American Property Casualty Insurance Association℠
INSURING AMERICA apci.org

To: Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Committee on Commerce and Consumer Protection

From: Mark Sektnan, Vice President

Re: **SB 974 – Relating to Consumer Data Protection**
APCIA Position: Request for Amendment

Date: Friday, February 10, 2023
9:40 a.m.; conference room 229 & Videoconference

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee:

The American Property Casualty Insurance Association of America (APCIA) is requesting amendments to **SB 974** related to data privacy. The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

APCIA appreciates the author's intention to protect the private information of people living in Hawaii. Section 2 (c) (2) exempts insurers who are already covered by the Graham-Leach-Bliley Act of 1999 but should be expanded to exempt the entity level companies per the following language:

- Provided further, nothing in this act shall be deemed to apply in any manner to a financial institution or an affiliate of a financial institution that is subject to the federal Gramm-Leach-Bliley Act of 1999 and the rules promulgated thereunder.

APCIA would also suggest that Section 2, subsection (b), of the bill should be expanded to exempt those insurers licensed under Chapters 431 and 432, Hawaii Revised Statutes, because the Data Security Model Law as proposed by the National Association of Insurance Commissioners (NAIC) was adopted in Hawaii in 2021 and is now codified as Article 3B, Chapter 431, Hawaii Revised Statutes. This NAIC model law was specifically drafted by the NAIC for the property and casualty insurance industry (and health insurers) to properly manage and secure personal information.

For these reasons, APCIA asks the committee to **amend** this bill in committee.

February 9, 2023

SB 974 Relating to Privacy
Senate Committee on Commerce and Consumer Protection
Hearing Date/Time: Friday, February 10, 2023, 9:40 AM
Place: Conference Room 229, State Capitol, 415 South Beretania Street

Dear Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee:

I write in **SUPPORT** of SB 974. As a privacy expert, I have worked in data privacy for over 15 years and served on the 21st Century Privacy Law Task Force created by the Legislature in 2019.

Fundamentally, this is a **bill of rights**. How can people not have rights to their own data? In today's legal landscape, they don't. Big companies like social media and data brokers buy and sell our data as if it belonged to them. And with today's laws, it does belong to them. This bill gives the following rights back to people for their own personal data:

- Right to access - The right for a person to access the info collected about them from a business.
- Right to correct - The right for a person to request that incorrect or outdated personal info about them be corrected.
- Right to delete - The right for a person to request deletion of their personal info under certain conditions.
- Right to opt out of certain processing - The right for a person to restrict a business's ability to process their personal info.
- Right to portability - The right for a person to request their personal info be disclosed in a portable file format.
- Right to opt-out of sales - The right for a person to opt out of the sale of their personal info to third parties.

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

Kelly McCanlies

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

TESTIMONY BEFORE THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SB 974

Relating to Consumer Privacy

February 10, 2023
9:40 a.m., Agenda Item #2
State Capitol, Conference Room 229 & Videoconference

Wendee Hilderbrand
Managing Counsel & Privacy Officer
Hawaiian Electric

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

My name is Wendee Hilderbrand, and I am testifying on behalf of Hawaiian Electric in opposition to SB 974. Hawaiian Electric is generally supportive of consumer privacy rights legislation and is in support of a similar bill currently proceeding in the House (HB 1497 HD1). Both bills would require affected businesses to make significant changes to their internal processes and incur significant compliance costs both up front and in the long-term.[1] Legislation this impactful should be carefully constructed to ensure that the consumer value to be gained is not outweighed by the burden and costs imposed on Hawai‘i businesses, which are bound to flow back to Hawai‘i consumers.

SB 974 arises out of legislation passed in California, Virginia, Colorado, and Utah, from 2018 to 2022. The original legislation (California Consumer Privacy Act

[1] One state report estimated that the compliance efforts required by an earlier version of California's legislation (compliance requirements have become more onerous since) were likely to reach $55 billion. *See* State of Cal. DOJ Office of the Attorney General Report, "Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations," prepared by Berkley Economic Advising & Research, LLC (August 2019).

("CCPA")) caused such enormous disruption, both in California and throughout the national business community, that California has spent the last four years dealing with numerous amendments, delayed enforcement, and ultimately, a ballot referendum.

Virginia, Colorado, and Utah took a more measured approach. By making a few key changes, these states have been able to ease the impact and expense on the business community (*e.g.*, exempting employee records) without losing the crux of consumer privacy rights (*i.e.*, the right to know, to opt out, and to delete/be forgotten).

SB 974 seems to follow most closely with the Virginia Consumer Data Protection Act ("VCDPA"), which passed in 2021 and took effect on January 1, 2023. Hawaiian Electric is largely agreeable with the approach taken by the VCDPA and already complies with the vast majority of its requirements.

However, one of the key changes made by Virginia that did not carry over to SB 974 is that the VCDPA limits the consumer right to receive copies of personal information to only information that the consumer originally provided the business. Given the broad definition of "personal information" an unlimited right to receive copies would mean that businesses would have to turn over, for example, internal account notes, call center audio recordings, drafts of work product, work product for which payment was never received, etc. Unless the definition of "personal information" is narrowed, a business would presumably need to provide its entire internal file, which was never mean to be shared externally. Though some of the more sensitive information within the file may fall within an exception (reference to other individuals, communications with in-house counsel, etc.), the process of

reviewing, redacting, and justifying any withholding would itself be unduly burdensome. Virginia addressed this concern fairly effectively[2] in the VCDPA, by limiting the right to receive copies only to "personal data that the consumer previously provided to the controller." This important qualifier was removed from SB 974, reviving the same concerns over the expense and challenge of providing internal business files to customers upon demand.

