

JAN 26 2009

A BILL FOR AN ACT

RELATING TO ATTORNEYS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 605-14, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§605-14 Unauthorized practice of law prohibited.** (a) It
4 shall be unlawful for any person, firm, association, or
5 corporation to engage in or attempt to engage in or to offer to
6 engage in the practice of law, or to do or attempt to do or
7 offer to do any act constituting the practice of law, except and
8 to the extent that the person, firm, or association is licensed
9 or authorized so to do by an appropriate court, agency, or
10 office or by a statute of the State or of the United States.

11 Nothing contained in sections 605-14 to 605-17 [~~contained~~] shall
12 be construed to prohibit the preparation or use by any party to
13 a transaction of any legal or business form or document used in
14 the transaction."

15 (b) For the purposes of this section, "practice of law"
16 means the provision of professional legal advice or services by
17 a person, firm, association, or corporation. "Practice of law"



1 does not include the provision of services by a person, firm,
2 association, or corporation licensed or authorized under
3 chapters 431, 453, 464, 466, or 467; provided that the person,
4 firm, association, or corporation acts according to the terms of
5 the license or authorization and does not provide or profess to
6 provide professional legal advice, services based on legal
7 competency, or standing in the law."

8 SECTION 2. Section 431:3-201, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§431:3-201 Authority required. (a) No person shall act,
11 purport to act, or advertise the person's services as an insurer
12 and no insurer shall transact insurance business in this State
13 other than as authorized by a certificate of authority granted
14 to it by the commissioner; except as to [~~such~~] transactions as
15 are expressly otherwise provided in this code.

16 (b) The investigation and adjustment of claims in this
17 State arising under insurance contracts issued by an
18 unauthorized insurer, except surplus line insurance issued
19 pursuant to section 431:8-301, shall be deemed to constitute the
20 transaction of insurance in this State, unless the [~~same~~]
21 investigation and adjustment of claims are isolated or
22 nonrecurring transactions.



1 (c) Every certificate of authority shall include but not
2 be limited to:

3 (1) The name of the insurer and the classes of insurance
4 it is authorized to transact in this State; or

5 (2) The name of and location of the principal office of
6 its attorney-in-fact if a reciprocal insurer.

7 (d) An insurer who possesses a certificate of authority in
8 good standing under this chapter and applicable rules shall not
9 be deemed to be engaged in the practice of law when providing
10 services within the scope of the insurer's certificate of
11 authority."

12 SECTION 3. Section 453-2, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§453-2 License required; exceptions.** (a) Except as
15 otherwise provided by law, no person shall practice medicine or
16 surgery in the State, either gratuitously or for pay, or offer
17 to practice medicine or surgery in the State, or advertise or
18 announce one's self, either publicly or privately, as prepared
19 or qualified to practice medicine or surgery in the State, or
20 append the letters "Dr.", "M.D.", or "D.O." to one's name with
21 the intent to imply that the person is a practitioner of
22 medicine or surgery, without having a valid unrevoked license or



1 a limited and temporary license obtained from the Hawaii medical
2 board.

3 (b) Nothing herein shall:

4 (1) Apply to so-called Christian Scientists; provided that
5 the Christian Scientists practice the religious tenets
6 of their church without pretending a knowledge of
7 medicine or surgery;

8 (2) Prohibit service in the case of emergency or the
9 domestic administration of family remedies;

10 (3) Apply to any commissioned medical officer in the
11 United States armed forces or public health service
12 engaged in the discharge of one's official duty, nor
13 to any practitioner of medicine and surgery from
14 another state when in actual consultation, including
15 in-person, mail, electronic, telephonic, fiber-optic,
16 or other telemedicine consultation with a licensed
17 physician or osteopathic physician of this State, if
18 the physician or osteopathic physician from another
19 state at the time of consultation is licensed to
20 practice in the state in which the physician or
21 osteopathic physician resides; provided that:



- 1 (A) The physician or osteopathic physician from
2 another state shall not open an office, or
3 appoint a place to meet patients in this State,
4 or receive calls within the limits of the State
5 for the provision of care for a patient who is
6 located in this State;
- 7 (B) The licensed physician or osteopathic physician
8 of this State retains control and remains
9 responsible for the provision of care for the
10 patient who is located in this State; and
- 11 (C) The laws and rules relating to contagious
12 diseases are not violated;
- 13 (4) Prohibit services rendered by any person certified
14 under part II of this chapter to provide emergency
15 medical services, or any physician assistant, when the
16 services are rendered under the direction and control
17 of a physician or osteopathic physician licensed in
18 this State except for final refraction resulting in a
19 prescription for spectacles, contact lenses, or visual
20 training as performed by an oculist or optometrist
21 duly licensed by the State. The direction and control
22 shall not be construed in every case to require the



1 personal presence of the supervising and controlling
2 physician or osteopathic physician. Any physician or
3 osteopathic physician who employs or directs a person
4 certified under part II of this chapter to provide
5 emergency medical services, or a physician assistant,
6 shall retain full professional and personal
7 responsibility for any act that constitutes the
8 practice of medicine when performed by the certified
9 person or physician assistant;

10 (5) Prohibit automated external defibrillation by:

11 (A) Any first responder personnel certified by the
12 department of health to provide automated
13 external defibrillation when it is rendered under
14 the medical oversight of a physician or
15 osteopathic physician licensed in this State; or

16 (B) Any person acting in accordance with section
17 663-1.5(e); or

18 (6) Prohibit a radiologist duly licensed to practice
19 medicine and provide radiology services in another
20 state from using telemedicine while located in this
21 State to provide radiology services to a patient who



1 is located in the state in which the radiologist is
2 licensed. For the purposes of this paragraph:

3 "Radiologist" means a doctor of medicine or a
4 doctor of osteopathy certified in radiology by the
5 American Board of Radiology or the American Board of
6 Osteopathy.

