



**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. 2137, H.D. 1, RELATING TO ARTIFICIAL INTELLIGENCE.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

DATE: Wednesday, February 18, 2026 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 329

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

Chair Matayoshi and Members of the Committee:

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

This bill adds two new chapters to the Hawaii Revised Statutes (HRS) to prohibit certain unauthorized uses of artificial intelligence-generated likenesses, mandate disclosure for the public distribution of such likenesses, and provide civil actions and civil remedies for injured individuals.

The Department has identified several areas of this bill that may be subject to challenge under the First Amendment of the United States Constitution, especially in light of the recent United States District Court, District of Hawaii, decision in *Babylon Bee v. Lopez*, No. 1:25-cv-00234-SASP-KJM (D. Haw. Jan. 30, 2026) (enjoining enforcement of Act 191 Session Laws of Hawaii 2024, codified as part of Hawaii's election law, sections 11-303 and 11-304, HRS, regulating the distribution of election-based content that is "materially deceptive").

Section -1, "Definitions," of the first new chapter to be added to the HRS by section 2 of this bill defines "distribute" as "to convey information by any means." In *Babylon Bee*, the court addressed the distribution of prohibited content "by any means" and highlighted the concern that the law "could apply to prohibited content sent by an individual via direct message to a single person who may or may not vote in an

upcoming Hawai'i election, as long as the enforcing agency or complainant can show that the content was distributed 'in reckless disregard of *the risk of harming* the reputation or electoral prospects of a candidate'—an amorphous, subjective standard." *Id.* at *34. To mitigate potential overbreadth issues courts may find with this bill's definition of "distribute," we recommend deleting "distribute" and its corresponding definition (page 3, line 16) and replacing it with: "'Publish' means to display, present, or release to the public, or cause to be displayed, presented, or released to the public."

Section -2, "Prohibited acts," raises similar overbreadth concerns by making it unlawful to "knowingly create, publish, or distribute" certain realistic digital imitations of an identifiable individual without that individual's consent. We recommend removing "create" and "distribute" so that it is just unlawful to "knowingly publish" certain nonconsensual imitations. Courts may find that prohibiting merely the creation of such media, when the creator never publicly uses the media, is overbroad.

Defining "advertisement" where it appears on page 4, line 7, could add clarity to what exactly is prohibited by section -2, "Prohibited acts," paragraph (1). We recommend defining "advertisement" in section -1, "Definitions," as "a message published in any medium that aids, promotes, or assists, directly or indirectly, a product, service, or commercial transaction."

In the following paragraph of section -2 "Prohibited acts.", courts could potentially find the phrase "likely to cause harm" in paragraph (2) (page 4, line 9) vague and overbroad. In *Babylon Bee*, the court addressed a similar issue – if a person has to subjectively figure out what is "likely" to cause harm, or whether there is a "risk" of harm, it may not be clear what speech is prohibited, so this can lead to over-censorship. To mitigate this issue, we recommend deleting "[i]s likely to cause harm;" and replacing it with "cause harm" or "cause legally cognizable harm."

In paragraph (3) of section -2, "Prohibited acts," courts could potentially find the phrase "[f]alsely implies endorsement or authorship" (page 4, line 10) vague and overbroad. Content-based restrictions of false speech can also usually only evade strict scrutiny if there is some "legally cognizable harm associated with a false statement." *United States v. Alvarez*, 567 U.S. 709, 719 (2012). If paragraph (2) is amended to

require actual harm, as suggested above, that would include injury to an individual's reputation, which would likely cover many instances of false endorsements or authorship. We thus recommend deleting paragraph (3) and renumbering the subsequent paragraph accordingly.

