

Honolulu, Hawaii

FEB 13 2009

RE: S.B. No. 51
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Health, to which was referred S.B. No. 51
entitled:

"A BILL FOR AN ACT RELATING TO DENTISTRY,"

begs leave to report as follows:

The purpose of this measure is to protect public health by
including tooth whitening services in the definition of the
practice of dentistry.

Your Committee received testimony in support of this measure
from the Hawaii Dental Association and the Board of Dental
Examiners. The Department of Commerce and Consumer Affairs
submitted testimony in support of this measure with amendments.

Your Committee finds that teeth whitening services are being
provided by businesses that are not licensed to practice
dentistry. Including teeth whitening services in the definition
of the practice of dentistry will enable the Department of
Commerce and Consumer Affairs to facilitate effective enforcement
of businesses engaged in the unlicensed practice of dentistry.

Your Committee has amended this measure by adopting the
recommendations of the Department of Commerce and Consumer Affairs
by clarifying that:

- (1) The practice of dentistry includes the offer to perform
or the performance of any phase of any operation
incident to teeth whitening, including the instruction



or application of teeth whitening materials or procedures at any location; and

- (2) "Teeth whitening" means any process performed by one individual upon another individual to whiten or lighten the appearance of human teeth by the application of chemicals, whether or not in conjunction with a light source.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 51, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 51, S.D. 1, and be referred to the Committee on Commerce and Consumer Protection.

Respectfully submitted on
behalf of the members of the
Committee on Health,

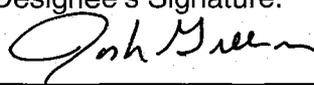


DAVID Y. IGE, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Health
HTH

Bill / Resolution No.:* SB 51	Committee Referral: HTH CPN	Date: 2/6/9		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
IGE, David Y. (C)	✓			
GREEN, M.D., Josh (VC)	✓			
BAKER, Rosalyn H.	✓			
ESPERO, Will	✓			
NISHIHARA, Clarence K.				✓
HEMMINGS, Fred	✓			
TOTAL	5	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

Report Title:

Dentistry; Teeth Whitening

Description:

Redefines the practice of dentistry to include teeth whitening.
(SD1)

A BILL FOR AN ACT

RELATING TO DENTISTRY.

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

1 SECTION 1. Section 448-1, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§448-1 Dentistry defined; exempted practices.** (a) A
4 person practices dentistry, within the meaning of this chapter,
5 who represents oneself as being able to diagnose, treat, operate
6 or prescribe for any disease, pain, injury, deficiency,
7 deformity, or physical condition of the human teeth, alveolar
8 process, gums, or jaw, or who offers or undertakes by any means
9 or methods to diagnose, treat, operate or prescribe for any
10 disease, pain, injury, deficiency, deformity, or physical
11 condition of the same, or to take impressions of the teeth or
12 jaws; or who owns, maintains, or operates an office for the
13 practice of dentistry; or who engages in any of the practices
14 included in the curricula of recognized and approved dental
15 schools or colleges. Dentistry includes that part of health
16 care concerned with the diagnosis, prevention, and treatment of
17 diseases of the teeth, oral cavity, and associated structures

1 including the restoration of defective or missing teeth.
2 Dentistry includes the offer to perform or the performance of
3 any phase of any operation incident to teeth whitening,
4 including the instruction or application of teeth whitening
5 materials or procedures at any location. The fact that a person
6 uses any dental degree, or designation, or any card, device,
7 directory, poster, sign, or other media whereby one represents
8 oneself to be a dentist, shall be prima facie evidence that the
9 person is engaged in the practice of dentistry.

10 For the purposes of this chapter, "teeth whitening" means
11 any process performed by one individual upon another individual
12 to whiten or lighten the appearance of human teeth by the
13 application of chemicals, whether or not in conjunction with a
14 light source.

