

LATE TESTIMONY

HAWAII ASSOCIATION OF MIXED MARTIAL ARTS
PO BOX 8709, HONOLULU, HI 96830

DATE: February 3, 2010

TO: COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Robert N. Herkes, Chair; Rep. Glenn Wakai, Vice Chair

FROM: David Squeri, of Otsuka & Associates, A Limited Liability Law Company
On behalf of
The HAWAII ASSOCIATION OF MIXED MARTIAL ARTS

RE: Strong opposition to HB 2639

Honorable Chair and members of the House Committee on Consumer Protection and Commerce, I represent the Hawaii Association of Mixed Martial Arts ("HAMMA"), an industry group currently being formed with the express purpose of assisting both lawmakers and the regulatory enforcement agencies with the fair and equitable regulation of the sport of Mixed Marital Arts ("MMA") in Hawaii.

PURPOSE: HB 2639 amends HRS Chapter 440E to impose the regulatory scheme intended for professional MMA events to amateur MMA contests.

POSITION: We OPPOSE HB 2639, as the passage of this bill threatens to inflict an additional layer of unneeded bureaucracy to the development of MMA events in Hawaii. Amateur MMA contests may often need to charge admission fees or employ methods to gain revenue to support the costs involved in creating an amateur MMA event. As currently drafted, it is believed that this Bill will have the result of exposing promoters, Martial Arts schools, social groups, and others who seek to create such an event to regulatory restrictions and taxes originally designed for professional contests. As professional events can be expected to have substantially higher gross revenue, it is fundamentally unfair to expect amateur events to burden identical costs.

PROPOSAL: We believe that instead that a clearer definition of "Professional" and "Amateur" MMA events should be created to assist regulatory agencies in determining if the subject event constitutes a Professional event regulated under HRS Ch. 440E. Currently, 440E provides "*Amateur mixed martial arts contest" means a mixed martial arts contest in which no money, prize, purse, or other form of compensation is offered or given to contestants.*" However, as prizes or other compensation such as "product giveaways" can be expected to be a part of any amateur event in most sports, this definition fails to provide a clear indication as to what constitutes an amateur event. It is believed that before attempting to consider the regulation of amateur MMA contests, the statutory framework needs to create a clearer definition of "Amateur mixed martial arts contest".

Thank you for the opportunity to give testimony on this Bill.



MIXED MARTIAL ARTS

UFC chief says MMA future bleak in Hawaii

By Billy Hull

POSTED: 01:30 a.m. HST, Nov 21, 2008

Local mixed martial arts promotions aside, Hawaii seems unlikely to ever draw a major national card -- at least if UFC president Dana White is to be believed.

White, in town to promote the Ultimate Fighting Championship's Jan. 31 fight between champions BJ Penn and George St.-Pierre, says the chances of holding a UFC event in Hawaii are all but dead.

The reason? It's too expensive, White says.

"We finally get some regulations and they slap this huge tax on us that's out of control, so probably never," White says. "I guess it's their way of saying 'OK, we'll sanction this, but we'll make sure nobody ever shows up and comes and does an event here.'"

The bill regulating MMA in Hawaii, which goes into effect July 1, has already hurt local MMA promotions -- including Icon Sport, which held possibly its last show in August after an 11-year run -- and X-1, which hasn't done an event at Blaisdell Arena since May and has been staging its recent shows at much smaller venues.

"Greed got involved and it's a travesty," Penn said. "The real travesty of the whole situation is the children who love fighting and train in people's gyms and love fighting now have people coming in who know nothing about the sport step in and ruin it for the kids."

"They really should step back and think about what they are doing, forget about the greed factor, and step up and let the sport grow and flourish instead of being greedy."

Find this article at:

http://www.starbulletin.com/sports/sportsnews/20081121_UFC_chief_says_MMA_future_bleak_in_Hawaii.html

Check the box to include the list of links referenced in the article.

