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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Labor and Technology
Wednesday, February 8, 2023
3:00 p.m.
Conference Room 224**

**On the following measure:
S.B. 1180, RELATING TO PRIVACY**

Chair Moriwaki and Members of the Committee:

My name is Mana Moriarty, 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 prohibit the sale of geolocation information and internet browser information without consent.

Location and browsing data collected from a smartphone, laptop, or other GPS-enabled device, such as a smart watch or a tablet, becomes a record of a person's movement and invasion of their privacy.

This bill would address the privacy concerns consumers may have by prohibiting the sale of their location and browsing data without their consent.

Thank you for the opportunity to testify on this bill.

STATE PRIVACY & SECURITY COALITION

February 7, 2023

Chair Sharon Moriwaki
Vice Chair Chris Lee
Committee on Labor and Technology
Hawaii State Senate
415 South Beretania Street
Honolulu, HI 96817

Re: SB 1180 – (Geolocation Privacy) – Oppose

Dear Chair Moriwaki and Vice Chair Lee,

The State Privacy and Security Coalition (SPSC), a coalition of over 30 companies and five trade associations the retail, telecom, tech, automotive, and payment card sectors writes in opposition to SB 1180. Our concerns stem from the precedent of segmenting particular types or uses of data and subjecting them to particular controls rather than taking a comprehensive approach. Instead, we would suggest that Hawaii look closely at advancing HB 1497 HD 1 and SB 974, both of which offer strong personal protections for consumers – including opt-in consent for the collection of precise geolocation information – while also providing a more workable balance for businesses.

SPSC members support strong consumer controls on personal data, and our goal is to support Hawaii in finding a solution. However, we have strong concerns about regulating data in a “sectoral,” rather than comprehensive fashion. This will lead to annual legislation seeking to regulate different types of data instead of a comprehensive approach that provides strong protections for consumers while also establishing obligations for businesses to carefully assess how they use personal data.

Additionally, SB 1180 contains provisions that have been filed in prior sessions, and as such contain outdated definitions. For instance, the definition of “geolocation information” exists in other state laws as “precise geolocation information,” and is uniform across these laws. Similarly, the definition of “consent” has also been standardized across state lines. The definition of “sale” in SB 1180, while borrowed from the California Consumer Privacy Act (CCPA), has led to significant compliance questions and unintended consequences on businesses attempting to comply with this complex, difficult-to-understand statute. Utilizing standard definitions leads to greater interoperability, greater levels of compliance, and reduced friction in the user experience.

Fortunately, privacy law has evolved rapidly in the last two years. States such as Virginia, Connecticut, and Colorado – upon which HI HB 1497 HD 1 and SB 974 are based - have passed comprehensive privacy laws that cover a broad swath of personal data. These bills provide:

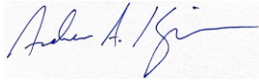
- Strong, opt-in protections for consumers with regard to precise geolocation information and other sensitive data;

STATE PRIVACY & SECURITY COALITION

- A greater number of consumer rights (access, deletion, correction, portability), opt-out of sale, targeted advertising, and profiling;
- Strong obligations on businesses to document data processing activities that present a heightened risk of harm; and
- Strong contractual requirements for entities that handle personal data – including precise geolocation – on behalf of the entities that collect the data.

As stated above, SPSC members understand the concerns in Hawaii and would like to be helpful in arriving at a solution that works for all. We ask this chamber to move HB 1497 HD 1 and SB 974 forward rather than SB 1180, as they represent the strongest protections for consumers while still providing operational workability for businesses.

Respectfully submitted,



Andrew A. Kingman
Counsel, State Privacy & Security Coalition

February 7, 2023

SB 1180 Relating to Privacy
Senate Committee on Labor and Technology
Hearing Date/Time: Wednesday, February 8, 2023, 3:00 PM
Place: Conference Room 224, State Capitol, 415 South Beretania Street

Dear Chair Morikowi, Vice Chair Lee, and members of the Committee:

I write in **SUPPORT** of SB 1180. 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.

