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**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE**

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, February 14, 2018
2:00 PM

**TESTIMONY ON HOUSE BILL NO. 2471, RELATING TO CONSUMER
PROTECTION.**

**TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE
COMMITTEE:**

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 2471, Relating to Consumer Protection. My name is Stephen Levins, and I am the Executive Director of the Department’s Office of Consumer Protection. The Department offers the following comments.

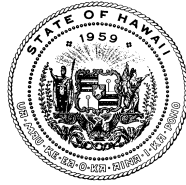
This bill adds a new section to Hawaii Revised Statutes (“HRS”) chapter 487 that establishes a Hawaii digital gaming commission within the Office of Consumer Protection to ensure proper oversight of game developers and marketers and protection of consumers from predatory and manipulative practices by the gaming industry.

Concerns about the addictive nature of video games, particularly among children, have been raised by parents and mental health experts since video games were introduced decades ago. Recently, video game developers have introduced certain predatory mechanisms in video games that, according to mental health experts, can create the same psychological, addictive, and financial risks as gambling.

The primary purpose of the Office of Consumer Protection is to promote fair and honest business practices by investigating alleged violations of consumer protection laws, by taking legal action to stop unfair or deceptive practices in the marketplace and by educating the consumer public and businesses regarding their respective rights and obligations.

While the Department acknowledges the serious issues concerning video games, the Office of Consumer Protection lacks the resources to facilitate a commission that is responsible to provide oversight and monitoring of predatory or exploitive practices in digital games. Based upon the preliminary research that the Department has been able to perform, it is clear that the effective oversight will need to be the product of careful and thoughtful review.

Thank you for the opportunity to testify on H.B. 2471. I would be happy to answer any questions the Committee may have.



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**Testimony COMMENTING on HB2471.
RELATING TO CONSUMER PROTECTION.**

REP. ROY TAKUMI, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Hearing Date: February 14, 2018 Room Number: 329

1 **Fiscal Implications:** N/A.

2 **Department Testimony:** The Department of Health acknowledges the potential for addictive or
3 compulsive behavior related to alleged predatory and manipulative practices by the video game
4 industry. From a public health perspective, video games and related entertainment activities are
5 often associated with a sedentary lifestyle for youth and young adults. The American
6 Association of Pediatrics recommends no more than two hours worth of screen time per week to
7 promote a healthy lifestyle. Per the Hawaii Youth Risk Behavior Survey (YRBS), only 27% of
8 middle school students and 20% of high school students meet physical activity guidelines of 60
9 or more minutes per day.

10 However, with regard to the specific mechanic of “loot boxes” sufficient data are not yet
11 available to guide public policy or parental decision-making, and more specifically to “provide
12 oversight and monitoring.” Although YRBS reports that in 2015, 21.7% of high school students
13 reported between 3-5 hours per school day of screen-based entertainment, the proportion that is
14 video games is unknown.

15 As a result of this paucity of data, a commission codified in statute may be premature. Most
16 states and jurisdictions appear to be less aware of these practices, and Hawaii’s emerging
17 interest should be recognized, but further research should precede proposals for a new regulatory
18 framework.

19 **Offered Amendments:** N/A.



**Written Testimony of the
Entertainment Software Association
Presented for the Record to
Committee on Consumer Protection and Commerce
February 14, 2018**

Chair Persons Takumi, Ichiyama and members of the Committee on Consumer Protection and Commerce:

On behalf of the Entertainment Software Association (ESA) and its members¹, thank you for the opportunity to submit testimony in opposition of House Bill 2471, legislation introduced to establish a digital gaming commission within the office of consumer protection. The ESA is the U.S. trade association representing the publishers of computer and video game consoles, personal computers, mobile devices, and the Internet.

First, we appreciate the opportunity to engage in thoughtful and meaningful conversation around today's video games, their evolving in-game mechanisms and technology, as well as the information available to help consumers and parents make informed decisions regarding the content of the games they play. Video game players are the most essential component of the video game industry's success, and their awareness and trust is paramount to our business. We believe strongly that the industry's robust, self-regulatory body, the Entertainment Software Rating Board (ESRB) remains the most efficient and effective way to address these important issues without government intervention. The ESA and the ESRB look forward to sharing more information regarding the industry's ongoing efforts related to interactive elements as they become public.

