



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary

From: Cathy L. Takase, Acting Director

Hearing: Friday, February 25, 2011, 2:00 p.m.
State Capitol, Room 325

Re: Testimony on H.B. No. 1141, H.D. 1
Relating to the Uniform Information Practices Act

Thank you for the opportunity to submit testimony on H.B. No. 1411, H.D. 1. This bill seeks to require agencies to keep "consumer complaints" confidential under specified circumstances.

The Office of Information Practices (OIP) has strong concerns about this bill because it will significantly reduce public access to consumer related information concerning licensees and because it would disrupt the planned scheme of our state public records law, the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA).

Bill's Required Confidentiality of Consumer Complaints is Inconsistent with the UIPA

OIP's first concern is the inappropriate placement of a confidentiality provision within the UIPA. The UIPA sets forth general disclosure requirements and provides five general exceptions to disclosure that apply to all government records. A specific prohibition against disclosure of one specific record, here consumer complaints, would create an anomaly that is clearly inconsistent with the UIPA's statutory scheme.

The UIPA's exceptions to the general rule of disclosure are broad-based (such as the exceptions for privacy or for information whose disclosure would frustrate a legitimate

government function): **All confidentiality provisions concerning specific information or specific government records are placed in the laws governing the agencies maintaining the records.** The UIPA recognizes these confidentiality provisions in other chapters of the Hawaii Revised Statutes or in federal law, under § 92F-13(4), which excepts from disclosure government records that are protected from disclosure by state or federal law. Insertion of one confidentiality provision concerning a specific category of records disrupts this statutory scheme and thus OIP strongly recommends against it.

Potential Confusion and Conflict of Bill's Disclosure and Confidentiality Provisions

OIP finds that the bill's proposed provisions create potential confusion and conflict with each other and with other UIPA provisions. For example, the bill requires the complaint to be kept confidential when "[t]he department of agency is conducting an active investigation or review of the complaint," but also provides that an agency must disclose a consumer complaint when "[t]he complaint will be referred for legal action." In some cases, however, the referral is internal because the legal action is prosecuted by the agency itself.

The bill also allows an agency to "establish rules pursuant to chapter 91 that define the information to be disclosed to the general public." Placing this provision within the UIPA may be found to conflict with the UIPA's general provisions that are intended to control the extent to which government records are required to be publicly disclosed.

Bill Focuses on Consumer Complaints when Complaint History is the Intended Target

OIP believes that this bill resurrects in substance a bill vetoed by the Governor last year that sought to declare that professional and vocational licensees have a significant privacy interest in their records of complaints until and unless a complaint is resolved against them. Yet the bill currently before your Committee specifically focuses on the consumer complaints themselves and only addresses a licensee's complaint history by removing it from the list of licensing information for which the UIPA recognizes no significant privacy interest. OIP believes that this bill seeks to alter the long standing practice of informing consumers of a licensee's complaint history. However, it is not clear that this result could be achieved by this bill because it only addresses disclosure of the individual complaints themselves.

Moreover, OIP questions the breadth of the current language of the bill, which is not limited to complaints against individual licensees. As drafted, the bill would also prevent

disclosure of complaints against any business, utility, non-profit, or other person or entity that provides any sort of services or goods for money that may be the subject of a consumer complaint. A complaint about a store that sold a faulty television and refused to accept a return, or about overbilling by a public utility, or about deceptive insurance practices, or even about the food sold in a public school cafeteria, would all fall within this bill's scope.

Bill Would Alter Consumers' Ability to Find Out about a Business' Complaint History

This bill seeks to make pending complaint information inaccessible, or at least not readily accessible, to consumers who may want this information in order to make informed decisions about whether to engage the services of a business.

This complaint information is clearly valuable to the public when seeking services from the vast range of businesses that the Legislature believes must be subject to regulation for the safety and protection of the public because these services pose a substantial risk of financial and/or bodily harm to consumers. This includes services of travel agencies, electricians, contractors, engineers, realtors, and nursing care homes. OIP further notes that the amount of time a complaint is pending may be protracted, and it is reasonable to believe that the pendency of a complaint is longer where the allegations are of a serious nature and supported by some evidence. By amending the UIPA as proposed, the Legislature would greatly impact consumers by withholding information that would allow them to make their own informed choices and to protect themselves against potential risks.