Legislation with this level of impact is far too important to be passed without balancing consumer and business interests. A similar bill pending in the House, HB 1497 HD1, retains all of the key rights for consumers, while taking a more measured approach to the obligations imposed on Hawaii's local businesses. After recent amendments to that bill, Hawaiian Electric stands by its commitment to consumer privacy and supports HB 1497 HD1.

For the reasons stated above, Hawaiian Electric opposes SB 974 and any legislation that would require our business to open up confidential client files, drawings, notes, and other documents upon demand. Thank you for the opportunity to provide testimony.

[2] There was one ambiguity left in the Virginia statute, which was originally carried over to HB 1497. After hearing testimony, the House Committee on Higher Education & Technology amended the bill to resolve this ambiguity in HB 1497 HD1.

HAWAII FINANCIAL SERVICES ASSOCIATION

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February 10, 2023

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
and members of the Senate Committee on Commerce & Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **S.B. 974 (Consumer Data Protection)**
Hearing Date/Time: Friday, February 10, 2023, 9:40 a.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: establishes a framework to regulate controllers and processors with access to personal consumer data; establishes penalties; establishes a new consumer privacy special fund, and appropriates moneys.

We recommend that this Bill be amended on page 10, Sec. -2(b) (Scope; exemptions) to add in (4):

(b) This chapter shall not apply to any:

(l) Government entity;
(2) Nonprofit organization;
(3) Institution of higher education; or
(4) Financial institution or an affiliate of a financial institution as defined by and that is subject to the federal Gramm-Leach-Bliley Act, 15 U.S.C. Sec. 6801 et seq., as amended, and implementing regulations, including Regulation P, 12 C.F.R. 1016.

This type of exemption for a financial institution, including an affiliate, that is subject to the Gramm-Leach-Bliley Act, would "level the playing field" and is based on recently enacted Colorado (2021) and Utah (2022) privacy statutes. Additionally, the concept of an exemption for a financial institution that is subject to GLBA is in H.B. 1497, House Draft 1 (Consumer Data Protection) on page 9, lines 15-18.

Thank you for considering our testimony.

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

(MSCD/hfsa)

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February 6, 2023

BY EMAIL

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice-Chair
Committee on Commerce and Consumer Protection
State Capitol
415 S Beretania St.
Honolulu, HI 96813

Re: Senate Bill 974/Consumer Data Protection Act

Dear Senators Keohokalole and Fukunaga:

Our firm represents a coalition of companies (i.e., Spokeo, PeopleFinders, Truthfinder, BeenVerified, and PeopleConnect) that provide background check, fraud detection, and other people search services. We write about a single operational issue posed by SB 974—i.e., the inability of indirect data collectors to thoroughly and feasibly delete personal data "provided by or obtained about" a consumer.

As discussed in detail below, this inability has led every other state that has enacted a comprehensive data privacy law either to limit deletion obligations to direct collectors or provide indirect collectors the option either to retain ("suppress") minimum data necessary to ensure permanent deletion or to opt consumers out of processing for all but exempted purposes. We respectfully request that SB 974 be amended to do the same.[1]

I. Our clients. As noted, our clients provide background check, fraud detection, and other people search services. They do so, like others in the data industry, by collecting data mostly from publicly available sources, organizing the data into usable products (such as reports), and offering the reorganized data for sale to customers. Unlike businesses that collect personal information directly from consumers, our clients collect information only from third-party sources.

Our clients' services are widely used and highly valued by any array of public and private entities and individuals. Law enforcement agencies use the services to identify and locate suspects and witnesses and to serve subpoenas. Welfare agencies use the services to find parents evading child support awards. The Veterans Administration uses the services to locate next-of-kin of fallen soldiers. Businesses use the services to detect order fraud and update customer and

[1] In making this request, we note that, consistent with the national trend, two other comprehensive data privacy proposals introduced this year in Hawaii—SB 1110 and HB 1497—contain these precise options for indirect collectors.

prospect databases. Consumers use the services to find lost relatives and friends, plan family reunions, check out relationship and service-provider prospects, and root out scams.

II. Our concerns with SB 974. Our clients support the enactment of privacy laws like SB 974. Clear and consistent data privacy practices not only protect consumers, but benefit businesses through enhanced consumer trust and stable compliance regimes. For these reasons, our clients have long voluntarily provided many of the consumer protections (e.g., opt out rights) that SB 974 would make mandatory and have been codified in states like California, Colorado, Utah, and Virginia. Consistent with this approach, our comments below are not meant to undermine SB 974, but instead to suggest changes to ensure SB 974 is legally compliant and operationally sound.

SB 974, in Section 3(a)(3), provides that "[a] controller shall comply with an authenticated consumer request to exercise the right … [t]o delete personal data provided by, or inferred or obtained about, the consumer…." It is unclear whether this deletion right applies only to personal information a business has collected directly from the consumer or, instead, to personal information about a consumer collected indirectly from third-party sources. If the latter, the right poses significant operational concerns, to the detriment of both businesses and consumers.

Companies that collect personal data directly from consumers can readily and confidently meet the deletion requirement. Upon receiving a consumer request, such companies can simply delete the consumer's data in its entirety from their databases. Since the consumer is the only source of the data, the companies need not worry about the consumer's data reappearing in their databases in the future, unless the consumer herself re-engages the company.

In contrast, companies that collect data from third party sources cannot fully, feasibly, or confidently comply with a deletion request. The reason is that such companies generally do not collect consumer data on a one-time only basis, but instead on an ongoing, repetitive basis from an array of sources to ensure that data remains up-to-date and accurate (again, for the benefit of businesses and consumers). Typically, these sources send new, updated data flows to the company on a monthly, if not weekly, basis. Unless the sources themselves have deleted the consumer's data, the consumer's data is included in each of these new data flows.

