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**PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE**

TO THE HOUSE COMMITTEE ON JUDICIARY

**TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2009**

**TUESDAY, FEBRUARY 24, 2009
2:05 P.M.**

TESTIMONY ON HOUSE BILL NO. 1212-RELATING TO INFORMATION PRACTICES

**TO THE HONORABLE JON RIKI KARAMATSU, CHAIR
AND TO THE HONORABLE KEN ITO, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 1212, Relating to Information Practices. My name is Jo Ann Uchida, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department recognizes that this bill addresses an area of law which strikes a delicate balance between consumers interested in complaints histories and licensees concerned about the integrity of their good name. The Department takes no position on the merits of House Bill No. 1212, but offers the following comments.

House Bill No. 1212 amends §92F-14, Hawaii Revised Statutes ("HRS"), to delete "the record of complaints including all dispositions" as an exception to the types of information in which an individual has a significant privacy interest.

Similar bills, House Bill No. 2310 and Senate Bill No. 2059, were introduced in the 2008 legislative session. House Bill No. 2310 was not heard and Senate Bill No. 2059 was recommitted and failed to cross over.

House Bill No. 1212 would preclude government from disclosing the existence of customer complaints until and unless those complaints result in legal action by the government agency. Several of the Department's programs, including RICO, would be affected by this bill to the extent they currently provide licensee complaints information to the public and encourage consumers to check licensing and complaints history prior to hiring licensed professionals.

The Department recognizes that under §92F-14(b)(7), HRS, individuals have significant privacy interests in information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, with three exceptions, and the Department has tried over the course of many years to effectuate this law in a manner that appropriately balances the licensee's significant privacy interests against the benefit to the public in obtaining information about the individuals they may hire.

To this end, the Department has long encouraged consumers to obtain licensing and complaints information prior to hiring professionals and, as such, supports the disclosure of information that enhances consumer awareness and

decision-making. It should be noted, however, that the Department's public complaints history report provides only specific, limited information about complaints and their outcomes.

The Department is aware that by providing "the record of complaints including all dispositions" as referenced in §92F-14(7)(C), HRS, its complaints history information includes cases that were not substantiated in investigation, cases that may have been filed for ulterior motives, and cases in which the investigation is still pending. The Department has endeavored to act as a neutral repository of information rather than attempt to differentiate or disclose cases based on the case outcome. In this manner, it provides transparency and accountability to the public as to how cases are investigated.

However, in order to reduce the negative connotation that consumers may associate with a complaints history, the public is always urged to judge a business's complaints history on the outcome of the investigation rather than on the number of complaints or the fact that a complaint was filed. Moreover, there is a concerted effort upon receipt of a complaint to determine whether there is sufficient cause to investigate, and to include in the public complaints history report only those cases in which investigation is warranted. Thus, many complaints are not included in the complaints database because they do not meet the sufficient cause test.

Currently, and in compliance with §92F-14(b)(7), HRS, RICO provides complaints information to consumers through its complaints website and upon

telephone or written request.¹ Public RICO complaints information includes the respondent's name, the case numbers associated with each complaint, and the total number of complaints on record. If a complaint is closed without legal action, the complaints history will also show the allegations that were investigated and the outcome of the investigation. If a complaint investigation is pending, the case number of the complaint is included in the complaints history report, and the report states: "This is a pending complaint. No further information is available." If the case results in legal action, information about the nature of the legal action and any board action is reflected in the licensee's complaints history.

Website usage data shows that the RICO/OCP complaints history database was viewed 450,855 times in fiscal year 2008. In addition, approximately 29,578 RICO telephone complaint history inquiries were received during fiscal year 2008, including 11,818 inquiries relating to contracting, 2,251 relating to MDs and osteopaths, 333 relating to the dental profession, 428 relating to mortgage brokers and solicitors, and 766 relating to real estate agents and brokers.²

¹ The Office of Consumer Protection ("OCP") shares the same database as RICO for purposes of complaints history information, but because its complaints are not received or compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, its complaints history information would not be affected by this bill. In addition, complaints history or RICO legal actions involving unlicensed persons would not be affected by this bill.