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FROM: David Squeri, of Otsuka & Associates, A Limited Liability Law Company
On behalf of
THE HAWAII ASSOCIATION OF MIXED MARTIAL ARTS

RE: Support of HB 2764

Honorable Chair and members of the House Committee on Consumer Protection and Commerce, I represent the Hawaii Association of Mixed Martial Arts (“HAMMA”), an industry group currently being formed with the express purpose of assisting both lawmakers and the regulatory enforcement agencies with the fair and equitable regulation of the sport of Mixed Marital Arts (“MMA”) in Hawaii.

PURPOSE: HB 2764 amends HRS Chapter 440E to omit the two percent (2%) tax on the gross sales price for the sale, lease or other exploitation of media rights to an MMA contest or event.

POSITION: We support HB 2764, as an opportunity to reduce costs and raise the profits associated with the promotion of MMA contests, which will work toward the development of this sport in the local market, while promoting local business and tourism.

A tax on the sale of media rights works against the State of Hawaii’s compelling interest in attracting major MMA events from the mainland, which have access to tax advantageous venues in other states, and even other countries. Paired with the comparably high cost associated with creating a large scale event in Hawaii, the tax on gross revenue from media rights creates another barrier to attracting major MMA events to Hawaii.¹ The abolishment of the media rights tax, by attracting major MMA events from both the mainland and abroad, would work towards bringing in sources of revenue for local businesses, while promoting tourism; which would have the effect of creating additional tax revenue for the State. In its current form, the tax on media rights only serves to make Hawaii less attractive to major sports promoters.

PROPOSAL: For the same reasons as listed herein, HRS §440E-7(d)(4) requiring promoters to pay two percent (2%) of the gross revenue from admission fees should also be eliminated.

Thank you for the opportunity to give testimony on this Bill.

¹ The UFC pay per view (PPV) cable TV revenues have been reported to have topped 200 million dollars (2006), with the profit gained from individual contests reaching as high as approximately 40 million dollars.

The Honorable Robert N. Herkes and Members
of the Committee on Consumer Protection and Commerce
The House of Representatives
Hawaii State Capitol
Honolulu, HI 96813
Subject: HB 2764

Dear Chair Herkes and Members:

I, Brittany Yap, stand in strong support of HB 2764, which amends HB 1866 by removing the requirement that MMA promoters need to pay the DCCA 2 percent of their gross sales price relating to broadcasting, television, Internet, and motion picture rights. I would also like to see amendments to the bill so that HB 2764 also removes the 2 percent fee to the pay-per-view sales if a promotion. Also, rather than 4 percent fee for the first \$50,000, the DCCA should only be allowed to charge 3 percent and they shouldn't raise it to 6 percent after 2013.

I am the owner of UPROAR, LLC—formerly a mixed martial arts (MMA) lifestyle magazine, and now an online local MMA news site. I have been in the MMA business for nearly three years, and I have been a fan of MMA for even longer. I attend about 90 percent of the shows here in Hawaii and I take pictures of the fights and cover it for my news site.

Since July 1, when the HB 1866 took effect, there have been about 5 amateur shows and only one professional MMA show in Hawaii. Rick Young, from UP n UP Promotions was the only promoter to hold a professional show after the bill went into effect and according to Young, he lost a lot of money.

The fees imposed by the DCCA in HB 1866 are ridiculous. I do not believe the DCCA needs to charge a 4 percent fee and a 2 percent fee on top of all these registration and licensing charges to promoters in order to pay their staff to regulate MMA. Also, any money a promotion makes from DVD, Internet or pay-per-view sales should go to their pocketbook and no one else's. The greediness of this department has killed the local promotions here in Hawaii, and even worse, is deterring larger U.S. Mainland promotions from coming here.

Our local economy is in need of stimulation right now. Dana White, owner of the Ultimate Fighting Championships (the largest MMA promotion in the world), has wanted to bring his promotion to Oahu for more than a year now and was awaiting the implementation of MMA regulations. Now that we have our regulations in place, White has been very opposed to the fees saying he won't come to Hawaii unless this 2 percent fee (on Internet, pay-per-view, and DVD sales) is taken out of HB 1866.

What's the point of imposing fees if the fees are going to kill the sport and the DCCA can't collect money anyway? Unless that is the intention—to kill the sport here in Hawaii—lawmakers should try to find a way so that promoters won't be charged so many fees and the DCCA can pay their staff for imposing the new regulations.

