

STAND. COM. REP. NO.

2177

Honolulu, Hawaii

FEB 11 2014

RE: S.B. No. 2958
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 2958 entitled:

"A BILL FOR AN ACT RELATING TO ONLINE PROTECTION OF INDIVIDUAL RIGHTS,"

begs leave to report as follows:

The purpose and intent of this measure is to shift the burden of proof from the claimant to the alleged violator in instances where the alleged violator registers a domain name that consists solely of the claimant's legal name or a name that is otherwise commonly used to identify the claimant if the claimant demonstrates with reasonable certainty the potential of immediate and irreparable harm through misuse of the domain name.

Your Committee received testimony in support of this measure from two individuals. Your Committee received comments on this measure from the Office of Consumer Protection of the Department of Commerce and Consumer Affairs.

Your Committee has heard testimony that the shift in the burden of proof proposed by this measure raises serious due process concerns and potential federal preemption issues under the federal Anticybersquatting Consumer Protection Act. Your Committee understands and appreciates these concerns and concludes that language shifting the burden of proof from the claimant to the alleged violator should be removed from this measure.



Your Committee has also heard testimony that provisions under chapter 481B, part II, Hawaii Revised Statutes, relating to civil liability for bad faith registration of a domain name, determining bad faith intent, and the good faith exception only apply to living persons, rather than applying to the broader definition of "persons" under chapter 481B, part II, Hawaii Revised Statutes, which includes individuals and business entities. Your Committee further finds that businesses that are victims of online bad faith registration of a domain name have no recourse under this existing chapter. Therefore, amendments are necessary to change references from "living person" to "person", thereby ensuring that individuals and business entities are protected from bad faith actors.

Accordingly, your Committee has amended this measure by:

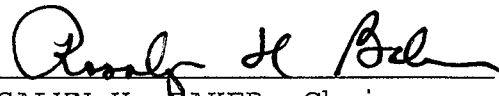
- (1) Specifying that a person who in bad faith registers a domain name of another person, rather than another living person, shall be liable in a civil action;
- (2) Specifying that in a civil action for bad faith registration of a domain name, a court may consider an alleged violator's registration of multiple domain names the alleged violator knew were identical or confusingly similar to the name of another person, rather than another living person;
- (3) Removing language that would have shifted the burden of proof from the claimant to the alleged violator in instances where the alleged violator registers a domain name that consists solely of the claimant's legal name or a name that is otherwise commonly used to identify the claimant and removing language that would have required the claimant to demonstrate with reasonable certainty the potential of immediate and irreparable harm through misuse of the domain name;
- (4) Clarifying that the good faith exception to registration of a domain name shall apply to persons who in good faith register a domain name consisting of the name of another person, rather than another living person;
- (5) Inserting an effective date of July 1, 2050, to encourage further discussion; and



- (6) 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 Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2958, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2958, S.D. 1, and be referred to the Committee on Judiciary and Labor.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 2958	CPN, JDL	2/5/14		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
NISHIHARA, Clarence K.	✓			
WAKAI, Glenn	✓			
SLOM, Sam				✓
TOTAL	4	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes