

Hawai'i State Legislature
Senate Committee on Commerce and Consumer Protection

February 23, 2025

Filed via electronic testimony submission system

RE: SB 1286, SD1, - Data Privacy; Driver Data; Personal Information; Consumer Protection; Disclosures; Unfair and Deceptive Practices; Motor Vehicles - NAMIC's Testimony of concern

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 25, 2025, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

The National Association of Mutual Insurance Companies consists of nearly 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers. NAMIC member companies write approximately \$391 billion in annual premiums and represent 68 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance.

NAMIC's members appreciate the importance of providing consumers with reasonable safeguards to protect personal privacy and the importance of providing consumers with appropriate disclosures necessary for the consumer to have functional understanding of their insurance products. However, we are generally concerned about disclosures and consent requirements that are likely to: 1) Confuse and needlessly discourage consumers from using an insurance product that may be beneficial to them; 2) Create costly and impractical administrative process burdens for insurers and their policyholders that will make it harder and more expensive for insurance companies to provide pro-consumer products and services to their policyholders; and 3) Facilitate legal disputes over ambiguous and/or overly-broad terminology.

NAMIC is concerned that the proposed legislation is overly-broad in scope and will create unintended adverse consequences for consumers. Insurance companies are continually striving to provide consumers with what they frequently state they want and need – auto insurance rates that accurately reflect the policyholder's driving practices and claims risk exposure. Insurers have diligently worked to create insurance products that provide consumers with the *option* of having their driving experience monitored so that a comprehensive profile of their auto insurance risk exposure may be factored into the risk-based pricing process they use to set rates.

It is important to note that the Hawaii's Division of Insurance (HID) engages in a comprehensive review of all rate filings prior to an insurer being able to use the new rate or insurance product.



Further, the HID reviews these rate filings to make sure that the “rate is not excessive, inadequate or unfairly discriminatory” based upon the insurance code and state law. As part of the extensive regulatory review and oversight, the HID evaluates what pro-consumer protection disclosures are necessary and appropriate. Consequently, the proposed legislation is unnecessary as it relates to insurance consumers, so we respectfully request that the provisions relating to insurance be removed from the bill so as not to create redundant, overlapping and potentially conflicting legal requirements.

As previously stated, we believe that the proposed legislation is overly-broad as it relates to disclosures and consent from the consumer, and will create a situation where insurers will be hindered in their ability to provide consumers with insurance products that directly take into consideration the policyholder’s driving practices. In effect, the proposed legislation could ultimately act as a de facto prohibition on the use of these driver behavior evaluation products, frequently referred to as Telematics, to the detriment of insurance consumers. All but one state in the nation allows for the use of Telematics and those policymakers and regulators have all found a way to draft their laws and regulations in a way that does not make the process impractical and unworkable. NAMIC believes that this legislature has the same ability and opportunity to find a measured and thoughtful balance between consumer privacy protection and consumer utility of a desired insurance product.

NAMIC is expressly concerned with the following provisions in the bill are overly-broad and likely to create challenging, if not insuperable obstacles, for insurers to overcome when trying to provide their policyholders with a current regulator-approved, opt-in only, functionality disclosed Telematics insurance product:

“Clear and conspicuous” means obtaining a clear affirmative act signifying a consumer’s freely given, specific, informed, and unambiguous authorization for an act or practice after having been informed, in response to a specific request from a person; ...” [Emphasis added]

“Driver data” means any information related to a person operating a motor vehicle that is collected from a user’s interactions with a motor vehicle, which may include: (1) Personal or personally identifiable information and other sensitive details about a user’s actions and movements; Patterns of driving behavior, such as speeding, frequent stops, and aggressive braking; (3) Geolocation data, such as vehicle tracking information, routes taken, and location history; and (4) Information about a vehicle’s operation and usage patterns, such as frequent driving times, routes, or destinations. [Emphasis Added]

NAMIC is concerned that this language is likely to create administrative problems that will make it very difficult for insurers to provide consumers with Telematics products. The term “specific” and the phrase “unambiguous authorization for an act or practice” could be arguably interpreted to



require an insurer to disclose and secure formal consent on *every specific* behavioral driving act or practice being considered in the rating process and algorithm.