I respectfully urge your committee to pass HB 2764.

Sincerely,
Brittany Yap

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Hawai'i MMA regulations take effect July 1

How will this help or hurt the industry?



Story Tim Mott and Britt Yap >>> Photos Britt Yap

On July 1, a new bill regulating mixed martial arts in Hawai'i will go into effect. This bill—which was sponsored by Hilo Representative Jerry Chang—will add stricter guidelines for fighters and promoters to follow at professional MMA fights in the state.

While such regulations are a first for MMA in Hawaii, a wave of similar strict enforcement has been recently handed down across the nation. In fact, many states have recently created regulatory bodies and measures for MMA in their states in order to collect revenue to squash unlicensed fights.

Chang said the reason he introduced the bill was “for the safety of the fighters and to legitimize the sport more.”

Similarly, State Department of Commerce & Consumer Affairs Executive Officer Alan Taniguchi said the main reason for the regulations is “to protect the health and safety of the fighter.” Unlike other licenses that the DCCA approves, this MMA statute is in place to protect the fighter and not the consumer.

Hawai'i recently joined 35 other states that are MMA regulated when it passed House Bill 1866 (HB1866), a bill that will now grant the state more power over the business side of MMA, which many MMA promoters feel is unfair.

MMA in Hawai'i Today

MMA in Hawai'i is currently overseen by the State Department of Commerce and Consumer Affairs (DCCA) and Regulated Industries Compliance Office (RICO), which handles licensing and issues permits required by promoters to hold events.

Today, anyone who wants to promote an MMA fight or contest in Hawai'i is not required to be licensed, and therefore is not required to pay any licensing fees. Instead, the DCCA collects a per-event promoter's fee of \$500. Most sporting events in Hawai'i are subject to the state general excise tax of four percent from ticket sales and other event-generated revenue.

Under the new law, the \$500 promoter's fee will be eliminated and replaced by a combination of percentage cuts from events ticket sales, pay-per-view sales, and sales from broadcast over the Internet, TV, or movie rights.

As it stands now, event promoters are not required to disclose ticket sales or revenues, so the state really has no idea how much money these events are generating. According to the DCCA, under current per-event promoter's fees, the state collected \$10,000 in each of the 2006 and 2007 fiscal years. Also, through May of 2008, they had collected \$20,000.

Events have doubled in the first-half of 2008 to 40 events compared to the previous two years. It is estimated by

some that the state could stand to collect close to \$1 million annually after implementing the new law.

The state is estimating that 10 MMA promoters regularly hold contests in Hawai'i, and whether or not that number will increase or decrease has yet to be determined.

New Regulations

On July 1, 2009 HB1866, which is now a statute, will go into effect and the state will begin regulating the sport of MMA in Hawai'i and collecting fees based on the following outline of the statute:

*4 percent of the first \$50,000 from admissions fees.

*3 percent of gross receipts over \$50,000 from admissions fees.

*2 percent of the gross sales price for the sale or lease of broadcasting television, Internet, and motion picture rights for a contest. (According to Taniguchi, a cap will be placed on this.)

*2 percent of the gross receipts from subscription fees for the pay-per-view telecasts.

Taniguchi decided on these numbers after reviewing MMA regulations in other states. “Our fees in this statute are comparable to other states,” he said.

But Jay Dee Penn—BJ Penn's father—raises the question, “Why are we looking at other states?”

Penn argued that what they are doing in New Jersey or California has nothing to do with the demograph-

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ics of MMA in Hawai'i. There are a lot more people in New Jersey and it doesn't cost very much to drive to watch a show, versus flying out to the middle of the Pacific to watch a show. Promoters on the mainland have much more potential to make money just based on location and sheer numbers alone, and that doesn't even take into consideration the high cost of living in Hawai'i.

"You couldn't make money before they started taxing, and you won't be able to make money now, unless you're on TV" Penn said.

According to Taniguchi, the fees that promoters have to pay the DCCA will stay and support the MMA program and the overseeing of it. It will not go back to the state and used for something else.

"The DCCA doesn't get any general funds," Taniguchi said. "Everything we do is paid for by the fees we collect."