OIP understands the desire of persons falsely accused of a wrongdoing to protect their reputation. However, one apparent reason the Legislature originally provided express access to licensee complaint history information was its belief that consumers had a right to access such information that could potentially protect them. Presumably, the Legislature believed that pending complaints or complaints not resolved may be given the appropriate weight by the affected member of the public seeking a licensee's service. OIP believes that disclosure of complaint information where no legal action is taken may also be important to the consumer, depending upon the reason no action is taken, and is also important to the public interest in ensuring accountability of government agencies in carrying out administration of laws and regulations governing businesses and designed to protect consumers.

The proposed amendment of the UIPA is ultimately a policy concern. However, because the bill creates a significant departure from the original intent of the UIPA's current provisions ensuring public access to complaint history information for the welfare of the public, OIP recommends that your committee hold this bill or, at a minimum, place this provision outside of the UIPA.



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Friday, February 25, 2011, 2:00 p.m.
State Capitol, Conference Room 325

by
Rodney A. Maile
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1141, H.D. 1, Relating to the Uniform Information Practices Act

Purpose: The purpose of House Bill No. 1141, H.D. 1 (HB1141, HD1) is to add a new section to the Uniform Information Practices Act, Hawaii Revised Statutes chapter 92F. The new section would clarify circumstances under which complaints submitted to agencies shall be made available to the public.

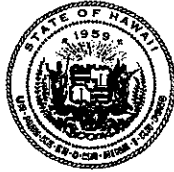
Judiciary's Position:

The Judiciary takes no position on HB1141, HD1, but believes that certain terms in the bill should be further defined. While it appears that the purpose of HB1141, HD1 is to permit regulatory agencies to disclose complaints arising out of the purchase of goods or services in commercial transactions, it is possible that "consumer complaint" could be interpreted more broadly. Some persons may claim that any complaint regarding goods or services that is submitted to any department or agency is subject to disclosure.

Thank you for the opportunity to testify on HB1141, HD1.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
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STATE OF HAWAII
DEPARTMENT OF TAXATION

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FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

HOUSE COMMITTEE ON JUDICIARY

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 1141, HD 1 RELATING TO THE UNIFORM INFORMATION PRACTICES ACT

TESTIFIER: FREDERICK D. PABLO, DIRECTOR OF TAXATION
(OR DESIGNEE)

COMMITTEE: JUD

DATE: FEBRUARY 25, 2011

TIME: 2:00PM

POSITION: CONCERNS; REQUEST AMENDMENT

This measure clarifies circumstances under which complaints submitted to departments and agencies shall be made available to the public.

The Department of Taxation (Department) is concerned this bill might require the Department to disclose confidential taxpayer information. The definition of "consumer complaints" in the bill is ambiguous and could arguably include the following types of communications with the Department, all of which could contain confidential taxpayer information:

- Complaints by a taxpayer about the status of their refund, staff interaction, the cashier's office, etc.
- Complaint by Taxpayer A alleging that Taxpayer X is cheating
- Complaints about the Department's tax position in an ongoing audit
- Demands for refunds

Making information about any of the above available to the public could violate several of Title 14's confidentiality laws. The Department would prefer to avoid a conflict between Chapter 92F and Title 14.

The Department recommends amending the bill to either specifically exclude the Department of Taxation or to include a caveat stating that under no circumstances will otherwise confidential information such as confidential taxpayer information be made available to public under this statute.



NEIL AMBERCROMBIE
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KEALI'I S. LOPEZ
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EVERETT S. KANESHIGE
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION
TO THE HOUSE COMMITTEE ON JUDICIARY
TWENTY-SIXTH LEGISLATURE
Regular Session of 2011
Friday, February 25, 2011
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 1141, H.D. 1, RELATING TO THE UNIFORM
INFORMATION PRACTICES ACT.**

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR, AND KARL RHOADS,
VICE CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify in opposition to House Bill No. 1141, H.D.1, Relating to The Uniform Information Practice Act. My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

House Bill No. 1141, H.D.1, would obstruct the ability of the Office of Consumer Protection to provide consumer complaint information to our citizens. For at least the past 30 years, Hawaii has required the OCP to "Provide a central clearinghouse of information by collecting and compiling all consumer complaints and inquiries and making the collections and compilations available to the general public". See, section

Testimony on House Bill No. 1141, H.D. 1
Friday, February 25, 2011
Page 2

487-5(8) of the Hawaii Revised Statutes. This measure undermines this longstanding policy. The reason that the law is important is because it 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.