The video game industry is now a \$36 billion American success story that continues to grow substantially year over year—and our consumer base continues to be one of the most diverse. Sixty percent of Americans play video games every day. Sixty-seven percent of American households own a device used to play video games. Gamers age 18 or older represent 72 percent of the video game-playing population, and the average gamer today is 35 years old. Forty-nine percent of gamers are women; and adult women represent a significantly greater portion of the video game-playing population (31 percent) than boys under age 18 (18 percent). Twenty percent of Americans over the age of 50 play video games at least once a week. Additionally, 67 percent of parents play video games with their children at least once a week. In short, video games are enjoyed by hundreds of millions of Americans, often by entire families playing together across generations.

The declaratory statements included in this legislation are identical to the language contained within four other pieces of legislation introduced by members of the Hawaii Legislature on January 24. Many of

¹ ESA's members: 505 Games; Activision Blizzard, Inc.; Bandai Namco Entertainment Inc.; Bethesda Softworks, Capcom USA, Inc.; Deep Silver; DeNA; Disney Interactive Studios, Inc.; Electronic Arts; Epic Games, Inc.; Focus Home Interactive; Gearbox Publishing; Grey Box; GungHo Online Entertainment American, Inc.; Konami Digital Entertainment; Legends of Learning; LEVEL-5 Inc.; Magic Leap; Microsoft Corporation; Natsume Inc.; Nexon America, Inc.; Nintendo of America Inc.; NVIDIA; Phosphor Studios; SEGA of America, Inc.; Sony Computer Entertainment of America; Square Enix, Inc.; Take-Two Interactive Software, Inc.; Tencent, Inc.; THQ Nordic; Triseum; Ubisoft Entertainment, Inc.; Warner Bros. Interactive Entertainment Inc.; and XSEED Games.

these statements are sensationalist opinions rather than scientific facts. Their inclusion in legislation undermines the value and reputation of the video game industry while eliciting an emotional response to garner greater support for this legislation. Today's video game industry remains committed to creating the most technologically advanced, and compelling, interactive storytelling the world has ever known because gamers will accept nothing less. The industry is held to an exceptionally high standard by its players and prefers it that way. No industry is more receptive or capable to address, in real time, its customers' demands than video games.

The increased attention around video games and their in-game components has spurred a valuable dialogue around emerging technologies and business practices in which, as an industry, we are actively engaged. It is our desire to help educate committee members and other members of the legislature on the intricacies of the video game industry, its ratings system, its commitment to all consumers, and its ongoing efforts to address emerging issues as quickly and appropriately as possible.

It would be helpful for the Committee to have a comprehensive understanding of the in-game mechanisms this legislation is seeking to address. Loot boxes are an optional feature in certain games to provide gamers another way to acquire virtual items for use in that game. Like opening a package of baseball cards, customers might not know exactly what they are getting until they open the loot box, but they are guaranteed to get something. Loot boxes may reward the gamer with a sought-after virtual item (*e.g.*, a hard-to-find object) or a more pedestrian item (*e.g.*, an animated emoji). However, players always get something for use within the game, not outside the game. All loot boxes contain virtual items. As with other virtual items, often loot boxes can be earned through game play or purchased using virtual currency. Players like to collect virtual items, such as cosmetic features for their avatars, and loot boxes help meet this desire in an entertaining way.

It is important to note that is not necessary or required for players to acquire or purchase loot boxes to advance within a game. A gamer can play through an entire video game successfully without buying any loot boxes. Like other in-game features, players can choose to use them or not. Some or most of the same items found in loot boxes can often be obtained through routine game play (*e.g.*, defeating an enemy) or by using game points. In some cases, loot boxes have elements that help a gamer progress (*e.g.*, tools or different equipment). In others, they are merely cosmetic.

