



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

KA 'OIHANA PILI KĀLEPA
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Government Operations
Thursday, February 9, 2023
3:00 PM
Room 225

On the following measure:
S.B. 1438, RELATING TO THE OFFICE OF CONSUMER PROTECTION

Chair McKelvey and Members of the Committee:

My name is Mana Moriarty, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection. The Office of Consumer Protection opposes this bill.

The purpose of this bill is to transfer the Office of Consumer Protection from the Department to the Department of the Attorney General.

The Office of Consumer Protection affirms and adopts as its own position the Department's testimony in opposition to this bill.

Thank you for the opportunity to testify on this bill.



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Thursday, February 9, 2023
3:00 p.m.**

On the following measure:

S.B. 1438, RELATING TO THE OFFICE OF CONSUMER PROTECTION

Chair McKelvey and Members of the Committee:

My name is Nadine Ando, and I am the Director of the Department of Commerce and Consumer Affairs (Department). The Department opposes this bill.

The purpose of this bill is to transfer the Office of Consumer Protection (OCP) from the Department of Commerce and Consumer Affairs to the Department of the Attorney General.

The DCCA is concerned that the proposed move of the OCP to the Department of the Attorney General could result in a loss of agency case handling experience, sunk costs, and possible lapses and delays in services to the consumer public. The potential loss of government services to consumers is of concern as this is one of the primary missions of the DCCA.

Transferring OCP to another principal department and maintaining similar levels of services would require additional expenditures by another agency to develop the case handling tools that DCCA has put in place after more than forty years coordination between the OCP, the Regulated Industries Complaints Office (RICO), and the

Securities Enforcement Branch (SEB). Since no case handling system can be implemented at another principal department, delays or lapses in services will occur. And after a transfer, coordination would have to be undertaken to ensure that the significant consumer protection functions remain with the DCCA RICO and SEB, are properly coordinated with the OCP.

In 1980, the Legislature placed OCP in the Department of Regulatory Agencies (DRA), which only two years later became the Department of Commerce and Consumer Affairs (DCCA). The decision to place OCP in the DRA, which subsequently became the DCCA, was arrived at after an extensive 1974 study and comprehensive report by the Legislative Reference Bureau. *Sanctify the Scales: A Study of Consumer Protection in Hawaii*, Bina Chun, Researcher.

Since then, the DCCA has developed a one-stop destination for consumer resources. This “one-stop shop” destination for consumer resources premise was based on the notion that consumers benefit when they can access a single location for consumer resources and submitting complaints. Consumers may not know whether a complaint is more appropriately addressed to RICO, the Office of Consumer Protection, or Securities Enforcement Branch, and shouldn’t have to when they file a complaint. The Consumer Resources Center (CRC), housed within and operated by RICO, operates an integrated complaints intake system. Complaints and cases referrals are guided to the appropriate divisions for follow up by experienced agency personnel at RICO’s Intake Branch.

The DCCA has at least two other divisions with comparable investigatory and enforcement responsibilities as the OCP—Securities Enforcement Branch and RICO. Intake Branch personnel are familiar with the sometimes-overlapping and sometimes-disparate jurisdiction of the three entities. Intake personnel make appropriate case referrals based on years of experience. SEB, RICO, and OCP are in frequent contact with each other about appropriate case handling, and in some cases, on joint prosecution.

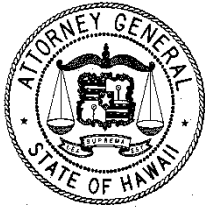
In recent years, the majority of CRC’s case intake has migrated to a web-based portal that is operated under a vendor contract. Adoption of a web-based portal and

development of case handling processes using the portal has been an unmitigated success. DCCA personnel have worked and continue to work on portal enhancements that improve the consumer experience and the ability of the affected government units to perform their duties.

The Department of the Attorney General (AG) and the Office of Consumer Protection's shared jurisdiction to enforce certain state laws does not result in any waste or duplication of resources. The AG routinely refers cases to OCP where they relate to consumer protection. OCP's relationship to the AG could be compared to the relationship between the U.S. Department of Justice and the Federal Trade Commission, which is part of the Department of Commerce, both of which have enforcement powers when it comes to consumer protection.