Given this, indirect collectors such as our clients would face a Hobson's Choice if subject to a deletion requirement. They could honor a consumer's request when received by deleting the consumer's data entirely. However, within weeks, if not days, the consumer's data would once again be sent to their databases and our clients, having deleted any prior record of the consumer, would have no way to identify the new data for deletion. In this scenario, the companies would be technically compliant with the consumer's deletion request, but the impact would be only momentary. The consumers, meanwhile, would have no way to know their deletion was only temporary and would have to return to the indirect collectors, again and again, to ensure thorough and lasting deletion. In this scenario, the burden would be on consumers to return to indirect collectors and repeatedly request deletion.

Alternatively, companies such as our clients could assume that burden and retain enough of the consumer's data to allow them to identify and re-delete the later-acquired data. But, in this scenario, the companies would not fully have complied with the consumer's deletion request and, thus, would be in violation of the law. Few companies would make that choice, we suspect, even if it better serves consumers and better promotes consumer goodwill.

In recognition of these facts, California's privacy law limits the deletion obligation only to companies that collect data directly from consumers. Specifically, Cal. Civil Code sec. 1798.105(a), enacted as part of the California Consumer Privacy Act (CCPA) and retained in the California Privacy Rights Act (CPRA), provides consumers the "right to request that a business delete any personal information about the consumer **which the business has collected from the consumer.**" (Emphasis added). The recently enacted Utah Consumer Privacy Act (UCPA) likewise limits deletion to "personal data that the consumer provided to the controller." Utah Code Ann. § 13-61-201(b)(2).

Similar concerns caused the Uniform Law Commission (ULC)[2] to omit a deletion requirement altogether from the recently approved model state privacy law—i.e., Uniform Personal Data Protection Act (UPDPA). In comments to UPDPA Section 4, the ULC explains that the UPDPA "does not obligate controllers or processors to delete data at the request of the data subject," citing "a wide range of legitimate interests on the part of collectors that require data retention" and the fact that it is "difficult given how data is currently stored and processed to assure that any particular data subject's data is deleted."

Limiting the right to deletion to direct data collectors does not make consumers powerless to achieve the goal of deletion—i.e., stopping the circulation of the consumers' data by those that possess it. As the ULC noted in foregoing a deletion requirement, "[t]he restriction on processing for compatible uses or incompatible uses with consent should provide sufficient protection" for consumers. Indeed, SB 974 provides consumers the right to opt out of the processing of their data for targeted advertising, sale, or profiling. Sec. 3(a)(5). By opting out with respect to an indirect collector, the consumer prevents the further dissemination of the consumer's data by the indirect collector. Further, unlike deletion, since the indirect collector faces no operational difficulties complying with the opt out request, the consumer's goal is assured of being achieved. Moreover, by seeking deletion from direct collectors, consumers can stop the flow of their data to indirect collectors at the source, once and without repetition.

Limiting deletion to direct collectors is but one way to resolve the operational quandary indirect collectors face. The "about a consumer" language present in SB 974 first appeared in the 2021 Virginia Consumer Data Protection Act ("VCDPA"). Va. Code § 59.1-573.A.3. Concerns

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[2] The ULC, also known as the National Conference on Commissioners on Uniform State Laws, is comprised of retired judges, law professors, and practicing attorneys representing all 50 states. It is perhaps best known for developing the Uniform Commercial and Uniform Probate Codes. A committee of the ULC began its work on the model state privacy law in 2019, and the full ULC approved the UPDPA in July 2021. The UPDPA already has been proposed as legislation in Washington, D.C., Oklahoma, and Nebraska.

regarding the operability of certain provisions, including the deletion provision, led the then-Virginia Governor to a establish a working group to consider "issues related to [the VCDPA's] implementation" in the fall of 2021. Those same concerns (as outlined above) led to the introduction of numerous bills—i.e., VA HB 381, SB 393, and SB 584—in late 2021 aiming to solve the problem of deletion by indirect collectors (a problem not present in California and the ULC model).

One of those bills, HB 381, unanimously passed the Virginia House and Senate, and was signed into law by Virginia's Governor on April 11, 2022. The bill gives indirect collectors two options for handling deletion requests: either retaining some minimal data to ensure deletion of later-received data or opting the consumer out of the processing of his or her data for all but exempted purposes. Specifically, Virginia HB 381 amended the VCDPA by adding the following provision:

> "A controller that has obtained personal data about a consumer from a source other than the consumer shall be deemed in compliance with a consumer's request to delete such data pursuant to subdivision A 3 by either (i) retaining a record of the deletion request and the minimum data necessary for the purpose of ensuring the consumer's personal data remains deleted from the business's records and not using such retained data for any other purpose pursuant to the provisions of this chapter or (ii) opting the consumer out of the processing of such personal data for any purpose except for those exempted pursuant to the provisions of this chapter."

Recognizing the wisdom and practicality of the Virginia amendment, the Connecticut legislature incorporated identical language into the Connecticut Personal Data Privacy Act (CPDA), which was signed into law in May 2022. Public Act No. 22-15 section 4(a)(5). Likewise, the Colorado Attorney General's office has proposed the same language in draft regulations to implement the July 2021 Colorado Privacy Act, regulations expected to go final soon. Draft Rule 904-3-4.06(E).

This alternative solution provision is a classic win-win. It resolves the Hobson's Choice discussed above by allowing indirect collectors to retain enough data to perpetually and perennially delete a consumer's data or to opt that data out of sale. At the same time, it ensures that the consumer's desire to stop the further circulation of his/her data is honored.[3]

Given the above, we request that SB 974 be amended to limit deletion only to data provided by a consumer; specifically, that section 3(a)(3) be amended to provide:

> "(3) To delete personal data provided by~~, or inferred or obtained about,~~ the consumer;"

[3] As noted above, language providing indirect collectors these two options for compliance with deletion requests is included in concurrently proposed data privacy bills SB 1110 and HB 1497 at section 3(b)(5) of each bill.