In view of the foregoing, the OCP is in opposition to House Bill No. 1141, H.D. 1.

Thank you for providing me with the opportunity to testify. I will be happy to answer any questions that the committee members may have.



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KEALI'I S. LOPEZ
DIRECTOR

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DEPUTY DIRECTOR

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
JUDICIARY

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2011

FRIDAY, FEBRUARY 25, 2011
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 1141 H.D.1
RELATING TO THE UNIFORM INFORMATION PRACTICES ACT

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND TO THE HONORABLE KARL RHOADS, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs' Regulated Industries Complaints Office ("RICO") appreciates the opportunity to testify on House Bill No. 1141 H.D.1, Relating to the Uniform Information Practices Act. My name is Jo Ann Uchida, testifying on behalf of RICO. RICO opposes House Bill No. 1141 H.D.1.

House Bill No. 1141 H.D.1 adds a new section to Chapter 92F, Hawaii Revised Statutes ("HRS") to limit the disclosure of complaints information to only those complaints that are or will be referred for legal action, and precludes

disclosure of pending complaints, complaints referred to another state agency, and complaints that are without merit. The bill also has a defective effective date of July 1, 2050.

The disclosure of complaints information by RICO has been the subject of legislation over the past several years, including, but not limited to, House Bill No. 1212 (2010), which was vetoed by the Governor.

Like House Bill No. 1212 (2010), this bill as drafted would have the practical effect of precluding RICO from disclosing the existence of any complaints except those that result in legal action. This means that the public would not be apprised of pending investigations, or of those cases in which an investigation was conducted that did not result in legal action.

Unlike House Bill No. 1212, this bill impacts all complaints governed by Chapter 92F, HRS, including complaints housed in other state and county departments, and including complaints involving unlicensed activity. House Bill No. 1141 H.D.1 impacts complaints information in all forms, including complaints history information that is available online and by telephone, as well as the actual complaints file.¹

The proponents of the bill appear to argue that RICO should only tell the public about those complaints that result in legal action. This presumes that the public would not benefit from knowing about ongoing investigations and is not

¹ For RICO complaints, the bill would affect disclosure of complaints relating to over 45 different licensed professions, including unlicensed contractors, licensed contractors, doctors, real estate agents, dentists, nursing home administrators, travel agencies, and cemeteries and funeral trusts. RICO would be precluded from issuing warnings to the

entitled to an explanation or assurances from a government enforcement agency that it is addressing possible ongoing licensing law violations relating to specific law violators.

As a recent example, when a travel agent failed to book reservations or provide tickets to customers for flights to Manila, RICO responded to press coverage, solicited complaints, and distributed information to affected members of the public. When a RICO investigation showed that unlicensed driveway pavers had migrated to the State and had triggered consumer complaints, the Department alerted the public to the problem, issued a citation, and averted continued violations. This bill would preclude RICO from fulfilling this most basic consumer protection function – that is, protecting consumers.

Website usage data shows that there is strong public interest in the information that is being provided, with webpage views at 642,420 times in FY 2010, up from 554,154 times in FY 2009 and 450,855 times in FY 2008. The bill's proponents have argued that it is unfair that RICO and OCP data is readily available and online when complaints of other agencies are not. Essentially this means that unless all agencies disclose complaints history information online, no agency should do so. This "lowest common denominator" approach runs contrary to public expectations that government should use its available resources to optimize its services.