For all these reasons, DCCA respectfully requests that this bill be filed in Committee.

Thank you for the opportunity to testify on this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 1438, RELATING TO THE OFFICE OF CONSUMER PROTECTION.

BEFORE THE:

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

DATE: Thursday, February 9, 2023 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Benjamin M. Creps or Bryan C. Yee, Deputy Attorneys General

Chair McKelvey and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

This bill would transfer the Office of Consumer Protection (OCP) from the Department of Commerce and Consumer Affairs to the Department.

Although the Department does not take a policy position on the proposed transfer, we wanted to inform the Legislature that we have a long history of working well with OCP in achieving our shared mission to protect consumers in Hawaii. In recent years, OCP filed suit to protect consumers from Takata airbags, the Department filed suit over the opioid crisis, and we jointly settled cases over misrepresentations made by Volkswagen. Throughout these efforts, OCP and our Department have worked together with mutual respect and cooperation.

In short, we would like to inform the Committee that the current system works, and we are not seeking any changes. If this bill advances, however, the Department respectfully requests that an appropriation be made to fund the additional office space, equipment, and other related expenses and obligations that would need to be fulfilled by the Department.

Thank you for the opportunity to present this testimony.



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**Before the
Senate Committee on Government Operations
Thursday, February 9, 2023
3:00 p.m.**

**On the following measure:
S.B. 1438, RELATING TO THE OFFICE OF CONSUMER PROTECTION**

Chair McKelvey and Members of the Committee:

My name is Esther Brown, and I am the Complaints and Enforcement Officer of the Regulated Industries Complaints Office (RICO), which is an agency within the Department of Commerce and Consumer Affairs (Department). RICO offers comments on this measure.

The purpose of SB1438 is to transfer the Office of Consumer Protection (OCP) from the Department to the Department of the Attorney General (AG).

RICO is charged with enforcing the licensing laws of various professional and trade industries in the State through the receipt, investigation and prosecution of persons who perform special services that are regulated by licensing Boards, Commissions and Programs (Boards) that are administratively attached to the Department. Regulation by these Boards is necessary because the specialty work performed by licensees impact the health, safety or welfare of consumers of their services. To protect consumers, therefore, Boards issue licenses to only those persons who have demonstrated the skill, experience, education and competency required to

perform the specialty work. When the specialized and regulated work is performed by a person who is not licensed by a Board, the person can be sued by RICO in circuit court for engaging in illegal, unlicensed activity.

PART I, SECTIONS 3 and 4 of the bill, which begins on page 14, line 20 of the measure, transfers to the AG's office the functions and duties of the OCP, and the employees who perform those functions and duties. Currently, eleven (11) specialized intake investigators in RICO's Consumer Resource Center perform the intake function of the OCP as part of their regular work functions and duties. The eleven RICO employees screen callers, correspondence and complaints filed with the OCP for minimally-required information, and then direct-refer the matters to the OCP for handling. Because OCP's intake function and duties are performed by workers who aren't OCP employees, the functions and employees cannot be uprooted and transferred to the AG in accordance with SECTIONS 3 and 4 of the measure.

PART I, SECTION 6 of the bill, which begins on page 16, line 20, transfers all "equipment" of the OCP to the AG. Because OCP's intake function is performed by RICO's Consumer Resource Center intake investigators, RICO and the OCP share the *same* equipment - consisting of a complaints-management computer software application - at the Intake level. The software enables data entry and electronic communication of basic intake information and documents from RICO directly to the OCP. The "equipment" or software that RICO employees use to intake matters for the OCP, therefore, is part of RICO's comprehensive software system and it cannot at this time be "extracted" and transferred to the AG in accordance with SECTION 6 of the bill.