Originally, HB1866 was drafted to allow the Hawai'i State Boxing Commission to oversee the regulations, but after a strong backlash by the MMA community, the state suggested establishing a five-member, independent body called the Mixed Martial Arts Commission of Hawai'i, whose committee members would be appointed by the governor.

"The people thought (the boxing commission) didn't have the expertise to oversee MMA events," Taniguchi said.

In the end, the state has decided to do away with any kind of commission to oversee the regulations. Instead, the DCCA is implementing a program that will oversee MMA shows in Hawai'i and be responsible for enforcing the statute.

"There's no board, there's no a commission," said Taniguchi. "It's just a program run by my division."

Some of the new guidelines include:

- *Mandatory neurological testing of athletes.
- *Disease and drug testing of athletes.
- *Defining formal "rules" of MMA, including length of fights & rounds.
- *Criminal and financial background checks.
- *Proof of medical insurance for fighters.
- *Certified pre-payment for athletes. DCCA will give fighters their paycheck right after the fight.
- *Out-of-state fighter physicals will be accepted.
- *Any injuries sustained during the event, the promoter has to pay for.

Basically, promoters first need to get a license. Once they get that, they have to get a permit for each event they put on. Prior to each event, the promoter is responsible for the cost of the premiums and deductibles for each fighter's medical. They also need to provide proof of a venue contract, have a written confirmation for an ambulance, a written confirmation for security, proof of all of the fighters' physicals, and much more. If promoters don't meet this checklist, they cannot put on an event.

If fighters don't make weight,

they won't be allowed to fight. If a fighter drops out of a fight not due to a medical problem cleared from a certified doctor, there will be repercussion for that fighter. If a main event is cancelled, or the fighter people bought the ticket to see isn't fighting anymore, the promotion has to offer a full refund of the tickets.

For more details about the statute, contact the DCCA office.

Exceptions to the rule

The statute does allow for unregulated MMA events that may occur within the state, if they are classified as a "recreational activity" under the control of the armed forces, National Guard, or Police Activities League.

The statute excludes amateurs from the regulations. Therefore, a promoter could put on an event with all amateur fights and be clear of any regulations. However, there is a clause in the statute that states if the fighter is given rewards, gifts, or any other form of compensation from the promoter, they will be considered a professional fighter.

Possible Repercussions

The worst case scenario is that there won't be any local MMA shows come July 1, because either promoters won't be able to afford it, or the regulations will be too tedious to follow. One thing is for sure, however, a lot more preparation time will be needed to throw an event in Hawai'i.

Because the bill is a sliding scale based on the more you make the less you pay, the new fees could put the smaller shows out of business.

With the smaller shows being affected the big shows could be affected to, because the fighters you see on TV don't just start out there. They start on the cards of the smaller events and build their talents and resumes before anyone sees them on television. The small promotions are basically a farm system, and the statute could kill them.

Prior to enactment, promoters were required to provide basic medical info about fighters—like last date of physical, and the names of the doctors and referees who will be in place for the event.

Now, promoters, fighters, referees, physicians, judges, and managers participating in an event in Hawai'i will be required to get licensed by the state and pay the licensing fee.

The state claims their intention, like any other state, is to regulate the sport of MMA and to ensure safety, but local promoters feel that the state is going after the money.

Patrick Freitas, former promoter of ICON Sport, was quoted in The Honolulu Advertiser as saying, "We initially came out and supported (the bill) but we're changing our stance. We're looking at \$12,000 to \$20,000 in fees going back to the state per fight. That's way too much money. I think that lawmak-

ers were judging this by maybe what they see on TV, the big showy events, where those companies are making hundreds of millions a year. Hawai'i MMA promoters are small-business people."

"Absolute power absolutely corrupts," said Penn about the new statute. "In the end, the fighter is the one who gets cheated. It hurts businesses and it doesn't help the fighter at all.

Penn is passionate about the sport and how it has helped keep kids off the streets. He fears that this new statute will kill all MMA shows leaving kids without a positive outlet.