The bill's proponents have argued that RICO disclosure of complaints is not updated timely, and that citations remain on the website in excess of five years. These comments reflect a basic misunderstanding of RICO complaints history disclosure policy. This policy, as reflected on its website, states:

The complaints history report includes both pending and closed investigations, although no information about pending investigations is included in the complaints history report except case numbers. For RICO cases, complaints that were resolved or closed at the intake level are generally excluded from the report. RICO complaints in which five or more years have passed from the year of final outcome are not included in the report, unless the respondent has not complied with the outcome.

In other words, if legal action has been taken, but the respondent has failed to comply with the legal action by not paying the ordered fine or restitution, the legal action information continues to be included in the report for disclosure to the public.

The bill's proponents argue that RICO discloses frivolous complaints as well as complaints that were closed for insufficient evidence. Complaints that RICO determines are frivolous or filed with an ulterior purpose, or that otherwise do not warrant investigation are closed at the intake level and are excluded from the complaints history report. Over 50% of the complaints received by RICO are resolved or screened by RICO at the intake level without the need for a field investigation and are not included in the complaints history report.

RICO acknowledges that it is difficult to balance the competing interests of consumers in making knowledgeable decisions about the professionals they hire against a professional's interest in avoiding negative connotations associated with a history of complaints. RICO is continually evaluating the extent to which it can

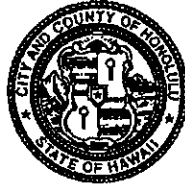
Testimony on House Bill No. 1141 H.D.1
February 25, 2011
Page 5

refine the manner in which these competing interests are served, without undermining its obligation to be as accountable and transparent to the public as possible in its enforcement activities.

Given the practical impact of House Bill No. 1141 H.D.1, and in weighing the competing interests involved, RICO believes that the bill weighs too heavily against the public's interest in making informed consumer decisions and against the public's interest in knowing what government is up to. As such, RICO opposes House Bill No. 1141 H.D.1 as drafted.

Thank you for this opportunity to testify on House Bill No. 1141 H.D.1. I will be happy to answer any questions that the members of the Committee may have.

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PETER B. CARLISLE
MAYOR

CARRIE K.S. OKINAGA
CORPORATION COUNSEL

KATHLEEN A. KELLY
FIRST DEPUTY CORPORATION COUNSEL

February 24, 2011

The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Karl Rhoades, Vice Chair
and Committee Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran, Vice-Chair Rhoades, and Committee Members:

Re: H.B. 1141, H.D.1, Relating to the Uniform Information Practices Act

The Department of the Corporation Counsel, City and County of Honolulu takes no position on this bill; however, we recommend that H.B. 1141, H.D.1 be amended to include a definition for "consumer complaint". Without this amendment, the bill is vague and ambiguous and can be broadly construed to apply to all complaints received by an agency from members of the general public, who are all arguably "consumers" in today's marketplace.

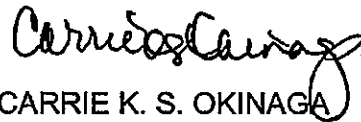
Although the purpose of H.B. 1141, H.D.1 appears to permit regulatory agencies to disclose complaints arising out of the purchase of goods or services in commercial transactions, it is possible that the term "consumer complaint" could be construed as any complaint regarding goods or services that is submitted to any government department or agency. Accordingly, we respectfully request that if the intent of this bill is to regulate the disclosure of complaints arising from the purchase of goods or services from entities regulated by the Department of Commerce and Consumer Affairs, that the Committee so clarify by amending the bill to include a definition for "consumer complaint" to state as follows:

The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Karl Rhoades, Vice Chair
February 24, 2011
Page 2

"Consumer complaint" means any complaint arising from the purchase of any commodity or service from an entity for which a license, registration, or certificate is required from the department of commerce and consumer affairs or any board or commission thereunder.

Thank you for the opportunity to provide our comments on this bill.

Very truly yours,



CARRIE K. S. OKINAGA
Corporation Counsel

CKSO:ey

HB1141, HD1 (TESTIMONY)



AMERICANS FOR DEMOCRATIC ACTION

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February 23, 2011

TO: Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads
Members of the House Judiciary Committee

FROM: Americans for Democratic Action/Hawaii
Barbara Polk, Legislative Chair

SUBJECT: OPPOSITION TO HB 1141, HD1

Americans for Democratic Action strongly opposes HB 1141 that seeks to hide from the public all consumer complaints to any department or agency unless there is a probable violation of law and the complaint has been referred for legal action. We oppose this bill for four reasons:

1. The bill seeks to block valid complaints from public view.

Since almost all valid complaints are resolved short of legal action, with a variety of disciplinary procedures or through mutual resolution of the complaint, those complaints would never be revealed to the public, although they are valid.