Alternatively, we request SB 974 be amended to allow companies that collect consumer data from third parties to either retain a limited amount of data to ensure ongoing deletion of a consumer's data or treat deletion requests as if they were opt out requests. This would accomplish the consumer's goal of effectively—rather than temporarily—stopping the unwanted circulation of his/her data and, at the same time, provide these companies a way to confidently comply with the law. This could be accomplished by adding the following language as a new subsection 3(c)(5):

"**(5) A controller that has obtained personal data about a consumer from a source other than the consumer shall be deemed in compliance with a consumer's request to delete the data pursuant to subsection (a)(3) by either:**

> **(A) Retaining a record of the deletion request and the minimum data necessary for the purpose of ensuring the consumer's personal data remains deleted from the business's records and not using the retained data for any other purpose pursuant to the provisions of this chapter; or**
>
> **(B) Opting the consumer out of the processing of the personal data for any purpose except for those exempted pursuant to the provisions of this chapter."**

III. Conclusion. We hope this information is helpful. Please let us know if you have any questions about it. Otherwise, we would welcome the opportunity to speak to you further about the issues discussed herein.

Yours sincerely,

Philip Recht
Partner

TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 10, 2023
Re: SB 974 RELATING TO CONSUMER DATA PROTECTION

Good morning, Chair Keohokalole, and members of the Senate Committee on Commerce and Consumer Protection. am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901 and is a statewide, not for profit trade organization committed to supporting the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, on-line sellers, local, national, and international retailers, chains, and everyone in between.

We are opposed to SB 974 Relating to Consumer Data Protection. This bill establishes a framework to regulate controllers and processors with access to personal consumer data. Establishes penalties. Establishes a new consumer privacy special fund; and appropriates moneys.

Congress is currently working federal legislation that addresses consumer date protection. We ask that the committee takes this into consideration and recommend that we wait for the federal legislation before moving forward. It is our understanding that the measure before congress is moving and addresses many concerns.

We respectfully ask that you hold this measure. Mahalo again for this opportunity to testify.

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TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA ʻOIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023

LATE

ON THE FOLLOWING MEASURE:
S.B. NO. 974, RELATING TO CONSUMER DATA PROTECTION.

BEFORE THE:
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Friday, February 10, 2023 **TIME:** 9:40 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Benjamin M. Creps or Bryan C. Yee, Deputy Attorneys General

Chair Keohokalole and Members of the Committee:

The Department of the Attorney General (Department) supports the intent of this bill to strengthen consumer rights in relation to the commercial collection and use of consumers' personal data and offers the following comments.

This bill creates a new chapter of the Hawaii Revised Statutes (HRS) to regulate entities that conduct business in the State and who collect, use, and have access to consumers' personal data. "Personal data" is defined under the bill as "any information that is linked or could be reasonably linkable to an identified or identifiable natural person" and does not include "de-identified data or publicly available information."

The new chapter enumerates several consumer rights pertaining to personal records and establishes a framework for the exercise of those rights. It requires "controllers" to disclose what personal data they collect and what they do with it and obtain consumer consent for certain uses of personal data. [1] The chapter would also

[1] The chapter would apply to "controllers", who, "alone or jointly with others," determine the "purpose and means of processing personal data." This chapter also applies to "processors" that "process personal data on behalf of a controller." The term "process" and processing" are defined as, "any operation or set of operations performed, whether by manual or automated means, on personal data or on sets of personal data, including the collection, use, storage, disclosure, analysis, deletion, or modification of personal data."

require controllers to allow consumers to opt out of targeted advertising, sales of personal data, and "profiling" practices. [2]

Government agencies, nonprofits, and institutions of higher education are exempt from this chapter as are numerous categories of data (e.g., medical records, records subject to other laws). This bill establishes a new consumer privacy fund for administration of the new chapter and appropriates an unspecified amount of funds for purposes of effectuating the bill.

Suggested amendment #1. Subsection (a) of section -2 (page 10, lines 9-17) provides two independent thresholds for the applicability of the chapter and provides a calendar year timespan for determining one threshold, but not both. If this disparity is not intended, the Department suggests the following amendment at page 10, lines 9-17:

> (a) This chapter applies to persons that conduct business in the State or produce products or services that are targeted to residents of the State and[~~:~~] during a calendar year:
>
> (1) [~~During a calendar year, control~~] Control or process personal data of at least one hundred thousand consumers; or
>
> (2) Control or process personal data of at least twenty-five thousand consumers and derive over twenty-five per cent of gross revenue from the sale of personal data.

Suggested amendment #2. Section -10 provides investigatory powers to the Department. This section is largely duplicative of existing law, including chapter 28, Hawaii Revised Statutes. For this and the reasons discussed below, the Department recommends the entire section—page 41, line 11, through page 50, line 14—be deleted and replaced with the following:

> **§ -10 Investigative authority.** The Department may investigate alleged violations of this chapter pursuant to section 28-2.5 and any other applicable law.

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[2] "Profiling" means "any form of automated processing performed on personal data to evaluate, analyze, or predict personal aspects related to an identified or identifiable natural person's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements."

Alternatively, the Department recommends deleting subsections (k), (l), and (m) of section -10 for the following reasons:

- Section -10(k), at page 47, line 18, through page 48, line 3, compels witness testimony and makes noncompliance a misdemeanor. Existing law and rules of court procedure authorize the courts to hold a witness in contempt for noncompliance with a lawful request for testimony and other things. E.g., section 710-1077, HRS (providing criminal penalties for civil contempt of court).
- Section -10(l), at page 48, lines 4 through 8, appears to downgrade perjury in this context to a misdemeanor. Under existing law, perjury is a class C felony. Section 710-1060, HRS.
- Section -10(m), at page 48, line 9, through page 49, line 10, appears to both: (1) compel incriminating testimony, contrary to the U.S. Constitution's fifth amendment protection; and (2) grant criminal immunity to witnesses testifying on a potentially broad range of subject-matters in connection with investigations brought under the new chapter, which would encroach on prosecutorial discretion.