For example, would the insurer need to disclose and secure consent for how it evaluates every different type of left turns versus right turns (two lane intersection left turn versus one lane intersection left turn, rural versus city left turn, downhill versus uphill or flat road left turn) or complete stops versus partial stops, exact distance one starts to stop from the stop sign, and then describe with specificity each scenario and secure consent from policyholder for how the insurer plans to consider each and every granular permutation of the driver's behavior? Will the insurer have to list every type of motor vehicle speed fluctuations and braking patterns for consumer consent? This could become an exercise of the absurd. This could arguably result in a very lengthy disclosure and consent document where the consumer would have to acknowledge and specifically consent to each and every one of the driving experience rating factors used by the insurer. We are talking about thousands, tens of thousands, maybe even hundreds of thousands of rating variable driving scenarios that get considered in rating models.

Do consumers really need and benefit from the burden and expense of having to review and sign voluminous disclosures with a multitude of different places in the document for them to expressly sign as consent to *that specific* "act or practice"? No consumer is going to want to have to individually sign their name next to thousands of rating variable driving patterns and operational practices. And then what are the record retention requirements for these consent documents?

Additionally, NAMIC is concerned that the proposed legislation would require continuous and on-going disclosures and specific consent from every policyholder whenever the insurer makes a minor modification or addition to the Telematics product to improve functionality. Specifically, the proposed legislation states:

Affirmative consent to an act or practice is not inferred from the inaction of the consumer or the consumer's continued use of a service or product provided by the controller. [Emphasis added].

NAMIC is concerned that the overly-broad language in the bill may sound pro-consumer, but in reality is anti-consumer, because it over-protects the consumer out of being able to utilize a pro-consumer insurance product. As the old English idiom goes "don't throw the baby out with the bath water". NAMIC is concerned that the desire to protect against improper use of consumer data, which the insurance industry is already regulated against by the HID, is leading the sponsors to throw the "baby" (Telematics) away by imposing requirements that no reasonable insurer or policyholder will want to have to comply with in order to satisfy the disclosure and consent requirements of the bill.



For the aforementioned reasons, we respectfully request that you remove insurance from the scope of the bill, because it is unnecessary, unworkable, and really not where the consumer data unauthorized-use risk really exists.

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



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GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 23, 2025

TO: Senator Jarrett Keohokalole
Chair, Senate Committee on Commerce and Consumer Protection

Senator Carol Fukunaga
Vice Chair, Senate Committee on Commerce and Consumer Protection

FROM: Tiffany Yajima

RE: **S.B. 1286 S.D.1 - Relating to Motor Vehicles**
Hearing Date: Tuesday, February 25, 2025 at 9:32 a.m.
Conference Room: 229

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

On behalf of the Alliance for Automotive Innovation (“Auto Innovators”) we submit this testimony in **opposition** of S.B. 1286 S.D.1, Relating to Motor Vehicles.

The Alliance for Automotive Innovation is the singular, authoritative and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents the manufacturers producing nearly 99 percent of cars and light trucks sold in the U.S. Members include motor vehicle manufacturers, original equipment suppliers, technology, and other automotive-related companies and trade associations.

Auto Innovators is concerned that this bill is overly broad, difficult to comply with and could create unsafe situations for vehicle drivers. This measure prohibits the collection, sale, or disclosure of all driver data obtained by a motor vehicle or other connected car service, feature, or application to any third-party unless there is explicit consent of the owner or lessee of the vehicle to share this data.

Auto Innovators is concerned that this bill could limit data sharing for crucial vehicle services that are employed in vehicles today, including the transmittal of basic information between vehicle components to ensure a vehicle system’s performance.

