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

TO THE HOUSE COMMITTEE ON JUDICIARY

AND

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2012

MONDAY, FEBRUARY 13, 2012
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 2298 H.D.1
RELATING TO PRIVACY RIGHTS

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND TO THE HONORABLE KARL RHOADS, VICE CHAIR,
AND TO THE HONORABLE RYAN Y. YAMANE, VICE CHAIR,
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department")
appreciates the opportunity to testify on House Bill No. 2298 H.D.1, Relating To
Privacy Rights. My name is Jo Ann Uchida, Acting Deputy Director. The
Department offers the following comments.

House Bill No. 2298 H.D. 1 amends §92F-14, Hawaii Revised Statutes ("HRS"), to specify that a privacy interest does not apply to information concerning complaints against a Chapter 436B, HRS, licensee only if the licensing authority has determined that the licensee was provided an opportunity to respond to the complaint.

The Department acknowledges that the Legislature faces a difficult policy issue in trying to balance the interests of consumers in obtaining information about the professionals that they hire versus the interests of professionals in ensuring that their reputations are not unfairly tarnished by uncorroborated complaints. This issue 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, and House Bill No. 1141 (2011).

The Department has long encouraged consumers to obtain licensing and complaints information prior to hiring professionals and, as such, supports the disclosure of information that enhances consumer awareness and decision-making. The public is always urged to judge a business's complaints history on the outcome of the investigation rather than on the number of complaints or the fact that a complaint was filed.

Moreover, there is a concerted effort upon receipt of a complaint to determine whether there is sufficient cause to investigate, and to disclose complaints information only on those cases in which investigation is warranted.

Thus, many complaints are not included in the complaints database because they do not meet the sufficient cause test.

By way of background, RICO¹ provides complaints information to the public in three ways. First, complaints histories are publicly disclosed via the internet at www.businesscheck.hawaii.gov. This method of disclosure is the most popular for the public and the most problematic for licensees because of its ease of access on a 24/7 basis. Website usage data shows that there is strong public interest in the information that is being provided, with webpage views at 592,116 times in FY 2011 (includes hits for both RICO and OCP).

The second method of access to complaints information is by telephone at 587-3222. This form of access remains an important resource, especially for consumers who do not have internet access.

The third method of disclosure is by way of a request for specific documents, usually in the form of a Chapter 92F, HRS, request. The information that is disclosed pursuant to a Chapter 92F, HRS, request varies, depending upon the request and the applicable provisions of Chapter 92F, HRS.

The Department understands, based upon numerous discussions with licensee groups, that the primary concern with RICO's complaints disclosures centers on its online complaints history reports. However, the bill as drafted would preclude all three methods of access to complaints information. If that is not the

¹ RICO has enforcement authority for 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.

intent of the bill, the Department suggests that the bill be tailored to more closely address industry concerns.²

In addition, pursuant to §26-9(m), HRS, licensing authorities are required by statute to delegate investigative and enforcement functions to DCCA. This is to ensure that the licensing authority's adjudicatory functions are not tainted or compromised and that the licensee is afforded due process in the disciplinary proceeding. Since licensing authorities are precluded under §26-9(m), HRS, from being involved in an enforcement action at a pre-decisional stage, the bill as drafted would mean that no complaint records could be disclosed.

Also, House Bill No. 2298 H.D.1 may have the practical effect of preventing RICO from apprising the public of pending investigations. RICO would not be able to issue warnings to the public regarding pending investigations or solicit information from the public about law violators, regardless of the seriousness of the conduct.

As examples, 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. House

² Hawaii was one of the first states in the country to utilize the Internet to share complaints information with the public. Since that time, a number of state and federal agencies have followed with their own online complaints sites. A sampling of those sites is attached to this testimony.

Bill No. 2298 H.D.1 would preclude RICO from fulfilling this most basic consumer protection function – that is, protecting consumers.

Over the course of many years, RICO has consistently accommodated industry concerns through refinements of its online Complaints History website. In particular, legal actions in which licensees have complied with all sanctions are removed from the website after five years. Similarly, cases in which the respondent acted expeditiously to resolve the complaint are closed with a "resolved expeditiously" description.

RICO has made recent changes to its website such that at the present time, RICO's Complaints History website (1) segregates RICO cases from cases investigated by the Department's Office of Consumer Protection; (2) captures two, rather than, five years of non-legal action complaints; and (3) archives certain complaints that did not result in legal action. RICO believes that these website revisions represent a fair, reasonable, and appropriate balance of public and industry interests. No legislation was necessary for these modifications to occur.