The bill has also put a hold on any chance that a UFC fight will happen in Hawai'i this year. Although UFC President Dana White wanted the regulations, he isn't exactly agreeable with the fees. At the UFC 94 press conference in Honolulu, White said that his intention has always been to do a show in Hawai'i but because of the new fees and regulations, he wasn't sure if it was something he would still want to do.

Give it a chance, nothing's in stone

Taniguchi is currently working out the details of the statute. Some time before July 1 there will be a public hearing where the MMA community can review the statute in detail and give its feedback to the DCCA.

While the public can give its input on things like whether eye gouging and head butting should or shouldn't be allowed, or the timeline of when fighters' paperwork are due, the public will not be able to say anything that will change the fact that there will be regulations and fees come July 1. That is already a law.

After the public hearing, the statute will be reviewed by the Governor's Office, the Budget and Finance Office, the Attorney General, and the Small Business Regulatory Board.

Although the law will take effect in July, nothing is ever set in stone. If the regulations and fees prove to be such a huge burden on promoters that there is a significantly less number of shows, or if there are problems with the rules, the statute can be amended through the legislature come January.

"I'm only asking for people to give it a chance," Taniguchi said.

According to Chang, the reason why he wrote the bill was so that large promotions like the UFC would come down to Hawai'i, put on a show, and generate revenue for the state.

"If it's going to cut the fights down, then we should look at (the bill) again and amend it," said Chang.

For more information, the public can contact Taniguchi directly by calling (808) 586-2701 or e-mailing mma@dcca.hawaii.gov.



"If (the statute) is going to cut the fights down, then we should look at it again and amend it."

-Rep. Jerry Chang

My name is Gary Levitt. I have been a licensed attorney in the state of Hawaii since 1987. I have represented the Penn family on a majority of their business matters for approximately 20 years. I have also had the opportunity over the past three years to represent BJ Penn in his capacity as a mixed martial arts fighter. I have also assisted other championship level MMA fighters in their relationship with the UFC (Ultimate Fighting Championship). As a result, I have worked closely with the UFC, which is by far the largest and most popular mixed martial arts fight promotion company in the world. As such, I have become familiar with the internal workings of the business of mixed martial arts.

At the outset, I would like to state that we strongly support mixed martial arts regulations that protect the health, safety and welfare of the fighters. However, the current law which regulates mixed martial arts and imposes certain fees on the promoter and events, as set forth in HRS Section 440e, is not working. Simply put, HRS 440e has killed mixed martial arts professional fight events in the state of Hawaii. Since the law took effect, we are aware of only one MMA professional fight that took place in the state of Hawaii in 2009. That fight was put on by a small promotion company and was not deemed to be successful as it was held at the Blaisdell Arena and attracted approximately 1,500 people. Yet in past years there were numerous MMA professional fight events, including two Elite XC shows (the predecessor of Strikeforce) which were broadcast live from the Blaisdell on Showtime, a large number of ICON productions, Rumble on the Rock productions, K-1 and others. In fact, since its inception it is my understanding that ICON has promoted close to 100 professional mixed martial arts professional fight events in the state of Hawaii. While these events are intended to be profitable, most promoters are happy to break even as the costs associated with these events which has been set forth in other testimony are

extensive. Because of the fees imposed by the current law, we are unaware of any upcoming or scheduled professional mixed martial arts events. This has a negative economic impact on Hawaii.

The Ultimate Fighting Championship wants to come to Hawaii. One reason is that they know that Hawaii has a large mixed martial arts fan base and has supported mixed martial arts events throughout the years even when the sport was in its infancy. However, the main reason the UFC desires to hold an event in Hawaii is because of BJ Penn who is their former world welterweight champion and current lightweight champion and is regarded as one of the best pound-for-pound fighters ever.

In 2009 BJ was ranked as the top Pay-per-View draw for the UFC. I have personally heard the owners of the UFC state on no less than five occasions that they wish to come to Hawaii, but the fees imposed within the current regulations make it cost prohibitive. If these fees are removed, the UFC intends to bring an event to Hawaii within the next 15 months.