15 (b) The following practices, acts, and operations,
16 however, are exempt from the operation of this chapter:

17 (1) The rendering of dental relief in emergency cases in
18 the practice of one's profession by a physician or
19 surgeon, licensed as such and registered under the
20 laws of this State, unless one undertakes to reproduce
21 or reproduces lost parts of the human teeth in the

1 mouth or to restore or replace in the human mouth lost
2 or missing teeth;

3 (2) The practice of dentistry in the discharge of their
4 official duties by dentists in the United States Army,
5 the United States Navy, the United States Air Force,
6 the United States Public Health Service, or the United
7 States Veterans Administration;

8 (3) The practice of dentistry by licensed dentists of
9 other states or countries at meetings of the Hawaii
10 Dental Association or component parts thereof, alumni
11 meetings of dental colleges, or any other like dental
12 organizations, while appearing as clinicians;

13 (4) The use of roentgen and other rays for making
14 radiograms or similar records of dental or oral
15 tissues;

16 (5) The making of artificial restorations, substitutes,
17 appliances, or materials for the correction of
18 disease, loss, deformity, malposition, dislocation,
19 fracture, injury to the jaws, teeth, lips, gums,
20 cheeks, palate, or associated tissues, or parts, upon
21 orders, prescription, casts, models, or from

1 impressions furnished by a Hawaii licensed dentist;
2 and
3 (6) The ownership and management of a dental practice by
4 the executor or administrator of a dentist's estate or
5 the legal guardian or authorized representative of a
6 dentist, where the licensed dentist has died or is
7 incapacitated, for the purpose of winding down,
8 transferring, or selling the practice, for a period
9 not to exceed one year from the time of death or from
10 the date the dentist is declared incapacitated;
11 provided that all other aspects of the practice of
12 dentistry are performed by one or more licensed
13 dentists."

14 SECTION 2. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun, before its effective date.

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Tuesday, March 3, 2009
9:30 a.m.

TESTIMONY ON SENATE BILL NO. 51, S.D. 1
RELATING TO DENTISTRY.

WRITTEN ONLY

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, DAVID Y. IGE, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lawrence Reifurth, Director of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to provide comments on Senate Bill No. 51, S.D. 1, which redefines the practice of dentistry to include tooth whitening services. The bill effectively restricts tooth whitening services to licensed dentists.

When determining whether the provision of tooth whitening services constitutes the practice of dentistry, and therefore should be a regulated activity that requires licensure, the Legislature should consider the following:

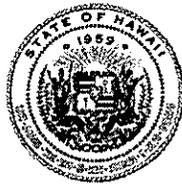
- (1) Is regulation necessary to protect the health, safety, or welfare of consumers;
- (2) Is there evidence of abuses by providers of the service;
- (3) Does the potential danger to consumers exceed any increase in costs that may be associated with regulation; and
- (4) Would requiring a license unreasonably restrict entry into the business by all qualified persons.

Clarifying that dentistry includes “tooth whitening services” may be helpful in the Department’s enforcement of unlicensed activities with respect to the practice of dentistry. However, if the performance of the service does not pose a danger to consumers or there is little evidence of abuses by providers of the service, then the restriction could be viewed as an unreasonable restriction on the entry into the business.

In 2007-2008, the Department’s Regulated Industries Complaints Office received four complaints involving teeth whitening services. Because these are pending cases, the Department cannot discuss the specifics of the cases. However, based on the number of complaints received, there does not appear to be widespread abuses.

Consequently, the Department suggests that the Committee proceed cautiously before passing a measure that may have anti-competitive results.

Thank you for the opportunity to submit testimony on S.B. No. 51, S.D. 1.



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

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

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2009

TUESDAY, MARCH 3, 2009
9:30 A.M.

WRITTEN TESTIMONY ONLY
ON
SENATE BILL NO. 51 S.D.1 – RELATING TO DENTISTRY

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE DAVID Y. IGE, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 51 S.D.1, Relating to Dentistry. My name is Jo Ann Uchida, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department takes no position on the question of whether teeth-whitening should be within the scope of the practice of dentistry, but offers the following enforcement-related comments:

Testimony on Senate Bill No. 51 S.D.1
March 3, 2009
Page 2

Senate Bill No. 51 S.D.1 expands the definition of dentistry to include "teeth whitening services." The bill contains language similar to the language in House Bill No. 1209 H.D.1.

By way of background, RICO has received a number of complaints over the past year from dentists regarding the tooth whitening businesses that have appeared at a variety of fairly prominent locations, such as shopping malls. The complaints allege that the tooth whitening businesses are engaged in the practice of dentistry.

Without discussing the details of any particular case, our investigation has shown that it is important, for purposes of determining unlicensed activity, to clearly differentiate conduct that is dentistry from conduct that is incident to the marketing and sale of tooth whitening products. Based upon our research of the issue, it appears that dental boards across the country are facing similar questions.

Legislation that clearly articulates the types of conduct that would be deemed "teeth whitening" would facilitate effective enforcement. While House Bill No. 1209 H.D.1 contains very similar language, the Department prefers the language as it is set forth in this bill.