Thank you for the opportunity to present this testimony.

SanHi
GOVERNMENT STRATEGIES
A LIMITED LIABILITY LAW PARTNERSHIP

LATE

DATE: February 9, 2023

TO: Senator Jarrett Keohokalole
Chair, Committee on Commerce and Consumer Protection
Submitted Via Capitol Website

FROM: Matt Tsujimura

RE: **S.B. 974 – Relating to Consumer Data Protection**
Hearing Date: Friday, February 10, 2023 at 9:40AM
Conference Room: 229

Dear Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee on Commerce and Consumer Protection:

I am Matt Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers this testimony in opposition to S.B. 974 which establishes a framework to regulate controllers and processors with access to personal consumer data.

State Farm understands and shares the Legislature's concern for protecting privacy of information that consumers give to businesses to provide the products and services that consumers desire. The financial services industry, which includes insurers, is highly regulated. Insurer's use of information is regulated through a framework of privacy laws at the state and federal level, including the Gramm-Leach-Bliley Act (GLBA), HIPAA, and HRS §§ 431:2-209, 431:3A-101 to 431:3A-504, and 431:3B-101 to 431:3B-306.

The GLBA, for example, imposes strict privacy provisions to protect customers of financial services entities. The GLBA provides consumers with the right to opt out of sharing nonpublic personal information (NPI) with nonaffiliated third parties and requires financial institutions to provide customers with a privacy policy disclosing: 1) whether the financial institution discloses NPI to affiliates and nonaffiliated third parties, including the categories of information disclosed; 2) whether the financial institution discloses NPI of former customers; 3) the categories of NPI collected by the financial institution; 4) the policies maintained by the financial institution to protect the confidentiality and security of NPI; and 5) disclosure of and ability to opt out of sharing NPI with affiliates.

Under the GLBA, insurers cannot disclose NPI to nonaffiliated third parties without notice and an opportunity to opt out. Exceptions to this general rule—such as the often used "service provider" exception— account for the need to process transactions or to report consumer information to consumer reporting agencies. Under the GLBA, state insurance regulators are the functional regulators for privacy and security of customer personal information held by insurers.

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State Farm is concerned S.B. 974 will inadvertently limit its ability to effectively serve its policyholders in Hawaii. While State Farm appreciates the need to protect consumers, the variation in privacy laws across the states presents operational challenges and may create confusion for consumers. For this reason, State Farm favors the enactment of a pre-emptive national data privacy law over the current patchwork of federal and state privacy requirements.

For the reasons set for above, we respectfully ask the Committee to Vote No on S.B. 974. Alternatively, if the Legislature is inclined to move forward with the legislation, State Farm proposes the following amendment to S.B. 974 to clarify that the proposed bill does not apply to insurers, the affiliates, or subsidiaries:

Amend § -2 Scope; exemptions at pg. 11, Line 1 by adding:

> (4) financial institution or an affiliate of a financial institution, subject to the Gramm-Leach-Bliley Act, P.L. 106-102, and regulations adopted to implement that Act.

Amend § -2 Scope; exemptions, pg. 11, Lines 5-6:

> (2) ~~Nonpublic personal~~ Information collected, processed, sold or disclosed under and in accordance with ~~as defined in~~ the Gramm-Leach-Bliley Act (15 U.S.C. chapter 94) and regulations adopted to implement that Act;

Amend § -3 Personal data rights; consumers, pg. 16, Line 13:

> Delete the word “insurance” from the provision that allows consumers to “opt-out” of processing of personal data to align with the GLBA exemption.

Thank you for the opportunity to submit testimony.

LATE

CALIFORNIA PRIVACY PROTECTION AGENCY
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Written Testimony of Maureen Mahoney
Deputy Director of Policy & Legislation, California Privacy Protection Agency

Comments on SB 974 (Consumer Data Protection)
Hawaii Senate Commerce and Consumer Protection Committee

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Senate Commerce and Consumer Protection Committee, the California Privacy Protection Agency[1] (CPPA or Agency) thanks you for the opportunity to submit written comments on SB 974 (Consumer Data Protection). Our originating statute, the California Consumer Privacy Act (CCPA), directs the Agency to work with other entities with jurisdiction over privacy laws to "ensure consistent application of privacy protections."[2] We are proud that states are leading the way on legislation to protect consumers' privacy and data security. As of 2023, four states have adopted, and over half the states have considered, omnibus consumer privacy laws.[3]

The Agency is encouraged that SB 974 shares similarities with California's approach. For example, SB 974, like the CCPA, not only provides consumers with the right to access, delete, correct, and stop the sale of information to third parties, with additional protections for sensitive data, but is intended to be easy for consumers to use. This reflects the concerns outlined in the California law's findings, which pointed out the "asymmetry of information [that] makes it difficult for consumers to understand what they are exchanging[.]"[4]

Background

California has a long history of privacy and data protection legislation. In 1972, California voters established the right of privacy in the California Constitution, amending it to include privacy as one of Californians' "inalienable" rights.[5] In 2002, California became the first state to pass a data breach notification requirement, and in 2003, became the first state to require businesses to post privacy policies outlining their data use practices. In 2018, it became the first state in the nation to adopt a comprehensive commercial privacy law, the California Consumer Privacy Act. That measure went into effect on January 1, 2020, and the Attorney General began enforcing it on July 1, 2020.[6]

In November 2020, California voters ratified Proposition 24, the California Privacy Rights Act, which amends and expands the CCPA, including by creating the first authority with full administrative powers focused on privacy and data protection in the United States, the California Privacy Protection Agency.

