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**PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION**  
  
**TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**  
  
**TWENTY-FIFTH STATE LEGISLATURE**  
**Regular Session 2009**

Wednesday, February 11, 2009  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 1359 -- RELATING TO CONSUMER PROTECTION.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify in opposition to House Bill No. 1359, Relating to Consumer Protection. My name is Stephen Levins, and I am the Executive Director of the Department's Office of Consumer Protection ("OCP").

House Bill No. 1359 seeks to deny to the people of Hawaii the longstanding statutory right to learn of the ultimate disposition of complaints reviewed by the Office of Consumer Protection. As written, House Bill No. 1359 would prohibit the OCP from making consumer complaints publicly available in cases where the complaint was

resolved in favor of the business against which the complaint was filed.

Pursuant to Chapter 487 of the Hawaii Revised Statutes, the general public has had the right to review closed complaints (with very limited exceptions) in the possession of OCP for at least the past thirty years. The policy facilitates the concept of open government, allows transparency of the enforcement process and is consistent with the practices of virtually every jurisdiction in the United States. Rather than restrict access to information, as this proposal attempts, the national trend has been to allow even more public access.

If this proposal sought to address the release of erroneous information, it might have some merit. This, however, is not the case. Instead, it seeks to censor accurate information from public access. Under current law, OCP is invested by statute to "provide a central clearinghouse of information by collecting and compiling all consumer complaints and inquiries and making the collection and compilations available to the general public" (emphasis added). See section 487-5(8) of the Haw. Rev. Stats. Pursuant to this statutory mandate, if a complaint is without merit this information is disclosed, if there is insufficient evidence, this is disclosed, if the State lacks jurisdiction this also is disclosed. Since all of these dispositions are accurate, they all warrant disclosure to an inquiring public.

The fact that someone has filed a complaint against a business is of course not necessarily indicative that a violation of law has occurred and this fact is disclosed to persons making the inquiry. In fact, in an effort to safeguard a business from suffering

improper aspersions, the online DCCA Complaint History Report prominently features the following disclaimer:

"The Business & Complaints History database is designed to serve as a neutral repository of complaints filed with OCP or RICO. Users should judge a business' complaints history on the outcome of the complaints and not on the number of complaints or on the fact that a complaint was filed."

The term in the proposed bill "resolved in favor of the person against whom the complaint was filed" is so ambiguous, that when applied, is rendered meaningless. Does it mean that if a case is closed because of "no jurisdiction" the public should not learn of the complaint? What if an airline engages in a persistent pattern of improper business practices? Under the Airline Deregulation Act of 1978, the states have virtually no authority to initiate enforcement actions for violation of state consumer protection laws. In light of this, an airline may be able to argue that OCP must deny access to the public of all consumer complaints that it has received against it because technically there is no law under which OCP could successfully prosecute it for alleged violations. Additionally, respondents may argue that cases that are closed because of mediation, business v. business disputes, uncooperative or unavailable witnesses, insufficient monetary thresholds, or even those transmitted to another agency should not be disclosed because they should be considered to be resolved in favor of the respondent.

Another major flaw with the bill is that it may insulate OCP from being accountable for its actions. For example, what if a large number of complaints are received by OCP but nothing is done? Shouldn't the public know that a governmental agency is not doing its job? Merely by declaring that there is "insufficient evidence", this proposal would allow OCP to insulate itself from any public inquiry regarding why it may have failed to adequately investigate a company's business practices. This is one of the reasons why open government is encouraged and a compelling reason why the disposition of complaints must be made easily available to the inquiring public.

Thank you for this opportunity to testify on House Bill No. 1359. 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 Consumer Protection and Commerce

From: Paul T. Tsukiyama, Director

Date: Wednesday, February 11, 2009, 2:00 p.m.  
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 1359  
Relating to Consumer Information

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Thank you for the opportunity to submit testimony on this bill. The purpose of this bill is to prohibit the Office of Consumer Protection ("OCP") from disclosing complaints "that have been investigated and resolved by the office in favor of the person against whom the complaint was filed." The Office of Information Practices ("OIP") has concerns about this bill.