7 "Telemedicine" means the use of
8 telecommunications services, as that term is defined
9 in section 269-1, including real-time video
10 conferencing-based communication, secure interactive
11 and non-interactive web-based communication, and
12 secure asynchronous information exchange, to transmit
13 patient medical information, such as diagnostic-
14 quality digital images and laboratory results for
15 medical interpretation and diagnosis, and deliver
16 health care services and information to parties
17 separated by distance.

18 (c) Nothing in this chapter shall prohibit healing
19 practices by traditional Hawaiian healers engaged in traditional
20 [Native] native Hawaiian healing practices, [~~both as~~] recognized
21 and certified as such by any kupuna council convened by Papa Ola
22 Lokahi. No person or organization involved with the selection



1 of kupuna council members, the convening of a kupuna council, or
2 the certification process of healers under this subsection shall
3 be sued or held liable for any cause of action that may arise
4 out of their participation in the selection, convening, or
5 certification process. Nothing in this chapter shall limit,
6 alter, or otherwise adversely affect any rights of practice of
7 traditional [~~Native~~] native Hawaiian healing pursuant to the
8 Constitution of the State of Hawaii.

9 (d) A physician or osteopathic physician who possesses a
10 valid unrevoked license or a limited temporary license in good
11 standing under this chapter and applicable rules shall not be
12 deemed to be engaged in the practice of law when providing
13 services within the scope of the physician or osteopathic
14 physician's license or temporary license."

15 SECTION 4. Section 464-2, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§464-2 Licensing of practicing engineers, etc.** (a) In
18 order to safeguard life, health, and property, no person except
19 those exempted by sections 464-3 and 464-5 shall practice
20 professional engineering, architecture, land surveying or
21 landscape architecture in the State unless the person is duly
22 licensed under this chapter.



1 (b) A person practicing professional engineering,
2 architecture, land surveying, or landscape architecture who
3 possesses a valid unrevoked license in good standing under this
4 chapter and applicable rules shall not be deemed to be engaged
5 in the practice of law when providing services within the scope
6 of the professional engineer, architect, land surveyor, or
7 landscape architect's license."

8 SECTION 5. Section 466-5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§466-5 License of certified public accountant.** (a) A
11 license and a permit are required to practice public
12 accountancy. The board may license and grant the designation of
13 "certified public accountant" to any person who has met the
14 following criteria:

- 15 (1) [~~Attained~~] Has attained eighteen years of age;
16 (2) Possesses a history of competence, trustworthiness,
17 and fair dealing;
18 (3) [~~Educational~~] Satisfies the educational requirements
19 of this section or section 466-5.5;
20 (4) [~~Experience~~] Satisfies the experience requirements of
21 subsection (d);



1 credited toward the experience requirements in
2 subsection (d).

3 (c) A person shall be exempt from the requirements in
4 subsection (b) or section 466-5.5 if that person:

5 (1) Holds a current license as a public accountant under
6 section 466-6; or

7 (2) Holds, and has continued to hold, a valid comparable
8 certificate, registration, or license of certified
9 public accountant of another state for a period of not
10 less than ten years preceding the date of the person's
11 application under this section, and has been in active
12 practice of public accountancy in one or more states
13 for a period of not less than five years preceding the
14 date of the application.

15 (d) Each applicant shall present satisfactory evidence in
16 the form of a certified statement from present or former
17 employer(s) that the applicant has met one of the following
18 experience requirements for license:

19 (1) Completion of one thousand five hundred chargeable
20 hours in the performance of audits involving the
21 application of generally accepted accounting



1 principles and auditing standards earned while in
2 public accounting practice; or

- 3 (2) Completion of two years of professional experience in
4 [~~public accountancy practice~~] the practice of public
5 accountancy as defined in section 466-3. Completion
6 of experience in private or government accounting or
7 auditing work, deemed by the board to be equivalent to
8 professional experience in [~~public accountancy~~
9 ~~practice~~] the practice of public accountancy as
10 defined in section 466-3, may be substituted for all
11 or part of the two years of professional experience in
12 public accounting practice. The nature, variety, and
13 depth of acceptable private or government accounting
14 or auditing experience shall be defined by the board
15 in its rules.