It is not the case, as alleged in the testimony of most of the 65 dentists who supported the bill, that frivolous complaints are listed by DCCA. Those that are patently frivolous are weeded out immediately. Other complaints are listed as not having been verified. While others identify the outcomes of valid complaints.

2. The scope of the bill is so broad that it is not clear how government will be impacted.

This bill goes beyond limitations on revealing complaints against any of the 50 or so occupations licensed under Title 25 to cover a completely unknown amount of other information on consumer complaints made to agencies and departments other than DCCA or OIP. Numerous state laws and procedures require that complaints and their resolution be made public. In some cases, the bill would bar state agencies from communicating important information to other state agencies.

3. The bill may interfere with agency and professional organization disciplinary procedures.

It would appear to bar providing information about complaints to professional organizations that may have their own standards and disciplinary procedures.

4. The bill prevents the consumer from being able to make informed choices among professionals or contractors.

This is not a trivial matter. DCCA reported last year that their website listing only complaints against licensed professionals is consulted hundreds of thousands of times each year, while an

additional tens of thousands of people received information via telephone. Under this bill, almost all of the listings would vanish, even those that have been upheld. As a result, consumers would be unable to determine, for example, whether a business had a lengthy history of shoddy work—which in most cases is not illegal.

In effect, this bill seeks to protect those against whom valid complaints are made, rather than protecting service providers from frivolous complaints.

We urge you to defeat this bill.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 25, 2011

Representative Gilbert Keith-Agaran
Committee on Judiciary
State Capitol, Room 325
Honolulu, HI 96813

RE: HB 1141, HD1 " Relating to the Uniform Information Practices Act"

Chair Keith-Agaran and Members of the Committee on Judiciary:

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 strongly supports HB1141, HD1 "Relating to the Uniform Information Practices Act." HB1141, HD1 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. BIA-Hawaii believes 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 testimony on HB1141, Page 2

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 the 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 a good choice. The fact that the names are not removed for 5 years or more, even when the complaints are unfounded or settled, is a real disservice to contractors.

For these reasons, BIA-Hawaii supports HB1141, HD1 and asks that this bill be recommended for approval by this committee..

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

A handwritten signature in black ink that reads "Karen I. Nakamura". The signature is written in a cursive style with a large initial 'K' and 'N'.

Chief Executive Officer

BIA-Hawaii



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February 24, 2011

The Honorable Gilbert S.C. Keith-Agaran, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 1141, H.D. 1, Relating to the Uniform Information Practices Act

HEARING: Friday, February 25, 2011 at 2:00 p.m.

Aloha Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR supports H.B. 1141, H.D. 1, which clarifies and creates the circumstances under which complaints, submitted to the department and agencies, shall be made available to the public.

HAR believes in the public's right to have access to information regarding the discipline of state-licensed professionals in various occupations. However, Hawai'i is the only state in the country where all complaints against licensed professionals are disclosed on the Regulated Industries Complaints Office ("RICO") website, regardless of the outcome of such complaints.

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. This has two potentially negative effects—the public may be misled about a licensee's complaint history, and a licensee may be unfairly tainted by the complaint.

HAR believes this measure provides a balanced approach to the disclosure of complaints against real estate licensees and other regulated professionals, inasmuch as, it provides a clear framework and process for the types of complaints to be disclosed to the public.

Mahalo for the opportunity to testify.

REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.



Hawaii State Legislature
State House of Representatives
Committee on Judiciary

Representative Gilbert S. C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
Committee on Judiciary

Friday, February 25, 2011, 2:00 p.m. Room 325
House Bill 1141, HD 1 Relating to the Uniform Information Practices Act

Honorable Chair Gilbert S. C. Keith-Agaran, Vice Chair Karl Rhoads and
members of the House Committee on Judiciary,

My name is Russel Yamashita and I am the legislative representative for the Hawaii Dental Association and its 960 member dentists. I appreciate the opportunity to testify in support of HB 1141, HD 1 Relating to the Uniform Information Practices Act. The bill before you today would seek to provide basic due process for those who have complaints filed against them with state and county agencies.