When the US Congress passed the Telecommunications Act of 1996, they gave the Federal Communications Commission (FCC) the right to regulate the selling of call data and other technical information by the telephone companies. This data is called Customer Proprietary Network Information (CPNI). And for the last 27 years, the FCC has done exactly that.

But technology has continued to evolve. Now people send emails and carry mobile phones. The Telecommunications Act of 1996 is no longer enough to protect us. As an example CPNI regulations prevent a telephone company from selling a list of everyone who calls Charles Schwab Investments to Fidelity Investments. But internet providers can sell a list of everyone who emails Charles Schwab Investments to Fidelity Investments. And cell phone carriers can use geolocation data to create list of everyone who walks into a Charles Schwab Investments office and sell that list to Fidelity Investments. It's time the law caught up. It's time the law protects internet browsing data and geolocation data the same way we protect call data.

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





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GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 7, 2023

TO: Senator Sharon Y. Moriwaki
Chair, Committee on Higher Labor and Technology
Submitted Via Capitol Website

FROM: Matt Tsujimura

RE: **S.B. 1180 – Relating to Privacy**
Hearing Date: Wednesday, February 8, 2023 at 3:00PM
Conference Room: 224

Dear Chair Moriwaki, Vice Chair Lee, and Members of the Committee on Labor and Technology:

I am Matt Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers this testimony in opposition to S.B. 1180 which prohibits the sale of geolocation information and internet browser information without consent. State Farm understands and shares the Legislature's desire to protect Hawaii citizen's private information through regulating the sale of internet browser information in an effort to prevent businesses from infringing on the consumers civil rights and liberties. 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.

State Farm is concerned S.B. 1180 will inadvertently limit its ability to effectively serve its policyholders in Hawaii. For example, the broad definition of “internet browser

information” would seem to capture any information shared with State Farm over the internet, even information which may be publicly available. The definition of “internet browser information” when read with “sale” may prohibit insurers from sharing information necessary to provide the consumer with products and services.

State Farm favors the enactment of a pre-emptive national data privacy law over the current patchwork of federal and state privacy requirements. 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. However, if the Legislature is inclined to move forward with the legislation, State Farm asks S.B. 1180 to be amended as follows:

Amend, pg. 6, Lines 8-12:

"Sale" means the selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, of internet browser information to a non-affiliated third party another business or a third party for monetary or other valuable consideration. "Sale" does not include the releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, internet browser information pursuant to a service provider agreement or as otherwise agreed by the parties.

Add, pg. 6, Line 15 (after definition of "Subscriber"):

This section does not apply to information collected, processed, sold or disclosed under and in accordance with the Gramm-Leach-Bliley Act, P.L. 106-102, and regulations adopted to implement that Act.

For the reasons set for above, we respectfully ask the Committee to amend S.B. 1180 as provided herein. Thank you for the opportunity to submit testimony.



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

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www.technet.org | @TechNetSW

February 7, 2023

The Honorable Sharon Moriwaki
Chair, Senate Labor and Technology Committee
Hawaii State Capitol
415 South Beretania Street, Room 215
Honolulu, HI 96813

The Honorable Chris Lee
Vice Chair, Senate Labor and Technology Committee
Hawaii State Capitol
415 South Beretania Street, Room 219
Honolulu, HI 96813

RE: SB 1180 – Relating to Geolocation Information – OPPOSE

Dear Chair Moriwaki, Vice Chair Lee, and Members of the Committee,

TechNet respectfully submits this letter in opposition to SB 1180, which would apply to geolocation information and internet browser information.