[1] Established in 2020, the California Privacy Protection Agency was created to protect Californians' consumer privacy. The CPPA implements and enforces the California Consumer Privacy Act. It is governed by a five-member board that consists of experts in privacy, technology, and consumer rights.
[2] Cal. Civ. Code § 1798.199.40(i).
[3] National Conference of State Legislatures, 2022 Consumer Privacy Legislation (updated June 10, 2022), https://www.ncsl.org/about-state-legislatures/2022-consumer-privacy-legislation.
[4] Proposition 24, The California Privacy Rights Act § 2 (2020), https://vig.cdn.sos.ca.gov/2020/general/pdf/topl-prop24.pdf.
[5] Cal. Cons. Art. 1 § 1.
[6] Cal. Civ. Code § 1798.100 et seq.

Proposition 24 added new substantive provisions to the CCPA, such as new limitations on businesses' collection, use, retention, and sharing of personal information, a right to correction, and additional protections for sensitive data, which went into effect on January 1, 2023. On April 21, 2022, rulemaking authority under the CCPA formally transferred to the Agency. Along with the Attorney General, the Agency is vested with the authority to undertake enforcement to protect Californians' privacy.

Overview of California law

The CCPA includes specific notice requirements for businesses, grants new privacy rights to consumers, and imposes corresponding obligations on businesses. The rights granted to consumers include the right to know what personal information businesses have collected about consumers and how that information is being used, sold, and shared; the right to delete personal information that businesses have collected from consumers; the right to stop businesses' sale and sharing of personal information; and the right to non-discrimination in service, quality, or price as a result of exercising their privacy rights. As of January 1, 2023, California consumers have the right to correct inaccurate personal information the business maintains about them, and the right to limit a business's use and disclosure of sensitive personal information about them to certain business purposes, among other protections.

The CCPA provides additional protections for children under 16. Businesses are not permitted to sell the personal information of consumers if the business has actual knowledge that the consumer is under 16, unless the consumer, or the consumer's parent or guardian in the case of consumers who are under 13, has affirmatively authorized the sale of the consumer's information.

The CCPA covers information that identifies, relates to, or could reasonably be linked with a particular consumer or household—subject to certain exceptions. The measure applies to for-profit businesses that do business in California, collect consumers' personal information (or have others collect personal information for them), determine why and how the information will be processed, and meet any of the following thresholds: have a gross annual revenue of over $25 million; buy, sell, or share the personal information of 100,000 or more California consumers or householders; or derive 50% or more of their annual revenue from selling or sharing California residents' personal information.

Businesses have corresponding duties, including with respect to:

- *Data minimization and purpose limitations*
    - Businesses' collection, use, retention, and sharing of personal information must be reasonably necessary and proportionate to achieve the purposes for which the personal information was collected or processed, or for another disclosed purpose that is compatible with the context in which the personal information was collected.
    - Businesses must not further process personal information in a manner that is incompatible with those purposes.
- *Dark patterns*
    - In obtaining consent from consumers, businesses are prohibited from using "dark patterns," which are defined to mean a user interface "designed or manipulated with the

substantial effect of subverting or impairing user autonomy, decisionmaking, or choice[.]"[7]

Overview of CPPA Rulemaking

The California Privacy Protection Agency is currently engaged in a formal rulemaking process to issue regulations to further the intent of the CCPA, as amended.[8] On July 8, 2022, the Agency published its notice of proposed action in the California Regulatory Notice Register, beginning the formal rulemaking process. The proposed regulations primarily do three things: (1) update existing CCPA regulations to harmonize them with CPRA amendments to the CCPA; (2) operationalize new rights and concepts introduced by the CPRA to provide clarity and specificity to implement the law; and (3) reorganize and consolidate requirements set forth in the law to make the regulations easier to follow and understand. They place the consumer in a position where they can knowingly and freely negotiate with a business over the business's use of the consumer's personal information.

SB 974 and State Privacy Laws

As noted above, the Agency appreciates that SB 974 shares a number of similarities with California's approach. It's important that consumers have effective tools to protect their privacy, as well as default protections that provide key privacy safeguards even without taking additional steps. For example, like California and other states, SB 974 has several provisions that help ensure this ease of use for consumers:

- ***Global opt-out***. California, Colorado, and Connecticut each have a provision in their privacy laws requiring businesses receiving opt-out requests to honor requests submitted by browser privacy signals.[9] The CPPA's proposed regulations reiterate the requirements for an opt-out preference signal that consumers may use to easily opt-out of the sale or sharing of their personal information with all businesses that they interact with online. With the goal of strengthening consumer privacy, the regulations support innovation in pro-consumer and privacy-aware products and services and help businesses efficiently implement privacy-aware goods and services.

  The California Attorney General is currently enforcing the browser privacy signal requirement in the existing CCPA regulations. Last year, it announced its first public case, against Sephora, alleging that Sephora failed to disclose to consumers that it was selling their personal information and failed to process user requests to opt out of sale via user-enabled global privacy controls in violation of the CCPA.[10]

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[7] Cal. Civ. Code § 1798.140(l).
[8] For more information about the Agency's work to implement the regulations, please see California Privacy Protection Agency, California Consumer Privacy Act Regulations, https://cppa.ca.gov/regulations/consumer_privacy_act.html.
[9] See, Cal. Civ. Code § 1798.135(e).
[10] Press release, *Attorney General Bonta Announces Settlement with Sephora as Part of Ongoing Enforcement of California Consumer Privacy Act* (Aug. 24, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-settlement-sephora-part-ongoing-enforcement. For information on additional AG enforcement activity, see State of California Department of Justice, CCPA Enforcement Case Examples (updated Aug. 24, 2022), https://oag.ca.gov/privacy/ccpa/enforcement.