For the last two legislative sessions, the HDA, along with other concerned groups, have sought to obtain a semblance of justice from the Legislature in the blatantly unfair and unconscionable act of the public listing of unfounded and unsubstantiated complaints against licensees. During the last legislative session a reasonable compromise was determined by the House and Senate in HB 1212, HD 1, SD 1, CD 1, which was passed to Governor Lingle who vetoed the measure.

In trying to address the issue again during the interim, suggestions were made by legislative members and interested groups to find a way to address this issue from another point of view. It is important to note that Hawaii is the only state that provides for the unresolved and uninvestigated complaints to be listed for the public.

In reviewing other states, California and Florida seemed to provide the proper level of due process to those subject to public complaints. As a result, the California statutory framework was chosen as a basis for this legislation. As noted, the only thing that is affected is the public listing of unsubstantiated and uninvestigated complaints that provide no meaningful information as to whether or not the complaint is substantive or frivolous.

This bill provides specific guidelines as to when a complaint can be made public. Essentially, these guidelines provide that the target of the complaint be treated with a minimum of due process that permits the target to respond to the complaint made against them. Also, the agency must at least make a determination that the complaint is substantive enough to warrant legal action due to a violation of the law and is a risk to the public.

With respect to the HDA's members, an example of an blatant lack of due process is the complaint that listed a dentist member who has a complaint filed over five years ago by a patient who complaint about a billing issue, who was never contacted by DCCA investigators or notified of the complaint filed against him. Yet, the complaint still remains posted on the DCCA website to this day.

Additionally, in reviewing the disclosure provisions for complaints made against lawyers and judges, it is interesting to note that they are not subject to the same disclosure standards that other state agencies are held to. In fact, the complaint handling against lawyers and judges provides for disclosure only after full investigations, prosecutions and hearings are completed, and discipline is applied before the Supreme Court of Hawaii.

The only correction necessary to this bill will be the change of the effective date to "upon approval".

Thank you again for the opportunity to testify on this bill.



HB1141

JUD

Friday, February 25, 2011

2:00 p.m.

Room 325

Hawaii's Voice for a Better Future

COMMITTEE ON JUDICIARY

Rep. Gilbert S.C. Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

February 23, 2011

Re: HB1141 — Relating to the Uniform Information Practices Act

In Opposition

Representative Keith-Agaran, Representative Rhoads, and members of the Committee:

Kokua Council objects to this bill because it removes consumer access to complaints against all manner of professional and non-professional business. Access to complaints can be critical to deciding which funeral home honors its pre-paid funeral plans, for example. In fact, it is the only way to learn which plans have been troublesome in the absence of meaningful regulation.

Consumers are smart enough to sort out the few frivolous complaints. In any case, the business concerned can file a response to appear along with the complaint. Far from seeing access to complaints as a negative, good businesses should recognize that "no complaints" is an asset, a reason why they will be chosen.

Anyone looking for a doctor, dentist or similar professional ought to be able to know if there is a history of trouble before submitting to the knife. I'm sure each of you on this committee would like to have that information. The same would apply if you are looking for a contractor, licensed or unlicensed, or if you needed to get nursing home care for a parent.

It would also hobble RICO from pursuing law violators and would prevent them from warning the public or gathering and using public input.

These days we recognize the importance of transparency. **This bill promotes secrecy, protects special interests over the public interest, and should not be passed into law.**

Larry Geller

President, Kokua Council

The Kokua Council is one of Hawaii's oldest advocacy groups. Kokua Council seeks to empower seniors and other concerned citizens to be effective advocates in shaping the future and well-being of our community, with particular attention to those needing help in advocating for themselves. "We embrace diversity and extend a special invitation to any senior or intergenerational minded individual interested in advocating for these important issues in Hawaii."



