REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY OF POTENTIAL METHODS FOR RESTRICTING THE COLLECTION AND SALE OF SENSITIVE CONSUMER DATA BY INTERNET SERVICE PROVIDERS AND URGING HAWAII'S INTERNET SERVICE PROVIDERS TO VOLUNTARILY REFRAIN FROM SUCH PRACTICES.

WHEREAS, the Hawaii Constitution recognizes the right of the people to privacy, and directs the legislature to take affirmative steps to protect their privacy; and

WHEREAS, Internet Service Providers ("ISPs") have the ability to monitor and collect many types of sensitive information about consumers, including their web browsing history, app usage history, precise geo-location, financial information, health information, and even, in many cases, the content of their communications; and

WHEREAS, left unrestricted, ISPs can sell explicitly targeted advertising on their networks via text message, mobile applications, and web browsers, using sensitive information gathered from a customer's unique browsing history; and

WHEREAS, ISPs can share this sensitive information with partner companies, or even sell it to other companies looking to create targeted advertisements; and

WHEREAS, to prevent this kind of exploitative behavior, the Federal Communications Commission ("FCC") in October 2016 created rules that, if they had become effective, would have required ISPs to refrain from selling or sharing consumers' sensitive personal data without notifying the consumer and obtaining their prior "opt-in" consent; and

WHEREAS, those FCC rules would have also prohibited "take-it-or-leave-it" offers, also known as adhesion contracts, which
currently proliferate throughout the industry, whereby consumers
must consent to the commercial use and sharing of their
sensitive data in order to receive any service and ISPs can
decline to serve consumers who do not consent; and

WHEREAS, those FCC rules would have also heavily
scrutinized "pay for privacy" offerings, whereby companies can
exact a higher fee from customers who wish to avoid having their
sensitive personal data collected and sold for commercial
purposes; and

WHEREAS, those FCC rules were never allowed to go into
effect, but instead were invalidated by Congress under the
rarely-used Congressional Review Act, an action that not only
invalidated these FCC privacy rules, but will prevent the FCC or
any other federal agency from creating similar rules unless
explicitly authorized by Congress; and

WHEREAS, although an injunction that previously prevented
the Federal Trade Commission from regulating Internet Service
Providers was recently lifted by the United States Court of
Appeals for the Ninth Circuit, the regulatory power of the
Federal Trade Commission will never be as robust as that
previously afforded to the FCC under Title II of the Federal
Communications Act, leaving an important gap in regulatory
authority that must be filled by the state of Hawaii; now,
therefore,

BE IT RESOLVED by the House of Representatives of the
Twenty-ninth Legislature of the State of Hawaii, Regular Session
of 2018, that the Legislative Reference Bureau is requested to
conduct a study on potential methods of preventing Internet
Service Providers from collecting and selling the sensitive data
of Hawaii's consumers; and

BE IT FURTHER RESOLVED that the Department of Commerce and
Consumer Affairs is requested to provide information as may be
requested by the Bureau to assist in the timely completion of
the study; and
BE IT FURTHER RESOLVED that internet service providers in Hawaii, including Spectrum/Charter Communications, Comcast, Hawaiian Telcom, and the major cellular service providers, are strongly urged to protect the trust and privacy of their customers by refusing to exploit personal data for marketing purposes or to generate revenue; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Director of the Legislative Reference Bureau, the Director of the Department of Commerce and Consumer Affairs, and to the Presidents and CEOs respectively of Spectrum Cable, Charter Communications, Comcast, Hawaiian Telcom, CenturyLink, Verizon, AT&T, T-Mobile, and Sprint.

OFFERED BY: 

[Signatures]

MAR 08 2018