



February 7, 2023

Senate Committee on Labor and Technology
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: SB 1085 - Relating to Biometric Information Privacy (Oppose)

Dear Chair Moriwaki and Members of the Senate Committee on Labor and Technology:

On behalf of the Computer & Communications Industry Association (CCIA)¹, I write to respectfully oppose SB 1085, relating to biometric information privacy. CCIA supports the enactment of comprehensive federal privacy legislation to promote a trustworthy information ecosystem characterized by clear and consistent consumer privacy rights and responsibilities for organizations that collect and process data. A uniform federal approach to the protection of consumer privacy throughout the economy is necessary to ensure that businesses have regulatory certainty in meeting their compliance obligations and that consumers are able to exercise their rights. CCIA appreciates, however, that in the absence of baseline federal privacy protections, state lawmakers are attempting to fill in the gaps. To inform these efforts, CCIA produced a set of principles to promote fair and accountable data practices.²

CCIA strongly supports the protection of consumer data and understands that Hawaii residents are rightfully concerned about the proper safeguarding of their biometric data. However, as currently written, SB 1085 goes far beyond protecting such data, which could result in degraded consumer services and experience. We appreciate the committee's consideration of our comments regarding several areas for potential improvement.

1. Overly broad and confusing definitions risk complicating consumers' understanding of their rights and business' compliance efforts.

As currently drafted, SB 1085 includes several overly broad and confusing definitions. For example, "biometric information" should be narrowed to include more specificity around identifying a specific person. CCIA would recommend amending the definition to clarify that it refers to *a specific* individual and not *an individual*. In addition, the definition of "confidential and sensitive information" also invites confusion in so far as the definition groups "social

¹ CCIA is an international, not-for-profit trade association representing small, medium, and large communications and technology firms. For over 50 years, CCIA has promoted open markets, open systems, and open networks. For more information about CCIA please see: <https://www.ccianet.org/about>.

² Computer & Communications Industry Association, *Considerations for State Consumer Privacy Legislation: Principles to Promote Fair and Accountable Data Practices* (January, 2022), <https://www.ccianet.org/wp-content/uploads/2022/02/CCIA-State-Privacy-Principles.pdf>

security number” and “pass code” under this definition. Passcodes inherently pose less risk to a consumer as they are intentionally changeable and not intended to be a unique identifier as a social security number is. CCIA also recommends allowing for more flexibility for organizations, particularly concerning exceptions for security. For example, Washington has approached this by exempting entities that collect and store biometric identifiers in furtherance of a “security purpose.”

2. Sufficient time is needed to allow covered entities to understand and comply with newly established requirements.

As drafted, SB 1085 would go into effect upon its approval. This timeline fails to provide covered entities with a sufficient onramp to achieve compliance. A successful privacy framework should ensure that businesses have an appropriate and reasonable opportunity to clarify the measures that need to be taken to fully comply with new requirements. Recently enacted privacy laws in California, Colorado and Virginia included two-year delays in enforcement of those laws. CCIA recommends that any privacy legislation advanced in Hawaii include a comparable lead time to allow covered entities to come into compliance and would therefore recommend amending the current effective date.

3. Investing enforcement authority with the state attorney general and providing a cure period would be beneficial to consumers and businesses alike.

SB 1085 permits consumers to bring legal action against businesses that have been accused of violating new regulations. By creating a new private right of action, the measure would open the doors of Hawaii’s courthouses to plaintiffs advancing frivolous claims with little evidence of actual injury. Lawsuits also prove extremely costly and time-intensive – it is foreseeable that these costs would be passed on to individual consumers in Hawaii, disproportionately impacting smaller businesses and startups across the state. Further, every state that has established a comprehensive consumer data privacy law – California, Colorado, Connecticut, Utah and Virginia – has opted to invest enforcement authority with their respective state attorney general. This allows for the leveraging of technical expertise concerning enforcement authority, placing public interest at the forefront.

CCIA recommends that the legislation include a cure period of at least 30 days. This would allow for actors operating in good faith to correct an unknowing or technical violation, reserving formal lawsuits and violation penalties for the bad actors that the bill intends to address. This would also focus the government’s limited resources on enforcing the law’s provisions for those that persist in violations despite being made aware of such alleged violations. Such notice allows consumers to receive injunctive relief, but without the time and expense of bringing a formal suit. Businesses would also be better equipped with the time and resources to address potential privacy changes rather than shifting focus to defending against litigation.

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We appreciate your consideration of these comments and stand ready to provide additional information as the legislature considers proposals related to technology policy.

Sincerely,

Khara Boender
State Policy Director
Computer & Communications Industry Association