

JAN 26 2009

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# A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1           SECTION 1. Section 487-5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§487-5 General functions, powers, and duties.** The  
4 director of the office of consumer protection is designated the  
5 consumer counsel for the State and shall represent and protect  
6 the State, the respective counties, and the general public as  
7 consumers. The director of the office of consumer protection  
8 shall have the following functions, powers, and duties:

9           (1) Coordinate the consumer protection activities of all  
10 departments, divisions, and branches of state  
11 government, and of branches of the county government  
12 concerned with consumer protection;

13           (2) Assist, advise, and cooperate with federal, state, and  
14 local agencies and officials to protect and promote  
15 the interests of the consumer public;

16           (3) Conduct investigations, research, studies, and  
17 analysis of matters and take appropriate action  
18 affecting the interests of consumers;



- 1           (4) Study the operation of laws affecting consumers and  
2           recommend to the governor and the legislature, new  
3           laws and amendments of laws in the consumers'  
4           interest;
- 5           (5) Adopt, amend, or repeal rules pursuant to chapter 91  
6           necessary for the purposes of this chapter, including  
7           rules which define with specificity acts or practices  
8           which are unfair or deceptive acts or practices in the  
9           conduct of any trade or commerce;
- 10          (6) Investigate reported or suspected violations of laws  
11          enacted and rules adopted for the purpose of consumer  
12          protection and shall enforce such laws and rules by  
13          bringing civil actions or proceedings;
- 14          (7) Organize and hold conferences on problems affecting  
15          consumers; and undertake activities to encourage  
16          business and industry to maintain high standards of  
17          honesty, fair business practices, and public  
18          responsibility in the production, promotion, and sale  
19          of consumer goods and services;
- 20          (8) Provide a central clearinghouse of information by  
21          collecting and compiling all consumer complaints and  
22          inquiries and making the collections and compilations



1 available to the general public; provided that  
2 consumer complaints [~~may~~] shall not be made available  
3 to the general public if [~~the~~]:

4 (A) The office of consumer protection is conducting  
5 an investigation or review of the complaints~~[, or~~  
6 ~~if the];~~

7 (B) The complaints are being used in connection with  
8 civil actions or proceedings initiated by the  
9 office of consumer protection~~[, or if the];~~

10 (C) The complaints have been referred to another  
11 state agency; or

12 (D) The complaints have been investigated and  
13 resolved by the office in favor of the person  
14 against whom the complaint was filed. The office  
15 shall immediately remove public access to all  
16 information regarding any complaint falling under  
17 this subparagraph;

18 (9) Appear before governmental commissions, departments,  
19 and agencies to represent and be heard on behalf of  
20 consumers' interest;

21 (10) Contract with other county, state, or federal  
22 governmental agencies, with nonprofit social services



1 societies, or with private nonprofit trade,  
 2 professional, or business organizations for the  
 3 performance of any of the functions of the office not  
 4 involving the enforcement of rules for the purpose of  
 5 consumer protection under this section, within the  
 6 budget limitations for any period not exceeding a  
 7 budget year, provided that the purposes and policies  
 8 of this chapter are in no way diluted, abridged,  
 9 misdirected, or destroyed; and

10 (11) Perform such other acts as may be incidental to the  
 11 exercise of the functions, powers, and duties set  
 12 forth in this section, including but not limited to,  
 13 compensation of witnesses in such amounts and for such  
 14 purposes as shall be prescribed by rules."

15 SECTION 2. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

By Request



**Report Title:**

Office of Consumer Protection; Consumer Complaints; Public  
Access

**Description:**

Prohibits the Office of Consumer Protection from making consumer  
complaints publicly available in cases where the complaint was  
resolved in favor of the business against which the complaint  
was filed.



# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Commerce and Consumer Protection

From: Paul T. Tsukiyama, Director

Date: Friday, February 13, 2009, 8:30 a.m.  
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 1041  
Relating to Consumer Information

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

OIP administers Hawaii’s public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“HRS”) (“UIPA”). Under the UIPA, records of complaints against commercial entities are, to a large extent, open to the public because most information contained in the complaints would not fall under any of the exceptions to disclosure. For example, as comparison, the UIPA makes clear that any individual granted any type of license in the State does not have a significant privacy interest in “the record of complaints including all dispositions.” Haw. Rev. Stat. § 92F-14(b)(7)(C) (1993).

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

This bill signifies a policy shift in the accessibility of consumer complaint information that the public has come to rely on. While it is, of course, the Legislature's call as to whether to make the policy shift called for in this bill, it is highly questionable as to how this bill would serve anyone other than the few commercial entities who want to hide a part of their complaint records from the public's view.

Thank you for the opportunity to testify.



LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LT. GOVERNOR

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PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE  
Regular Session 2009

Friday, February 13, 2009  
8:30 a.m.

**TESTIMONY ON SENATE BILL NO. 1041 -- RELATING TO CONSUMER  
PROTECTION.**

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

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify in opposition to Senate Bill No. 1041, Relating to Consumer Protection. My name is Stephen Levins, and I am the Executive Director of the Department's Office of Consumer Protection ("OCP").

Senate Bill No. 1041 seeks to deny to the people of Hawaii the longstanding statutory right to learn of the ultimate disposition of complaints reviewed by the Office of Consumer Protection. As written, Senate Bill No. 1041 would prohibit the OCP from making consumer complaints publicly available in cases where the complaint was



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

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

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

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

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

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

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

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

Thank you for this opportunity to testify on Senate Bill No. 1041. I will be happy to answer any questions that the members of the Committee may have.

**From:** Ian Lind [ian@ilind.net]  
**Sent:** Tuesday, February 10, 2009 2:14 PM  
**To:** CPN Testimony  
**Subject:** Opposing HB 1359

Senate Committee on Commerce and Consumer Protection  
Senator Rozalyn Baker, Chair  
Senator David Ige, Vice Chair

**Testimony in opposition to SB 1041**

Submitted by Ian Lind  
PO Box 600  
Kaaawa, Hawaii

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for your consideration.