² Affected licensee types investigated by RICO include Accountancy, Activity Desks, Acupuncture, Barbering, Cosmetology, Boxing, Cemetery and Funeral Trust, Chiropractic, Collection Agencies, Employment Agencies, Contractors, Dentists and Dental Hygienists, Detectives and Guards, Electricians and Plumbers, Electrologists, Elevator Mechanics, Engineers, Architects, Land Surveyors and Landscape Architects, Hearing Aid Dealers and Fitters, Marriage and Family Therapists, Massage, Medicine and Surgery (including Osteopathy), Mental Health Counselors, Mortgage Brokers and Solicitors, Motor Vehicle Sales, Motor Vehicle Repair, Naturopathy, Nurses, Nursing Home Administrators, Occupational Therapists, Dispensing Opticians, Optometrists, Pest Control, Pharmacy, Physical Therapy, Port Pilots, Psychology, Real Estate Appraisers, Real Estate

If this Committee is inclined to pass this bill, it should be amended. Under the current draft, the Department believes that it could no longer disclose the existence of pending cases or cases closed without legal action to 1) consumers via its website, by telephone, or in writing; 2) investigative and expert witnesses who may possess information or documentary evidence relating to a pending investigation; 3) other divisions within the Department, including the Professional and Vocational Licensing division and the Office of Administrative Hearings; and 4) the licensing boards. Some of these effects may be unintended. Such restrictions not only would significantly impact consumers, but require the Department to extensively modify its current operations.

Thank you for this opportunity to testify on House Bill No. 1212. I will be happy to answer any questions that the members of the Committee may have.

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary
From: Paul T. Tsukiyama, Director
Date: Tuesday, February 24, 2009, 2:05 p.m.
State Capitol, Conference Room 325
Re: Testimony on H.B. No. 1212
Relating to Information Practices.

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices ("OIP") opposes this bill.

OIP administers Hawaii's public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("HRS") ("UIPA"). Since its adoption in 1988, the UIPA has made clear that any individual granted any type of license in the State does **not** have a significant privacy interest in "the record of complaints including all dispositions" so that the UIPA's privacy exception provided in section 92F-13(1), HRS, could not apply to exempt such records from public disclosure. Thus, currently, under the UIPA, the public has access to complaint records about any and all licensees. It cannot be disputed that the availability of such complaint information has been valuable to the public. For example, many consumers have relied on these records to make informed decisions about whether to engage licensees' services.

This bill jeopardizes the public's current access to licensee complaint records by removing the express acknowledgment that licensees' have no significant privacy interest in complaint records. In effect, under this bill, all licensees would now be deemed to have a significant privacy interest in their records of complaints and, if this significant privacy interest is found to outweigh the public interest in disclosure, the complaint records about any and all licensees can be held exempt from public disclosure under the UIPA's privacy exception.

When adopting the UIPA in 1988, the Legislature had reported that it was crafting the new law in response to extensive testimony that was received by a Governor's Committee on Public Records and Privacy in 1987 and that largely criticized the shortcomings of previous public records laws. Thus, the Legislature appeared to have been responsive to the public's need for licensee complaint information when it specifically inserted the express recognition of no significant privacy interest in such records.

This bill signifies a major policy shift in the accessibility of licensee complaint information that the public has come to rely on. While it is, of course, the Legislature's call as to whether to make the policy shift called for in this bill, it is highly questionable as to how this bill would serve anyone other than the few licensees who want to hide their complaint records from the public's view.

Thank you for the opportunity to testify.



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February 23, 2009

The Honorable Jon Riki Karamatsu, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 1212 Relating to Information Practices

HEARING DATE: Tuesday, February 24, 2009 at 2:05 p.m.

Aloha Chair Karamatsu, Vice-Chair Ito and Members of the Committee:

I am Gary Slovin with Goodwill Anderson Quinn & Stifel, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members. HAR **supports** H.B. 1212, which removes records of complaints from the exceptions to the types of information that are not subject to disclosure as public documents.

H.B. 1212 would remove the current practice of public reporting of complaints filed against a licensee, regardless of the outcome of the complaint. Currently, the Regulated Industries Complaints Office ("RICO") posts on its website all complaints received against any licensee, including real estate brokers and salespersons. These reported complaints remain on the website for five years and are not removed, even if the investigation is closed for lack of evidence or merit, or if there is a determination by RICO that a violation did not occur.

