

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
NO. 1 CAPITOL DISTRICT BUILDING  
250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
TELEPHONE: 808-586-1400 FAX: 808-586-1412  
EMAIL: oip@hawaii.gov

To: Senate Committee on Judiciary & Government Operations

From: Paul T. Tsukiyama, Director

Date: March 20, 2009, 9:30 a.m.  
State Capitol, Conference Room 016

Re: Testimony on H.B. No. 1212, H.D. 1  
Relating to Information Practices.

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices ("OIP") opposes this bill.

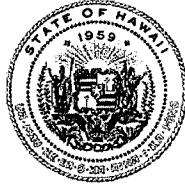
OIP administers Hawaii's public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("HRS") ("UIPA"). Since its adoption in 1988, the UIPA has made clear that any individual granted any type of license in the State does not have a significant privacy interest in "the record of complaints including all dispositions" so that the UIPA's privacy exception provided in section 92F-13(1), HRS, could not apply to exempt such records from public disclosure. Thus, currently, under the UIPA, the public has access to complaint records about any and all licensees. It cannot be disputed that the availability of such complaint information has been valuable to the public. For example, many consumers have relied on these records to make informed decisions about whether to engage licensees' services.

This bill jeopardizes the public's current access to licensee complaint records by removing the express acknowledgment that licensees' have no significant privacy interest in complaint records. In effect, under this bill, all licensees would now be deemed to have a significant privacy interest in their records of complaints and, if this significant privacy interest is found to outweigh the public interest in disclosure, the complaint records about any and all licensees can be held exempt from public disclosure under the UIPA's privacy exception.

When adopting the UIPA in 1988, the Legislature had reported that it was crafting the new law in response to extensive testimony that was received by a Governor's Committee on Public Records and Privacy in 1987 and that largely criticized the shortcomings of previous public records laws. Thus, the Legislature appeared to have been responsive to the public's need for licensee complaint information when it specifically inserted the express recognition of no significant privacy interest in such records.

This bill signifies a major policy shift in the accessibility of licensee 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 licensees who want to hide their complaint records from the public's view.

Thank you for the opportunity to testify.



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  
JUDICIARY AND GOVERNMENT OPERATIONS

TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION, 2009

FRIDAY, MARCH 20, 2009  
9:30 A.M.

TESTIMONY ON HOUSE BILL NO. 1212, H.D.1  
RELATING TO INFORMATION PRACTICES

TO THE HONORABLE BRIAN T. TANIGUCHI, CHAIR  
AND TO THE HONORABLE DWIGHT Y. TAKAMINE, VICE-CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 1212, H.D.1, Relating to Information Practices. My name is Jo Ann Uchida, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department opposes this bill.

House Bill No. 1212, H.D.1 amends §92F-14, Hawaii Revised Statutes ("HRS"), to delete "the record of complaints including all dispositions" as an exception to the types of information in which an individual has a significant

privacy interest. Similar bills, House Bill No. 2310 and Senate Bill No. 2059, were introduced in the 2008 legislative session. House Bill No. 2310 was not heard and Senate Bill No. 2059 was recommitted and failed to cross over.

House Bill No. 1212, H.D.1 would preclude government from disclosing the existence of customer complaints until and unless those complaints result in disciplinary action by the government agency. Several of the Department's programs, including RICO, would be affected by this bill to the extent they currently provide licensee complaints information to the public and encourage consumers to check licensing and complaints history prior to hiring licensed professionals.

Under the current draft, the Department could no longer disclose the existence of pending investigations to the public. It is an unfortunate and inevitable reality that, given the current economic situation, the Department and more importantly, the public, will be faced with business failures and shutdowns. The Department has already begun to see these shutdowns in a variety of contexts, such as mortgage brokers, travel agencies, and property managers. Shutdowns happen quickly, and consumers need information and guidance when these shutdowns occur, both to prevent additional monetary losses, as well as to provide consumers with assistance. The bill will prevent the Department from assuring the public that it is investigating a possible business shutdown and will prevent the Department from telling the public how many pending complaints have

been filed. It is important that the Department have the ability to provide timely and meaningful information to consumers when they need it most.

The Department recognizes that under §92F-14(b)(7), HRS, individuals have significant privacy interests in information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, with three exceptions, and the Department has tried over the course of many years to effectuate this law in a manner that appropriately balances the licensee's significant privacy interests against the benefit to the public in obtaining information about the individuals they may hire.

To this end, the Department has long encouraged consumers to obtain licensing and complaints information prior to hiring professionals and, as such, supports the disclosure of information that enhances consumer awareness and decision-making. It should be noted, however, that the Department's public complaints history report provides only specific, limited information about complaints and their outcomes.

