

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:

H.B. NO. 2357, RELATING TO ARTIFICIAL INTELLIGENCE.

BEFORE THE:

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & TECHNOLOGY

DATE: Friday, February 6, 2026 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 423

TESTIFER(S): Anne E. Lopez, Attorney General, or
Ashley M. Tanaka, or Christopher J.I. Leong,
Deputy Attorneys General

Chair Ilagan and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

This bill adds a new chapter to the Hawaii Revised Statutes (HRS) to prohibit music streaming platforms from making available in the State music performed or attributed to an artificial intelligence music artist; appropriates funds to the Department of Agriculture to use artificial intelligence to support the agricultural industry; and adds a separate new chapter to the HRS to prohibit producing, circulating, publishing, distributing, communicating, or making available in the State any tangible product created with the use of artificial intelligence without a disclosure that artificial intelligence was used to create the tangible product. This bill also assigns the Department exclusive enforcement and rulemaking authority over the two new chapters added to the HRS by this bill and declares violations of these new chapters to be unfair methods of competition and unfair and deceptive acts or practices under section 480-2, HRS.

This bill may be subject to a legal challenge under the First Amendment of the United States Constitution, as the new section -2 of the new chapter added by section 1 restricts expressive speech by prohibiting music streaming platforms from making available an entire category of music – music performed or attributed to an artificial intelligence music artist. As the U.S. Supreme Court stated in Brown v. Entertainment

Merchants Assn., 564 U.S. 786 (2011), "whatever the challenges of applying the Constitution to ever-advancing technology, the basic principles" of the First Amendment "do not vary." *Id.* at 790. In this case, even though music streaming platforms and artificial intelligence music artists represent modern, ever-advancing technology, courts would still likely engage in a First Amendment analysis in determining whether this bill is constitutional. In Moody v. NetChoice, LLC, 603 U.S. 707 (2024), the U.S. Supreme Court stated that "the government may not, in supposed pursuit of better expressive balance, alter a private speaker's own editorial choices about the mix of speech it wants to convey." *Id.* at 734. In Moody v. NetChoice, LLC, the Court considered social media platforms to be entities exercising editorial discretion in the selection and presentation of content and thus engaging in First Amendment-protected speech activity. When the government interferes with such editorial choices, the Court held that it alters the content of the compilation, and in overriding a private party's expressive choices, the government confronts the First Amendment.

In this bill, courts would likely treat music streaming platforms as entities exercising editorial discretion in the selection and presentation of music and hold that the government is violating such platforms' First Amendment rights by attempting to interfere with and override such platforms' expressive choices in prohibiting music performed or attributed to an artificial intelligence artist. We recommend that the new section -2 of the new chapter be deleted.

The new section -3(a) of the new chapter added by section 1 of this bill attempts to give the Department exclusive enforcement authority over this new chapter. Section -3(b), however, deems violations of this chapter unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce under section 480-2. Under section 480-2(d), HRS, the Office of Consumer Protection may also bring actions based upon unfair or deceptive acts or practices declared unlawful by section 480-2, HRS. Section -3(a) also refers to the purposes of the new chapter that the Department is charged with carrying out; however, the bill is silent as to what the new chapter's purposes are. To remove confusion as to who has enforcement authority

Testimony of the Department of the Attorney General

Thirty-Third Legislature, 2026

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over this chapter and what the chapter's purposes are, the Department recommends deleting section -3(a) on page 2, lines 9-12.

Section 2 of this bill appropriates an unspecified amount of money to the Department of Agriculture to use artificial intelligence to support the agricultural industry. This section may be difficult to implement due to its vagueness. It is unclear whether the Department of Agriculture currently uses artificial intelligence to support the agricultural industry, and if so, for what sectors and for what reasons. The bill may require further factual background to establish the purpose of the appropriation. Additionally, if there is to be an appropriation to that department, the current name "Department of Agriculture and Biosecurity" should be used.

The definition of "tangible product" in the new section -2 of the new chapter added by section 3 of the bill is unclear and appears to be incomplete. It currently reads: "'Tangible product' means anything created with the use of artificial intelligence. 'Tangible product' includes audio and audio visual." The Department suggests adding words following "audio and audio visual" to give complete examples of what "tangible product" includes.

As with the issues noted above about the new section -3(a) of the new chapter added by **section 1** of this bill, section -3(a) of the new chapter added by **section 3** of the bill attempts to give the Department exclusive enforcement authority over this new chapter. Section -3(b), however, deems violations of this chapter unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce under section 480-2. Under section 480-2(d), HRS, the Office of Consumer Protection may also bring actions based upon unfair or deceptive acts or practices declared unlawful by section 480-2, HRS. Section -3(a) also refers to the purposes of the new chapter that the Department is charged with carrying out; however, the bill is silent as to what the new chapter's purposes are. To remove confusion as to who has enforcement authority over this chapter and what the chapter's purposes are, the Department recommends deleting subsection -3(a) on page 4, lines 7-10.

