

HB 2824



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
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**PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION**

**TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE AND
JUDICIARY**

**TWENTY-FIFTH STATE LEGISLATURE
Regular Session 2010**

**Thursday, February 4, 2010
2:00 p.m.**

TESTIMONY ON HOUSE BILL NO. 2824 -- RELATING TO DISTRESSED PROPERTY.

**TO THE HONORABLE ROBERT N. HERKES AND JON RIKI KARAMATSU, CHAIRS,
AND MEMBERS OF THE COMMITTEES:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 2824, Relating to Distressed Property. The Department opposes the portion of the Bill that imposes a registration requirement but supports the amendment which clarifies that attorneys licensed in the State are not distressed property consultants. My name is Stephen Levins, and I am the Executive Director of the Department's Office of Consumer Protection ("OCP").

House Bill No. 2824 proposes to require distressed property consultants and distressed property purchasers to register with the Department of Commerce and

Consumer Affairs prior to doing business in the State of Hawaii. The Department opposes this amendment because it does not believe that it is necessary. The Mortgage Rescue Fraud Prevention Act was enacted in 2008 in order to protect Hawaii consumers from persons improperly claiming that they could save homes from foreclosure. It contained several important consumer protections, including disclosure requirements and limitations on compensation. Violators are subject to severe penalties of up to \$10,000 per violation. Since the Act became law, the Office of Consumer Protection ("OCP") has effectively utilized its provisions against both distressed property consultants and purchasers. The absence of a registration requirement has not inhibited our ability to investigate alleged violators. In the view of OCP, a registration requirement is not necessary at this time since any marginal benefit of imposing one will be outweighed by the financial costs of implementation.

The Department does support clarifying the exclusion relating to licensed attorneys. Although it has been the interpretation of the OCP that the Act only excludes attorneys licensed in Hawaii it has received several inquiries from interested parties wondering whether out-of-state attorneys may also be included in the exemption. Adding the amendment would resolve any ambiguity.

Thank you for this opportunity to testify on House Bill No. 2824. I will be happy to answer any questions that the Committees members may have.



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THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

Date: Thursday, February 4, 2010
Time: 2:00 p.m.
Conference Room: 325

**TESTIMONY ON HOUSE BILL NO. 2824
RELATING TO DISTRESSED PROPERTY.**

TO THE HONORABLE ROBERT N. HERKES AND THE HONORABLE JON RIKI
KARAMATSU, CHAIRS, AND MEMBERS OF THE COMMITTEES:

My name is Tung Chan, Securities Commissioner of the Business Registration Division (BREG), Department of Commerce and Consumer Affairs ("Department"). The Department opposes this bill.

This bill proposes to amend the Mortgage Rescue Fraud Prevention Act, chapter 480E, Hawaii Revised Statutes, by requiring that certain distressed property consultants and purchasers register with BREG before doing business in Hawaii. We oppose this bill for several reasons:

First, the bill provides no guidance on the required information that should be captured by the business registry. All of our current registration laws expressly state the fields that the Legislature deems most important to include in the business record, such as names and agents. This bill fails to provide these and other basic provisions such as the term of registration or termination and dissolutions provisions. To implement the legislative intent of the bill, we would need at least basic legislative guidance to assure that the administrative branch was not law-making.

Second, the bill lacks standard provisions explaining that the registry is not responsible for the substantive review of the registrations (ministerial, clerical duties only). Nor are there penalty provisions for false filings. These provisions are found in our other business registration laws and are crucial to proper administration. The bill also gives DCCA the power to request copies of consulting and conveyance contracts as part of the business registration process, which leaves the impression that the bill contemplates BREG's duties to be more than just ministerial. BREG provides a clerical registry that does no substantive review. We would need funds and time to hire staff, train and support this kind of expansion beyond ministerial duties. But this bill provides no additional staffing, funding or time to build capacity.

Third, a quality integrated database takes both time and money to build, especially in this instance of a new filing concept. The DCCA information technology division has estimated the database at a cost of over \$100,000 with over 9 months to complete. Again, there is no funding resource provided in this bill and as noted above, the effective date gives us no time to accommodate a new filing.

Finally, we note that we polled other states' business registries and found that of the two dozen that responded, no state or Canada utilized their business registration systems to track distressed property consultants and purchasers. Distressed property is beyond the scope of standard business registrations and the bill and its provisions have therefore not been vetted by any business registration expert or legal bar. While the bill specifically names BREG as the implementing division, DCCA is normally given latitude to determine which division should be responsible for implementing a new law.

We respectfully ask that this bill be held. Thank you for the opportunity to testify.



February 3, 2010

The Honorable Robert N. Herkes, Chair

The Honorable Glenn Wakai, Vice Chair
House Committee on Consumer Protection & Commerce

The Honorable Jon Riki Karamatsu, Chair

The Honorable Ken Ito, Vice Chair
House Committee on Judiciary
Hawaii Capitol, Room 312 Honolulu, Hawaii 96813

HEARING: Thursday, February 4, 2010 at 2:00 p.m.