Section -3, "Disclosure; requirement," requires disclosures whenever realistic digital imitations are publicly distributed, regardless of whether the individual depicted in the media consented to having the individual's artificial intelligence-generated likeness publicly distributed. This requirement may be overbroad and is inconsistent with the previous section that prohibits the creation, publication, or distribution of such media only if the individual depicted in the media did not give the individual's consent. To rectify this issue, we recommend deleting "publicly distributed" (page 4, line 14) and replacing it with "published without the depicted individual's consent."

The current version of this bill added paragraph (1) to section -4 "Exemptions" (page 5, lines 5-7). Exempting these listed entities appears to create a speaker-discriminatory restriction. In *Babylon Bee*, the court addressed a similar issue, explaining that "[a]s well as content-based discrimination, Act 191 also discriminates based on speaker. Act 191 includes carveouts for broadcasters, cable operators, direct-to-home satellite providers, and other service providers that meet certain criteria . . . [and] imposes different obligations on different speakers depending on who they are and their degree of knowledge and/or separation from the materially deceptive media." *Id.* at *24-*25. Speaker-discriminatory restrictions could trigger strict scrutiny. *See Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 170 (2015) ("[B]ecause speech restrictions based on the identity of the speaker are all too often simply a means to control content, we have insisted that 'laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference.' Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based." To avoid facing strict scrutiny in a possible speaker-discriminatory restriction challenge, we recommend deleting paragraph (1) from section -4, "Exemptions."

In *Babylon Bee*, the court addressed requiring disclaimers for parody or satire and concluded that doing so would "kill the joke." *Id.* at *24. This bill requires "a clear disclosure" that "[c]ontent generated or altered by artificial intelligence" is parody (page 5, lines 8-14). This requirement could be challenged as content-based compelled speech that changes the message of the content and "kill[s] the joke." Besides the disclosure, the additional requirement that the content not be "intended, and could not reasonably be foreseen, to deceive a reasonable person into believing that it is authentic" (page 5, lines 15-17) could also be problematic in light of *Babylon Bee*. In that case, the court found that limiting disclosures to media that "[w]ould cause a reasonable viewer or listener to believe that the depicted individual engaged in the speech or conduct depicted," was not sufficient to exempt satire and parody, and that requiring a disclaimer for satire and parody was impermissible. To mitigate these issues, we recommend deleting paragraph (2)(A)(i) from section -4 "Exemptions" (page 5, lines 13-14), and deleting ", and could not reasonably be foreseen," from paragraph (2)(A)(ii) (page 5, lines 15-16) so that it instead reads, "(ii) Is not intended to deceive a reasonable person into believing that it is authentic;".

In subparagraph (C) of section -4(2), the word "artistic" (page 6, line 1) is potentially problematic as its interpretation is subjective and thus renders the word ambiguous in this context. In the same subparagraph (C), it is also unclear what the intended scope for "educational use" is. How such content is to be "labeled" also invites ambiguity as the bill does not explain what constitutes "clearly labeled." The phrase "reasonably foreseeable" at the end of this subparagraph is also potentially overbroad and could lead to over-censorship. To mitigate these issues, we recommend deleting subparagraph (C) (page 6, lines 1-3).

Section -5, "Civil actions; civil remedies," provides civil actions and civil remedies for individuals if "[a] realistic digital imitation is made of an individual without the individual's consent;" (page 6, lines 5-6). Using the word "made" in this section seemingly creates a different, inconsistent standard from previous sections of this bill; section -2, "Prohibited acts," currently makes it "unlawful for any person to knowingly create, publish, or distribute a realistic digital imitation of an identifiable individual

without that individual's consent" (page 4, lines 3-6). To make this section consistent with our previous recommendation to amend section 2 "Prohibited acts," to make it "unlawful for any person to knowingly publish a realistic digital imitation of an identifiable individual without that individual's consent," we recommend amending section 5(a)(1) so that it reads: "(1) A realistic digital imitation of an individual is used in violation of section 2 without the individual's consent;" (page 6, lines 5-6).

Thank you for the opportunity to provide comments.