PART II, SECTION 14 of the bill amends Hawaii Revised Statutes (HRS) section 26-9(h) by removing the Department's blanket authority, per HRS sections 487-12, 487-14, 480-3.1, 480-15, 480-15.1, 480-20(c) and 480-22, to sue for injunctive relief against unlicensed, unregistered or uncertified work as the attorney general and OCP are currently empowered to do. See bill at page 19, line 20 through page 20, line 8. However, the statutes marked for deletion on page 20, lines 5 – 6 of the bill, have never been limited to the sole use of the OCP. Other divisions within the Department that issue licenses, certifications or registrations may rely on them; RICO certainly does

to sue, enjoin and impose fines on persons that perform specialty work that is regulated by the licensing Boards without having a valid license to do so.

Also, some acts that constitute a licensing law violation are also unfair and deceptive too. An example is the unlicensed person who misleads a consumer into believing that they have a license from the Contractors Licensing Board, and even gives the consumer a business card with a fake contractor's license on it. That person's conduct would violate provisions of Chapter 444 HRS, which govern the contracting industry, and Chapter 480 too. Another example is HRS 444-25.2(d), which makes a licensed contractor's failure to make certain verbal and written disclosures to a homeowner an automatic unfair or deceptive practice under Chapter 480 HRS.

Additionally, HRS section 487-12 is used routinely by RICO to resolve complaints alleging unlicensed activity where a lawsuit may not be needed, thereby preserving judicial economy by avoiding the unnecessary clogging of our courts.

We therefore request that the language proposed to be stricken from HRS 26-9, as shown on page 19, line 20 through page 20, line 8, remain in the statute. Removing the language will reduce RICO's ability to penalize those who expose consumers to harm through unlicensed work.

Thank you for the opportunity to testify on this bill.

SB-1438

Submitted on: 2/8/2023 6:38:01 AM

Testimony for GVO on 2/9/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Stephen Levins	Individual	Oppose	Remotely Via Zoom

Comments:

My name is Stephen Levins and I am the former executive director of the State of Hawaii Office of Consumer Protection (OCP). During my over three decade tenure at the OCP I represented the interests of the State of Hawaii and the people of the state in the realm of consumer protection.

Hawaii's unique statutory enforcement mechanism in which the function of consumer protection is separate and independent from the enforcement mechanisms of the state attorney general's office has led to strong and effective consumer protection for the people of the state of Hawaii. Elimination of this organizational structure, which has been in existence since the late 1960s, will have a negative impact on the enforcement and advocacy of consumer protection in the state. **Because of this, I testify in opposition to Senate Bill 1438.**

One of the core statutory functions of the Office of Consumer Protection is to represent the state and its citizens as consumers before the Hawaii legislature. See, section 487-5 of the Haw. Rev. Stats. In furtherest of this mission the executive director frequently testifies at the Hawaii Legislature with one thing in mind, be a strong advocate for the interests of Hawaii consumers. If the office is absorbed by the state attorney general this vital function will be considerably eroded. The Department of the Attorney General unlike the OCP has a broader mission. It represents the interests of the State of Hawaii and the interests of everyone associated with the state. Among its responsibilities with respect to advice and counsel are interpreting laws, and providing legal advice and counsel to state officials to assist them in performing their functions and tasks. Unlike OCP, it must consider the interests of all, including, state officials, private businesses and the citizens of the state. Consequently, unlike the OCP, which is solely focused on consumer perspectives, when it testifies before the Legislature, the state AG must present its testimony in a broader context.

During my tenure at OCP I testified on thousands of bills. At the legislative hearings I was often the only person testifying from a consumer perspective. Because of this the legislative committees were able to gain insight into consumer issues that otherwise would not be

addressed. This critical element would likely disappear if the OCP no longer existed as a separate entity.

Consumer protection in Hawaii is also enhanced by OCP's position within the Department of Commerce and Consumer Affairs (DCCA). Its physical and organizational proximity to sister divisions, such as, RICO, PVL, SEB, Insurance, and Financial Institutions (which in many instances share OCP's commitment to advancing the interests of consumers) has created opportunities for the straightforward exchange of information that would not be as readily available if the office is transferred to the Department of the Attorney General.

When something isn't broke there is no need to fix it. This old adage is particularly pertinent to this Bill. The status quo works and works well. There is no need to tinker with something that has proven effective for over a half a century. Please hold this Bill.