The Department is aware that by providing "the record of complaints including all dispositions" as referenced in §92F-14(b)(7)(C), HRS, its complaints history information includes cases that were not substantiated in investigation, cases that may have been filed for ulterior motives, and cases in which the investigation is still pending. The Department has endeavored to act as a neutral repository of information rather than attempt to differentiate or disclose cases

based on the case outcome. In this manner, it provides transparency and accountability to the public as to how cases are investigated.

However, in order to reduce the negative connotation that consumers may associate with a complaints history, the public is always urged to judge a business's complaints history on the outcome of the investigation rather than on the number of complaints or the fact that a complaint was filed. Moreover, there is a concerted effort upon receipt of a complaint to determine whether there is sufficient cause to investigate, and to include in the public complaints history report only those cases in which investigation is warranted. Thus, many complaints are not included in the complaints database because they do not meet the sufficient cause test.

Currently, and in compliance with §92F-14(b)(7), HRS, RICO provides complaints information to consumers through its complaints website and upon telephone or written request.<sup>1</sup> Public RICO complaints information includes the respondent's name, the case numbers associated with each complaint, and the total number of complaints on record. If a complaint is closed without legal action, the complaints history will also show the allegations that were investigated and the outcome of the investigation. If a complaint investigation is pending, the case number of the complaint is included in the complaints history report, and the report

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<sup>1</sup> The Office of Consumer Protection ("OCP") shares the same database as RICO for purposes of complaints history information, but because its complaints are not received or compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, its complaints history information would not be affected by this bill. In addition, complaints history or RICO legal actions involving unlicensed persons would not be affected by this bill.

states: "This is a pending complaint. No further information is available." If the case results in legal action, information about the nature of the legal action and any board action is reflected in the licensee's complaints history.

Website usage data shows that the RICO/OCP complaints history database was viewed 450,855 times in fiscal year 2008. In addition, approximately 29,578 RICO telephone complaint history inquiries were received during fiscal year 2008, including 11,818 inquiries relating to contracting, 2,251 relating to MDs and osteopaths, 333 relating to the dental profession, 428 relating to mortgage brokers and solicitors, and 766 relating to real estate agents and brokers.<sup>2</sup>

Thank you for this opportunity to testify on House Bill No. 1212, H.D.1. I will be happy to answer any questions that the members of the Committee may have.

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<sup>2</sup> Affected licensee types investigated by RICO include Accountancy, Activity Desks, Acupuncture, Barbering, Cosmetology, Boxing, Cemetery and Funeral Trust, Chiropractic, Collection Agencies, Employment Agencies, Contractors, Dentists and Dental Hygienists, Detectives and Guards, Electricians and Plumbers, Electrologists, Elevator Mechanics, Engineers, Architects, Land Surveyors and Landscape Architects, Hearing Aid Dealers and Fitters, Marriage and Family Therapists, Massage, Medicine and Surgery (including Osteopathy), Mental Health Counselors, Mortgage Brokers and Solicitors, Motor Vehicle Sales, Motor Vehicle Repair, Naturopathy, Nurses, Nursing Home Administrators, Occupational Therapists, Dispensing Opticians, Optometrists, Pest Control, Pharmacy, Physical Therapy, Port Pilots, Psychology, Real Estate Appraisers, Real Estate Brokers and Salespersons, Social Workers, Speech Pathologists and Audiologists, Time Share, Travel Agencies and Veterinarians.



**Hawai'i  
Association of  
REALTORS®**  
www.hawaii Realtors.com

The REALTOR® Building  
1136 12<sup>th</sup> Avenue, Suite 220  
Honolulu, Hawaii 96816

Phone: (808) 733-7060  
Fax: (808) 737-4977  
Neighbor Islands: (888) 737-9070  
Email: har@hawaii Realtors.com

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March 19, 2009

**The Honorable Brian Taniguchi, Chair**  
House Committee on Judiciary and Government Operations  
State Capitol, Room 219  
Honolulu, Hawaii 96813

**RE: H.B. 1212, H.D. 1 Relating to Information Practices**

**HEARING DATE: Friday, March 20, 2009 at 9:30 a.m.**

Aloha Chair Taniguchi and Members of the Committee:

I am Mihoko Ito with Goodsill Anderson Quinn & Stifel, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members. HAR **supports** H.B. 1212, H.D. 1, which removes records of complaints from the exceptions to the types of information that are not subject to disclosure as public documents.

H.B. 1212, H.D. 1 would remove the current practice of public reporting of complaints filed against a licensee, regardless of the outcome of the complaint. Currently, the Regulated Industries Complaints Office ("RICO") posts on its website all complaints received against any licensee, including real estate brokers and salespersons. These reported complaints remain on the website for five years and are not removed, even if the investigation is closed for lack of evidence or merit, or if there is a determination by RICO that a violation did not occur.