The bill would also require consent for each of these instances where data is collected, shared, sold or offered for sale. Vehicles today are highly technological

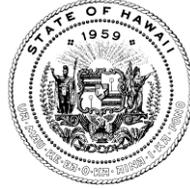
and complex, and this requirement could result in drivers being required to consent to multiple disclosures for every single update over the life of the vehicle. In addition, every single disclosure is required to stand alone, meaning that drivers would be constantly required to provide consent.

Furthermore, this bill also would allow a vehicle owner or lessee to opt-out of vehicle data sharing and revoke consent at any time. Auto Innovators is concerned that this broad revocation language is impractical and difficult to comply with properly. Automakers are also concerned that this could create unsafe situations. For example, if a vehicle owner chooses to opt out of sharing vehicle performance data related to a particular component in the vehicle, the supplier of that component would not be alerted to potential safety defect identification.

Automakers have existing legal obligations to collect data beyond the non-emergency exemptions in this bill and are therefore concerned that this measure also does not comport with the existing federally enforceable Federal Trade Commission rules and Privacy Principles on auto data privacy thereby creating an excessive regulatory burden.

For these reasons, Auto Innovators strongly opposes this measure and asks the committee to hold this bill.

Thank you for the opportunity to submit this testimony.



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JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

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Testimony of the Department of Commerce and Consumer Affairs

Office of Consumer Protection

Before the
Senate Committee on Commerce and Consumer Protection
February 25, 2025
9:32 AM
Via Videoconference
Conference Room 229

On the following measure:
S.B. 1286, S.D. 1, RELATING TO MOTOR VEHICLES

Chair Keohokalole and Members of the Committee:

My name is Melissa Enright, and I am an Enforcement Attorney at the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department offers the following comments.

The purposes of this bill are to: (1) establish requirements, including additional disclosures and consumer consent regarding the collection, sharing, selling and storage of consumer driving data; and (2) prohibit the sale of consumer driving data without obtaining the consumer's affirmative express consent.

This bill aims to protect the privacy of consumers and drivers by requiring automakers to obtain express consent from the consumer before collecting, sharing, or selling data that is recorded by the automobile. Of particular concern to OCP are reports of drivers being tracked even after turning off the tracking feature in the automobile.

Tracking and collecting geolocation data can be extremely privacy invasive, revealing intimate details about a person's life and exposing their daily routines.

The Federal Trade Commission investigated and issued a complaint against General Motors, LLC (GM) and OnStar, LLC for selling consumers' data without their express consent. The Commission alleged that GM and OnStar told consumers the driving data they collected from consumers would be used for the consumers' own assessment of their driving habits. [Complaint, No. 242-3052](#), paragraph 9. However, GM and OnStar allegedly used their tracking technology to sell precise geolocation data and consumer driving behavior data without consumers' consent. As a result of this conduct, the Commission further alleged that consumers have experienced loss of auto insurance, unexpected increases in insurance premiums, as well as the loss of privacy about sensitive locations they visit and their day-to-day movements.

The Commission's Bureau of Consumer Protection thereafter executed an agreement, which is subject to approval by the Commissioners, in which GM and OnStar agreed to:

- Limit the collection, use, and disclosure of covered driver data absent affirmative express consent;
- Allow consumers to disable the collection of Location Data from their Vehicles to the extent the Vehicle is equipped with the necessary technology, with exceptions; and
- Allow consumers to disable their remote collection of all data from their Vehicles if consumers decline to enroll or unenroll in OnStar.

[Proposed Decision and Order, No. 242-3052](#); see also 90 Fed. Reg. 8528 at p. [13](#).

The injunctive terms that GM and OnStar already agreed to should be the starting point for legislation to protect consumers from privacy-intrusive practices by auto-makers. In light of the injunctive terms that GM and OnStar already agreed to, OCP recommends that the following provisions be considered in future versions of this bill:

- The consumer's ability to withhold or withdraw affirmative express consent shall not be limited, such as by degrading the quality or functionality of a product or service as a penalty, unless the collection and use of covered driver data is

technically necessary to providing quality or functionality of the product or service without such degradation.