TechNet is the national, bipartisan network of technology CEOs and senior executives. Our diverse membership includes dynamic American businesses ranging from startups to some of the most recognizable companies in the world. TechNet represents over five million employees and countless customers in the fields of information technology, e-commerce, sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

TechNet members place a high priority on consumer privacy and we support a unified standard for consumer privacy at the state level to ensure interoperability across states. As introduced, the requirements in SB 1180 would apply to geolocation information only. TechNet supports a more comprehensive approach to privacy that applies to a broader range of consumer data, which would offer strong consumer protections and a more workable set of standards for businesses. We also believe that the definitions in the bill should likewise align with definitions that are used and have been standardized in other states in order to provide clarity and uniformity for both businesses and consumers.

Consumers expect, and should expect, to trust the technology sector to protect their data. The most effective way of protecting Hawaii residents' personal information, including their geolocation information, is through a comprehensive approach to consumer privacy rather than regulating certain types of personal data separately and differently from others.

Thank you for your consideration. If you have any questions regarding TechNet's opposition to SB 1180, please contact Lia Nitake, Deputy Executive Director, at lnitake@technet.org or 310-940-5506.

Sincerely,



Lia Nitake
Deputy Executive Director for the Southwest
TechNet



Alliance Advocates - Hawai'i

To: Hawai'i Senate Committee on Labor and Technology
Hearing Date/Time: Wednesday, Feb. 8th, 2023 at 3:00 pm
Re: Testimony of Planned Parenthood Alliance Advocates in support of SB 1180

Greetings Chair Moriwaki and members of the Committee,

Planned Parenthood Alliance Advocates - Hawai'i supports SB 1180, a bill that prohibits the sale of geolocation information and internet browser information without consent. As many states are moving rapidly to criminalize abortion care and gender affirming care, our state should take steps to bolster data privacy as part of its efforts to support access to care.

The U.S. does not have a comprehensive data privacy law that requires transparency and accountability for how companies can use an individual's data. As a result, people have little insight into and even less control over how their information is collected, used, shared, and sold. There is serious harm caused by data abuse that is heightened in a post-*Roe* world. Many states are moving rapidly to criminalize abortion care and jeopardize access to needed health care services. In this new landscape, data shared between companies, private parties, and the government could be used to target and harass individuals who seek or access reproductive health care.

Despite abortion remaining legal in Hawai'i, patients are terrified of being criminally investigated or prosecuted for seeking legal health care in our state. Patients are asking questions like "is it safe to Google where to find an abortion provider?" Patients are afraid to seek care because of privacy concerns.

Planned Parenthood understands firsthand how data in the wrong hands can lead to not only prosecutions, but also to violence and harassment. Right now, this data is easily accessible and dangerous. In May 2022, SafeGraph, a location data broker, sold the aggregated location data of people who visited abortion clinics, including more than 600 Planned Parenthoods over a one week period for just \$160. The data showed where patients traveled from, how much time they spent at the healthcare centers, and where they went afterwards. Those who obtain abortions should not be subjected to targeted ads about their private health care decisions and people should not have their locations tracked and shared via geotargeting when seeking health care.

Our data should not be left vulnerable to be shared by anti-choice groups, used in prosecutions, or employed for targeted advertising. Thank you for your support of SB 1180 to help keep patients and providers safe from harassment, violence, and prosecutions.

Sincerely,

Jen Wilbur
Hawai'i State Director
Planned Parenthood Alliance Advocates – Hawai'i



**Testimony of
JAKE LESTOCK
CTIA**

In Opposition to Hawaii Senate Bill 1180

**Before the
Hawaii Senate Labor and Technology Committee**

February 8, 2023

Chair Moriwaki, and members of the committee, on behalf of CTIA®, the trade association for the wireless communications industry, I submit this testimony in opposition to Senate Bill 1180. Our members support strong consumer privacy protections, including empowering consumers with the rights necessary to control their data. We are concerned however, that this bill would create inconsistent protections and obligations by focusing on exclusively on consent requirements for the sale of geolocation information by mobile devices or location-based applications. Privacy frameworks should apply consistently to all companies. This bill, in contrast, would create consumer confusion, distort competition, and fail to comprehensively protect consumers by focusing on an overly narrow subset of data and imposing overly broad consent requirements. Moreover, if enacted, it would have a host of unintended consequences and create conflicts with other state and federal laws.