P.O. Box 3141
Honolulu, HI 96802
Feb. 25, 2011

Gilbert S.C. Keith-Agaran, chairman
House Judiciary Committee
415 S. Beretania St.
Honolulu, HI 96813

Re: House Bill 1141 Related to the Uniform Information Practices Act

Rep. Keith-Agaran and Committee Members:

The Hawaii Chapter of the Society of Professional Journalists thanks you for the opportunity to testify against HB 1141.

Consumer confidence in business has long been buoyed by the availability of complaints to government agencies. It also provides a window for the public to view whether government is doing its job of protecting it from unscrupulous operators.

We believe this is an important issue for consumers. How many times have people heard the complaint: If we had only known about this business operator, we wouldn't have hired him or her.

This measure appears to do what last year's failed legislation tried to do: Cut off the public from seeing consumer complaints. In our view, Gov. Linda Lingle was justified in vetoing that bill.

As you know, this bill would affect all complaints, not just those at the Department of Commerce and Consumer Affairs. We ask whether you have a sense of the across-the-board impact if this measure becomes law? Under this bill, complaints to the governor's or mayor's offices or any number of agencies could be hidden from view because they fall under a law that has broad application.

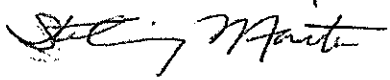
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HB 1141

We hope you will uphold openness in government and continue allowing consumers to learn whether they are dealing with disreputable businesses..

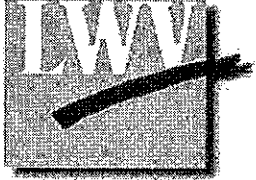
We hope you will discard this bill.

We appreciate your time in hearing our opposition to this bill.

Thank you,

A handwritten signature in black ink, appearing to read "Stirling Morita". The signature is written in a cursive style with a large initial "S" and a long horizontal stroke.

Stirling Morita
President
Hawaii Chapter, Society of Professional Journalists



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON HB 1141 HD1, RELATING TO THE UNIFORM INFORMATION PRACTICES ACT

Committee on Judiciary

Date: Friday, February 25, 2011

Time: 2:00 p.m.

Place: Conference Room 325

Testifier: Jean Aoki, LWV Legislative committee

Chair Gilbert Keith-Algaran, Vice Chair Rhoads, members of the Committee on Judiciary,

The League of Women Voters of Hawaii opposes HB1141, HD1 which would add more restrictions on government's ability to give the public access to information that could protect them from making unwise choices in procuring consumer services. The disclosure of complaints from the consumer public is being severely curtailed for example by certain requirements that have to be met prior to disclosure such as "that the complaint will be referred for legal action if legal action is authorized." Also, "A complaint shall not be made public if the department or agency is conducting an active investigation or review of the complaint". I present but a few of the restrictions to disclosure.

Chapter 92F, Hawaii Revised Statutes lists examples of information in which the individual has a significant privacy interest. No. 7 in that list says *Information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, **except:** (emphasis added)*

(A) The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline; and

(B) Information on the current place of employment and required insurance coverages of licensees.

Interestingly, (C) *(The record of complaints including all dispositions)* has been stricken from this bill. Isn't that information important to consumers?

The League of Women Voters respects the privacy interests of our service providers, most of whom are trustworthy citizens who seek to help members of the public. However, the public needs access to certain information when seeking professional services which involve their health, or the outlay of large sums of money, etc. For the sake of our citizens, please hold SB 1437 in committee. Thank you

TO : COMMITTEE ON JUDICIARY
Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair

FROM: Eldon L. Wegner, Ph.D.

HEARING: 2:00 pm Friday, February 25, 2011
Conference Room 325, Hawaii State Capitol

SUBJECT: HB1141 HD 1 Relating to the Uniform Information Practices Act

POSITION: I **oppose** HB 1141 HD 1 which would seriously limit the access of the public to complaints against licensed professionals and businesses.