Thank you for the opportunity to provide comments.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**
KA 'OIHANA HO'OMOHALA PĀ'OIHANA, 'IMI WAIWAI
A HO'OMĀKA'IKA'I

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Statement of
JAMES KUNANE TOKIOKA
Director

Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ECONOMIC DEVELOPMENT & TOURISM

February 6, 2026
8:30 AM
State Capitol, Conference Room 423

In consideration of
HB2357
RELATING TO ARTIFICIAL INTELLIGENCE

Chair Ilagan, Vice Chair Hussey, and members of the Committee. The Department of Business, Economic Development and Tourism (DBEDT) offers the following comments on HB2357 which seeks to restrict various applications of artificial intelligence (AI) in the state and provides appropriation for the Department of Agriculture and Biosecurity to utilize AI to support the agricultural industry. We defer to the Office of the Attorney General on the requirements for Parts I and III and Department of Agriculture and Biosecurity

AI is a tool for many creative artists today and growing in adoption. This is a key aspect of Hawai'i's vision for economic diversification across multiple sectors. We must balance the opportunities with the regulation framework, where digital distribution is providing significant opportunities to storytellers in all genres, particularly music, film and other media content.

Regulatory aspects are important to consider in protection of human capital and creative IP. We note that in the sections related to the music industry, we caution that

as written, there could be unintended adverse impacts to our Hawai'i music artists, songwriters and performers on major streaming platforms such as Spotify, a revenue source for resident creatives.

We welcome the opportunity to work with the introducers to provide additional creative sector benefits and impacts of AI as the measure advances this session.

Thank you for this opportunity to testify



February 5, 2026

Greggor Ilagan, Chair
House Committee on Economic Development & Technology
Hawai'i State Legislature
Hawai'i State Capitol, Room 419
Honolulu, HI 96813

RE: Oppose HB 2357 - Relating to Artificial Intelligence

Chamber of Progress respectfully urges the Committee to oppose H.B. 2357. While the bill aims to promote transparency in artificial intelligence (AI), its operative provisions (Part I and Part III) adopt content-based restrictions and vague disclosure mandates that clearly violate the First Amendment. If passed, these provisions will invite protracted, expensive, and likely successful legal challenges, thus impeding the State's ability to achieve its policy goals.

H.B. 2357 Chills Constitutionally Protected Speech

Part I bans streaming platforms from hosting music "performed or attributed to an artificial intelligence music artist." **By singling out a specific category of expressive content, the bill is presumptively unconstitutional.** This blanket prohibition is not narrowly tailored as required by law: it suppresses protected artistic expression—including remixes, parodies, and collaborations—and targets specific speakers, making it ripe for immediate and likely successful constitutional challenges.

Furthermore, the bill relies on undefined, indeterminate terms such as "AI music artist" and "created with the use of AI." The scope of the bill is thus vague and unclear as it fails to distinguish between incidental AI assistance (like mastering) and generative output. Such vagueness will force platforms and creators to over-remove content to avoid liability, effectively chilling lawful expression and thwarting innovation.

The Bill Unconstitutionally Compels Speech

Separately, the bill mandates "clear and conspicuous" AI disclosures for "tangible products," a term defined to include artistic audio and audiovisual works. It is settled law that the free speech clause of the First Amendment prevents the government from forcing speakers to carry specific messages. Requiring creators to disclose their creative choice to use certain methods and techniques in their creative works when they would not otherwise

have done so alters the content of their message and thus violates their First Amendment rights. Hawai'i's regulation of competition cannot lawfully encroach on its citizens' fundamental constitutional liberties.

Due to these constitutional infirmities, we **urge you to oppose H.B. 2357** and respectfully suggest that, in its stead, the Committee amend existing Hawai'i competition laws regulating fraudulent and deceptive business practices to explicitly address improper use of artificial intelligence.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert" followed by a surname.

Robert Singleton
Senior Director of Policy and Public Affairs, California and US West

HB-2357

Submitted on: 2/4/2026 2:55:32 PM
Testimony for ECD on 2/6/2026 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Jessica Kuzmier	Individual	Support	Written Testimony Only

Comments:

Aloha, I am writing in support of HB2357 because I believe the State needs to regulate AI in whatever capacity it can. Mahalo for your consideration.

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HB-2357

Submitted on: 2/5/2026 2:18:25 PM
Testimony for ECD on 2/6/2026 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Nancy D Moser	Individual	Support	Written Testimony Only

Comments:

In support