Testimony in **Support of H.B. 2824.**

Dear Chair Herkes, Chair Karamatsu, and Joint Committee Members:

I, Dennis Oshiro on behalf of Hawaii HomeOwnership Center (HHOC), speak in support of the H.B. 2824 and ask for your favorable support.

HHOC is HUD-approved for both pre-purchase housing financial education and for homeowner foreclosure prevention counseling and lender intervention. I am providing testimony today in support of registration for distressed property counselors in the for-profit sector as described in the proposed bill. Please take note that we are a 501(c)3 and we do not charge clients for foreclosure prevention and intervention services.

In the foreclosure prevention and intervention services area, far too often we encounter families who have subscribed to the services of for-profit companies and have paid monies in anticipation of receiving modification of their mortgage payments but have not gained anything. This is not an indictment of all for-profit companies providing this type of service, but we have encountered far too many families that have not received any payment relief, have lost time with property values declining, and they have fallen further in arrears with their lender(s) or may have been foreclosed on!

HHOC hopes that registration of such for-profit entities will eliminate predatory acts in this area and prevent further financial abuse of Hawaii's families already facing a financial crisis.

Thank you very much.

Sincerely,

Dennis S. Oshiro
Executive Director

Hawaii HomeOwnership Center
1259 Aala Street, Suite 201 Honolulu, HI 96817
(808) 523-9500 www.hihomeownership.org



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LAWRENCE M. REIFURTH
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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Thursday, February 4, 2010
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2546, RELATING TO RESTORATION OF
CERTAIN FORFEITED PROFESSIONAL AND VOCATIONAL LICENSES.**

**TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,
AND MEMBERS OF THE COMMITTEES:**

My name is Celia Suzuki, Acting Licensing Administrator of the Professional and Vocational Licensing Division ("PVLD") of the Department of Commerce and Consumer Affairs ("Department"). We thank you for the opportunity to testify on House Bill No. 2546. The Department strongly supports this Administration proposal relating to restoration of certain forfeited professional and vocational licenses.

**PRESENTATION OF THE
BOARD OF CHIROPRACTIC EXAMINERS**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Thursday, February 4, 2010
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2546, RELATING TO RESTORATION OF
CERTAIN FORFEITED PROFESSIONAL AND VOCATIONAL LICENSES.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Lynn Bhanot and I am the Executive Officer for the Board of Chiropractic Examiners ("Board"). I appreciate the opportunity to present testimony on behalf of Dr. Francis Brewer, Chair of the Board of Chiropractic Examiners ("Board"). The Board is in strong support of Administration bill House Bill No. 2546, Relating to Restoration of Certain Forfeited Professional and Vocational Licenses.

The Board agrees that a restoration time limit of two (2) years is for the protection of consumers. If licenses are not restored within these time limits, then applying as a new applicant will ensure minimal competency based on current licensure requirements including the passage of licensure examinations in effect at the time of the new application.

The Board further supports House Bill No. 2546, as it is consistent with other health related licensing areas and it also coincides with the renewal of chiropractic

examiner licenses. In addition, there will be a cost savings to chiropractic examiners who apply anew under this proposal. A chiropractic examiner pays \$360 to restore a license within the forfeiture period. However, under this proposal a chiropractic examiner would pay \$310 when applying for a new license.

The Board respectfully requests your Committees' approval and passage of this measure. Thank you for this opportunity to testify in support of House Bill No. 2546.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Thursday, February 4, 2010
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2546, RELATING TO RESTORATION OF
CERTAIN FORFEITED PROFESSIONAL AND VOCATIONAL LICENSES.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Trudy Nishihara, Chairperson of the Hawaii Real Estate Commission ("Commission"). I thank you for the opportunity to testify on House Bill No. 2546. The Commission supports this Administration proposal relating to restoration of certain forfeited professional and vocational licenses.

The purposes of this bill, among other things, are to establish a five-year time limit to restore forfeited individual real estate broker and salesperson licenses; a one year restoration period for forfeited real estate brokers other than individuals, such as entities; and an automatic termination of a forfeited license if the licensee fails to restore within the applicable proposed restoration period.

Hawaii real estate licensees are responsible for the timely renewal of their licenses and for satisfying the renewal requirements provided by law. Currently, however, the restoration period for individual real estate licensees is open ended.

Because the real estate industry continually evolves, numerous changes to the practice of real estate occur of which the licensee must be aware and knowledgeable. However, the current open ended restoration period does not ensure current minimal competency, which the Commission believes should be verified at a particular point in time. As proposed in this measure, if an individual real estate license is not restored within five years, the forfeited licensee must apply as a new applicant. The Commission believes that setting five years as the limit for individual licensee restoration, rather than allowing for an open ended restoration period, ensures the licensee has knowledge of current industry practices and the laws that affect the practice and ensures the consumer is protected through the proven competency of the licensee.

