fiduciary's access to a principal's digital media accounts.

Our review of this bill reveals that it closely mirrors the Uniform Law Commission(ULC)'s first version of the Uniform Fiduciary Access to Digital Access Act which was adopted by the ULC in 2014.

However, that initial proposed legislation raised significant concerns and opposition from the technology industry when it was approved, and as such, the ULC instead negotiated some changes and approved the second version, or Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) in 2015.

Hawai'i adopted RUFADAA in 2016, which then became codified as Haw. Rev. Stat. (HRS) Chapter 556A. Along with Hawaii, this act is now law in 47 other states and jurisdictions, nearing uniformity. As such, there is already a law

on the books that deals with this issue.

Adoption of this bill would create confusion and inconsistency in the laws since it does not repeal HRS Ch. 556A. It is also concerning because it would make Hawai'i law inconsistent with all of the other RUFADAA jurisdictions.

If the intent is towards specific and particular issues with regards to fiduciary rights to digital assets, we would suggest that amendments be proposed to HRS Ch. 556A.

Thank you very much for this opportunity to testify on this measure.



Internet Association



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NetChoice

February 3, 2021

Honorable Gregg Takayama, Chair
House Higher Education and Technology Committee
State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: Opposition to HB 591 Digital Assets and HB 590, Digital Media

Dear Representative Takayama:

Our associations represent hundreds of the country's leading technology companies in high-tech manufacturing, computer networking, information technology, clean energy, life sciences, internet media, ecommerce, education, and the sharing economy sectors. Our member companies are committed to advancing public policies and private sector initiatives that make the United States the most innovative country in the world.

On behalf of our members, we want to express **opposition to HB 591**, as Hawaii's Uniform Fiduciary Access to Digital Assets Act of 2016 (UFADAA) already addresses fiduciary access to digital assets of a principal. We also **oppose HB 590**, as it would conflict with the Hawaii UFADAA.

The Hawaii UFADAA (Revised Statutes Chapter 556A) mirrors a model law crafted with input from industry, the probate bar, the ACLU and the Uniform Law Commission (ULC). The ULC is a nonprofit organization, made up of volunteer attorneys appointed by their states and at the time included Hawaii representatives who assisted in drafting the model that strikes the right balance between protecting internet user privacy and the need for fiduciary access to digital assets, and it does so without conflicting with federal laws.

HB 590, which proposes to require the digital media account of a decedent to be given to the decedent's heirs, if no one else is designated, violates the federal Stored Communications Act (specifically 18 USC 2702), as it prohibits providers of digital media accounts from disclosing the contents of communications stored in digital accounts. This includes accounts for storage of photos, videos and audios and other items a user specifically placed in an account for storage. HB 590 would also conflict with other federal privacy laws that prohibit sharing access and content of a deceased accounts, including the Video Privacy Protection Act (VPPA), 18 USC 2710.

More importantly, disclosure of this information without the accountholder's consent could severely compromise the privacy of the deceased person, as well as the still-living with whom the deceased communicated with which is why providers require consent, by a will or other document, before allowing a fiduciary to obtain content of a deceased's communications. HB 590 proposes to require that providers give specific passwords of a deceased user, which would be impractical or even impossible for providers to do so in a format that would not violate security best-practices which may require all passwords be encrypted.

Account holders are in the best position to decide who has access to their information stored in digital accounts when they pass on. That is why many private sector companies have already created services that allow users to store their digital assets and communications in one place, for subsequent delivery to a next of kin, relatives, or an executor/fiduciary. Fiduciaries could be given permission to view the contents of private communications of the decedent when expressly allowed via an online tool, will, trust, power of attorney or other written evidence of user consent. Otherwise, fiduciaries could still have access to a catalogue of the decedent's communications to allow them to perform duties such as compiling inventory or obtaining important insurance and banking information of the deceased. The fiduciary could then contact those companies directly for copies of account statements.

Hawaii's current UFADAA law does not need to be amended. It already gives an appropriate level of legal authority to fiduciaries to access and manage a decedent internet user's digital asset through that person's estate plan. The law protects a user's private communications from unwarranted disclosure. It is consistent with federal privacy laws, which protects user emails and social media conversations. Hawaii's law rightly prevents companies that store user communications from releasing such information to fiduciaries unless the decedent had previously consented to the disclosure.

For the reasons stated above, the associations listed **oppose HB 591 and HB 590**. Please contact Tammy Cota at 802-279-3534 or tammy@theinternetcoalition.com if you have questions or would like to discuss this issue further.

Sincerely,

Internet Coalition
Internet Association
TechNet
NetChoice

cc: House Higher Education and Technology Committee members