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KEALI'I S. LOPEZ
DIRECTOR

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

**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE**

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

**TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2012**

**MONDAY, MARCH 12, 2012
2:10 P.M.**

**TESTIMONY ON SENATE BILL NO. 3002 S.D.2
RELATING TO REAL ESTATE BROKERS AND SALESPERSONS**

**TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND TO THE HONORABLE RYAN I. YAMANE, VICE CHAIR,
AND TO THE HONORABLE KARL RHOADS, VICE CHAIR,
AND MEMBERS OF THE COMMITTEES:**

The Regulated Industries Complaints Office ("RICO") of the Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 3002 S.D.2, Relating To Real Estate Brokers and Salespersons. My name is Daria Loy-Goto, Acting Complaints and Enforcement Officer for RICO. RICO opposes this bill.

Senate Bill No. 3002 S.D.2 amends §467-14, Hawaii Revised Statutes ("HRS"), to provide that a real estate broker or salesperson is not liable for misrepresentations based upon a good faith reliance on information provided by a reputable property inspector; the seller or the seller's representative; a surveyor, contractor, or other licensed professional; a community or homeowner association's representative; a property manager; and public records. The bill also provides that a real estate broker or salesperson is not liable for failure to ascertain and disclose all material facts concerning a property based upon a good faith reliance and with due care on a disclosure statement prepared pursuant to §508D-9, HRS.

RICO notes that the House Committees on Judiciary and Consumer Protection and Commerce deferred the companion measure, House Bill No. 2768, on February 22, 2012.

RICO's offers the following comments in opposition to the bill:

1) As currently drafted, Senate Bill No. 3002 S.D.2 is inconsistent with national professional standards that govern real estate brokers and salespersons. Under the Code of Ethics for the National Association of Realtors ("NAR"), realtors must avoid misrepresentation without qualification. In its explanation to consumers on how the Code of Ethics affect daily real estate practice, the NAR provides that "[i]f a REALTOR believes information provided by a seller is questionable, the REALTOR is obligated to investigate." This bill would lower the standard of

practice for Hawaii licensees below those currently established by the NAR and negate a real estate broker's responsibilities as required by the NAR.

2) The phrase "shall not be held liable" on page 1, line 13 and on page 6, line 12 is overbroad and may create problems for consumers outside the licensing arena.

3) Lastly, Senate Bill No. 3002 S.D.2 is unnecessary. A review of recent disciplinary actions taken by the Real Estate Commission ("Commission") indicates that there are no cases in which the Commission took disciplinary action based on a single act of simple misrepresentation.

If, however, this Committee is inclined to pass the bill out, RICO respectfully requests that the following language replace the current amendments and be inserted on page 7, line 12:

The real estate commission shall consider whether the licensee relied in good faith on information provided by other persons or third parties.

This language will clarify that licensees will not be disciplined for good faith misrepresentations.

Thank you for this opportunity to testify on Senate Bill No. 3002 S.D.2. I will be happy to answer any questions that the members of the Committees may have.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

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

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

**TWENTY-SIXTH LEGISLATURE
Regular Session of 2012**

**Monday, March 12, 2012
2:10 a.m.**

**TESTIMONY ON SENATE BILL NO. 3002, S.D. 2, RELATING TO REAL
ESTATE BROKERS AND SALESPERSONS.**

**TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE GILBERT S. C. KEITH-AGARAN, CHAIR,
AND MEMBERS OF THE COMMITTEES:**

My name is Carol Ball and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on Senate Bill No. 3002, S.D. 2, Relating to Real Estate Brokers and Salespersons, and opposes this measure for the following reasons.

Senate Bill No. 3002, S.D. 2, deviates from the strong public policy of protecting the consumer and instead shifts liability to the uneducated consumer away from a real estate licensee as articulated in Section 467-14, Hawaii Revised Statutes ("HRS"):

- Making any misrepresentation concerning any real estate transaction; and
- Failing to ascertain and disclose all material facts so that the licensee may fulfill the licensee's obligation to avoid errors.

