OFFICE OF INFORMATION PRACTICES

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To: House Committee on Finance

From: Paul T. Tsukiyama, Director

Date: Wednesday, February 27, 2008, 12:15 p.m.
State Capitol, Conference Room

Re: Testimony on H.B. 12, H.D.1
Relating to Prescription Drug Cost Containment and Affordable Access.

Thank you for the opportunity to submit testimony on H.B. 12, H.D. 1. The Office of Information Practices ("OIP") takes no position on the substance of this bill, but makes the following recommendation.

The bill seeks to add a provision at page 2, lines 10-13, which states as follows:

> (c) The board of pharmacy and the attorney general shall keep confidential all trade secret information. The disclosure form prescribed by the board of pharmacy shall permit the company to identify any information that is a trade secret.

OIP recommends that the second sentence be deleted. The sentence is unnecessary to allow an agency to allow a private company to identify what it believes to be a trade secret, which is what some agencies routinely do without such a statutory provision. However, the sentence, as written, appears to create a presumption that the company is allowed to determine what will be protected as a "trade secret."

This is contrary to the agency's responsibilities imposed under chapter 92F, HRS, the Uniform Information Practices Act (Modified), which places the burden on the agency to establish justification for nondisclosure. See Haw. Rev. Stat. § 92F-15 (1993). Thus, under the UIPA, it is the agency that must make the determination that information constitutes a "trade secret" in order to withhold that information. See Haw. Rev. Stat. § 92F-13(4) (1993) (UIPA does not require disclosure of government records which are protected from disclosure pursuant to state or federal law).

Accordingly, to avoid any ambiguity as to the agency's responsibility to make the final determination as to what constitutes a "trade secret," consistent with the UIPA and other confidentiality statutes protecting "trade secrets," OIP recommends that the second sentence of proposed subsection (c) be deleted.

Thank you for the opportunity to testify.

The Twenty-Fourth Legislature
Regular Session of 2008

HOUSE OF REPRESENTATIVES
Committee on Finance
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

State Capitol, Conference Room 308
Wednesday, February 27, 2008; 12:15 p.m.

STATEMENT OF THE ILWU LOCAL 142 ON H.B. 12, HD1 RELATING TO PRESCRIPTION DRUG COST CONTAINMENT AND AFFORDABLE ACCESS

The ILWU Local 142 supports H.B. 12, HD1, which requires drug manufacturers to disclose economic benefits of $25 or more provided to persons who prescribe, dispense, or purchase prescription drugs.

Drug manufacturers have used their huge financial resources to influence those who prescribe, dispense, or purchase prescription drugs. While some may argue that this is the "free market" at work, medications that individuals need to survive or stay healthy should not be subject to biased judgment by those who should be objective and fair. Right or wrong, consumers are influenced by slick advertising on television, magazines, etc. Right or wrong, providers are influenced by drug salesmen who ply them with "free" samples and gifts. Disclosure will help to keep providers accountable.

The ILWU endorses this effort to require full disclosure and urges passage of H.B. 12, HD1. Thank you for the opportunity to provide testimony on this matter.

February 26, 2008

TO: Chair Marcus R. Oshiro and Members of the House Committee on Finance

FROM: Pharmaceutical Research and Manufacturers of America
(Norman H. Suzuki)

RE: **HB 12, HD 1** Relating to Prescription Drug Cost Containment and Affordable Access

Hearing Date: 2/27/08 at 12:15 p.m.

My name is Norman Suzuki. I am a representative of the Pharmaceutical Research and Manufacturers of America ("PhRMA").

WE RESPECTFULLY OPPOSE PASSAGE OF HB 12, HD 1.

WHAT THE BILL DOES:

HB 12, HD 1 requires every manufacturer selling prescription drugs in the State of Hawaii to file an annual disclosure for all items of economic benefit of $25 or more provided to a physician, hospital, nursing home or other provider of health services. The bill requires each company to select someone to be responsible for the accuracy of the disclosure report. Each violation will be subject to a civil penalty of up to $10,000.

LIMITS INFORMATION WHICH BENEFITS PATIENTS:

When a physician, clinic or hospital or other provider receives charts, graphs, medical literature, physical models, visual aids or any type of information which cost $25 or more, a disclosure must be made by the manufacturer. These items are intended to benefit the patient as well as the provider who obtains the information. Such disclosure requirements may be too onerous to comply with. At conventions for medical providers, often literature or other handouts are made available. If this bill becomes law, it will result in a loss to patients as well as doctors and hospitals. Calculating what materials may exceed $25 and having to account and take liability for disclosure may discourage the dissemination of worthwhile information.