Thank you for this opportunity to submit written testimony on Senate Bill No. 51 S.D.1.

**PRESENTATION OF THE
BOARD OF DENTAL EXAMINERS**

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Tuesday, March 3, 2009
9:30 a.m.

**WRITTEN COMMENTS ON SENATE BILL NO. 51, S.D.1, RELATING TO
DENTISTRY.**

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

My name is Jeffrey Miyazawa, D.D.S., Chair of the Board of Dental Examiners ("Board"). The Board appreciates the opportunity to provide written comments in support of S.B. No. 51, S.D.1, Relating to Dentistry.

The purpose of S.B. No. 51, S.D.1 is to amend the definition of the practice of dentistry to include tooth whitening.

The Board believes tooth whitening is within the scope of practice of dentistry and not merely a cosmetic procedure as there is potential harm to the patient's gums and teeth if the procedure is not done correctly. Currently, there is general language related to treating teeth and this bill will clarify that tooth whitening is included in the practice of dentistry.

Thank you for the opportunity to provide comments in support of S.B. No. 51, S.D.1.

Hawaii State Legislature
State Senate
Committee on Commerce and Consumer Protection

Senator Rosalyn Baker, Chair
Senator David Ige, Vice Chair

Tuesday, March 3, 2009 9:30 a.m.
Senate Bill 51, SD1 Relating to Dentistry

Honorable Chair Rosalyn Baker, Vice Chair Ige, and members of the Senate Committee on Commerce and Consumer Protection,

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 SB51, SD1. This bill will protect the public from unlicensed individuals who are practicing dentistry in a manner that can cause damage to teeth and gums.

After thirty years of practicing general dentistry in Kailua, Oahu, in the past year I have seen several instances of my patients suffering damage to their gums caused by tooth whitening treatments performed by unlicensed individuals. To date, the Regulated Industries Complaints Office has been unable to prevent unlicensed individuals, from performing these potentially harmful procedures on the public.

With the language suggested by the Regulated Industries Complaints Office, and included in SB51, SD1 this bill should enable them to provide better protection for the public. Therefore, I strongly support this bill.

From: Darrell [teruyadt@worldnet.att.net]
Sent: Thursday, February 26, 2009 7:53 AM
To: CPN Testimony
Subject: testimony in support of SB51, SD1 Redefines the practice of dentistry to include teeth whitening; Tuesday, March 03, 2009 9:30 AM

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION Senator Rosalyn H. Baker, Chair Senator David Y. Ige, Vice Chair

Tuesday, March 03, 2009; 9:30 a.m. Conference Room 229

SB 51, SD1 RELATING TO DENTISTRY. Redefines the practice of dentistry to include teeth whitening.

Honorable Chair Rosalyn H. Baker, Vice Chair David Y. Ige and members of the Senate Committee on Commerce and Consumer Protection, thank you for the opportunity to present testimony in support of Senate Bill 51, SD 1 which qualifies the definition of teeth whitening in the practice of Dentistry.

In the State of Hawaii as of late and, indeed nationally, "bleaching kiosks" have been opening and closing apparently at will. None of these have a licensed dentist present and the level of training of the personnel at these booths is in question. The lightening agent is usually a type of carbamyl or other peroxide in a plastic tray delivery system. This may be used in conjunction with a light source which allegedly enhances the process.

Many of these operations have been observed by our dentist members who have noted that the operators often assist the customer in placing the tray in the mouth. This sort of action is defined in Hawaii Statutes as the Practice of Dentistry.

Due to the caustic nature of these solutions, whether commercial or legend (intended for the use of trained personnel), there is a risk of soft tissue damage to the gums and tongue and areas of the face, and tooth sensitivity due to the bleaching process or undiagnosed decay. These have been the findings of more than a few dentists who observed these adverse outcomes after a patient of theirs visited one of these kiosks.

There is an overall concern on the matter cleanliness and guarding against cross-contamination between customers using these booths. It would indeed be difficult to maintain asepsis in a stall at a bridal fair or worse, in the middle of the Stadium Swap Meet as has been witnessed by an impeccable source. And, of course, if the bleaching solution is swallowed or contacts any eye tissue it depends on the operator to react in an immediate and appropriate manner to this type of emergency situation.

This definition would not affect the purchase of over the counter products such as Crest white strips which are intended for the sole use and application by the consumer.

Thank you for your consideration of this measure.

Darrell Teruya, DDS
Immediate Past-President, Hawaii Dental Association