The purchase of a home in Hawaii is largely considered the biggest investment consumers will make during their lifetime. The legislature recognized the magnitude of this purchase and provided the unsuspecting consumer all the protections the legislature could afford to provide them. In 1977 the legislature established the Hawaii Regulatory Licensing Reform Act under Chapter 26H, HRS, and the major policy of the Act states, "the purpose of regulation **shall** be the protection of the public welfare and **not** that of the regulated profession or vocation." (emphasis added).

The legislature further recognized the necessity for creating additional protections for the public when it established the Commission. The legislature defined the Commission's purpose in Section 467-4, HRS, as "the protection of the general public in its real estate transactions." In its effort to protect the public, the legislature made the aforementioned prohibited acts illegal and mandated the Commission investigate whether or not the licensee violated those acts.

The Commission understands that the Regulated Industries Complaints Office ("RICO") will investigate all allegations of the misconduct of a licensee, but not all investigations result in a disciplinary sanction. According to RICO, after investigation, mitigating factors introduced by the licensee may result in a dismissal of the case. RICO reported that in its recorded history, **NO** disciplinary sanctions have occurred for simple misrepresentation, **NONE**. In its efforts to protect the consumer, RICO also reported establishing fair enforcement

standards of the statute and has never disciplined a licensee for simple misrepresentation.

Furthermore, the National Association of Realtors ("NAR") and the Hawaii Association of Realtors ("HAR") also recognized the need to protect the consumer. NAR's Code of Ethics states that all members "shall avoid exaggeration, **misrepresentation**, or concealment." (emphasis added). There is no qualification of the misrepresentation. It simply is prohibited. However, with this proposed statutory amendment, it appears that certain members of NAR/HAR are attempting the dilution of the NAR Code by trying to change the statute.

The first proposed amendment is not only vague and ambiguous, but it is intended to protect the licensee, not the public, and further raises many questions detrimental to the consumer. For example, should the licensee who has knowledge the information is a misrepresentation be allowed to hide behind it? What is considered a reputable inspector? Would anyone be considered a representative of the seller? Next door neighbor? Should a real estate licensee rely on a misrepresentation by any licensed professional regarding real property? A veterinarian? Or a port pilot? Are blogs public records? Anyone's FaceBook page? There will be harmful unintended consequences should this amendment pass.

Testimony on Senate Bill No. 3002, S.D. 2
Monday, March 12, 2012
Page 4

The second amendment is unnecessary and serves no purpose, but again creates potential unintended consequences. Section 508D-9, HRS, currently provides that "a buyer has no cause of action against a seller or a seller's agent for, arising out of, or relating to the providing of a disclosure statement when the disclosure statement is prepared in good faith and with due care."

For the reasons discussed, this measure will hurt the consuming public and therefore the Commission strongly opposes Senate Bill No. 3002, S.D. 2. Thank you for the opportunity to testify.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 3002, SD 2**

March 12, 2012

To: Chairmen Robert Herkes and Gilbert Keith-Agaran and Members of the House
Committee on Consumer Protection and Commerce and the Members of the House
Committee on Judiciary:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the
Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. No. 3002, SD 2, relating
to Real Estate Brokers and Salespersons.

The protection from liability afforded in this bill is too broad and vague and does
not take into consideration the various situations that occur or may occur in the sale of
real estate. For example, if the seller tell the broker that they are not aware of any roof
leaks and the salesperson or broker notices some water marks on the ceiling would they
be immune under this bill. If the statement by the seller is considered a misrepresentation
the real estate salesperson is immune even though he or she noticed that there could have
been a leak.

There will be complicated issues of what is "misrepresentation" and what
constitutes "good faith reliance" and this bill shifts the burden to the buyer in a
transaction. This immunity is not good public policy.

Thank you very much for allowing me to testify in OPPOSITION to this measure.
Please feel free to contact me should you have any questions or desire additional
information.

Testimony for SB3002 on 3/12/2012 2:10:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, March 11, 2012 8:54 PM

To: CPCtestimony

Cc: mark.decastro@decastrorealty.com

Testimony for CPC/JUD 3/12/2012 2:10:00 PM SB3002

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Mark-Allen H DeCastro

Organization: Individual

E-mail: mark.decastro@decastrorealty.com

Submitted on: 3/11/2012

Comments:

RE: SB 3002, SD2: Relating to Real Estate Brokers and Salespersons.

Subject: Written Testimony In Support of the Bill

My name is Jack M. Legal. I am the owner and Principal Broker of Legal Realty. I support SB 3002, SD2, which amends Section 467-14, of Hawaii Revised Statutes.

I believe this is a good piece of legislation which will have a positive impact on the Real Estate Industry and its practitioners. I think it is based on the presumption that Real Estate brokers and salespersons are charged with the duty to protect the interest of the public and in that sense this amendment does not relieve them from careless and negligent acts. As professionals they are still charged with the duty to do due diligence when the information provided is suspect or when the source of the information is in doubt.

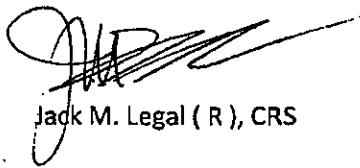
The standard of "good faith reliance" recognizes the fact that the Real Estate Industry derives information from many sources including but not limited to the parties in the transaction, public records, experts and other agents. The sum total of the information gathered in relation to a transaction, absent evidence of gross misrepresentation and obvious fraud, must be relied upon for the transaction to move on. But even under this standard, the party relying on the information must realize that he is doing so to his own detriment.

I believe, however, that this amendment is better and more humane than arbitrarily being named a party to a misrepresentation because of the wrong information provided from what were believed to be reliable sources and being faced with a severe punishment of revocation of Real Estate license.

This is a good law because it makes sense by making sources of information share the burden of making sure that information provided is accurate and those who rely on them in good faith cannot be held liable.

Should you wish to contact me, my number is 284-6832. My e-mail address is legalrealty@earthlink.net.

Thank you.



Jack M. Legal (R), CRS

March 10, 2012



The Honorable Rep. Robert Herkes & Re. Ryan Yamane
And the House Committee on Consumer Protection & Commerce

The Honorable Rep. Gilbert S.C. Keith-Agaran & Re. Karl Rhodes
And the House Committee on Consumer Protection & Commerce

State Capitol, Room 325
Honolulu, Hawaii 96813

RE: SB3002, SD2 Relating to Real Estate Brokers and Salespersons

Aloha Chairs Herkes & Keith-Agaran, Vice-Chairs Yamane and Rhodes and Members of the Committees:

I am writing in STRONG Support of SB3002, SD2.

I am a real estate agent, with a broker's license in Central Oahu and hold several leadership positions in the industry. I also serve in leadership with several community groups and non-profits. I am speaking as an individual and not for any of the organizations I represent.

SB 3002 is strongly needed to correct a serious problem with our current licensing enforcement for real estate brokers and salespersons. Under the current interpretation of our laws and rules, RICO is taking the position that a licensee giving out misleading or false information can have their license revoked; even if the information they provided came from another source and even if they in good faith did their due diligence to gather that information. This is absolutely wrong and should never happen. No one should be held to that standard. Other licensees, government employees and elected officials are not held to such a standard to keep their jobs and neither should real estate professionals.

In the course of practicing real estate we are required to gather information from multiple sources and supply that information to our clients, prospective buyers and sellers, members of the public, other real estate professionals and to various reporting services. The information we gather comes from both public and private sources. We do not have control over those sources; we can only pass on that information after doing our best effort to confirm the accuracy.

A prime example of a source that we supply information from is the county records. I regularly supply records from the County Tax Department and the Department of Permitting and Planning. On many occasions there were inaccuracies in the information provided by those government agencies.

Similarly we collect documents from condo and community associations. We also collect information for the property owners and the MLS system. Under the current practices I could lose my license for relying on their information. Unfortunately we have no choice. We must use their records in order to complete the sale of a property.

If a licensee commits fraud or is found to be negligent, disciplinary action should be taken. If the information they provided was supplied by someone expected to be a reliable source or someone with an interest in the transaction; the licensee should not have their career put at risk. If harm was caused to a member of the public, that member of the public can pursue civil or criminal action against the person responsible. If a licensee was responsible for the harm, they can also file a complaint against their license. If the licensee is a member of the Association of Realtors®, the public has additional avenues for disciplinary actions or mediations; though professional standards at the Board of Realtors®. A license should never be revoked for something that was of no fault of the licensee. If there was an infraction and found to be minor or accidental, the penalty should be far less than loss of the right to earn a living.

No other industry or government agency is held to such draconian rules and neither should the real estate industry.

Thank you in advance for your support of this needed bill. Please feel free to contact me if you have any questions.

Sincerely,



Randy Prothero, REALTOR®
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March 11, 2012

The Honorable Rep. Robert Herkes and Rep. Ryan Yamane
And the House Committee on Consumer Protection and Commerce

The Honorable Rep. Gilbert S.C. Keith Agaran and Rep. Carl Rhodes
And the House Committee on Consumer Protection and Commerce

State Capitol, Room 325
Honolulu, HI 96813

Dear Chairs, Vice-Chairs, and Members of the Committee:

RE: SB 3002, S.D. 2: Relating to Real Estate Brokers and Salespersons

I strongly support SB 3002, S.D. 2.

I am a licensed Realtor ® with Coldwell Banker Pacific Properties. I have a broker's license, conduct business island-wide, and currently serve in a volunteer capacity as the East Oahu Regional Director on the Honolulu Board of Realtors. Over the past years, I have served on other Real Estate-related Boards, as well as on neighborhood associations and nonprofit community fundraising groups. Today, I am submitting testimony as an individual and do not speak for any of the organizations that I represent.

RICO is currently imposing unreasonably strict liability for errors and omissions on real estate licensees despite the honesty, diligence, and utmost integrity of agents in performing a fiduciary responsibility to their clients. Verification of all information provided to a real estate agent by Sellers, licensed professionals and affiliates, such as building contractors, home inspectors and property managers, places undue burden on a Realtor ®, and alleviates the responsibility and defeats the purpose of hiring and paying allied professionals to provide services in a transaction. A real estate agent cannot be expected to pay a company to provide the relevant condominium or building department documents and then to duplicate in order to validate the work of the hired firm. Are we to do EVERYONE's job, checking innumerable sources, verify and re-verifying sources, because we are presently held to an impossible standard of perfection? I think not.

Two examples will illustrate the need for clarification of Chapter 467.

CASE OF THE LAZY PROPERTY MANAGER. Recently, I noted an error in a Property Information document (RR-105C) prepared by a Property Manager who works for a well-respected firm. It showed the maintenance fee utility inclusions incorrectly and I asked for him to please correct the information. He responded that, "by law", he wasn't required to provide the document at all, was not obligated to change the erroneous information, but that he'd see if his "gal" had time to do so. Should I as a licensed Realtor ® representing a Seller be held accountable for the written improper documentation that no doubt often occurs? Isn't the Property Manager the one who bears the duty to verify and report the factual truth and to correct errors when they are brought to his/her attention?

CASE OF HIDING IT UNDER THE RUG. If a Seller does not report damage on the Seller's Real Property Disclosure Statement (SRPDS) that is later discovered by a Buyer upon moving into the home, should the listing agent who is a licensed Realtor ® be held accountable? Such was the case of the Seller whose cracked tiles were conveniently hidden under a large area rug upon which sat heavy furnishings. The Seller did not disclose any damage to the flooring in the SRPDS, did not inform her agent, and later insisted that she did not regard this as damage. Should the listor, or I as the Buyer's agent, have personally inspected the home, and moved the bedroom furniture to lift up the rug to make certain the flooring was not damaged? Professional Home Inspectors do not perform such work, nor is a Seller required to remove all furnishings for a home inspection to be conducted. Under the current interpretation, the listing agent would be found to have misrepresented the facts and potentially sanctioned for misconduct. Does not the Seller bear the responsibility of providing the facts and the truth on the SRPDS? How do we resolve that this document clearly states that the document MUST BE COMPETED BY SELLER ONLY?

I am in favor of providing clarification to Chapter 467. The examples above illustrate that Realtors ® are often provided information from reputable and professional affiliates and licensees and from their Sellers that is inaccurate and not verifiable. I respectfully urge you to please consider adopting SB 3002 that has more reasonable and suitable language reflecting the intent of the law in protecting the consumer. I agree that the law should not protect agents and their brokers who know or should have known about factually incorrect information. The spirit of this bill engenders "good faith reliance". As such, I strongly encourage your thoughtful consideration for real estate agents and their brokers who are diligent and honest in representing their clients.

Sincerely yours,

Jennifer Lee Busto, Ph.D.
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March 12, 2012

The Honorable Robert N. Herkes, Chair

House Committee on Consumer Protection & Commerce

The Honorable Gilbert S.C. Keith-Agaran, Chair

House Committee on Judiciary

State Capitol, Room 325

Honolulu, Hawaii 96813

RE: S.B. 3002, S.D.2, Relating To Real Estate Brokers and Salespersons

HEARING: Monday, March 12, 2012, at 2:10 p.m.

Aloha Chair Herkes, Chair Keith-Agaran, and Members of the Committees:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR strongly supports S.B. 3002, S.D.2, which amends provisions relating to licensing and penalties, that real estate brokers and salespersons shall not be held liable for misrepresentation based upon good faith reliance, and shall not be held liable for failure to ascertain and disclose all material facts concerning a property if there was a good faith reliance on a prepared disclosure statement.

HAR believes that this measure will help to clarify the revocation, suspension and fine provisions for real estate broker or salespersons by providing a clearer legal standard. For a real estate broker or salesperson, this would mean that a licensee would be found to violate the law if they failed to exercise the reasonable care that a real estate broker or salesperson would exercise in similar circumstances. Imposing this standard would not mean that the Real Estate Commission and/or the Regulated Industries Complaints Office's power to enforce violations would disappear. It would merely enact a reasonable standard by which the Commission must act, rather than the current strict liability standard that currently exists in the law for any violation, no matter how inconsequential. HAR believes that it is helpful to the profession as a whole to set a clear standard to govern whether a licensing violation has occurred.

HAR notes our support for the amendments made in the current language of S.B. 3002, S.D. 2 by the Senate Committee on Commerce and Consumer Protection, and Committee on Judiciary and Labor. These amendments narrowed the focus of the bill to specific conduct, while still preserving the ability to investigate and take disciplinary action in order to protect consumers.





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HAR further notes that the National Association of REALTORS® (“NAR”) Code of Ethics does not require that REALTORS® provide expertise in other professional areas or technical disciplines. As such, HAR believes that real estate licensing violations for real estate brokers or salespersons should not be based upon expertise provided by third parties within property transactions.

For the foregoing reasons, HAR respectfully requests your favorable passage of this measure.

Mahalo for the opportunity to testify.

REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.



Testimony for SB3002 on 3/12/2012 2:10:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 12, 2012 8:55 AM

To: CPCtestimony

Cc: kschultz@ahfi.com

Attachments: SB3002 Testimony 3-12-12.pdf (94 KB)

Testimony for CPC/JUD 3/12/2012 2:10:00 PM SB3002

Conference room: 325

Testifier position: Support

Testifier will be present: Yes

Submitted by: Kristin Schultz

Organization: Prudential Locations LLC

E-mail: kschultz@ahfi.com

Submitted on: 3/12/2012

Comments:

Brian Benton will be testifying.



Prudential Locations LLC
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JOINT HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE AND JUDICIARY
TESTIMONY IN SUPPORT OF
SB 3002, SD 2 RELATING TO REAL ESTATE BROKERS AND SALESPERSONS

Testimony of
Prudential Locations LLC
Monday, March 12, 2012, 2:10 p.m.
Conference Room 325

Chairs Herkes and Keith-Agaran, and members of the Committee:

Prudential Locations LLC ("Prudential Locations") **strongly supports** SB 3002, SD 2. Prudential Locations is a multi-faceted real estate company that started in 1969. Over the last forty years, Prudential Locations has established itself as a leader in the real estate industry, with over 250 real estate brokers and salespersons. We have been in business for over 40 years, handled over a 100,000 transactions, and, throughout that time, had a nearly perfect record with DCCA.

Currently, real estate brokers and salespersons unfairly face **strict liability** for any errors or omissions in connection with real estate transactions. This means they can be charged with wrongdoing even if they are diligent, honest, and capable; even if they are the unwitting and innocent victims of mistakes or misrepresentations by their clients; even if they do nothing wrong at all! The reality under this standard is harsh—the Real Estate Commission ("the Commission") can revoke or suspend a real estate broker's or salesperson's license or fine a real estate broker or salesperson regardless of fault.

No one would think of disciplining doctors, dentists, lawyers, or government officials when they have not been negligent or guilty of reckless or intentional wrongdoing. And, nearly all licensed professionals in Hawai'i face discipline under some fault-based standard (e.g., Motor Vehicle Licensing, Motor Vehicle Repairs, Chiropractic, Contractors, Dental Hygienists, Dentistry, Hearing Aid Dealers and Fitters, Secure and Fair Enforcement for Mortgage Licensing Act, Notaries Public, Pest Control Operators, Physical Therapy Practice Act, Pilotage, Podiatrists, Psychologists, Solicitation of Funds from the Public, Travel Agencies (Charter Tour Operators), and Alarm Business).

However, real estate brokers and salespersons face strict liability. Under the law as currently written and as currently being enforced by the Department of Commerce and Consumer Affairs ("DCCA"), a broker can be disciplined for "making" a statement that is found after the fact to be false even if she acted reasonably and ethically in:

- Relaying information from a reputable inspector about the condition of the roof, electrical and plumbing systems, or other non-obvious characteristics of the property;
- Sharing information obtained from a seller—and believed to be accurate—about the amounts owed for maintenance fees and utilities;
- Reporting information obtained from a contractor with a good reputation about past renovations done to the home;
- Passing on the seller's disclosure (done pursuant to the Disclosure Law) that is found to be inaccurate because the seller was ignorant or lying in ways not known to—or discoverable by—the broker; and
- Reporting information from a lawyer about a pending legal dispute.

In short, if a broker, acting with perfect diligence and honesty, "makes" a misrepresentation due to misinformation innocently received from a seller, a termite inspector, a contractor, a lawyer, or a title company, he/she is at risk of being punished by the Regulated Industry Complaint Office ("RICO") and DCCA.

Why? It makes no sense. It is not fair.

We are not suggesting—in any way—that licensees should not be punished if they are negligent, reckless, or guilty of intentional wrongdoing. They should—without question. But, no one should be at risk of losing their license when they have been honest, diligent, and competent.

Let us give you an example of how unfair the present system is. Recently, a licensee with an unblemished record, who has been working in the industry for more than 25 years was cited by RICO for misrepresenting that utilities were included in maintenance fees for a condo unit. How did it happen? The seller said the utilities were included and reported that in her mandatory disclosure. The broker had no reason to believe otherwise. The buyer and her agent were urged to confirm the information, which they were told was believed to be accurate, but not guaranteed. Unfortunately—unbeknownst to the broker—the seller had given bad information.

Nevertheless, RICO charged this broker (but not the agent who handled the sale) with wrongdoing and demanded she be sanctioned. In fact, it demanded that the broker, who was relying on her subordinates and only indirectly supervising the sale, should lose her license and be found guilty of failing to maintain a reputation for honesty (again, despite decades of blemish-free work)—without **any** proof that she was negligent, careless, reckless, or dishonest. That is not protecting consumers; it is unreasonable.

The current proposed changes to Haw. Rev. Stat. § 467-14, which, at the request of the Senate Judiciary Committee, was narrowed to specifically identify individuals (e.g., third parties) who could provide information that real estate brokers or salespersons may rely on in good faith, would clearly define the legal standard to be applied by the Commission and DCCA in imposing penalties against real estate brokers and agents—a standard that is consistent with

other licensing regimes. The proposed changes do not impose unreasonable burdens on the Commission in taking disciplinary action or reduce the powers of the Commission; rather, the proposed changes simply create a fair standard of behavior for real estate brokers and agents.

We are not seeking to change the course of prior proceedings before RICO and the Commission. This amendment should have only prospective application, and it is needed to fairly balance the rights of consumers and licensees who act honestly and diligently on their behalf.

Prudential Locations recognizes the importance of licensing penalties in order to protect the general public in real estate transactions. SB 3002, SD 2 does not—in any way—undermine this goal. And, SB 3002, SD 2 certainly does not eliminate penalties against real estate brokers and salespersons. SB 3002, SD 2 merely establishes an appropriate standard of liability for specific types of misconduct.

Thank you for the opportunity to testify on this matter.