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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
And
Senate Committee on Judiciary**

**Tuesday, March 1, 2022
10:00 a.m.
Via Videoconference**

**On the following measure:
S.B. 2212, S.D. 1, RELATING TO ROBOCALLS**

Chair Baker, Chair Rhoads, and Members of the Committees:

My name is Stephen Levins, 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 hold telecommunication service providers and third-party spoofing providers accountable by making certain robocalls and spoofing unlawful. Fraudulent robocalls are a pervasive problem in Hawaii and the rest of the country. Nearly 60 million Americans say that they have fallen victim to a phone scam in the past year, like the calls purporting to be from the IRS or a company inquiry about an expiring warranty on a nonexistent car. In total, Americans have been swindled out of more than \$30 billion over the past year, according to a survey conducted by TrueCaller and The Harris Poll.

A Robocall trying to sell something is illegal unless the company trying to sell the consumer something has obtained written permission, directly from the consumer, to call that way. To get permission, the company must be clear it's asking to call with

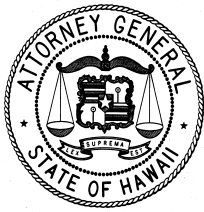
robocalls, and it can't make the consumer agree to the calls to get a product or service. Only a few types of robocalls are allowed under Federal Trade Commission rules without the consumer's permission, like political calls about candidates running for office, calls from some health care providers, or charities asking for donations.

Hawaii consumers have been victimized by the practice commonly referred to as spoofing. Spoofing is when callers disguise their identity by deliberately falsifying the information transmitted to their called ID display. Scammers do this to make calls less easily traceable. Also, scammers try to trick people into picking up a call by using so-called neighbor spoofing, which makes it appear as though the number is a local one that they may already know or trust.

Under the Truth in Caller ID Act, the Federal Communication Commission's rules prohibit any person or entity from transmitting misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongly obtain anything of value. Illegal spoofers can face fines of up to \$10,000 per violation of the law.

Senate Bill No. 2212, S.D. 1 seeks to prohibit many of the same practices that are already regulated by the Truth in Caller ID Act. To the extent that it provides another tool for state law enforcement to hold violators accountable, the Department supports this measure.

Thank you for the opportunity to testify on this bill.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 2212, S.D. 1, RELATING TO ROBOCALLS.

BEFORE THE:

SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION AND ON JUDICIARY

DATE: Tuesday, March 1, 2022 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 229 and Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Christopher J.I. Leong,
Deputy Attorney General, at 808-586-1180)

Chairs Baker and Rhoads and Members of the Committees:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to hold telecommunication service providers and third-party spoofing providers accountable by making certain robocalls and spoofing unlawful.

The bill may be subject to a dormant Commerce Clause challenge. The Commerce Clause, article I, section 8, clause 3, of the United States Constitution, grants Congress power to regulate interstate commerce and implicitly restricts states from enacting laws that unduly burden interstate commerce. The dormant aspect of the Commerce Clause prohibits state legislation that regulates commerce taking place wholly outside of the state's borders, regardless of whether the commerce has effects within the state. *Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989).

Similar anti-spoofing measures passed in other states have been struck down for violating the Commerce Clause. See, e.g., *SpoofCard, LLC v. Burgum*, 499 F. Supp. 3d 647 (D.N.D. 2020); *TelTech Systems, Inc. v. Barbour*, 866 F. Supp. 2d 571 (S.D. Miss. 2011), *aff'd on other grounds sub nom. Teltech Systems, Inc. v. Bryant*, 702 F.3d 232 (5th Cir. 2012). In these cases, the courts noted that due to the growth of mobile phone usage, mobile number portability, and services like call forwarding, "it is impossible for a user or provider of caller ID spoofing service to know whether the recipient of their caller ID spoofing is [within the state]." *TelTech*, 866 F. Supp. 2d at 575-76. Thus, while the

statute in each case was only directed at activity within the respective state, the spoofing providers challenging the statutes successfully argued that "it was impossible for [them] to conduct their businesses or use caller ID spoofing services anywhere in the country without risk of liability under the [respective] statute." *Id.* at 576. Accordingly, a spoofing provider would most likely have to refrain from all caller ID spoofing activity in all states in order to avoid liability in a state with an anti-spoofing statute in effect. Even though this bill is only aimed at caller ID spoofing activity affecting Hawaii residents, its practical effect is to regulate commerce that occurs wholly outside the state and thus would likely violate the Commerce Clause.

Thank you for the opportunity to provide comments.



**Testimony of
LISA MCCABE
CTIA
on
Hawaii Senate Bill 2212**

**Before the
Hawaii Senate Committee on Commerce and Consumer Protection**

February 25, 2022

Chair Baker, Vice Chair Chang, and committee members, on behalf of CTIA®, the trade association for the wireless communications industry, I submit this testimony in opposition to Senate Bill 2212.