HB 2471 inaccurately compares these in-game mechanisms to gambling and being similar to slot machines. Loot boxes do not constitute gambling under U.S. law. In general, for an activity to constitute gambling, it must meet three elements: *staking* something of value (consideration) for a *chance* to win something of *value* (a prize). If one of the elements is lacking, it is not gambling. Loot boxes do not satisfy those elements. For instance, there is no "prize" because you cannot win something of value in the real world. Whatever worth those virtual items have, it is limited to within a virtual universe. These items cannot be removed from the game. Nor can one cash them out legally as the terms of service prohibit it. So, the virtual items found in loot boxes have no "value" in the real world.

The video game industry understands and appreciates the increasing challenges parents and other caregivers face today in determining the appropriateness of content children view through entertainment devices. As an industry, we take this responsibility very seriously and are currently working to address the game mechanisms in question.

The most effective tool available to consumers today in limiting unwanted content are the parental control features available on all devices used for playing video games. The parental controls allow

parents to limit their children's video game use, block games by rating category, regulate the amount of time a child can play, limit or prohibit in-game purchases and restrict access to the Internet. In addition to the intuitive set-up capabilities provided by the hardware manufacturers, the industry provides easy step-by-step instructions on setting parental controls.

In addition, the ESRB, established in 1994, is the non-profit, self-regulatory body that independently assigns ratings for video games and apps so parents can make informed choices. The ESRB rating system includes: Rating Categories, which suggest age appropriateness; Content Descriptors, which indicate content that may have triggered a particular rating and may be of interest or concern; and Interactive Elements, which inform about the interactive aspects of a game or app, including the ability to make in-game purchases, interact with other players or share a user's location with other users.

As Maureen K. Ohlhausen, former Acting Chairman of Federal Trade Commission (FTC) put best, "self-regulation, such as that done by the Entertainment Software Rating Board for video games, is an effective way for companies to modify their behavior to protect consumers where the government could or should not act...The electronic game industry continues to have the strongest self-regulatory code and enforcement of restrictions on marketing, advertising and selling mature-rated games to younger audiences."

The industry continues to evolve around the technology used to deliver games, so too does the ESRB and the tools it provides parents to make informed decisions. To address the growing mobile game market, the ESRB established the International Age Rating Coalition (IARC) in conjunction with other international rating organizations. The IARC rating system streamlines the process for assigning age and content ratings to the high volume of digitally delivered games and apps coming into the market today,. IARC administers ESRB ratings for games and apps featured in Google Play, Nintendo eShop, the Microsoft Store for the Xbox and PC, and the Oculus VR Store in the U.S. Additional storefronts are expected to deploy the IARC rating system this year.

ESRB ratings, when conspicuously placed with its recognizable and trusted icons and other descriptors, allow parents to quickly and easily identify in-game features they may not want their children to access, including digital purchases. As the market evolves, the ESRB will continue to adjust and expand to meet new and emerging issues of concern.

It is the hope of ESA and its members the information provided helps clarify the attributes of the in-game mechanics HB 2471 seeks to address. We strongly encourage members of the Committee on Consumer Protection and Commerce to vote against further consideration of this legislation and work closely with the ESA and ESRB to gain a better understanding of the video game industry, its ratings system, and its most valuable asset--its passionate gamer community.

HAWAII YOUTH SERVICES NETWORK

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Web site: <http://www.hysn.org> E-mail: info@hysn.org

Rick Collins, President

Judith F. Clark, Executive
Director

Bay Clinic

Big Brothers Big Sisters of
Hawaii

Bobby Benson Center

Child and Family Service

Coalition for a Drug Free Hawaii

Domestic Violence Action Center

EPIC, Inc.

Family Programs Hawaii

Family Support Hawaii

Friends of the Children of
West Hawaii

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Children's Action
Network

Hawaii Student Television

Ho'ola Na Pua

Kahi Mohala

Kokua Kalihi Valley

Maui Youth and Family Services

P.A.R.E.N.T.S., Inc.