16 (e) The examination required [~~to be passed~~] for licensure
17 shall test the applicant's knowledge of the subjects of
18 accounting theory, accounting practice, auditing, and other
19 related subjects as the board may specify by rule. The board
20 shall prescribe the methods of [~~applying~~] application for and
21 [~~conducting~~] conduct of the examination, including methods for
22 grading papers and determining [a] the passing grade required



1 ~~[by an applicant]~~ for a license; provided that the board shall,
2 to the extent possible, ~~[see to it]~~ ensure that the methods of
3 grading ~~[of]~~ the examination and the passing ~~[grades]~~ grade
4 required for a license are ~~[uniform]~~ in accord with those
5 applicable in all other states. The board may use the Uniform
6 Certified Public Accountant Examination and Advisory Grading
7 Service of the American Institute of Certified Public
8 Accountants~~[7]~~ and may contract with third parties to perform
9 the administrative services with respect to the examination as
10 the board deems appropriate to assist it in performing its
11 duties herein.

12 (f) The board may allow an applicant to sit for the
13 Uniform Certified Public Accountant Examination, if the
14 applicant has met at least one of the following~~[+]~~
15 qualifications:

- 16 (1) Baccalaureate degree in accounting conferred by a
17 college or university acceptable to the board; ~~[or]~~
18 (2) Baccalaureate degree with a major in a subject other
19 than in accounting, plus eighteen semester hours of
20 upper division or graduate level accounting or
21 auditing subjects, conferred by a college or
22 university acceptable to the board; or



1 (3) Baccalaureate degree or its equivalent in accounting,
2 conferred by a college or university outside of the
3 United States, and submission of a letter of
4 acceptance from an accredited United States college or
5 university to its advanced degree program or an
6 educational equivalency report prepared by an
7 evaluator approved by the board.

8 (g) The board shall prescribe the terms and conditions
9 under which an applicant who has taken the examination
10 prescribed in subsection (e), but who has not satisfactorily
11 completed the examination, may be given credit for any part
12 thereof that the applicant has satisfactorily completed. The
13 board may also provide a specific length of time for an
14 applicant to apply for reexamination.

15 (h) A person who passed the Uniform Certified Public
16 Accountant Examination under the laws of another state may be
17 exempted from taking the examination required pursuant to
18 subsections (a)(5) and (e). The board shall prescribe the
19 methods and requirements for exemption from examination
20 requirements. The board shall prescribe the methods and
21 requirements for exemption for the holder of a valid comparable



1 certificate, registration, or license and a degree from a
2 foreign country.

3 (i) A person who, on January 1, 1974, holds a license of
4 certified public accountant issued under the laws of this State
5 theretofore existing shall not be required to obtain an
6 additional license of certified public accountant under this
7 chapter, but shall otherwise be subject to all the provisions of
8 this chapter; and the license theretofore issued shall, for all
9 purposes, be considered a license issued under this chapter and
10 subject to the provisions herein.

11 (j) Licenses shall be effective for a period not exceeding
12 two years and shall be renewable biennially on or before
13 December 31 of every odd-numbered year upon application to the
14 board.

15 (k) The board may renew the license of a certified public
16 accountant who completes a renewal application and fulfills the
17 following requirements:

- 18 (1) Holds a valid and current license; and
- 19 (2) Paid appropriate fees and assessments.

20 (l) Failure to renew a license on or before December 31 of
21 every odd-numbered year, shall constitute a forfeiture of
22 license. Continued practice in public accountancy without



1 renewing or restoring a license and permit shall constitute
2 unlicensed activity. Any person engaged in unlicensed activity
3 shall be subject to sections 466-9, 466-11, 487-13, and 26-9.

4 (m) The board shall specify the method and requirements of
5 application for restoration of a forfeited license. The date of
6 restoration of the license shall be the date of board approval
7 of the restoration. Restorations shall not be retrospective.

8 (n) A certified public accountant who possesses a valid
9 unrevoked license and a valid unrevoked permit to actively
10 engage in the practice of public accountancy under this chapter
11 and applicable rules shall not be deemed to be engaged in the
12 practice of law when providing services within the scope of the
13 certified public accountant's license and permit."

14 SECTION 6. Section 466-6, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§466-6 License of public accountant.** (a) A license and
17 a permit are required to actively practice public accountancy.

18 A person:

19 (1) Who has attained eighteen years of age;

20 (2) Who possesses a history of competence,

21 trustworthiness, and fair dealing;



- 1 (3) Who was serving in the armed forces of the United
2 States on June 15, 1955;
- 3 (4) Who was a resident of the Territory of Hawaii at the
4 time of entering such service in the armed forces; and
- 5 (5) Who at the time of entering such service, met the
6 requirements set forth in subparagraph (A), (B) or (C)
7 of this subsection, shall, upon application to the
8 board within six months after honorable discharge or
9 release from such service, be licensed by the board as
10 a "public accountant":
- 11 (A) Any person who held oneself out to the public as
12 being engaged in the practice of public
13 accountancy and who was engaged in the practice
14 of public accountancy as the person's principal
15 occupation, either on the person's own account or
16 as a member of a firm, or as an employee of a
17 certified public accountant, or public
18 accountant, and was regularly assigned to
19 accountancy engagements;
- 20 (B) Any person who was engaged in accounting or
21 auditing work in the Territory of Hawaii as an
22 employee of the United States, of the Territory,



1 or of any county, in a position in grade GS-9
2 under the territorial classification schedule in
3 effect on March 1, 1955, or the equivalent or
4 higher grade; or

5 (C) Any person who was engaged in private accounting
6 or auditing who has had not less than three years
7 of experience in such work, or in public
8 accounting, or both, and whose experience was of
9 such a character and for a length of time
10 sufficient in the opinion of the board to be
11 substantially equivalent to three years of public
12 accounting experience.