Although well intentioned, federal law already prohibits spoofing “with the intent to defraud, cause harm, or wrongly obtain anything of value.” In addition, wireless providers, including AT&T, Verizon and T-Mobile, have worked to develop and deploy caller ID authentication technology that works to combat illegal spoofing by helping consumers know when a call is being spoofed. Often labeled with its standards name: STIR/SHAKEN (Secure Telephone Identity Revisited and Signature-based Handling of Asserted Information Using toKENS), the technology STIR/SHAKEN helps wireless providers digitally validate a variety of calls, allowing a provider to verify the caller and the caller’s right to use the phone number; in other words, it helps confirm the call is from the person the caller ID says it is.

Regarding robocalls, national wireless carriers, along with other voice service providers, have a partnership with 51 attorneys general to adopt eight principles to fight illegal robocalls (as well as for illegal spoofing).¹ This partnership is a reaffirmation of the commitment made by providers, such as AT&T, T-Mobile, and Verizon, to aggressively fight illegal and unwanted robocalls from plaguing

¹ See <https://www.maine.gov/ag/news/article.shtml?id=1452907> (last accessed Feb. 4, 2022).



consumers. Specifically, those carriers agreed to incorporate, or continue to incorporate, the following anti-robocall principles into their business practices:

- Offer Free Call Blocking and Labeling
- Implement STIR/SHAKEN
- Analyze and Monitor Network Traffic
- Investigate Suspicious Calls and Calling Patterns
- Confirm the Identity of Commercial Customers
- Require Traceback Cooperation in Contracts
- Cooperate in Traceback Investigations
- Communicate and cooperate with state attorneys general about recognized scams and trends in illegal robocalling

A multi-pronged effort is needed to combat illegal robocalls. To that end, wireless carriers continue to monitor traffic across their networks to identify patterns like high-call volumes and short call durations that may be signs of bad actors. Moreover, voice service providers are in communication with each other to help identify illegal callers for referral to the appropriate federal and state enforcement authorities. To aid those enforcement efforts, wireless companies participate in the Industry “Traceback” Group, formed by broadband association USTelecom² that has worked with the Federal Communications Commission (FCC) and Federal Trade Commission (FTC) to identify the source of illegal calls.

In addition, the wireless industry continues to educate consumers on ways to curb unwanted robocalls with blocking features and tools that can identify likely “spam” or fraudulent calls. For example, CTIA and its member companies encourage consumers to use blocking features built into devices, install robocall blocking and labeling apps, and report unwanted calls to the FTC and the FCC through their online portals. CTIA has launched a dedicated consumer resource at

² Please see <https://tracebacks.org/>.



FightingRobocalls.CTIA.org to provide consumers with the information and tools needed to help combat illegal robocalls.

In closing, the wireless industry recognizes the need to fight unwanted and illegal robocalls and combat illegal caller ID spoofing. That is why we already provide and/or offer solutions to combat these troubling practices, and why we work together with interested stakeholders, including state attorneys general, the FCC, and the FTC, to protect consumers from being harassed and scammed. While CTIA opposes SB 2212, the wireless carriers stand ready to collaborate with you on this important matter as the collective work in this space continues to evolve.

SB-2212-SD-1

Submitted on: 2/25/2022 3:42:36 PM

Testimony for CPN on 3/1/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerard Silva	Individual	Oppose	No

Comments:

All Robocalls should be Unlawfull period !!

Written Statement of
Steven Golden
Vice President, External Affairs

SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, & TOURISM

March 1, 2022 10:00 AM
State Capitol, Conference Room 229, Videoconference

LATE

COMMENTS FOR:

S.B. NO. 2212 SD1 RELATING TO ROBOCALLS

To: Chairs Baker and Rhoads, Vice-Chairs Chang and Keohokalole, and Members of the Committees

Re: Testimony providing comments for SB 2212 SD1

Aloha Honorable Chairs, Vice-Chairs, and Committee Members:

Thank you for this opportunity to submit comments on Senate Bill 2212 SD1. The primary intent of this bill is to prevent illegal robocalls and spoofing of telephone numbers.

Hawaiian Telcom supports the SD1 version of this measure which exempts voice service providers that are in compliance with the federal Pallone-Thune TRACED (Telephone Robocall Abuse Criminal Enforcement and Deterrence) Act of 2019.

The Federal Communications Commission (FCC) requires all voice service providers to file certifications in the Robocall Mitigation Database regarding their efforts to fight illegal robocalls on their networks. Hawaiian Telcom filed its first certification of compliance in June 2021.

In order to prevent illegal robocalls, Hawaiian Telcom's Security Team conducts a comprehensive due diligence to identify customers it believes warrant further investigation based on factors that indicate they may be capable of originating illegal robocalls, such as having been subject to a traceback request or previous Robocall enforcement action.

With respect to spoofing, if a subscriber has customer premises equipment that enable spoofing, Hawaiian Telcom has no involvement in such activity. Spoofing violates the federal Truth in Caller ID Act and Hawaiian Telcom's terms of service, and is grounds for suspension and/or termination of service.