Parents and Children Together
(PACT)

Planned Parenthood of the
Great Northwest and
Hawaiian Islands

PHOCUSED

Salvation Army Family

Intervention Services

Sex Abuse Treatment Center

Susannah Wesley Community
Center

The Catalyst Group

February 13, 2018

To: Representative Roy Takumi, Chair
And members of the Committee on Consumer Protection and
Commerce

TESTIMONY IN SUPPORT OF HB 2471 RELATING TO CONSUMER PROTECTION

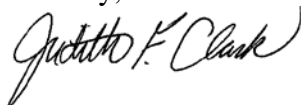
Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports SB 23024 Relating to Consumer Protection.

Video games that contain variable-reward mechanisms (called loot boxes) are widely and easily available to consumers. Children and youth who play these games are introduced to the thrills of gambling at an age when their brains are not fully developed. They are vulnerable to developing behavioral addiction to gambling, and do not have the maturity and knowledge to recognize the risks they encounter. Parents and other responsible adults are often unaware of these features in the games their children are using.

Regulating the sale to minors of video games that contain variable-reward mechanisms is prudent and sensible

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director

Robert J. Bidwell, M.D.
6264 Keokea Pl., Honolulu, Hi. 96825 Tel. 808-428-4545

Date: Feb. 14, 2018
Conference Room 329 (2:00 PM)
State Capitol

To: Rep. Roy Takumi, Chair (Consumer Protection and Commerce Committee)
Rep. Linda Ichiyama, Vice-Chair (Consumer Protection and Commerce Committee)

From: Robert J. Bidwell, M.D.

Re: HB 2471 “Relating to Consumer Protection”

Position: **Strong Support**

Dear Committee Chair, Vice-Chair, and Committee Members:

I am presenting this testimony in strong support of HB 2471 “Relating to Consumer Affairs.” In order to protect the health and well-being of our islands’ children and youth, I believe that the establishment of the Hawaii Digital Gaming Commission is essential to eliminate the predatory practices of the online gaming industry targeting the most vulnerable members of our community.

It is for the above reasons that I respectfully encourage members of your Committee to vote Over the past 25 years, through my position as Assistant Professor and later Associate Professor of Pediatrics and Director of Adolescent Medicine at the UH John A. Burns School of Medicine (1988-2012), I have provided health care and counseling to many of Hawai`i’s children and youth. I have continued to provide such care in my present position as Associate Clinical Professor of Pediatrics (2013-present). In all these positions I have had the opportunity to provide health care and counseling to children and youth in a variety of settings including the Adolescent Clinic at Kapi`olani Medical Center for Women and Children (KMCWC), the Sex Abuse Treatment Center (KMCWC), and the health clinics at both the Hawai`i Youth Correctional Facility in Kailua and the Juvenile Detention Facility in Kapolei. Many of these young people have faced both personal and family issues of addiction in its many forms, including gambling. Also, far too many have been victims of many forms of predation that have taken advantage of their youth, inexperience, still-developing cognitive abilities, and often disadvantaged life circumstances. The online gaming industry, particularly through the insinuation of “variable-reward mechanisms” (such as “loot boxes”) into its gaming products, has become a partner in that predation, yet is virtually unregulated compared to other forms of gambling.

The great majority of American youth have engaged in gaming activities in varying degrees. Many spend hours a day gaming. A 2011 study by R. Gentile in the journal *Pediatrics* found in a prospective study of over 3000 adolescents that 9% met criteria for “pathologic gaming.” Youth who were considered most vulnerable to becoming pathologic gamers were those who spent more hours gaming, who had lower social competence, and who were more impulsive by nature. The outcomes associated with being a pathologic gamer included increased depression, anxiety, social isolation and lower school performance. These results demonstrated the very real vulnerability of a significant percentage of youth to becoming pathologic gamers and the serious psychological, emotional and social consequences resulting from this. The effects on youth of online gaming buttresses the concerns of the American Medical Association, the American Psychiatric Association and the World Health Organization that pathologic online gaming likely represents a very real public health concern, not to mention its toll on individual health and well-being. It should be noted that the above study on youth gaming was conducted *before* the addition of “variable-reward mechanisms” into online gaming products. These mechanisms were introduced to games, at least in significant part, for the specific purpose of exploiting the cognitive and developmental vulnerabilities of children and youth. Common sense tell us, though the research has not yet been completed, that the addition of the addictive “variable-reward mechanisms” to online games can only increase the vulnerability of children and young people to pathologic levels of gaming and magnify its already proven negative effects, with the added negative consequence of significant financial loss incurred by youth and their families. We already have established strict regulation of the gambling industry, in large part to ensure that young people are shielded from its negative influences and effects. It only makes sense that we take similar strict measures to assure that the vulnerability of young people cannot be exploited by the online gaming industry.