13 (b) Licenses shall be effective for a period not exceeding
14 two years and shall be renewable biennially on or before
15 December 31 of every odd-numbered year upon application to the
16 board.

17 (c) A person who, on January 1, 1974, holds a license of
18 public accountant under the laws of this State theretofore
19 existing, shall not be required to obtain an additional license
20 under this chapter, but shall otherwise be subject to all the
21 provisions of this chapter; and such previous license shall, for

1 all purposes, be considered a license under this chapter and
2 subject to the provisions herein.

3 (d) A public accountant who possesses a valid unrevoked
4 license and a valid unrevoked permit to actively engage in the
5 practice of public accountancy under this chapter and applicable
6 rules shall not be deemed to be engaged in the practice of law
7 when providing services within the scope of the public
8 accountant's license and permit."

9 SECTION 7. Section 467-7, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§467-7 Licenses required to act as real estate broker and**
12 **salesperson. (a) No person within the purview of this chapter**
13 **shall act as real estate broker or real estate salesperson, or**
14 **shall advertise, or assume to act as real estate broker or real**
15 **estate salesperson without a license previously obtained under**
16 **and in compliance with this chapter and the rules and**
17 **regulations of the real estate commission.**

18 (b) A real estate broker or real estate salesperson who
19 possesses a valid unrevoked license under this chapter and
20 applicable rules shall not be deemed to be engaged in the
21 practice of law when providing services within the scope of the
22 real estate broker or real estate sales person's license."



S.B. NO. 1044

1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect July 1, 2009.

4

INTRODUCED BY: *Rasuly H. Beh*

John Muen
Joe Alvarado
Will Evers
Amiel Y. Lopez
Norman Sabonoff



**PRESENTATION OF THE
HAWAII MEDICAL BOARD**

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Wednesday, February 11, 2009
8:30 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 1044, RELATING TO ATTORNEYS.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide written testimony on S.B. No. 1044, Relating to Attorneys. The Hawaii Medical Board ("Board") has not had the opportunity to review this bill but will be discussing it at the next Board meeting on February 13, 2009. Therefore, although the Board is not able to take a position at this time it will be able to offer comments at subsequent hearings.

Thank you for the opportunity to provide written comments on this bill.

**PRESENTATION OF THE
BOARD OF PUBLIC ACCOUNTANCY**

**TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2009**

**Wednesday, February 11, 2009
8:30 a.m.**

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 1044 - RELATING TO ATTORNEYS.

**TO THE HONORABLE ROSAYLN H. BAKER, CHAIR, AND
MEMBERS OF THE COMMITTEE:**

My name is Howard Todo and I am the Chairperson of the Board of Public Accountancy ("Board"). The Board appreciates the opportunity to provide testimony on Senate Bill No. 1044, which allows licensed professionals, such as certified public accountants and public accountants, to provide services within the scope of their license without violating the prohibition on the unauthorized practice of law. The Board is in support of this measure in concept.

Thank you for the opportunity to present written testimony.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Wednesday, February 11, 2009
8:30 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 1044 – RELATING TO ATTORNEYS.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND
MEMBERS OF THE COMMITTEE:

My name is Trudy Nishihara and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to provide testimony on Senate Bill No. 1044, which proposes to specify that providing services as a real estate broker and salesperson pursuant to being licensed as a real estate broker and salesperson, is not deemed to be engaged in the practice of law. **The Commission is in support of this measure in concept.**

Thank you for the opportunity to present written testimony.

**PRESENTATION OF THE
BOARD OF PROFESSIONAL ENGINEERS, ARCHITECTS,
SURVEYORS AND LANDSCAPE ARCHITECTS**

**TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2009**

**Wednesday, February 11, 2009
8:30 a.m.**

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 1044, RELATING TO ATTORNEYS.

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Riley Smith and I am the Chair of the Board of Professional Engineers, Architects, Surveyors and Landscape Architects ("Board"). The Board appreciates the opportunity to provide testimony on Senate Bill No. 1044, which proposes to specify that a person practicing professional engineering, architecture, land surveying, or landscape architecture pursuant to being licensed as a professional engineer, architect, land surveyor, or landscape architect, is not deemed to be engaged in the practice of law. The Board is in support of the intent of this bill.

Thank you for the opportunity to present written testimony.

February 9, 2009

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 1044 Relating to Attorneys

Hearing date: February 11, 2009 @ 8:30 a.m.

Aloha Chair Baker, Vice Chair Ige, and Members of the Committee:

I am Robert G. Klein, attorney with McCorriston Miller Mukai MacKinnon, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members. HAR **supports the intent of S.B. 1044** which allows licensed professionals to provide services within the scope of their license without violating the prohibition on the unauthorized practice of law.

This measure clarifies that licensed and regulated professionals acting within the scope of their licenses will not be considered to be engaged in the practice of law.

In 2007, a proposed unauthorized practice of law rule was submitted by the Hawaii State Bar Association (HSBA) and circulated for consideration by the Hawai'i Supreme Court. The draft rule put many organizations and industries in jeopardy of practicing law without a license, which is a criminal violation. Fortunately, the Hawai'i Supreme Court asked the HSBA to rewrite and resubmit the Rule.