OIP administers Hawaii's public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("HRS") ("UIPA"). Under the UIPA, records of complaints against commercial entities are, to a large extent, open to the public because most information contained in the complaints would not fall under any of the exceptions to disclosure. For example, as comparison, the UIPA makes 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." Haw. Rev. Stat. § 92F-14(b)(7)(C) (1993).

With a few exceptions, existing law governing OCP requires OCP to collect and compile consumer complaints and make them available to the public. The availability of such complaint information is invaluable to the public and many consumers rely on these records to make informed decisions.

This bill signifies a policy shift in the accessibility of consumer 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 commercial entities who want to hide a part of their complaint records from the public's view.

Thank you for the opportunity to testify.

## wakai1-Karen

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**From:** Ian Lind [ian@ilind.net]  
**Sent:** Tuesday, February 10, 2009 2:03 PM  
**To:** CPCtestimony  
**Subject:** Opposing HB 1359

House Committee on Consumer Protection and Commerce  
Rep. Robert Herkes, Chair  
Rep. Glenn Wakai, Vice Chair  
Wednesday, February 11, 2009 • 2 p.m.  
Conference Room 325

### Testimony in opposition to HB 1359

Submitted by Ian Lind  
PO Box 600  
Kaaawa, Hawaii

Thank you for this opportunity to testify in opposition to HB 1359.

This bill would restrict public disclosure of information about certain consumer complaints against businesses and licensed professionals.

This would not be in the best interest of the public.

In 1987, I was fortunate enough to be named to serve on the Governor's Task Force on Privacy and Public Records. Our Task Force held statewide public hearings to consider the appropriate balance of between personal and business privacy, on the one hand, and the public's right to know, on the other.

After much deliberation, our committee concluded that information compiled by licensing agencies regarding "an individual's fitness to be granted or to retain a license" should remain confidential, with three important exceptions designed to balance the interests of the public and the licensee.

The exceptions, which describe information that should be public, are:

- (A) The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline;
- (B) Information on the current place of employment and required insurance coverages of licensees; and
- (C) The record of complaints including all dispositions.

Item (C) assure the public will have access to information about complaints as well as their dispositions. The public will be told when complaints are dismissed or when findings in favor of the person complained about are made.

These provisions were later adopted by the Legislature and made part of Chapter 92F.

Hawaii law requires that privacy interests be balanced against the public's right to know. I believe that these provisions continue to reflect the appropriate balance between these important interests.

Past Legislatures have previously considered this same issue and determined that there has been no change in the competing interests, and that the current provisions for partial disclosure of licensing information should be retained.

For this reason, I would urge you to protect the right of consumers to know about complaints and their disposition. This assures that the public will know when frivolous or unfounded complaints are dismissed, but may also be made aware of patterns of complaints.

Thank you for your consideration.

**wakai1-Karen**

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**From:** david kawelo [dlkrnkawelo@yahoo.com]  
**Sent:** Tuesday, February 10, 2009 8:42 PM  
**To:** CPCtestimony  
**Subject:** bill HB1359

ALOHA:

I AM IN FAVOR OF THIS BILL SINCE I AM ONE OF THE CONTRACTORS INVOLVED IN WRONGFUL COMPLAINT ACCUSATIONS....BECAUSE OF THE COMPLAINT THE CONTRACTOR WAS PUT ON AN INACTIVE STATUS AND SEEKED TO HAVE THE COMPLAINT DISMISSED AND REMOVED FROM THE BUS.AND LICENSE COMPLAINT DEPT. AND WAS TOLD THAT THEIR WAS A 5 YEAR WAITING PERIOD, AND BECAUSE THE COMPLAINT WAS UNWARRANTED THE CONTRACTORS SHOULD NOT BE PUNISHED, ESPECIALLY SINCE BEING IN BUSINESS FOR OVER 22 YEARS AND HAS NEVER ONCE HAD A WARRANTED COMPLAINT. PLEASE PASS THIS BILL HB 1359 FOR IT WILL SURELY HELP THE SMALL BUSINESS CONTRACTORS WHO ARE ALL STRUGGLING TO SURVIVE LIKE EVERYONE ELSE.

THANK YOU,

DAVID L.KAWELO-PRESIDENT - D & E KAWELO CONSTRUCTION, INC.