It is for the above reasons that I respectfully encourage members of your Committee to vote in favor of HB 2471.

Thank you so much for the opportunity to share my testimony with you.

Respectfully yours,

Robert J. Bidwell, MD

HB-2471

Submitted on: 2/13/2018 2:42:46 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward White	Individual	Support	Yes

Comments:

Aloha to the members of the legislature. I am submitting testimony on behalf of myself, as a resident of Honolulu, a life-long gamer, and a student of the practices described in this bill.

I wish to submit my support for SB2471, which creates a Hawaii Digital Gaming Commission to oversee and monitor video game business practices for predatory and exploitative practices.

It is unfortunate that we find ourselves at this point, and I regret having to support this bill, but I feel that the ESRB and the ESA have abdicated their responsibilities towards their customers with their recent positions towards lootboxes, leading to the need for government monitoring of the gaming industry's business practices.

My support stems from the increasing use of predatory practices in digital micro-transactions, particularly lootboxes, which use variable reward operant conditioning that is known to induce addiction through experiments and in practice in slot machines. Furthermore, there is evidence of large publishers seeking to use the power of game systems to coerce consumers into additional purchases, such as the recording of the EA CEO describing to investors how moments of frustration are channeled into additional purchases. All evidence points to these abuses getting worse, and the use of addictive techniques suggests that normal market pressures may not help slow down the rollout of these lucrative business practices.

I believe the key to blunting the influence of these business practices is to reintroduce the pressure that led to the creation of the ESRB in the first place--government attention, and the threat of government oversight and regulation. The Digital Gaming Commission creates a means of maintaining ongoing pressure on the video games industry to maintain ethical business practices.

This is particularly important given the scale of video games today, and the speed with which they change. As the ESA itself points out, the video game industry now dwarfs the movie industry in terms of size and influence. Modern video games have access to our pockets, living rooms, and now wallets in ways the movie and casino industries could only dream of. That additional power should come with additional responsibilities to the consumer, which the ESA and ESRB are shirking.

Particularly troubling is the ESA's and ESRB's use of a narrow definition of gambling to defend the use of lootboxes, which is the most prominent of a very few statements made about the issue and is included in other testimony submitted by these bodies. Saying that lootboxes are not gambling because you cannot win something of value "in the real world" is a distinction without a difference. The comparison to gambling is entirely driven by a comparison to slot machines, which use variable reward operant conditioning to cause addiction--a phenomenon which is well-documented.

As a side note, I would argue that lootbox microtransactions do have all the legal components of gambling, as the player is paying in actual money (consideration) for a chance (probabilistic reward) to obtain something of value. The fact is that players often have goals in mind when they buy lootboxes, and that goal has value to them, leading to excess purchases on the chance they can obtain that digital item of value--the "jackpot." As someone who deals in intellectual property, I find the thought laughable that a digital item could have no value, especially considering the peer-to-peer market for digital items in games such as second life, team fortress 2, and World of Warcraft. There is a hat in Team Fortress 2 that people will pay \$5,500 for a key to, in real-world money.

I would say that the disingenuous arguments submitted by the ESA to our very own legislature are themselves evidence of why this oversight body is necessary.

This oversight body is also necessary because of the nuance of the issues involved. As I've pointed out, few gamers would say that lootboxes aren't gambling in some way, but also few gamers would say that trading card games are as damaging as lootboxes, since the randomness of booster packs is designed to actually create an incentive for disparate players to come together--a positive, rather than predatory outcome.