REQUIRES TRADE INFORMATION DISCLOSURE:

The bill attempts to indicate that trade secret information will be held confidential, but there is no provision to insure confidentiality or place restrictions on the use of the information

collected. Free samples of drugs, which are given to physicians for needy patients, are excluded from this bill. Most of the promotional and advertising costs of pharmaceutical companies represent the value of free samples passed out to physicians or directly to patients through the various company pharmaceutical assistance plans. To place restrictions on the use of literature or other aids which may accompany the samples appears counterproductive.

IMPACT ON INNOVATION:

Marketing efforts increase competition among pharmaceutical companies by promoting access to information and the choices available in the marketplace. Pharmaceutical companies compete to discover and develop life-saving and life-enhancing new products. Government interference in the marketplace by requirements of disclosure and the attendant major liability for non-disclosure reduces the incentive of pharmaceutical companies to engage in research or development which lead to valuable medicines that may become available in the future. The largest companies have a 5 to 6% market share. Many smaller companies which may rely on direct marketing to physicians or other providers may not be able to comply or compete.

FEDERAL AND PhRMA GUIDELINES ARE ALREADY IN PLACE:

Pharmaceutical manufacturers are subject to criminal anti-kickback statutes and other criminal and civil provisions, enforced by the U.S. Department of Justice, that govern their relationships with healthcare providers, including the *Food, Drug and Cosmetic Act*, the *Federal Anti-Kickback Statute, Prescription Drug Marketing Act*, the *Federal Trade Commission Act*, and the *False Claims Act*. Furthermore, the Federal Health and Human Services Office of Inspection General (OIG) maintains detailed guidance for pharmaceutical companies designed to deter violations of these federal laws. These marketing guidelines prohibit *quid pro quos* between drug makers and healthcare professionals. Furthermore, the pharmaceutical industry has issued its own voluntary guidelines, *The PhRMA Code for Interactions with Healthcare Professionals* (the "PhRMA Code"), related to communications with healthcare practitioners.

ADDITIONAL COST AND EXPENSE MAY INCREASE PRICES.

Requiring an additional layer of reporting and monitoring, given the presence of both the PhRMA Code and OIG guidance, and existing legal sanctions for unlawful behavior will result in additional compliance costs to the industry which may result in increased cost of the product, appears counterproductive to the goal of reducing drug costs to consumers. Furthermore, pursuing legislation that would require oversight could increase the financial and administrative resource burdens of the State.

We respectfully oppose passage of this measure. Thank you for the opportunity to testify.

HAWAII ALLIANCE FOR RETIRED AMERICANS (HARA)
AN AFFILIATE OF THE ALLIANCE FOR RETIRED AMERICANS
C/O AFSCME, 888 MILILANI STREET, SUITE 101
HONOLULU, HAWAII 96813

TO: HOUSE-SGT-AT- ARMS

FEBRUARY 25, 2008
Fax 586-6001

FROM: Bruce McCullough
HARA Legislative Committee, Chair

FOR: COMMITTEE ON FINANCE
REP MARCUS R. OSHIRO, Chair
REP Marilyn B. Lee, Vice Chair

RE: HB 12, HD1 Relating to Prescription Drug Cost Containment & Affordable Access

DATE: Wednesday, February 27, 2008

TIME: 12:15 P.M. (Agenda #3)

PLACE: Rm 308 (I will testify in person)

I am submitting testimony on behalf of the Hawaii Alliance for Retired Americans (HARA). HARA represents over 17,000 retirees, members of numerous organizations and individuals. HARA is a chapter of the Alliance of Retired Americans (ARA), a national advocate for seniors and retirees with over three (3) million members.

HARA is in strong support of this proposed legislation.

The bill would create a pharmacy best practices and cost control program that is designed to reduce the cost of providing prescription drugs while maintaining high quality in prescription drug therapy.

This bill is modeled after a Vermont law which was enacted on June 13, 2003.

Like other legislation that will be introduced, this bill will help make prescription drugs more affordable as well as keeping quality of the drugs high for the residents of Hawaii.

The bill will also deter pharmaceutical representatives from unduly influencing the individuals who are responsible for prescribing, dispensing and purchasing prescription drugs.