HAR believes there needs to be a fair and equitable process so that licensees' reputations are not harmed by unwarranted or frivolous complaints. Under the proposed measure, the public would still have the right to information on a licensee's disciplinary history, where there has been a finding of wrongdoing and resulting disciplinary action has been taken. As such, HAR urges your support for this measure.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.



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# **BIA-HAWAII**

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## **BUILDING INDUSTRY ASSOCIATION**

March 20, 2009

Senator Brian Taniguchi, Chair  
Committee on Judiciary and Government Operations  
State Capitol, Room 016  
Honolulu, Hawaii 96813

**RE: HB 1212, HD1 “Relating to Information Practices”**

Chair Taniguchi and Members of the Committee on Judiciary and Government Operations:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is in strong support of HB1212, HD1 “Relating to Information Practices”. HB1212 would remove the current practice of public reporting of complaints filed against a licensee, regardless of the outcome of the complaint.

Currently, the Regulated Industries Complaints Office (RICO) posts on its website all complaints received against any licensee, including construction contractors. These listed complaints remain on the website for 5 years and are not removed, even if the investigation is closed for lack of evidence or merit, or if there is a determination by RICO that a violation did not occur. Members of BIA-Hawaii have experienced the continued listing of their names even when it was determined that no violation had occurred. These members believe that this practice is unfair to their reputation and credibility as licensed contractors. We understand the responsibility of a regulating agency such as RICO to the consumers of this state; however, in this case, we believe that consumers are misled by such a listing that continues long after the complaint has been settled or dismissed..

BIA-Hawaii believes that many other licensed professions share the same concern and that the principle of fairness should prevail. Under the proposed measure, the public would still have the right to information on a licensee’s disciplinary history, whether or not there was a finding of wrongdoing, and the resulting disciplinary action has been taken.

The placement of a licensee’s name on a list of complaints against that person gives the perception that the licensee is guilty of the charge against him/her. Anyone who checks

for any complaints against a contractor and sees a potential contractor's name on the list would think that the contractor was not as good a choice as one who didn't have a complaint listed. The fact that names are not removed for five years or more even when the complaints are unfounded or settled, is a real disservice to contractors.

For these reasons, BIA-Hawaii supports HB1212, HD1.

Thank you for the opportunity to share our views with you.

A handwritten signature in cursive script that reads "Karen L. Nakamura". The signature is fluid and elegant, with a prominent initial 'K' and a long, sweeping tail on the 'a'.

Chief Executive Officer  
BIA-Hawaii

Hawaii State Legislature  
State House of Representatives  
Committee on Judiciary

Representative Jon Riki Karamatsu, Chair

Representative Ken Ito, Vice Chair

Friday, March 20, 2009

Honorable Chair Jon Riki Karamatsu, Vice Chair Ken Ito and members of the Committee on Judiciary,

My name is Dr. Gary T. Umeda, and I am the President of Hawaii Dental Association. I am writing in support of HB 1212 relating to information practices. This bill addresses information practices under the aegis of the Department of Commerce and Consumer Affairs (DCCA). Regulated Industries Complaint Office (RICO) reports public complaints for 45 professions (and 20 licensing programs).

Properly adjudicated complaints are a valid and correct way to inform the public of any individual who has violated their professional duties and responsibilities. This system is sound in reasoning and necessary in today's world of fast information and is in place throughout the country. However, to our knowledge, only Hawaii has protocols in place that do not follow these established fundamental legal processes to file complaints. All it takes is just filing a complaint without any merit or substantiation and this complaint will stay on record with the state for five years. This is not right and violates the American system of justice and fairness and leaves vulnerable professionals to abuse, slander, lies and innuendo, destroying reputations built upon years of trust and integrity. All it takes is just filling out a few forms and the damage is done. It cannot be removed even though the complaint is later proven false. The rationale for the original statute may have been to protect the public, but it should not be at the price of justice and fairness. This needs to be corrected. Passage of this bill will prevent listing of any complaints that have not been properly adjudicated and allow the public to view complaints which are valid and should be listed. Thank you for your time in this matter.

Respectfully submitted,

Gary T. Umeda  
President, Hawaii Dental Association

**Testimony of Gerald Peters and The Hawaii Lumber Products Association  
(JGO) Senate Committee on Judiciary and Government Operations Friday Mar 20,  
2009. Room 016, 9:30 am**

**RE: HB1212HD1 – RELATING TO INFORMATION PRACTICES**

Chair Taniguchi, Vice Chair Bunda, and Members:

My name is Gerald Peters. I am testifying in very strong support of this legislation on behalf of The Hawaii Lumber Products Association, as well as myself as an individual with many years experience in Licensed General Contracting in Hawaii.