- ***Prohibition on dark patterns.*** California, Colorado, and Connecticut all have a provision prohibiting businesses from using dark patterns, defined in California as "a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice, as further defined by regulation[,]" in obtaining consent.[11] California's proposed regulations set forth clear requirements for how businesses are to craft their methods for submitting consumer requests and obtaining consumer consent so that the consumer's choice is freely made and not manipulated, subverted, or impaired through the use of dark patterns. They address not only narrow situations where consent must affirmatively be given, but general methods for submitting CCPA requests to address abuse by businesses who craft methods in ways that discourage consumers from exercising their rights.[12]

- ***No requirement for verification to opt out.*** Like SB 974, neither the CCPA nor Connecticut's privacy law require verification of opt-out requests. Verification often creates friction for consumers, making it more difficult for consumers to exercise their rights. This is particularly important as online identifiers that are used for behavioral tracking cannot be easily accessed or verified by the consumer. Like SB 974, California and Connecticut do require identity verification for access, deletion, and correction requests, where consumer privacy could be undermined in the case of an unauthorized request.

However, there are some elements of California law that are not included in SB 974. For example:

- ***Broad definition of personal information.*** California has a broad definition of personal information, including "information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household." It also specifically identifies online identifiers, inferences, and pseudonymous identifiers as personal information.[13]

- ***Protections with respect to non-discrimination/loyalty program*s.** The CCPA prohibits businesses from discriminating against consumers for exercising any of the rights provided by the measure, including by denying goods or services, offering a different price or a different level of quality for goods or services, or retaliating against an employee. Businesses are permitted to charge a consumer a different price or rate, or provide a different level or quality of goods or services to the consumer, if that difference is reasonably related to the value provided to the business by the consumer's data. Businesses are not permitted to use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.[14]

[11] Cal. Civ. Code § 1798.140(l)
[12] See, California Privacy Protection Agency, Draft Final Regulations Text at § 7004 (Feb. 3, 2023), https://cppa.ca.gov/meetings/materials/20230203_item4_text.pdf.
[13] See, Cal. Civ. Code § 1798.140(v).
[14] Cal. Civ. Code § 1798.125.

Conclusion

We hope that our work in implementing the CCPA is helpful to you as you consider legislation. I am happy to answer any questions.

JOSH GREEN, M.D.
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAI'I EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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STATE OF HAWAIʻI
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

WRITTEN ONLY

TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
ON
SENATE BILL NO. 974

February 10, 2023
9:40 a.m.
Room 229 and Videoconference

RELATING TO CONSUMER DATA PROTECTION

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

Senate Bill (S.B.) No. 974 adds a new chapter to Title 26, HRS, to: 1) establish a framework to regulate controllers and processors with access to personal consumer data; 2) establish penalties for violations under this chapter; 3) require the Department of the Attorney General (AG) to adopt rules necessary for the purposes of the chapter; and 4) establish the Consumer Privacy Special Fund (CPSF) for the AG to administer this chapter. This bill also appropriates an unspecified amount of general funds in FY 24 and FY 25 to be deposited into the CPSF and an unspecified amount of special funds out of the CPSF in FY 24 and FY 25 for the purposes of the chapter.

As a matter of general policy, B&F does not support the creation of any special fund, which does not meet the requirements of Section 37-52.3, HRS. Special funds should: 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and

charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. Regarding S.B. No. 974, it is difficult to determine whether the proposed special fund would be self-sustaining.

Thank you for your consideration of our comments.

HAWAII INSURERS COUNCIL
A trade association of property and casualty insurance companies

1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877

Alison H. Ueoka
President

TESTIMONY OF ALISON UEOKA

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

Friday, February 10, 2023
9:40 a.m.

SB 974

Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee on Commerce and Consumer Protection, my name is Alison Ueoka, President for 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 submits comments on this measure. While we support the intent to protect consumers privacy, we ask for one amendment to the bill. In 2021, the Hawaii Legislature enacted a National Association of Insurance Commissioner's (NAIC) model law on Data Security. This law is specific to the regulation of entities and the data they collect within and affiliated with the insurance industry. Therefore, we ask that Section -2(c) be amended to add an exemption to read, "Nonpublic information collected by any licensee, or in any licensee's possession, custody or control, that is subject to the Insurance Data Security Law pursuant to Article 3B, Chapter 431."

This language is substantially similar to the provision in the next bill on the agenda, SB 1178.

Thank you for the opportunity to testify.

STATE PRIVACY & SECURITY COALITION

February 9, 2023

Chair Jarrett Keohokalole
Vice Chair Carol Fukunaga
Committee on Commerce and Consumer Protection
Hawaii State Senate
415 South Beretania Street
Honolulu, HI 96817

Re: SB 974 (Omnibus Privacy) – Request for Amendments

Dear Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee on Commerce and Consumer Protection,

The State Privacy & Security Coalition (SPSC), a coalition of over 30 companies and five trade associations in the telecom, retail, technology, automobile, payment card, and health care sectors, writes with suggested amendments to Senate Bill 974. Broadly speaking, we believe that the approach in SB 974 is a more comprehensive, more balanced approach than the other privacy bills being considered in the Senate this session, but there are important amendments still to be made in order to align this bill with similar bills adopted in other states.

This bill is heavily based on the legislation that passed in Connecticut in the spring of 2022. This bill, like that bill, provides consumers with a set of strong consumer rights that will provide them increased control over their personal data, as well as increased transparency in how that data is used. It also imposes serious obligations on businesses to collect only the information necessary to accomplish the disclosed purposes for processing, and requires obtaining consent in order to process sensitive data. It requires businesses to document the risks and benefits of processing certain types of data or for particular purposes, and to attempt to mitigate those risks.