HAR understands that the review and decision processes of the Supreme Court create a level of uncertainty for many licensed professionals that only a clean statutory amendment can address. We have also learned that the State Attorney General, Hon. Mark J. Bennett, has written to the Hawai'i Supreme Court in opposition to the new draft Rule largely because of the numerous industry exemptions it affords.

Because of the uncertainty that presently exists, HAR supports the intent of S.B. 1044, but believes that S.B. 1219 is the preferred measure for licensed real estate brokers and salespersons.

For these reasons, HAR urges the passage of S.B. 1219. This measure would make clear that real estate brokers and salespersons licensed, regulated, and in good standing under HRS § 467 and Hawaii Administrative Rules Chapter 99 would not be deemed to be practicing law without a license.

Mahalo for the opportunity to testify.



THE LEGISLATIVE CENTER

820 MILILANI STREET, SUITE 810
HONOLULU, HAWAII 96813-2938
PHONE: (808) 537-4308 • FAX: (808)533-2739

February 11, 2009

Testimony To: Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons, Legislative Committee Chair
Aloha Society of Association Executives

Subject: S.B. 1044 – RELATING TO ATTORNEYS

Chair Baker and Members of the Committee:

I am Tim Lyons, Legislative Committee Chair for the Aloha Society of Association Executives. For the Committee's information a listing of our membership is attached so you have any idea of who it is we represent.

We are not opposed to this bill however, we are somewhat fearful that by passage of this bill it will be easily inferred that we fall under an inclusion, since we are not included in the exemption.

Association Executives are routinely involved in legal matters such as changing the terms of a hotel contract for booking a convention, changing contracts with speakers, audio/visual equipment companies and others. The rule change which the Bar Association worked out appeared to take care of that problem however, the passage of this bill, in its place, would appear to negate that rule.

Based on the above, while we have no objection to the professions identified in this bill being exempt, we think that it does not go far enough in including others.

Thank you.

Aloha Society of Association Executives – Hawaii Chapter **Membership List**

American Red Cross – Hawaii Chapter
Better Business Bureau of Hawaii
Building Industry Association of Hawaii
General Contractors Association of Hawaii
Hawaii Association of Independent Schools
Hawaii Association of Realtors
Hawaii Bankers Association
Hawaii Credit Union League
Hawaii Food Industry Association
Hawaii Hotel & Lodging Association
Hawaii Insurers Council
Hawaii Medical Association
Hawaii Museums Association
Hawaii Optometric Association, Inc.
Hawaii Orthopedic Association
Hawaii Pacific Tennis Foundation
Hawaii Prince Hotel
Hawaii Prince Hotel Waikiki & Golf Club
Hawaii Society of Certified Public Accountants
Hawaii Transportation Association
Hawaii Visitors & Convention Bureau
Hawaii Wall & Ceiling Industry Association
Honolulu Board of Realtors
Honolulu County Medical Society
Kaua'i Visitors Bureau
Legislative Information Services of Hawaii
NAMI Hawaii
National Association of Insurance & Financial Advisors Hawaii
NFIB
Organizations Management, LLC
Pacific and Asian Affairs Council
Pacific Telecommunications Council
Painting & Decorating Contractors Association
Plumbing & Mechanical Contractors Association
PROcom Hawaii
Retail Merchants of Hawaii
Sand Island Business Association
Sheet Metal Contractors Association
SMEI Honolulu
The Legislative Center, Inc.
Waikiki Improvement Association



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877
Facsimile (808) 525-5879

Alison Powers
Executive Director

TESTIMONY OF BRAD BLISS

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator David Y. Ige, Vice Chair

Wednesday, February 11, 2009

8:30 a.m.

SB 1044

Chair Baker, Vice Chair Ige and members of the Commerce and Consumer Protection Committee, my name is Brad Bliss, counsel for Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council **supports** S.B. 1044 **with amendments**. The Hawaii Supreme Court recently posted for public comment a proposed rule concerning the unauthorized practice of law. The Hawaii Insurers Council worked with the Hawaii State Bar Association and other interested parties prior to this posting in an effort to ensure that normal day to day commerce, especially as it pertains to the insurance industry, would not be impeded by the proposed rule. Notwithstanding this effort, important amendments proposed by the Hawaii Insurers Council to the in-house counsel provisions in the draft rule were not adopted. Many insurance companies doing business in Hawaii employ in-house attorneys who may be physically located in their home office or regional office outside Hawaii. These employee-attorneys should not have to pass the Hawaii bar examination, or be subject to potential sanctions for the unauthorized practice of law, in order to give advice and consultation to their Hawaii-based subsidiaries and affiliates.

We believe S.B. 1044 with a technical amendment to the insurance section, would make it clear that insurers authorized to do business in Hawaii may continue with their normal course of business without being deemed to be engaged in the practice of law.

We propose language as follows which would clarify that an insurer's employees and agents would be protected under this law. The new language in Section 431:3-201(d) would read as follows:

Section 431:3-201 "(d) An insurer who possesses a certificate of authority in good standing under this chapter and applicable rules, **its employees and agents**, shall not be deemed to be engaged in the practice of law when providing services within the scope of the insurer's certificate of authority."