RATIONALE:

- This bill is opposed by the State Department of Commerce and Consumer Protection and its Regulated Industries Complaints Office. It is also opposed by the Office of Information Practices. These public agencies are responsible for providing information which protects the consumer and are fully aware that they need to guard against frivolous complaints or needless damage to businesses.
- The PABEA Legislative Committee has met with the officials of these public offices and they have explained their procedures to us, have described their openness to improving their practices, and have offered alternative, less drastic solutions than this bill. I believe the Legislators must take their experience and thoughtful suggestions seriously.
- The promotion of this bill is primarily from professional and business interests who would simply like to be free from any accountability to the consumer. We don't find this bill provides a balanced solution to the consumer's right to know and the protection of worthy business and professional practice.
- This bill is moving the legislature under the radar of public awareness. The public will no doubt be outraged if this bill passes into law and takes away a consumer right which has been in Hawaii for a couple of decades.

Thank you for the opportunity to provide testimony.

Testimony to the House Judiciary Committee on
HB 1141, HD1
Relating to the Uniform Information Practices Act
By
Neil C. Nunokawa, D.D.S.
1885 Main Street, Suite 204
Wailuku, HI 96793

Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair

Friday, February 25, 2011, 2:00 pm.
Conference Room 325

Re: HB 1141, HD 1, Relating to the Uniform Information Practices Act

Honorable Chair Gilbert S.C. Keith-Agaran, Vice chair Karl Rhoads, and
Members of the House Judiciary Committee:

As the present President-Elect of the Hawaii Dental Association and a practicing dentist from the island of Maui for over 30 years, I wish to testify IN SUPPORT of House bill 1141, HD 1, Relating to the Uniform Information Practices Act. The present process posts complaints with no substantiation or investigation as to validity. This bill seeks a minimum of due process so that malicious or unsubstantiated claims are first evaluated before being posted on an official website. I wish to point out that I have no opposition to valid complaints as such a posting would serve the protection of the consumer.

I have been informed that this bill is modeled after similar legislation in California with the appropriate vetting of possible problems.

Thank you for allowing my testimony in support of House bill 1141, HD 1.

Sincerely,

Neil C. Nunokawa D.D.S

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 25, 2011 7:40 AM
To: JUDtestimony
Cc: cherilynminouye@gmail.com
Subject: Testimony for HB1141 on 2/25/2011 2:00:00 PM

Testimony for JUD 2/25/2011 2:00:00 PM HB1141

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Cherilyn Inouye
Organization: Individual
Address:
Phone:
E-mail: cherilynminouye@gmail.com
Submitted on: 2/25/2011

Comments:

Aloha Chair Keith-Agaran, Vice Chair Rhoads, and Committee Members, I am strongly opposed to HB1141 HD1. This bill would infringe on the public's right to view complaints filed by consumers. I understand that professionals such as dentists want to protect their businesses, but this should not come at the expense of public access to information. We should be able to make informed decisions about the businesses that we use, especially when it affects our ability to obtain healthcare. Again, please help to protect consumer access to information and do not pass this bill.

Thank you for considering my testimony.



Hawaii
COMMON CAUSE
Holding Power Accountable

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House JUD Committee
Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads

Friday 2/25/11 at 2:00PM in Room 325
HB 1141 – Relating to the Uniform Information Practices Act

TESTIMONY

Nikki Love, Executive Director, Common Cause Hawaii

Chair Keith-Agaran, Vice Chair Rhoads, and Committee Members:

Common Cause Hawaii opposes HB 1141. We believe this measure protects businesses/licenses at the expense of consumers and the public seeking information. Complaints filed by consumers have been made available for some time now, and the public would lose this important access.

We are concerned about the bill's departure from principles of open government and public information. Also, there are critical practical implications:

- In this bill, the department/agency is required to meet certain requirements prior to disclosing a complaint, and may not disclose complaints when there are active investigations, civil actions, or referrals to other agencies.
- With those requirements, there may be a long period of time from the point when a complaint is filed until the point when the department/agency can disclose the complaint. Particularly with furloughs and resource limitations, this delay in disclosure may be considerable.
- During this long period of time, numerous consumer complaints could be accumulating, but the public would have no way of finding out that information.

This bill is similar to last year's HB 1212. Attached is the Honolulu Advertiser's April 28, 2010 editorial regarding that bill, which highlights the issues clearly.

We ask you to hold HB 1141. Mahalo for the opportunity to submit testimony.