February 15, 2026

Position: **SUPPORT** of **HB2137 HD1**, Relating to Artificial Intelligence

To: Representative Scot Z. Matayoshi, Chair
Representative Tina Nakada Grandinetti, Vice Chair
Members of the House Committee on Consumer Protection & Commerce

From: Llasmin Chaine, LSW, Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in **SUPPORT** of **HB2137 HD1**, Relating to Artificial Intelligence

Hearing: Wednesday, February 18, 2026, 2:00 p.m.
Conference Room 329, State Capitol

The Hawaii State Commission on the Status of Women is committed to advancing the rights, safety, and dignity of women and girls across the state. The Commission **supports HB2137 HD1**, as it **addresses the growing risks posed by artificial intelligence-generated digital imitations, which can be used to harm, exploit, or misrepresent individuals, especially women, without their consent.**

The proliferation of AI technologies capable of creating highly realistic digital imitations raises significant concerns regarding privacy, consent, and the potential for reputational harm. Women and girls are disproportionately targeted by nonconsensual digital imitations, including deepfakes and synthetic media, which can lead to harassment, defamation, emotional distress, [sextortion](#), and assault. By prohibiting harmful uses of these technologies and mandating clear disclosure, **the bill provides critical safeguards and empowers individuals to seek remedies when their likeness is misused.**

Requiring disclosure of synthetic performers in advertising further promotes transparency and helps prevent deceptive practices that can undermine public trust. This aligns with best practices recommended by advocates for digital rights and gender equity, who emphasize the need for clear standards and accountability in the use of emerging technologies.

The Commission respectfully encourages ongoing review of these protections as AI technologies evolve, to ensure that the law remains effective in addressing new threats to privacy, dignity, safety, and well-being. We respectfully urge this Committee to **pass HB2137 HD1.**

Thank you for this opportunity to submit testimony.



February 17, 2026

Scot Z. Matayoshi, Chair
House Committee on Consumer Protection & Commerce
Hawai'i State Legislature
Hawai'i State Capitol, Room 433
Honolulu, HI 96813

Re: Oppose H.B. 2137 HD1 - Relating to Artificial Intelligence

Dear Chair Matayoshi and members of the committee:

Thank you for the opportunity to submit comments regarding H.B. 2137 as revised in the Committee on Economic Development & Technology for the record. On behalf of the Chamber of Progress, a tech industry association supporting public policies to build a more inclusive society in which all people benefit from technological advances, we write to reiterate our concerns about H.B. 2137 as currently drafted, none of which were addressed by changes made to the bill as introduced. Indeed, as explained below, those amendments may actually heighten the bill's chilling effects on the speech of the least-resourced and most vulnerable populations of creators.

Chamber of Progress respects artists and artistic effort, and we recognize the legitimate concerns about unauthorized digital replicas of individuals' voices and likenesses. We share the goal of protecting people from exploitation while preserving the educational, creative, and expressive uses of digital technology that benefit society. However, H.B. 2137 as revised raises several significant legal and practical concerns that we believe require careful consideration and, at minimum, amendment. Specifically:

The Bill is Preempted by Federal Law

Section 230 of the Communications Decency Act

Part 1, Section 2 of the bill makes it "unlawful for any person" to engage in the specified conduct concerning digital imitations and HI Rev Stat § 482P-1 (2024) defines "person" to include "any natural person, firm, association, partnership, corporation, company, [or] syndicate...." While Part 2 of the bill includes an express clause noting that nothing in the legislation is intended to "limit or expand

the protections conferred by 47 U.S.C. section 230,” Part 1 of the bill contains no such language. Interactive computer services are thus potentially liable under the bill, in direct contravention of Section 230’s intent to insulate interactive computer services from civil causes of action.

The Copyright Act

Moreover, many uses of digital imitations that are defensible under the Copyright Act, including fair use, are not specifically provided for in the bill’s exemptions. Without a provision clarifying that the legislation does not preclude such “fair use”, the bill risks federal preemption pursuant to 17 U.S.C. §301.