To begin, federal and state laws already exist to provide consumer protections on this issue. The Federal Trade Commission's (FTC) Privacy Framework considers precise geolocation information to be sensitive, meaning that its collection must be subject to opt-in



consent. The FTC has brought enforcement actions against companies that have misrepresented consumer control regarding collection of geolocation data. Examples include actions against [Nomi Technologies](#) and the [Goldenshores Technologies](#) (involving the flashlight app). The Federal Communications Commission (FCC) regulates wireless carriers' use of Customer Proprietary Network Information (CPNI), which includes certain location information. In 2019, the FCC brought an [enforcement action](#) against the major wireless carriers for what it defined as the unlawful sharing of location information, proposing over \$200 million in fines. The Hawaii Attorney General also has the authority to address unfair or deceptive acts or practices relating to consumer privacy under Hawaii's consumer protection laws.

Further, the overly broad treatment of the “sale” of “geolocation information” would lead to unintended consequences that could harm—rather than protect—Hawaii consumers. CTIA supports the FTC framework but has concerns with the geolocation section of SB 1180, which could hinder fraud prevention, hamper consumer use of certain applications, and prevent internet companies from providing new and innovative products and services – all to the detriment of consumers. For example, data and artificial intelligence (AI) help providers look for indicators of fraudulent behavior. If a provider sees a consumer logging into an online account from Hawaii, but the consumer's cell phone is located in New Jersey, that alerts the provider to possible fraud. If a customer's login occurs from a Hawaii IP address, and the same customer's cell phone location recently registered in Hawaii, that is a sign the consumer is



traveling. A provision requiring a possible wrongdoer in Hawaii to opt in to the “sale” of location information, which is broadly defined, could hamper a provider’s ability to use location in this way to detect and prevent fraud.

Additionally, because this legislation would require communications providers to limit the collection and sharing of GPS data of individuals within Hawaii, it mandates anti-privacy outcomes because more data will have to be collected and linked to individuals to determine when they are located within Hawaii and when the obligations apply. It also creates an onerous requirement for carriers to set a geofence around Hawaii and apply the bill’s rules to consumers while they are present in the state, and then maintain data on compliance in the event of potential litigation. To the extent the bill operationally requires carriers to apply its standards in other states, it likely violates the Dormant Commerce Clause of the United States Constitution.

Further, the definition of “geolocation information” is overly broad and will introduce a host of unintended consequences. For example, a consumer’s zip code could be interpreted to fall under the definition of geolocation information, which is not the type of information that CTIA thinks the legislature intends to identify as geolocation information. In other states that have enacted comprehensive privacy frameworks, the focus has been on requiring a consent for precise geolocation information based on a uniform definition. See VA. Code. Ann.§§ 59.1-575 to 59.1-585.



Furthermore, there are a number of smartphone apps designed for parents to monitor children, and these are generally based on the use of geolocation information. SB 1180 creates ambiguities for how these apps may function that raise serious concerns. Can children give consent or disable parental controls? Is parental consent sufficient, or could a child override the controls by not giving consent? SB 1180 could ultimately require a child to provide opt-in consent before a parent or guardian can initiate a tracking service or application.

Moreover, SB 1180 would only further fragment privacy regulation in the United States. To date, five states have enacted comprehensive consumer privacy laws. The vast majority of these laws define sensitive information to include precise geolocation information and to require consent. These laws define precise geolocation in a uniform way to avoid overly broad requirements. SB 1180 would deviate from these standards, creating further complexity in the growing state patchwork of privacy laws.