Thank you for the opportunity to testify.



Senate Committee on Judiciary and Government Operations (JGO)
Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair
Senator Robert Bunda
Senator Mike Gabbard
Senator Clarence K. Nishihara
Senator Sam Slom

RE: S.B.1044 and S.B.1219

HEARING: Wednesday, February 11, 2009, 8:30 am

The Hawaii State Bar Association (HSBA) submits the attached testimony in opposition to S.B. 1044 and S.B. 1219 regarding a proposed Unauthorized Practice of Law Rule under review by the Hawaii Supreme Court. For the reasons stated in the attached testimony, the HSBA submits that the proposed bills regarding the proposed UPL Rule should not be approved. We look forward to discussing this with you

Rai Saint Chu
President

OFFICERS

Rai Saint Chu, President
Hugh R. Jones, President-Elect
Louise K.Y. Ing, Vice-President
Ronette M. Kawakami, Secretary
Craig P. Wagnild, Treasurer

DIRECTORS

Nathan T.K. Aipa
Darren W.K. Ching
Steven J.T. Chow
James P. Dandar
Craig A. De Costa (Kauai)
P. Gregory Frey
Mark F. Gallagher
Geraldine N. Hasegawa (East Hawaii)
Carol S. Kitaoka (West Hawaii)
Derek R. Kobayashi
Gregory K. Markham
Alika L. Piper
Kenneth S. Robbins
Steven B. Songstad (Maui)
Suzanne T. Terada

YLD PRESIDENT

Damien A. Elefante

IMMEDIATE PAST PRESIDENT

Jeffrey H.K. Sia

HSBA/ABA DELEGATE

James A. Kawachika

EXECUTIVE DIRECTOR

Lyn Flanigan

Testimony of the
Hawai'i State Bar Association
Re: S.B. 1044; S.B. 1219

The Hawai'i State Bar Association (HSBA) respectfully submits this testimony in opposition to the above-referenced bills, which essentially seek to exempt certain licensed professional groups from a proposed Hawai'i Supreme Court rule defining the "practice of law." The amendment attempts to accomplish exemptions from the proposed court rule by adding a statutory definition of the "practice of law" and by exempting five groups of professionals from a Supreme Court rule defining the "practice of law", or stated otherwise, determining what is the "unauthorized practice of law."

The HSBA's opposition primarily is based on three grounds: (1) under the constitutional separation of powers doctrine, the promulgation of a "practice of law" definition is within the powers and authority of the judicial branch of government; (2) the proposed bills would constitute a total exemption from the unauthorized practice of law and as such are far too broad; and (3) the HSBA has worked with the professional groups seeking this exemption [with the exception of the physicians] on a revision to the proposed rule that takes into consideration the points and comments expressed by other licensed and regulated professional groups and associations. This revised rule, a copy of which is attached, has been submitted to the Supreme Court and is posted on the Judiciary website for comment.

1. On various occasions, the Hawai'i Supreme Court has held that it retains inherent authority to supervise and license members of the bar and the practice of law. This inherent authority, granted by the constitutional separation of powers of the government into the legislative, executive and judicial branches, is recognized in Hawai'i Revised Statutes § 605-1, which provides the Supreme Court has the sole authority to "examine, admit, and reinstate" as well as to "revoke or suspend" the license to practice law within the State of Hawai'i.

As this concept is currently recognized and practiced, the Hawai'i Supreme Court establishes the standards for qualification and the procedures and requirements for licensing and practice of attorneys in the State of Hawai'i. In fact, a committee of the Disciplinary Board of the Hawai'i Supreme Court is currently studying this and other issues and will soon recommend changes in the court's rules regulating the legal profession, which is the responsibility of the judicial branch of government.

Defining the practice of law, therefore, is the responsibility of the Judiciary, which administers and regulates the practice of law. This is in accord with the basic tenet of the separation of powers doctrine within Article VI, section 7 and codified in HRS Section 605-1. While the legislature can exercise its police power to regulate powers delegated to the court in exigent circumstances in order to protect the public's welfare, such exigent circumstances do not exist relative to this issue. The currently proposed UPL Rule posted by the Hawaii Supreme Court was a collaborative product between the HSBA and a coalition of licensed and unlicensed professionals and other interested groups and individual entities, and the

proposed UPL Rule generated by that collaboration specifically protects the lawful livelihood of various professions, groups, and individuals even beyond the scope of the S.B. 1044; S.B. 1219.

The HSBA respectfully submits that the proper course and procedure for review and establishment of regulations relating to the practice of law in the State of Hawai'i is to recognize the authority vested in the Hawai'i Supreme Court to establish and regulate those standards.

It was in keeping with the constitutional authority vested in the judicial branch of our government, and in recognition of the harm that is caused to consumers by untrained, unlicensed, and unregulated individuals who handle legal matters, that the HSBA, through its Consumer Protection Committee, asked the Hawai'i Supreme Court to promulgate a rule that would define the "practice of law" and enhance the protection for consumers who suffer financial loss and loss of rights or opportunities at the hands of untrained, unlicensed and unregulated individuals handling their legal matters. The Hawai'i Supreme Court initially proposed such a rule and posted it on the Judiciary website for comment in 2007. The work performed through 2008 culminated in the drafting of the currently proposed UPL Rule.