HAR believes there needs to be a fair and equitable process so that licensees' reputations are not harmed by unwarranted or frivolous complaints. Under the proposed measure, the public would still have the right to information on a licensee's disciplinary history, where there has been a finding of wrongdoing and resulting disciplinary action has been taken. As such, HAR urges your support for this measure.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.

karamatsu3-Leanne

From: Darrell [teruyadt@worldnet.att.net]
Sent: Saturday, February 21, 2009 8:19 AM
To: JUDtestimony
Cc: teruyadt@att.net
Subject: Testimony HB 1212 on information Practices Tues 02-24-09 rm 325, 2:05 PM

COMMITTEE ON JUDICIARY

Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

Tuesday, February 24, 2009 2:05 p.m. Conference Room 325

HB 1212 RELATING TO INFORMATION PRACTICES.

Removes records of complaints from the exceptions to the types of information that are not subject to disclosure as public documents.

Honorable Chairman Karamatsu' Honorable Vice Chairman Ito, venerable members of the Judiciary Committee; thank you for the opportunity to support House Bill 1212 which seeks to amend Section 92F-14 of the Hawaii Revised Statutes.

One of the ways that the Regulated Industries Complaint Office (RICO) under the aegis of the Department of Commerce and Consumer Affairs (DCCA) reports public complaints for 45 professions (and 20 licensing programs) via an entry to this page on their website:

<http://pahoehoe.ehawaii.gov/cms/app>

From there any member of the public is able to use a search engine to determine if any complaints have been filed against an individual.

There are, however some shortcomings with this process.

1. There are more than a few names with a single citation and some of these were dismissed due to findings of no improprieties, uncooperative witnesses or otherwise dismissed. Even these stay on the site for 5 years. Unfortunately there is an implication of the individual in the search of being "guilty until proven innocent". Also, since the details are not available it would be hard for anyone to determine the seriousness of the complaint.
2. One can type in a last name such as Teruya and while looking for, say, me, get a list of other people in regulated industries other than the dentist they were searching for in the first place. It is unfortunate that someone may punch in the last name of a realtor and retrieve a physician as the unintended result of the search.
3. I'm very sure that everyone thinks long and hard before anything is posted on the website and that it would be a serious matter that warrants the inclusion of that matter on that site. It's just that I'm unaware of the vetting process. I'm concerned that a frivolous accusation could make it to the list and once there remain for the 5 year period regardless of any subsequent finding.
4. We queried other states on this matter and none of them had a similar statute or similar law.

While everyone feels that an individual who is performing business in a manner detrimental to the public be brought to the attention of the public. The reputation of an innocent should, however, not be impugned through that process.

These are among the issues which were previously brought to the attention of Ms. Uchida at RICO and Ms. Takase at the OIP.

Thank you for your interest in this matter. .

Darrell Teruya, DDS
Immediate Past President, Hawaii Dental Association

Hawaii State Legislature
State House of Representatives
Committee on Judiciary

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair

Tuesday, February 24, 2009, 2:05 p.m. Room 325

Honorable Chair Jon Riki Karamatsu, Vice Chair Ken Ito and
Members of the Committee on Judiciary,

My name is Dr. Craig Mason. I am the President –Elect of the Hawaii Dental Association and I appreciate the opportunity to testify in support of HB 1212 relating to information practices. This bill addresses information practices which may mislead the public.

Most states make disciplinary actions against licensed individuals public information. It is an accepted right for the public to know when someone has breached their professional responsibilities. However, Hawaii is the only state we have been able to identify that makes public all complaints against licensed individuals before they have been investigated or adjudicated.

Anyone can file a complaint against any licensed individual in the state of Hawaii for any reason, even if it is frivolous or capricious. All of these complaints are posted on the web and remain there for a period of five years whether or not the complaint is found to have merit. This may not only reflect poorly and unfairly on the person against whom the complaint was filed, but may also mislead the public when they are choosing a licensed professional.

This bill will prevent the posting of complaints until they have been adjudicated, but still allow the public to access information when a licensed individual is found to be at fault.