Hawaiian Telcom is committed to protecting our customers from illegal robocalls and spoofed call telephone numbers, and will continue working with the FCC and other stakeholders to address this issue.

Thank you for the opportunity to submit these comments for Senate Bill 2212 SD1.

LATE

SB-2212-SD-1

Submitted on: 2/28/2022 3:43:30 PM

Testimony for CPN on 3/1/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Vicki R. Belluomini	Testifying for Maui County Office on Aging	Support	No

Comments:

Maui County Office on Aging strongly supports SB2212 making spoofing and robocalls unlawful. Kupuna are highly targeted by scammers and this law could help keep our elders and communities safe. Mahalo for the opportunity to testify on this important bill.

LATE

SB-2212-SD-1

Submitted on: 2/28/2022 7:46:42 PM

Testimony for CPN on 3/1/2022 10:00:00 AM

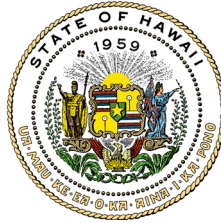
Submitted By	Organization	Testifier Position	Remote Testimony Requested
Paul Greenwood	Individual	Support	No

Comments:

Having led an Elder Abuse Prosecution Unit at the San Diego District Attorney's Office for 22 years, I have witnessed the immense damage that scammers can inflict on older adults by using robocalls to intimidate, coerce and persuade victims to part with their hard earned money. Elder Financial Exploitation has been appropriately called the crime of the 21st century. Crooks are using technology to gain access to hundreds of unsuspecting elders in Hawaii. This bill will go some way to stemming the tide of these scams and I urge bi-partisan support for its passage.

DAVID Y. IGE
GOVERNOR OF HAWAII

ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH



CAROLINE CADIRAO
DIRECTOR

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Testimony COMMENTING on SB2212 SD1
Relating to Robocalls



COMMITTEE ON COMMERCE & CONSUMER PROTECTION
SENATOR ROSALYN H. BAKER, CHAIR
SENATOR STANLEY CHANG, VICE CHAIR

COMMITTEE ON JUDICIARY
SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALO, VICE CHAIR

Testimony of Caroline Cadirao
Director, Executive Office on Aging
Attached Agency to the Department of Health

Hearing Date: March 1, 2022
10:00 AM

Via Videoconference

1 **EOA's Position:** The Executive Office on Aging (EOA), an attached agency to the Department
2 of Health, provides comments on SB2212 SD1, Relating to Robocalls.

3 **Purpose and Justification:** The purpose of this measure is to make spoofing and robocalls
4 unlawful and to stop the nuisance that scammers pose to the community, especially to our
5 kupuna.

6 The State of Hawaii leads the United States in overall life expectancy and has the fastest growth
7 rate of the Medicare population. The impact of these trends underscores the dire need to protect
8 Hawaii's elders, many of whom live alone or are isolated.

9 One of EOA's programs, the Senior Medicare Patrol (SMP) Hawaii is part of 54 projects or
10 chapters across the nation and U.S. territories that assist and empower beneficiaries, their family
11 members, and caregivers to prevent, detect and report healthcare fraud, errors and abuse through

1 outreach, counseling, and education. SMP Hawaii is also a referral agency for individuals
2 affected by alleged scams unrelated to healthcare, such as investment, romance, social media, tax
3 and more.

4 It is significantly critical now to work closely with local, county, state and federal agencies and
5 organizations to strengthen or develop new partnerships to combat the proliferation of illegal
6 robocalls and to hold telecommunication service providers and third-party spoofing providers
7 accountable. The following lists the growing intensity and reach of scammers who prey on
8 kupuna and the results of their success:

- 9 • Unwanted calls, including spoofing and robocalls, are the Federal Communication
10 Commission's top consumer complaint.
- 11 • The Federal Trade Commission (FTC) estimates nearly 2.4 billion robocalls are made
12 each month while this estimate is nearly double, according to YouMail, a private robocall
13 blocking service.
- 14 • Hawaii's kupuna lost \$6 million in 2020, and cases in Hawaii are expected to rise 10%
15 every year.
- 16 • According to a Consumer Reports survey, 70 percent of U.S. consumers say they won't
17 answer the phone if they don't recognize the caller's number. Sixty-two percent say they
18 let most calls go to voicemail.
- 19 • Medicare reportedly loses \$70 billion annually to fraudulent claims although the exact
20 amount is difficult to truly measure since many cases are unreported.
- 21 • 3,500,000+ older adults are swindled out of nearly \$5 billion each year from financial
22 crimes.
- 23 • The average loss is approximately \$34,200 for a senior who was scammed; and

- 1 • U.S. Office of Inspector General (OIG) received 1,500+ COVID-related complaints since
- 2 2020¹.

3 **Recommendation:** EOA supports the intent of SB2212 SD1.

4 Thank you for the opportunity to testify.

¹ Sources: *Consumer Affairs*, November 25, 2021; *Comparitech*, January 11, 2022