Lastly, as evidenced in China (where Blizzard tokenized their money to buy booster packs, arguably a worse outcome), digitally distributed games are able to change and evolve much faster than the law, and large game publishers that rely on lootboxes are incentivized to take advantage of loopholes to maintain their business model. Establishing the commission would allow Hawaii to keep up with the game industry as it develops.

There may be some concern about the burden placed on the industry as a result of these actions, but I actually think it can benefit the market, given that in the last 10 years, AAA publishers have gone from launching 60 games a year to only 5-10, all while maintaining the same levels of profitability. The use of lootboxes and micro-transactions are a driver in this level of market distortion, and seeking to end or manage the incentives caused by predatory practices may actually reintroduce options to the consumer.

In an industry that has adopted the term "whales" from the casino industry to describe big spenders, in an environment where you have an increasing number of stories of people spending thousands of dollars in micro-transactions, often as the result of

knowingly and openly-discussed coercive design practices that are deployed on a scale that some of our most famous industries haven't achieved, this commission seems necessary to help safeguard consumers in Hawaii and beyond.

Mahalo for your consideration.

HB-2471

Submitted on: 2/12/2018 5:33:02 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nathan Hutchinson	Individual	Support	No

Comments:

Aloha,

I believe creating a Hawaii Digital Gaming Commission is a great idea. Hawaii residents need protection from predatory game companies. DCCA needs to be informed on how best to protect video game consumers. An advisory commission should be created that is made up of video game subject matter experts that know how games are created and designed. We should have similar protections in gaming as other industries like, agriculture, health, & engineering.

Thank you,

Nathan

Committee: Consumer Protection & Commerce
Hearing Date/Time: Wednesday, February 14, 2018
Place: Conference Room 329
Re: HB 2471 Relating to Consumer Protection



Support HB 2471

Dear Chair Roy Takumi, Vice Chair Linda Ichiyama and Members of the Committee:

My name is Karen Ginoza and I am testifying as an individual. I am a retired teacher and still coach Special Olympics. I have observed the athletes playing games on their phones even while practicing for track & field competitions. I also enjoy playing video games on my iPad and realize how easy it is to click for additional play time without realizing the cost of paying for the extra playing time.

It is important to create the Hawaii Digital Gaming Commission within the Office of Consumer Protection to oversee and monitor predatory and exploitative practices in digital games. This gives parents added support and assurance that they will not be faced with large bills while allowing their children to play video games. Videos games can be educational, and people should have the opportunity to play video games safely.

Sincerely,

Karen Ginoza

HB-2471

Submitted on: 2/13/2018 11:30:34 PM

Testimony for CPC on 2/14/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christy MacPherson	Individual	Support	No

Comments:

Aloha Chair Takumi, Vice Chair Ichiyama and members of the Consumer Protection and Commerce Committee,

As a mother of a 12-year old "gamer" who looks like a telemarketer with his headset while playing video games when he should be doing his homework, I **STRONGLY SUPPORT** this bill. I have personally experienced the stress of looking at my credit card statement and realizing that I was charged over \$400 for gaming products. When I scolded my son, he replied that he "didn't know what he was doing." *This is the point.* Naturally, young people do not know what they are doing. And game product companies know this and prey on them.

As a Licensed Clinical Social Worker, it is very disturbing that young children are becoming addicted to all kinds of things (made so easily accessible to them) as their intellectual and emotional capacities are still developing. I can also attest to the fact that many of the parents whom I counseled have shared similar concerns. Most of these parents are low-income and economically vulnerable. Every \$100 spent on this garbage is \$100 less for them to use towards needed housing and groceries.

Establishing a Hawaii Digital Gaming Commission would protect the health of our youth- the next generation- as well as their hard-working parents. Will you, our lawmakers, care for our youth or will you succumb to the money-hungry lobbyists whose agenda is taking advantage of people who are unaware of the money they are losing so that they can gain millions?

Thank you for the opportunity to provide testimony.