Moreover, requiring opt-in consent for the “sale” of “internet browser information”—as both terms are broadly defined—deviates from federal guidance. This fragmentation does not benefit consumers.

A uniform law that covers all types of personal data and the different companies that collect it is the best approach for U.S. consumers and a bi-partisan momentum for this type of baseline legislation that would offer consistent protections for all U.S. consumers has been building in Congress. The FTC has also released their advance notice of proposed rulemaking



(ANPR), titled Trade Regulation Rule on Commercial Surveillance and Data Security – an effort to build robust public record to inform whether the FTC should issue rules to address privacy practices if sufficient momentum should not occur in Congress.

For states that are poised to act, the focus should be on enacting clear, consistent, and interoperable comprehensive privacy standards. Currently, Hawaii has several bills pending that seek to do this. For instance, HB 1497 HD 1 is generally aligned with the Virginia privacy framework, and SB 974 is generally aligned with the Connecticut privacy framework. Both of these models set forth a more viable framework for regulating consumer data, including sensitive data, without distorting competition and confusing consumers.

CTIA respectfully urges the legislature to reject broadly drafted legislation like this bill that could have serious operational impacts and hinder innovation and security. Comprehensive legislation setting forth clear and interoperable standards is the only way to ensure clear, consistent privacy protection for consumers and certainty for businesses. For these reasons, CTIA respectfully requests that you do not move this legislation.



Testimony to the Senate Committee on Labor and Technology
Wednesday, February 8, 2023
Conference Room 224

Comments re: SB 1180 - Relating to Privacy

To: The Honorable Sharon Moriwaki, Chair
The Honorable Chris Lee, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 47 Hawaii credit unions, representing over 864,000 credit union members across the state.

HCUL offers the following comments regarding SB 1180, Relating to Privacy. This bill would prohibit the sale of geolocation information and internet browser information without consent.

We understand the need for data privacy legislation, and we prefer a more comprehensive approach to this issue, to avoid possible unintended consequences for our members.

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



DATE: February 7, 2023

TO: Senator Sharon Moriwaki
Chair, Committee on Labor and Technology

FROM: Mihoko E. Ito

RE: **S.B. 1180 Relating to Privacy**
Hearing Date: February 8, 2023 at 3:00 p.m.
Conference Room 224 & Videoconference

Dear Chair Moriwaki, Vice Chair Lee, and Members of Committee:

We submit this testimony on behalf of the Hawaii Bankers Association (HBA). HBA represents seven Hawai'i banks and one bank from the continent with a branch in Hawai'i.

We respectfully **oppose** S.B. 1180, Relating to Privacy, which prohibits the sale of geolocation information and internet browser information without consent.

We are concerned that restricting geolocation in the manner proposed in this bill will inhibit legitimate uses of geolocation that assist customers in finding information that they have come to expect from businesses with the advancements in technology. For banks, as an example, that could be things like connecting customers with information regarding the bank branch closest to them. We would also note that, unlike some of the other privacy proposals before the Legislature, this bill does not contain a Gramm Leach Bliely Act (GLBA) exemption, which typically covers personal information that is collected by financial institutions.

Finally, we note that there are more comprehensive privacy proposals that are under consideration before the Legislature, and would suggest that may be a better starting point for discussing privacy policies, rather than approaching elements of privacy like geolocation separately.

For these reasons, we respectfully oppose this measure. Thank you for the opportunity to submit this testimony.

Thank you for the opportunity to submit this testimony.

SB-1180

Submitted on: 2/4/2023 10:04:04 AM

Testimony for LBT on 2/8/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Caroline Azelski	Individual	Support	Written Testimony Only

Comments:

Stong support. Thank you

SB-1180

Submitted on: 2/6/2023 2:28:56 AM

Testimony for LBT on 2/8/2023 3:00:00 PM

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

Comments:

Sale of geolocation data is a dangerous thing, and as a citizen I have a right to privacy. I support this bill. This needs to be regulated.