2. S.B.1044 and S.B.1219 propose amendments to H.R.S. §605-14 and to the H.R.S. chapters which regulate insurers (431), doctors* (453), engineers* (464), certified public accountants (466), and realtors (467), which are far too broad, to the extent that they exempt professionals licensed under H.R.S. Chapters 431, 453, 464, 466 and 467 from all regulation under a practice of law rule. This is unacceptably broad because the exemption would allow for the "practice of law" by persons lacking appropriate legal training or license and there would not be any recourse for harm caused by their exempted "practice of law."

The definition of "practice of law" under S.B. 1044 is overly broad, which is ironic considering that many of the initial comments and criticisms voiced by certain licensed professional groups to the initially proposed UPL Rule pertained to what they perceived to be an overly broad definition of "practice of law." The currently proposed UPL Rule tightened the definition to meet those concerns. The definition within S.B. 1044 exempts the activities of those licensed under chapters 431, 453, 464, 466, or 467 if they do not "provide or profess to provide professional legal advice, services based on legal competency, or standing in the law." A person licensed under any of the chapters, thus, could "get away" with practicing law by merely denying or professing that he or she is providing legal services. In short, a non-attorney could engage in the practice of law without any restrictions provided he or she "professed" not to be practicing law. The bill would not prevent a realtor or a certified public accountant, who "professed" not to be providing professional legal advice or services "based on legal competency or standing in the law," from appearing in court to represent a defendant in a murder case. By analogy, it would be like an attorney who does not profess to be providing medical advice or services based on medical competency or standing, but who then conducts a medical procedure without a medical license. The HSBA is concerned about untrained, non-licensed individuals who disclaim or "profess" that they are not providing legal

services or advice to others, and yet provide such service or advice to the detriment of consumers. S.B. 1044 would permit such activity.

The proposed definition of "practice of law" within S.B. 1044 has an exemption that only benefits licensees. One of the issues raised to the HSBA last year during the collaborative process in re-drafting an acceptable UPL Rule was from groups, organizations, and individuals who were not licensed or subject to licensing requirements under Hawaii law. S.B.1044 and S.B.1219 does not provide for those groups, organizations, and individuals, whereas the currently proposed UPL Rule does.

Based on the foregoing, the Hawai'i State Bar Association respectfully requests that S.B. 1044, amending H.R.S. §605-14 (relating to the unauthorized practice of law), and S.B. 1219, amending H.R.S. §467-7 and relating to realtors and the "practice of law," not be passed.

*We note that the doctors and engineers were not represented in the UPL Coalition and are unsure how they are affected in their professional work by a UPL Rule.

Proposed UPL Rule (revised as of 10/23/08 HSBA Meeting)

Rule _____. Unauthorized Practice of Law

(a) Purpose.

It is recognized that individuals have a right to represent themselves in legal matters. However, the privilege of representing others is granted and supervised by the Hawaii Supreme Court for the protection of the public from harm by persons engaged in the unauthorized practice of law in this state. Such persons generally lack the legal education, training, and experience of a licensed lawyer in this state and are not subject to Hawaii's Rules of Professional Conduct or disciplinary system established in this state for licensed lawyers. It is recognized that there are persons in this state who are licensed and/or otherwise authorized by the laws of this state to provide the public with necessary services in the fields of insurance, accounting, and real estate, among others. It is not the intent of this Rule to abridge or restrict those persons from conducting or engaging in those activities permitted or authorized by the laws of this state.

(b) Prohibition.

No person shall practice law in this state or in any manner hold themselves out as a lawyer, or being authorized or competent to practice law in this state unless the person is an active member of the state bar in good standing, except as otherwise permitted by this rule or any other supreme court rule.

(c) Definitions.

"Person" refers to individuals and entities.

"Practice of law" is the giving of legal advice, counsel, assistance, or service where there is a client relationship of trust or reliance between the party giving such advice, counsel, assistance, or service and the party to whom it is given. The practice of law includes, but is not limited to:

(1) Giving advice or counsel to another person or entity about the person's or entity's legal rights and obligations or the legal rights and obligations of others where a relationship of trust or reliance exists between the party giving such advice or counsel and the party to whom it is given.

(2) Holding oneself out in any manner as a lawyer, attorney, legal counselor or advisor entitled and able to engage in the practice of law in this state.

(3) Selecting, drafting, or completing documents that affect the legal rights of another person or entity.

(4) Representing another person in a court, an administrative proceeding, an arbitration proceeding, a hearing, a deposition, or any other formal or informal dispute resolution process in which legal documents are submitted or a record is established.

(5) Negotiating legal rights or obligations with others on behalf of another person or entity.

(6) Providing oral or written legal opinions.

“Qualifying institution” is a business organization that is authorized and registered to do business as provided by law.

(d) Exceptions and exclusions.

The following activity by a non-lawyer, who is not otherwise claiming to be a lawyer, or a lawyer not licensed in this State is permitted:

(1) Appearing *pro se*.

(2) Acting as a representative when authorized by law or by a governmental agency, including the representation of a person in small claims court without compensation and upon express approval of the court or representing a legal entity as an employee representative in small claims court.