- Auto manufacturers and third-party service providers must refrain from collecting more covered driver data than reasonably necessary to fulfill the specific purpose for which it was collected and must use, disclose, or retain such data only for that purpose.
- Auto manufacturers and third-party service providers must maintain simple, easily located means for consumers to request a copy of covered driver data and to request that such data be deleted.
- Auto manufacturers must allow consumers to disable the collection of location data from vehicles to the extent the vehicle is equipped with the necessary technology, which may be accomplished by providing a mechanism in the vehicle to disable the collection of location data.

OCP is willing to work with the introducer and committee members to explore amendments to protect the consumer public.

Thank you for the opportunity to testify on this bill.

TESTIMONY OF MICHAEL ONOFRIETTI

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

Tuesday, February 25, 2025
9:32 a.m.

SB 1286, SD1

Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee on Commerce and Consumer Protection, my name is Michael Onofrietti, ACAS, MAAA, CPCU, Senior Vice President, Chief Actuary & Chief Risk Officer for Island Insurance, Board Chair and Chairman of the Auto Policy Committee 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 **opposes** this bill. SB 1286, SD1 contains broad definitions and onerous requirements for the use or sale of any driver data that is recorded or collected without the explicit consent of the individual who is the owner or lessee of the motor vehicle. These provisions may have the unintended consequence of stymieing innovation which benefits consumers by using data to reduce the cost of motor vehicle insurance via telematics programs.

Telematics programs utilize driver behaviors such as speed, acceleration, hard braking and other factors. Insureds must opt in to participate in the program but must opt in to the **entire** program. If insureds have the option to opt out of specific elements of the programs (for example, they wish to exclude hard braking), the entire program is unworkable.

For this reason, in subsection (a) in Section 2 of the bill, "person" is overly broad, and we suggest it be amended if this bill moves forward, to "automaker." Additionally, "personal or personally identifiable information and other sensitive details about a user's actions and

movements” are included in the definition of “driver data.” This is of concern because the key terms “personal or personally identifiable information” and “other sensitive details” are not defined.

Furthermore, in Section 2 subsections (a), (c), and (e)(4), the requirements for “explicit consent”, “specific motor vehicle services”, and “specific use” make compliance so onerous that insurers may pull back options to consumers to use this type of data. This would result in higher premiums for many consumers. The same logic applies to Section 2, subsection (d) that requires consent on new motor vehicles AND software updates.

For these reasons, we ask that the bill be held or amended to avoid the unintended consequences outlined above.

Thank you for the opportunity to testify.



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

From: Mark Sektnan, Vice President

Re: **SB 1286 SD1 – Relating to Motor Vehicles**
APCIA Position: OPPOSE

Date: Tuesday, February 25, 2025; 9:32 a.m.
Room 229 & Videoconference

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

The American Property Casualty Insurance Association (APCIA) is **opposed to SB 1286 SD1** which restricts the use or sale of any driver data that is recorded or collected without the explicit consent of the individual who is the owner or lessee of the motor vehicle.

The American Property Casualty Insurance Association 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.

The provisions of this bill could have the unintended consequence of eliminating telematics programs in Hawaii and stifling further innovation. Telematics programs are programs which more closely base insurance rates on a driver’s actual driving behavior. Generally, there is a device in the car or through an app that collects driver data. In order to operate properly, and ensure the driver is paying the appropriate premium, the system needs to collect all of the driver’s driving behavior. If the consumer has the option to opt out of specific elements of the programs (for example, they wish to exclude hard braking), the entire program is unworkable.

Of particular concern is Section 2 subsections (a), (c), and (e)(4), which contain the requirements for “explicit consent”, “specific motor vehicle services”, and “specific use.” These requirements could make compliance so onerous that insurers may pull back options to consumers to use this type of data. This would result in higher premiums for many consumers. The same logic applies to Section 2, subsection (d) that requires consent on new motor vehicles AND software updates.

For these reasons, APCIA asks the committee to **amend** this bill in committee to eliminate the overly broad definitions and compliance requirements that could negatively impact programs enjoyed by many drivers in Hawaii.