This legislation would remove the current practice of public reporting of complaints filed against a licensee, regardless of the outcome of the complaint. Currently, the Regulated Industries Complaints Office (RICO) posts on its website all complaints received against any licensee, including construction contractors. These listed complaints remain on the website for 5 years and are not removed, even if the investigation is closed for lack of evidence or merit, or if there is a determination by RICO that a violation did not occur. Members of all of Hawaii's Building Associations have experienced the continued listing of their names even when it was determined that no violation had occurred. These members believe that this practice unfair to their reputation and credibility as licensed contractors.

Speaking on behalf of my Licensed General Contracting company, the current practice tips the scale unfairly against credible, law abiding contractors; it is presumed/declared guilty/punished without trial. In my opinion, this represents violation of the basic tenet of good faith and fair dealing by the government to both the construction contractors and the public.

The current practice gives consumers the unbridled ability to hold the club over construction contractors heads of having your company's name blemished without explanation, just listed crudely as an at fault presumed guilty party for years and years. This enables sneaky type consumers to extort settlements, change their mind post facto on already installed items and colors, and even cause the contractor's name to be blemished forever even if the item or work in question is faulty due to a manufacturing flaw, as in natural fissures in granite counter tops which crack when the clients or their kids sit or step on the counters, for example. Furthermore, to add insult to injury, even if the client wants to withdraw the complaint because it was ill founded, it was easily mediated and settled, the complaint still stays on the record and inquiring potential new clients never know whether it was ten dollars, ten thousand, one hundred thousand, or a million dollars in question.

Current practice is a particular hardship to companies in this economy who are reaching out to provide low dollar Licensed Handyman services. Commerce and economic vitality will continue to suffer when consumers end up choosing unlicensed, underground economy handymen over an otherwise price competitive licensed contractor who has done thousands of projects, but may have even one complaint from a screwball client, for example, and that dissuades the consumer from choosing that contractor. So the job goes to a handyman, who deals in cash so often, may violate the handyman exemption for the amount of the work, and never ends up paying any taxes at all. Thank you.

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**From:** Darrell [teruyadt@worldnet.att.net]  
**Sent:** Tuesday, March 17, 2009 5:11 PM  
**To:** JGO Testimony  
**Cc:** teruyadt@att.net  
**Subject:** Testimony in favor of HB 1212, HD1 Friday 03/20/09 Conference Rm 016

COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS Senator Brian T. Taniguchi, Chair, Senator Dwight Y. Takamine, Vice Chair

Friday, March 20, 2009, 9:30 a.m., Conference Room 016

HB 1212, HD1 RELATING TO INFORMATION PRACTICES.

Deletes the exception of a record of complaints with respect to government information relating to an individual's fitness for a license, when balancing an unwarranted invasion of a person's privacy against the public disclosure of the record.

Honorable Chairman Taniguchi, Honorable Vice Chairman Takamine, venerable members of the Committee on Judiciary and Government operations; thank you for the opportunity to submit testimony in support of House Bill 1212, HD1 which seeks to amend Section 92F-14 of the Hawaii Revised Statutes.

One of the ways that the Regulated Industries Complaint Office (RICO) under the aegis of the Department of Commerce and Consumer Affairs (DCCA) reports public complaints for 45 professions (and 20 licensing programs) via an entry to this page on their website:

<http://pahoehoe.ehawaii.gov/cms/app>

From there any member of the public is able to use a search engine to determine if any complaints have been filed against an individual. There are, however some shortcomings with this process.

1. There are more than a few names with a single citation and some of these were dismissed due to findings of no improprieties, uncooperative witnesses or otherwise dismissed. Even these stay on the site for 5 years. Unfortunately there is an implication of the individual in the search of being "guilty until proven innocent". Also, since the details are not available it would be hard for anyone to determine the seriousness of the complaint.
2. One can type in a last name such as Teruya and while looking for, say, me, get a list of other people in regulated industries other than the dentist they were searching for in the first place. It is unfortunate that someone may punch in the last name of a realtor and retrieve a physician as the unintended result of the search.
3. I'm very sure that everyone thinks long and hard before anything is posted on the website and that it would be a serious matter that warrants the inclusion of that matter on that site. It's just that I'm unaware of the vetting process. I'm concerned that a frivolous accusation could make it to the list and once there remain for the 5 year period regardless of any subsequent finding.

4. We queried other states on this matter and none of them had a similar statute or similar law.

While everyone feels that an individual who is performing business in a manner detrimental to the public be brought to the attention of the public. The reputation of an innocent should, however, not be impugned through that process.

These are among the issues which were previously brought to the attention of Ms. Uchida at RICO and Ms. Takase at the OIP.

Thank you for your interest in this matter. .

Darrell Teruya, DDS  
Immediate Past President, Hawaii Dental Association