Thank you for the opportunity to testify in support of House Bill No. 2546.

February 3, 2010

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection and Commerce

The Honorable Jon Riki Karamatsu, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 2546 Relating to Restoration of Certain Forfeited Professional and Vocational Licenses

HEARING: Thursday, February 4, 2010 at 2:00 p.m.

Aloha Chair Herkes, Chair Karamatsu and Members of the Joint 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 8,800 members in Hawai'i. HAR **supports** H.B. 2546, which establishes a five-year period to restore forfeited licenses for individual real estate broker and salesperson licenses, and a one year period to restore forfeited licenses for non-individual real estate brokers.

Real estate licensees are required to engage in continuing education as a condition of maintaining their license. With the constant changes that occur in the real estate industry, it is extremely important that all licensees become up-to-date on laws and standards of practice for the protection of consumers.

HAR believes that this measure is helpful because it establishes a time limit for a forfeited licensee to return to the practice of real estate. The five-year limit to restore individual licensees, rather than an open-ended restoration period, will ensure that licensees have knowledge of current laws and industry practices.

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.

PVLD licensees are responsible for the timely renewal of their licenses and for satisfying the renewal requirements provided by law. Failure to timely renew a license would cause the license to be automatically forfeited. A set period of time is provided either by statute or rule to allow for the restoration of a forfeited license. Currently, however, the restoration periods for chiropractic examiner licenses and individual real estate broker and salesperson licenses are open ended.

The purpose of this bill is to establish time limits to restore forfeited chiropractic examiner licenses and individual real estate broker and salesperson licenses. The proposed time limit to restore chiropractic examiner licenses after the date of forfeiture is two years. The proposed time limit to restore individual real estate broker and salesperson licenses after the date of forfeiture is five years. The bill also codifies a one year restoration period for forfeited real estate brokers other than individuals, such as entities. The bill further provides that if the licensee fails to apply for the restoration of a forfeited license within the applicable proposed restoration period, the license will be automatically terminated and if the person wishes to practice in this state after the license is terminated, then the person will be required to apply for licensure as a new applicant.

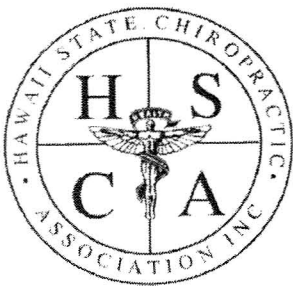
The Board of Chiropractic Examiners, the Real Estate Commission, and the PVLD agree that limiting the number of years that a licensee may restore a forfeited license, rather than allowing for open ended restoration periods, is for the protection of consumers. Industries continually evolve in such a way that allowing for restoration periods past the proposed set time limits may allow for restoring less than competent

and able practitioners. If licenses are not restored within these time limits, then applying as a new applicant will ensure minimal competency based on current licensure requirements including the passage of licensure examinations in effect at the time of the new application.

The Board of Chiropractic Examiners agreed to a two year time limit to restore forfeited chiropractic examiners licenses because this is consistent with other health related licensing areas. The two year time frame also coincides with the renewal of chiropractic examiner licenses.

The Real Estate Commission agreed to a five year time limit to restore forfeited individual real estate broker and salesperson licenses because the law currently provides different pathways for restoration that allow licensees to fulfill some of the requirements for licensure, but not all of the requirements, within a period of four years. The Commission set the restoration period at five years, after which to ensure minimal competency and consumer protection, licensure would require that all requirements be met.

The Department asks for your favorable consideration of this Administration bill. Thank you for the opportunity to testify in strong support of House Bill No. 2546.



Hawaii State Chiropractic Association

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January 3, 2010

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Robert N. Herkes, Chair
Rep. Glenn Wakai, Vice Chair

COMMITTEE ON JUDICIARY

Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

NOTICE OF HEARING

DATE: Thursday, February 4, 2010
TIME: 2:00 p.m.
PLACE: Conference Room 325
State Capitol
415 South Beretania Street

Dear Chair Herkes and Chair Karamatsu & members of the committees:

My name is Dr. Gary Saito, DC and I represent the Hawaii State Chiropractic Association. We have worked closely with the Board of Chiropractic Examiners on this issue and it was with our support that the DCCA wrote this bill for your consideration.

We believe that limiting the time a chiropractic license can be restored after failure to renew for two consecutive years is consistent with requirements of other professions and assures the public that their safety is preserved by terminating a license that had been forfeited for those years.

We recommend that your committees support HB2546.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary Saito', written in a cursive style.

Dr. Gary Saito, DC
President & Executive Director
HSCA