



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Energy, Economic Development, and Tourism  
Friday, January 28, 2022  
3:00 p.m.  
Via Videoconference**

**On the following measure:  
S.B. 2212, RELATING TO ROBOCALLS**

Chair Wakai and Members of the Committee:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection. The Department supports this bill.

The purpose of this bill is to hold telecommunication service providers and third-party spoofing providers accountable by making certain robocalls and spoofing unlawful. Fraudulent robocalls are a pervasive problem in Hawaii and the rest of the country. Nearly 60 million Americans say that they have fallen victim to a phone scam in the past year, like the calls purporting to be from the IRS or a company inquiry about an expiring warranty on a nonexistent car. In total, Americans have been swindled out of more than \$30 billion over the past year, according to a survey conducted by TrueCaller and The Harris Poll.

A Robocall trying to sell something is illegal unless the company trying to sell the consumer something has obtained written permission, directly from the consumer, to call that way. To get permission, the company must be clear it's asking to call with

robocalls, and it can't make the consumer agree to the calls to get a product or service. Only a few types of robocalls are allowed under Federal Trade Commission rules without the consumer's permission, like political calls about candidates running for office, calls from some health care providers, or charities asking for donations.

Hawaii consumers have been victimized by the practice commonly referred to as spoofing. Spoofing is when callers disguise their identity by deliberately falsifying the information transmitted to their called ID display. Scammers do this to make calls less easily traceable. Also, scammers try to trick people into picking up a call by using so-called neighbor spoofing, which makes it appear as though the number is a local one that they may already know or trust.

Under the Truth in Caller ID Act, the Federal Communication Commission's rules prohibit any person or entity from transmitting misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongly obtain anything of value. Illegal spoofers can face fines of up to \$10,000 per violation of the law.

Senate Bill No. 2212 seeks to prohibit many of the same practices that are already regulated by the Truth in Caller ID Act. To the extent that it provides another tool for state law enforcement to hold violators accountable, the Department supports this measure.

Thank you for the opportunity to testify on this bill.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2022**

---

**ON THE FOLLOWING MEASURE:**

S.B. NO. 2212, RELATING TO ROBOCALLS.

**BEFORE THE:**

SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

**DATE:** Friday, January 28, 2022                      **TIME:** 3:00 p.m.

**LOCATION:** State Capitol, Room 224 and Videoconference

**TESTIFIER(S):** Holly T. Shikada, Attorney General, or  
Christopher J.I. Leong, Deputy Attorney General

---

Chair Wakai and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to hold telecommunication service providers and third-party spoofing providers accountable by making certain robocalls and spoofing unlawful.

The bill may be subject to a dormant Commerce Clause challenge. The Commerce Clause, article I, section 8, clause 3, of the United States Constitution, grants Congress power to regulate interstate commerce and implicitly restricts states from enacting laws that unduly burden interstate commerce. The dormant aspect of the Commerce Clause prohibits state legislation that regulates commerce taking place wholly outside of the state's borders, regardless of whether the commerce has effects within the state. *Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989).

Similar anti-spoofing measures passed in other states have been struck down for violating the Commerce Clause. *See, e.g., SpoofCard, LLC v. Burgum*, 499 F. Supp. 3d 647 (D.N.D. 2020); *TelTech Systems, Inc. v. Barbour*, 866 F. Supp. 2d 571 (S.D. Miss. 2011), *aff'd on other grounds sub nom; Teltech Systems, Inc. v. Bryant*, 702 F.3d 232 (5th Cir. 2012). In these cases, the courts noted that due to the growth of mobile phone usage, mobile number portability, and services like call forwarding, "it is impossible for a user or provider of caller ID spoofing service to know whether the recipient of their caller ID spoofing is [within the state]." *TelTech*, 866 F. Supp. 2d at 575-76. Thus, while the statute in each case was only directed at activity within the respective state, the spoofing providers challenging the statutes successfully argued that "it was impossible

for [them] to conduct their businesses or use caller ID spoofing services anywhere in the country without risk of liability under the [respective] statute." *Id.* at 576. Accordingly, a spoofing provider would most likely have to refrain from all caller ID spoofing activity in all states in order to avoid liability in a state with an anti-spoofing statute in effect. Even though this bill is only aimed at caller ID spoofing activity affecting Hawaii residents, its practical effect is to regulate commerce that occurs wholly outside the state and thus would likely violate the Commerce Clause.

Thank you for the opportunity to provide comments.

Written Statement of  
**Steven Golden**  
Vice President, External Affairs

**SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, & TOURISM**

January 28, 2022 3:00PM  
State Capitol, Conference Room 224, Videoconference

**COMMENTS FOR:**

**S.B. NO. 2212 RELATING TO ROBOCALLS**

To: Chair Wakai, Vice-Chair Miscalucha, and Members of the Committee

**Re: Testimony providing comments for SB 2212**

Aloha Honorable Chair, Vice-Chair, and Committee Members:

Thank you for this opportunity to submit comments on Senate Bill 2212. The primary intent of this bill is to prevent illegal robocalls and spoofing of telephone numbers.

In 2019, Congress passed the TRACED (Telephone Robocall Abuse Criminal Enforcement and Deterrence) Act, providing the Federal Communications Commission (FCC) new tools to fight unwanted, and often illegal, robocalls. The FCC requires all voice service providers to file certifications in the Robocall Mitigation Database regarding their efforts to fight illegal robocalls on their networks. Hawaiian Telcom filed its first certification of compliance in June 2021.

In order to prevent illegal robocalls, Hawaiian Telcom's Security Team conducts a comprehensive due diligence to identify customers it believes warrant further investigation based on factors that indicate they may be capable of originating illegal robocalls, such as having been subject to a traceback request or previous Robocall enforcement action.

With respect to spoofing, if a subscriber has customer premises equipment that enable spoofing, Hawaiian Telcom has no involvement in such activity. Spoofing violates the federal Truth in Caller ID Act and Hawaiian Telcom's terms of service, and is grounds for suspension and/or termination of service.

We believe the current FCC rules are adequately addressing illegal robocalling and spoofing and that a state law on this is not necessary. However, if the Committee decides to move this bill, an exemption should be added for voice providers that comply with the Traced Act.

Hawaiian Telcom is committed to protecting our customers from illegal robocalls and spoofed call telephone numbers, and will continue working with the FCC and other stakeholders to address this issue.

Thank you for the opportunity to submit these comments for Senate Bill 2212.



**SB-2212**

Submitted on: 1/25/2022 9:04:12 PM

Testimony for EET on 1/28/2022 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
lynne matusow	Individual	Support	No

Comments:

Thank you senator Misalucha for introducing this bill. I am so fed up with robocalls. All unknown number or caller id numbers i do not recognize go to voice mail. i rarely get any messages, but they are a pain, especially those from the mainland which come in the middle of the night. i have friends who get calls saying their windows needs to be upgraded, and they don't even have computers. most of these callers are scammers and need to be stopped by any means.