H.B. 2137 Risks Chilling Constitutionally Protected Speech

The exemptions provided by Part 1, Section 4 of the bill are apparently intended to protect all forms of Constitutionally protected speech, but are not sufficient when read in combination with other provisions.

Part 1, Section 2 creates liability for any *one* of four specified categories of effect, including that a digital imitation “is likely to cause harm.” While Section 4 provides an exception for “artistic or educational use,” that carve out is only available if “no harm is intended or reasonably foreseeable.” Similarly, the exemption for use of a digital imitation in “parody, satire, commentary, or political expression” only applies if it could not be “reasonably foreseen” that viewers of the work would mistake the digital imitation for an authentic depiction of the actual person.

Tying these exemptions to the bill’s often ambiguous, legally complex “reasonable person” standard creates uncertainty that is likely to deter lawful creators and speakers, chilling their protected speech. These ambiguities, we underscore, also will disproportionately affect marginalized, under-resourced creators as such individuals have the least ability to litigate. They are thus most likely to self-censor.

Indeed, the amendments to H.B. 2137 made by the Committee on Economic Development & Technology for the benefit of mainstream media providers and platforms will actually exacerbate the bill’s chilling effects on such under-resourced creators. By now expressly exempting the media providers and platforms best positioned socially and economically to legally challenge the bill’s chilling effects on speech, the bill creates an inference that other creators are *not* intended to enjoy such protection. They are thus now even more likely to self-censor to avoid the substantial liability imposed by H.B. 2137.

The Proposed Penalties are Out of Sync with Related Statutes

Current Hawai'i law that protects an individual's right of publicity, HI Rev Stat § 482P-6 (2024), provides for the larger of actual damages or \$10,000 per violation. Part I of HB 2317, however, provides for "up to \$50,000 *per violation*" for similar conduct in the digital imitation context.

For these reasons, we **urge you to oppose H.B. 2137** and respectfully suggest that, in its stead, the Committee amend Hawaii's current right of publicity law to meet H.B. 2137's objectives.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Singleton". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping underline.

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

HB-2137-HD-1

Submitted on: 2/14/2026 11:00:06 AM

Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Caroline Azelski	Individual	Support	Written Testimony Only

Comments:

In support of. Thank you.

HB-2137-HD-1

Submitted on: 2/15/2026 4:17:11 AM

Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Keoni N Clarke	Individual	Support	Written Testimony Only

Comments:

Subject: Strong Support for HB2137 Relating to Artificial Intelligence

Aloha Chair, Vice Chair, and Members of the Committee,

My name is Keoni Clarke, and I am a Hawaiian, Hawai‘i resident, professional makeup artist, and creative professional. I am writing in strong support of HB2137.

As someone whose work and livelihood depend on my professional reputation, image, and identity, I am deeply concerned about the rapid advancement of artificial intelligence technologies that can replicate a person’s face, voice, and likeness without their consent. These tools can be used to deceive others, damage reputations, and cause real emotional and financial harm.

HB2137 is an essential step in protecting Hawai‘i residents from the misuse of AI-generated likenesses and synthetic media. Without safeguards like those proposed in this bill, individuals, including artists, small business owners, healthcare workers, and everyday residents, are vulnerable to having their identities exploited in ways they cannot control.

This issue is especially important in creative industries, where our faces, voices, and personal brands are directly tied to our income and credibility. Unauthorized AI use could misrepresent our work, harm our relationships with clients, or falsely associate us with content we did not create or approve.

This bill helps establish clear boundaries, accountability, and protections while still allowing innovation and creativity to continue responsibly. It ensures that individuals maintain ownership and control over their own identity.

Hawai'i has always valued community, respect, and protecting one another. HB2137 reflects those values by addressing emerging technology in a thoughtful and protective way.