(3) Serving as a neutral mediator, arbitrator, conciliator or facilitator when such service does not include rendering advice or counsel as set forth under section (c)(1) above.

(4) Serving as in-house counsel for a single qualifying institution; provided in-house counsel

(a) registers and maintains registration with the State Bar in accordance with the requirements of Rule 17,

(b) provides no personal representation to individuals, including customers, shareholders, owners, partners, officers, employees, servants, or agents of the qualifying institution,

(c) makes no state court appearances on behalf of any person or entity other than him or her self, and

(d) agrees to submit to the disciplinary jurisdiction of the supreme court and its Disciplinary Board.

(5) Acting as a legislative lobbyist.

(6) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.

(7) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements, or as otherwise allowed by law.

(8) Performing services as a law clerk to a judge, justice, or member of the bar.

(9) Performing services as a paralegal under the supervision of a judge, justice, or member of the bar.

(10) Preparing tax returns and performing any other statutorily or legally authorized services as a certified public accountant, enrolled agent, public accountant, public bookkeeper, or tax preparer, including, but not limited to financial planning or accompanying or representing a taxpayer client in a hearing before the Board of Taxation in Hawaii.

(11) Performing or providing services authorized by statute or regulation in this state by real estate licensees who are licensed real estate brokers or salespersons under and pursuant to H.R.S. Chapter 467 and H.A.R. Chapter 99, including, but not limited to, the following:

(a) Preparation of real estate sales and/or purchase agreements and contracts of sale.

(b) Preparation of real property leases or rental agreements.

(c) Providing or completing forms related to the sale, lease, rental, and/or purchase of real estate, improvements, and personal property for their customers.

(d) Providing information or advice relating to the sale, lease, rental, and/or purchase of real estate and improvements.

(e) Negotiating for or on behalf of clients or customers relative to the sale, lease, rental, and/or purchase of real estate and improvements.

(12) Performing or providing services authorized by statute or regulation in this state by an entity or organization in the business of insurance or a self-insured entity or organization licensed in this state, and their licensed agents, affiliated licensees, and employees of such entities, including claims representatives, adjustors or handlers.

(13) Selling, soliciting or negotiating insurance and annuity products, informing customers of their options with respect to the purchase, ownership and naming of beneficiaries of such products and the performance of any other function associated

with the purchase, replacement and administration of an insurance or annuity product, and adjustment or handling of insurance claims by insurance companies and their claims representatives and/or insurance agents as well as licensed claims representatives and insurance agents not affiliated or employed by a particular insurance company.

(14) Providing information or education about law, regulations, legal procedures, and compliance issues by a person, entity or organization for the purpose of teaching, training or educating others.

(15) Performing activities that are preempted by federal law.

(16) Preparing, filling in, or explaining a form or document used in a transaction or furnishing or explaining any statement or notice provided for by state or federal law, when performed by a merchant incidental to the sale of a product or service.

(17) Performing or providing services otherwise authorized by statute or regulation in this state.

(18) Performing such other activities as the courts of Hawaii have determined do not constitute the unauthorized practice of law.

(e) Governmental Agencies.

Nothing in this rule affects the ability of a governmental agency to carry out its responsibilities as provided by law.

(f) General Information.

Nothing in this rule affects the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(g) Document Use By A Party

Nothing contained in this rule shall be construed to prohibit the preparation or use by any party to a transaction of any legal or business form or document used in the transaction.

(h) No Private Cause of Action Created

Nothing in this Rule creates or may be the basis of a private cause of action or claim cognizable in any court, administrative agency or alternative dispute forum.



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection

From: Samuel Sorich, Vice President

Re: SB 1044 – Relating to Attorneys

Date: Wednesday, February 11, 2009
8:30 a.m.; Conference Room 229

The Property Casualty Insurers Association of America (PCI) supports the intent of SB 1044 to clarify the definition of “practice of law.” The bill’s statement that an insurer that has a certificate of authority to conduct business in Hawaii is not practicing law assures that the insurer can continue to provide services to its customers. PCI believes that the bill should be amended to address three other points.

First, the provision that a licensed insurer is not engaged in the practice of law should be extended to the employees of the insurer. Second, licensed insurance producers should not be deemed to be engaged in the practice of law as long as they are providing services within the scope of their licenses. Third, Section 2 of SB 1044 amends HRS Section 431:3-201. That statute recognizes that HRS Section 431:8-301 allows an unauthorized insurer to conduct business in Hawaii under certain circumstances. SB 1044’s exclusion of insurers from the definition of “practice of law” should extend to insurers that properly write surplus line insurance in Hawaii.

PCI appreciates the Committee’s consideration of these comments.

**SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

February 11, 2009

Senate Bill 1044 Relating to Attorneys

Chair Baker and members of the Senate Committee on Commerce and Consumer Protection, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm respectfully requests an amendment to Senate Bill 1044 Relating to Attorneys.

We request the following amendment on page 3, lines 7 through 11 to read as follows:

“(d) An insurer who possesses a certificate of authority in good standing under this chapter and applicable rules, its employees and agents, shall not be deemed to be engaged in the practice of law when providing services within the scope of the insurer's certificate of authority.”

We appreciate the opportunity to present testimony on this bill.