

RE: S.B. No. 2032
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2022
State of Hawaii
Sir:

Your Committee on Health, to which was referred S.B. No. 2032 entitled:
"A BILL FOR AN ACT RELATING TO GENETIC INFORMATION PRIVACY,"

begs leave to report as follows:

The purpose and intent of this measure is to establish the Hawaii Genetic Information Privacy Act (Privacy Act), which:

- (1) Requires direct-to-consumer genetic testing companies to adhere to certain requirements pertaining to its collection, use, and disclosure of genetic data;
- (2) Establishes fines for violations of the Privacy Act;
- (3) Allows the Executive Director of the Office of Consumer Protection, by and through the Attorney General, to bring civil action against violators on behalf of the State or consumers for injunctions, collection of civil penalties, and recovery damages; and
- (4) Allows the State to recover the costs of suit and reasonable attorneys' fees for violations of the Privacy Act.

Your Committee received testimony in support of this measure from the Department of Commerce and Consumer Affairs.

Your Committee finds that the number of companies offering direct-to-consumer genetic tests, such as ancestry tests, home genetic tests, and genealogy tests, has been growing. These direct-to-consumer genetic tests provide consumers with direct access to their genetic information without the involvement of health care providers and health plans. The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) established national standards to protect an individual's medical records and other personal health information, including genetic information. However, HIPAA applies only to health plans, health care clearinghouses, and certain health care providers; it does not apply to direct-to-consumer genetic testing companies. Currently, Hawaii law does not provide adequate guidelines for the use of genetic data collected by companies outside of the protective ambit of state and federal health privacy laws. This measure fills this gap by creating the Hawaii Genetic Information Privacy Act.

Your Committee acknowledges the testimony of the Department of Commerce and Consumer Affairs, which notes that the penalty and enforcement provisions of the Privacy Act can be better accomplished by incorporating the already existing penalty and enforcement provisions in statute.

Therefore, your Committee has amended this measure by:

- (1) Deleting sections five and six of the Privacy Act and replacing them with a new provision that deems any violation of the Privacy Act to be an unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2, Hawaii Revised Statutes; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2032, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2032, S.D. 1, and be referred to your Committees on Commerce and Consumer Protection and Judiciary.

Respectfully submitted on behalf of the members of the Committee on Health,

JARRETT KEOHOKALO, Chair