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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
and
Senate Committee on Labor and Technology

Friday, February 7, 2025
9:35 a.m.

Via Videoconference
Conference Room 229

On the following measure:
S.B. 640 RELATING TO ARTIFICIAL INTELLIGENCE

Chair Keohokalole, Chair Aquino, and Members of the Committees:

My name is Radji Tolentino, and I am an Enforcement Attorney at the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department offers comments on this bill.

The purpose of this bill is to require businesses to inform consumers when the consumers are interacting with a chatbot. This could help avoid misleading users into believing they are interacting with real people when they are interacting with a chatbot or similar technology during consumer transactions.

OCP has long been responsible for initiating civil enforcement actions to uphold consumer protection laws in Hawaii and appreciates the intent of this bill. However, OCP

has concerns about enforcement because (1) the remedies section of this bill is inconsistent with the remedies for violations of other consumer protection laws, and (2) it is unclear whether this bill clearly defines the chatbot technologies would trigger the disclosure requirement.

The remedies section of this bill departs from existing remedies in UDAP cases in a manner that may lead to unnecessary litigation. Existing remedies for unfair and deceptive practices in trade or commerce prohibited by existing law include damages, injunctive relief, and penalties, all of which may be awarded in a civil action. In the portion of the bill that pertains to a private right of action, this bill allows a court to exercise discretion to apportion and allocate the "portion of threefold damages in excess of compensatory damages" without identifying the class of persons or entities to whom the non-compensatory damages may be awarded. This is an unusual remedy that may invite litigation over the legislature's intent, particularly if the non-compensatory damages are awarded to legal persons who are not a party to the civil action.

The definitions of "artificial intelligence chatbot" and "chatbot" may also lead to litigation over which chatbot technologies trigger the disclosure requirement. For example, Pre-Written Response Chatbots operate based on a fixed set of responses. The technology differs from machine learning technology, but consumers might be deceived by these systems in a manner not dissimilar from how they would be deceived by a chatbot that is capable of machine learning. There are important questions left to be addressed about whether this bill strikes the right approach in defining the chatbot technologies that trigger the disclosure requirements.

OCP appreciates the intent of the bill and acknowledges that significant concerns remain about the various types of chatbot technologies that businesses use to engage with consumers. Addressing these concerns will be important if the State is to arrive at a legislative solution that provides clear guidance and is capable of effective enforcement.

Thank you for the opportunity to testify on this bill.



TECHNET
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February 4, 2025

Senator Jarrett Keohokalole
Chair, Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
415 South Beretania Street, Room 205
Honolulu, HI 96813

Senator Henry Aquino
Chair, Senate Committee on Labor and Technology
Hawaii State Capitol
415 South Beretania Street, Room 204
Honolulu, HI 96813

RE: SB 640 (Keohokalole) – AI: Chatbot Disclosures - OPPOSE

Dear Chair Keohokalole, Chair Aquino, and Members of the Committees,

On behalf of TechNet, I'm writing in respectful opposition to SB 640 (Keohokalole) related to disclosures around AI chatbots.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.5 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance. TechNet has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, Tallahassee, and Washington, D.C.

TechNet and our members certainly understand the need for consumers to understand when they are interacting with a chatbot or other technology powered by artificial intelligence. Although we appreciate the intent to provide consumers with transparency about potentially misleading products or services, we have serious concerns about the current scope of the requirement and the related damages and penalties, which are not tied to actual harm. Moreover, the bill does not exempt obvious cases where a reasonable person would recognize they are interacting with an AI chatbot.

First, the bill defines an “artificial intelligence chatbot” as one that uses a generative AI system but fails to define both “artificial intelligence” and “generative AI.” This omission, coupled with the vague phrase “or other technology,” creates a risk of overly broad applicability, potentially extending the bill’s reach to a wide range of technologies across various industries. This lack of clarity is especially concerning given that the disclosure obligation takes effect immediately upon passage, leaving businesses uncertain about compliance expectations.

We recommend clarifying the scope of AI technologies covered to prevent unintended consequences.

Moreover, violations could expose businesses to lawsuits or class actions with potential damages of up to \$10 million—on top of an excessive \$5 million civil penalty. This penalty is entirely disconnected from any actual harm suffered by a plaintiff. The threat of these lawsuits will have unintended and significant impacts on numerous technologies and companies that operate in Hawaii and serve Hawaii residents. We strongly recommend removing the private right of action and granting sole enforcement authority to the Attorney General to ensure a more balanced approach.

If you have any questions regarding our position, please contact Dylan Hoffman at dhoffman@technet.org or 505-402-5738.

Sincerely,

A handwritten signature in black ink, appearing to be 'Dylan Hoffman', with a stylized, flowing script.

Dylan Hoffman
Executive Director for California and the Southwest
TechNet



Testimony to the Senate Committee on Commerce and Consumer Protection

Senator Jarrett Keohokalole, Chair

Senator Carol Fukunaga, Vice Chair

Testimony to the Senate Committee on Labor and Technology

Senator Henry J.C. Aquino, Chair

Senator Chris Lee, Vice Chair

LATE

Friday, February 7, 2025, at 9:35AM
Conference Room 229 & Videoconference

RE: SB640 Relating to Artificial Intelligence

Aloha e Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

My name is Sherry Menor, President and CEO of the Chamber of Commerce Hawaii ("The Chamber"). The Chamber respectfully opposes Senate Bill 640 (SB640), which requires corporations, organizations, or individuals engaging in commercial transactions or trade practices to clearly and conspicuously notify consumers when the consumer is interacting with an artificial intelligence chatbot or other technology capable of mimicking human behaviors and authorizes private rights of action.

Regulating chatbots is unnecessary and burdens businesses and consumers. While intended to prevent deception, the bill ignores AI's role in improving efficiency and reducing costs. AI has become essential to daily life, powering virtual assistants, customer service, healthcare, and financial services. According to HealthTech, 79% of organizations use AI to enhance patient care and streamline administrative tasks. Strict disclosure rules could disrupt operations, forcing businesses to label even simple automated responses as chatbots, increasing costs without clear benefits.

The bill's heavy penalties and legal risks could discourage AI adoption, stifling innovation and pushing businesses elsewhere. With fines up to \$5 million, companies may avoid AI investments entirely. Consumers already recognize chatbots for routine interactions, making regulation redundant. The Chamber respectfully opposes this bill as it restricts technological progress, harms businesses, and limits access to AI-driven services.

The Chamber of Commerce Hawaii is the state's leading business advocacy organization, dedicated to improving Hawaii's economy and securing Hawaii's future for growth and opportunity. Our mission is to foster a vibrant economic climate. As such, we support initiatives and policies that align with the 2030 Blueprint for Hawaii that create opportunities to strengthen overall competitiveness, improve the quantity and skills of available workforce, diversify the economy, and build greater local wealth.

We respectfully ask to defer indefinitely 640. Thank you for the opportunity to testify.

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SB-640

Submitted on: 2/7/2025 2:25:34 AM

Testimony for CPN on 2/7/2025 9:35:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|--------------|--|--------------------|----------------------|
| Angela Young | Testifying for CARES Community Advocacy Research Education Services | Comments | Remotely Via Zoom |

Comments:

Cares provides comments.