I respectfully urge you to pass HB2137.

Mahalo for your time and your commitment to protecting the people of Hawai'i.

Keoni Clarke

(808)989-6505

noheaclarke@gmail.com

HB-2137-HD-1

Submitted on: 2/16/2026 7:42:21 PM

Testimony for CPC on 2/18/2026 2:00:00 PM

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

Comments:

Help protect against harmful uses of AI

HB-2137-HD-1

Submitted on: 2/16/2026 8:43:42 PM

Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jennifer Kau'i Young	Individual	Support	Written Testimony Only

Comments:

I fully support bill HB2137 and its measures to prohibit certain harmful uses of and mandate disclosure for realistic digital imitations generated by artificial intelligence (AI); provide for civil actions and civil remedies for individuals injured by unauthorized AI-generated realistic digital imitations, and require the disclosure of the use of synthetic performers in advertising, as well as the establishment of civil fines.

Sincerely, Kau'i Young

To: Representative Scot Z. Matayoshi, Chair
Representative Tina Nakada Grandinetti, Vice Chair
Committee on Consumer Protection & Commerce

From: Veronica Moore, Individual Citizen

Date: February 17, 2026

RE: House Bill 2137 HD1
Measure Title: RELATING TO ARTIFICIAL INTELLIGENCE.
Report Title: Artificial Intelligence; Realistic Digital Imitations; Protections for
Individuals; Synthetic Performers; Advertising; Disclosure

To All Concerned,

My name is Veronica Moore and I support House Bill 2137 HD1. Thank you for introducing this bill.

Sincerely,

Veronica M. Moore

HB-2137-HD-1

Submitted on: 2/17/2026 6:54:11 AM

Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Noelle Lindenmann	Individual	Support	Written Testimony Only

Comments:

Aloha Chair, Vice Chair and Committe Members,

I am writing in strong support for HB2137 HD1.

This bill will start to correct some of the problems caused by AI. Allowing for civil actions and remedies for individuals injured by unauthorized AI-generated realistic imitations will offer a way for us to call out unauthorized images.

I appreciate the requirement to disclose the use of fakes in advertising, as well.

Mahalo for this opportunity to provide testimony,

Noelle Lindenmann, Kailua-Kona

HB-2137-HD-1

Submitted on: 2/17/2026 8:24:41 AM

Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Olderr	Individual	Support	Written Testimony Only

Comments:

I support this bill. It's common sense; it opens AI companies to civil lawsuits for their harmful practices, and it protects consumers from having their information and likeness stolen. It's an easy brainer because we have already seen the damage that ChatBots and other Large Language Models do to people's mental health. OpenAI and CharacterAI are facing multiple lawsuits because of how users were manipulated into suicide by their AI. It's for the best that this practice, should it be used for commercial standards, be highly regulated or fined out of existence.

HB-2137-HD-1

Submitted on: 2/17/2026 12:25:19 PM

Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mariana Monasi	Individual	Support	Written Testimony Only

Comments:

Aloha, I write today in strong support for HB2137 HD1. The current lawlessness of ai has already created horrific images of child pornography, fueling a gruesome dark reality we are living in. There need to be safetyies in place to protect children and adults who are used for horrific images and videos that taint our humanity. SB2137 is a comprehensive bill that prohibits harm and punishes harmful AI usage. We deserve to know when AI is being used to sell us an idea or product, marketing comes with deep psychological manipulation, using a program that learns the behavior of people, run rampid is dangerous.

Mahalo.

LATE

HB-2137-HD-1

Submitted on: 2/17/2026 5:15:00 PM

Testimony for CPC on 2/18/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Pierce Young	Individual	Comments	Written Testimony Only

Comments:

I recognize the importance of establishing clear safeguards that build public trust in AI while ensuring innovation remains accessible to local businesses and startups. In this case the definition of AI is too broad, and would include many digital photo processes which we typically would not consider AI.