We do have some concerns about the ways in which this bill departs from the Connecticut model, including:

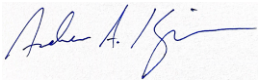
- The inclusion of "inferred about" in the consumer's right to delete. This language is not found in any of the four statutes that have passed a version of this legislation, and we believe the term "concerning" amply covers the data set for deletion.
- The lack of language which is found in Connecticut, Virginia, and Colorado laws and regulations that helps controllers who receive personal data from a source other than the consumer to comply with a deletion request from that consumer. We suggest adding the following language which has been vetted by numerous stakeholders and has not been controversial in other states:
    - "A controller that has obtained personal data about a consumer from a source other than the consumer shall be deemed in compliance with a consumer's request to delete such data by either (i) retaining a record of the deletion request and the minimum data necessary for the purpose of ensuring the

consumer's personal data remains deleted from the business's records and not using such retained data for any other purpose pursuant to the provisions of this chapter or (ii) opting the consumer out of the processing of such personal data for any purpose except for those exempted pursuant to the provisions of this chapter."

- The lack of alignment with other state laws in the Gramm-Leach-Bliley exemption language.
- The inclusion of attorney general rulemaking. In California, we have seen that rulemaking can often turn into a lengthy process that frustrates compliance efforts.

However, we are happy to continue having discussions on this bill as it moves forward, as it – along with HB 1497 HD 1 – represents a more effective, more sustainable approach for both Hawaii consumers and Hawaii businesses alike.

Respectfully submitted,



Andrew A. Kingman
Counsel, State Privacy & Security Coalition

NAMIC
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Hawaii State Legislature
Senate Committee on Consumer Protection

February 7, 2023

Filed via electronic testimony submission system

RE: SB 974, Consumers; Data; Privacy; Attorney General; Appropriations - NAMIC's Testimony in Opposition

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 10, 2023, 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.

The National Association of Mutual Insurance Companies (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 over $1.8 billion in annual premiums. In South Dakota, we have 227 member companies, including 6 domiciled companies, which underwrite 91% of homeowners and 67% of auto insurance coverage.

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 SB 974, 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. SB 974

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) SB 974 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 SB 974 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 SB 974 seeks to create certain exemptions to make the bill consistent with and complimentary to other privacy protection laws; however, the proposed exemption 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 entities, its affiliates and subsidiaries*, 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 SB 974, 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 SB 974, 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

SB-974
Submitted on: 2/6/2023 2:45:12 AM
Testimony for CPN on 2/10/2023 9:40:00 AM

Submitted By	Organization	Testifier Position	Testify
Robin Miyajima	Individual	Support	Written Testimony Only

Comments:

I support more regulation of companies and their use of personal data. That's why I support this bill.

SB-974
Submitted on: 2/8/2023 7:33:55 AM
Testimony for CPN on 2/10/2023 9:40:00 AM

Submitted By	Organization	Testifier Position	Testify
Hunter Heaivilin	Individual	Support	Written Testimony Only

Comments:

As the world becomes increasingly digital, it is more important than ever to protect the privacy and security of consumers' personal information. The amount of personal data that is collected, stored, and shared by companies is growing at an exponential rate, and it is crucial that we establish a framework to regulate the handling of this information.

SB974, the Consumer Data Protection bill, takes important steps towards this goal by establishing a framework to regulate the handling of personal consumer data by controllers and processors. This bill will help ensure that companies are transparent about what data they are collecting, how they are using it, and who they are sharing it with. Additionally, by establishing penalties for non-compliance, this bill will provide consumers with recourse in the event that their personal data is misused. The establishment of the consumer privacy special fund is a critical step towards ensuring that the resources are available to enforce the provisions of this bill and protect consumers' privacy rights.

TECHNET
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LATE

February 8, 2023

Senator Jarrett Keohokalole
Chair, Commerce and Consumer Protection Committee
Hawaii State Capitol
415 South Beretania Street, Room 205
Honolulu, HI 96813

Senator Carol Fukunaga
Vice Chair, Commerce and Consumer Protection Committee
Hawaii State Capitol
415 South Beretania Street, Room 216
Honolulu, HI 96813

Re: SB 974 (Lee) –Data Privacy– Comments

Dear Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee,

We appreciate the opportunity to provide comments on SB 974 (Lee), a bill that would enact strong privacy protections for Hawaiian consumers.

TechNet is the national, bipartisan network of technology companies 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 five million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

Our member companies place a high priority on consumer privacy. The technology industry is fully committed to securing privacy and security for consumers and engages in a wide range of practices to provide consumers with notice, choices about how their data are used, and control over their data. TechNet supports a federal standard that establishes a uniform set of rights and responsibilities for all Americans. Even the most well-designed state statute will ultimately contribute to a patchwork of different standards across the country. Understanding that states will move forward in the absence of federal law, we ask that the Committee consider a few changes to this bill should it move forward.

First, SB 974 includes "inferred data" in its right to delete. This inclusion does not align with other recently enacted state privacy laws, making it harder for companies to comply and contributing to a national patchwork of requirements.

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Additionally, SB 974 is missing crucial language regarding controllers who receive data from a third party when implementing a consumer's right to delete. Without this language, a company that acquires data from third parties might delete information at the request of a consumer but later reacquire that information without record of the consumer's request. The below change would allow companies to keep just enough information to know whether a consumer has exercised their rights under the bill.

We suggest adding the following language to SB 974 at page 19, subsection 4, at the end of line 17:

> 5. A controller that has obtained personal data about a consumer from a source other than the consumer shall be deemed in compliance with a consumer's request to delete such data pursuant to subdivision A 3 by either (i) retaining a record of the deletion request and the minimum data necessary for the purpose of ensuring the consumer's personal data remains deleted from the business's records and not using such retained data for any other purpose pursuant to the provisions of this chapter or (ii) opting the consumer out of the processing of such personal data for any purpose except for those exempted pursuant to the provisions of this chapter.

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

Sincerely,

Dylan Hoffman
Executive Director for California and the Southwest
TechNet