We need to do something to bring back our local professional mixed martial arts events and to entice the UFC to come to Hawaii, where they have stated that an event would be held at Aloha Stadium featuring BJ Penn. This would bring in visitors from the mainland, Canada, Japan, Australia and Korea to name a few. The UFC is in the midst of a world expansion. They currently hold fights in the UK, Ireland, Germany, and in February will be holding its first event in Australia. In April, BJ will be defending his world title in Abu Dhabi in the United Arab Emirates. In June the UFC will be making its debut in Vancouver, Canada. While we were in Abu Dhabi last week on a press tour announcing BJ's

April 10 fight, the UFC stated that their events are now seen in 175 countries (on cable, subscription or Pay-per-View basis) and available to over 500 million households. Hawaii is missing the boat on this opportunity to showcase our state and boost our economy. We need to eliminate the fees imposed upon mixed martial arts promoters and events.

TESTIMONY BY JAY DEE PENN
SUPPORT OF HB 2764

LATE TESTIMONY

MY NAME IS JAY DEE PENN, AND I AM IN SUPPORT OF HB 2764 AMENDING THE HB 1866 THAT BECAME LAW IN JULY OF 2009. I HAVE HAD THE OPPORTUNITY TO PRODUCE MANY MIXED MARTIAL ARTS EVENTS IN HAWAII, GUAM, FLORIDA, CALIFORNIA, NEW JERSEY, KOREA, AND A PLACE CALLED TUNICA ON NATIVE AMERICAN LANDS. I HAVE ALSO HAD THE OPPORTUNITY OF SEEING FIRST HAND HOW AN ORGANIZATION AS LARGE AS THE ULTIMATE FIGHTING CHAMPIONSHIPS AKA AS THE UFC BECOME THE LARGEST MMA PROMOTERS WORLDWIDE.

I ALSO HAD THE OPPORTUNITY TO PARTNER WITH THE K-1 ORGANIZATION FROM JAPAN AND ELITE XC/PRO-ELITE FROM CALIFORNIA TO PRODUCE FOUR OF THE LARGEST MMA EVENTS IN HAWAII. THREE EVENTS WERE AT THE NEAL BLAISDELL ARENA, AND ONE WAS AT THE ALOHA STADIUM. THE TWO K-1 EVENTS WERE SHOWN DELAYED LIVE TO OVER MILLIONS OF VIEWERS IN JAPAN WHICH HIGHLIGHTED OUR BEAUTIFUL HAWAIIAN CULTURE AND ISLANDS.

I ALSO HAD THE OPPORTUNITY TO PRODUCE SEVERAL MMA EVENTS SHOWN LIVE ON CBS TELEVISION WITH ELITE XC. OUR FIRST CBS LIVE MMA EVENT WAS SEEN BY ALMOST 6 MILLION VIEWERS; THE LARGEST VIEWER NUMBERS EVER AT THAT TIME.

SINCE HB 1866 BECAME LAW, PROFESSIONAL MMA EVENTS HAVE LITERALLY STOPPED. PROMOTERS HAVE HAD TO CLOSE THEIR OPERATIONS, LAYED OFF STAFF, AND MAY HAVE CLOSED DOWN THEIR TRAINING FACILITIES. WE HAVE SO MANY TALENTED AND PROMISING HAWAII FIGHTERS THAT HAVE GIVEN UP THEIR HOPES, PASSION, AND DREAMS BECAUSE PROFESSIONAL MMA EVENTS IS NOT HAPPENING IN HAWAII BECAUSE OF THE LAWS OF INCREASED FEES TARGETED ONLY TO MMA EVENTS PROMOTERS.

AS A PROMOTER AND PRODUCER, I SEE HAWAII AS MOVING FORWARD TO BEING ONE OF THE BEST PLACES IN THE WORLD TO ATTRACT MMA GLOBAL RECOGNITION WHICH WOULD ALSO BRING MILLIONS IN REVENUES INTO OUR STATE WHILE CREATING HUNDREDS OF MUCH NEEDED JOBS. WE HAVE SUCH GREAT TALENT IN OUR ISLANDS, AND I HAVE ALWAYS BELIEVED WE HAVE SUCH AN OPPORTUNITY TO PRODUCE THE BEST MMA EVENTS IN THE WORLD.