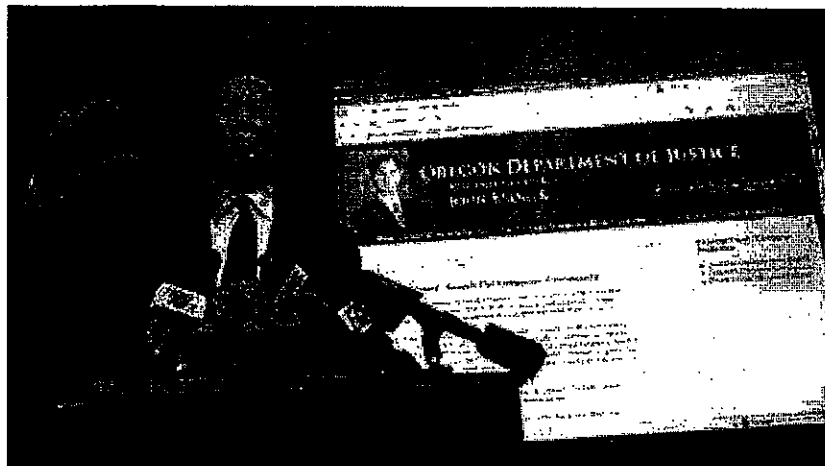
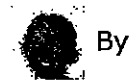
Thank you for this opportunity to testify on House Bill No. 2298 H.D.1. I will be happy to answer any questions that the members of the Committee may have.



Oregon puts consumer complaints data online

Published: Tuesday, March 09, 2010, 3:09 PM Updated: Tuesday, March 09, 2010, 3:58 PM

By **Laura Gunderson, The Oregonian**



The Associated Press Attorney General John Kroger kicked off National Consumer Protection Week today in Portland. Kroger unveiled a new online search feature that will allow consumers to look for complaints against businesses. The **Oregon attorney general's office** has put its **complaints database** online, meaning consumers can better research companies before deciding where to take their business.

Consumers without Internet access may call the agency at 1-877-877-9392.

Entries on the database, which contains complaints received since Jan. 1, 2008, do not include consumers' names and offer limited information, such as a company's address, the general category of the complaint and whether it was resolved.

As part of the attorney general's recognition of **National Consumer Protection Week**, today's announcement included a rundown of the top complaints the state received in 2009. Of the 14,021 complaints -- a 13 percent increase from 2008 -- the top five industry areas were telecommunications with 1,506 complaints; international money-transfer schemes, 1,021; health-related companies, 893; collection agencies, 774; and home-ownership lending firms, 761.

Last year was the fourth in a row in which telecommunications companies ranked No. 1 on the state's complaint list.



Ohio Department of Education Learning Supports

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- Literacy Improvement [+]
- Pupil Transportation [+]
- Safe and Supportive Learning [+]
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- Students with Disabilities
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 - Educating Students with Disabilities
 - Funding and Data
 - Laws, Policies and Performance
 - Mediation, Complaints and Due Process
 - Preschool Special Education
 - Resources and Support



Complaint and Due Process Databases

These databases are made available to provide the public with information regarding complaint investigation results and due process hearing decisions related to students with disabilities. The databases contain letters of findings and due process hearing decisions issued since **October 21, 2009**.

Complaint Database

The Complaint Database includes letters of findings corresponding to specific complaints. Each letter provides the name of the district, the issues investigated, facts determined in the investigation, conclusions the ODE reached regarding the complaint, and any corrective action the district was required to complete as a result of the investigation.

The database is updated monthly.

[Complaint Database](#)

Due Process Database

The Due Process Database contains decisions resulting from due process cases. Parents, school districts or other agencies (e.g., county boards of developmental disabilities) may request an impartial due process hearing to resolve disagreements about the identification, evaluation and placement of a student with a disability or the provision of a free appropriate public education (FAPE) to that student. Each due process hearing is conducted by an impartial hearing officer appointed by ODE. The hearing officer issues the decision.

[Due Process Database](#)

Last Modified Mar 22, 2011 05:06 AM



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SEARCH OUR COMPLAINT DATABASE

Use this search to investigate the status of complaints against a specific business. Find out how many complaints have been filed and if they were resolved favorably.

Enter Company Name and/or Trade Name and Press SEARCH

Company Name

Wildcard character () can be used to match zero or more characters.*

Trade Name



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The trick for your brain to learn a new language fast
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Secrets to settling back taxes with the IRS
Provided by Tax Retal Center

Vehicle complaint database

The U.S. government's National Highway Traffic Safety Administration (NHTSA) allows the public to file complaints about vehicles and transportation-related equipment. Complaints can be submitted by phone, fax, mail or online and are typically reported by consumers and attorneys. The complaints are monitored by NHTSA's Office of Defects Investigation, which looks for trends and, in some cases, orders investigations. Here are complaints about vehicles filed with NHTSA since Jan. 1, 2010. This list is updated daily, and the data are reprinted "as is" from the filings. Search by manufacturer and model and sort by model year, date filed and date of claimed incident.

Toyota: Road to recall

Check out the Times' Road To Recall series. Read the stories that broke news leading to the largest recall in Toyota's history. Browse the Times' official death count, with links to more contextual information about each incident.

[Read more >](#)

SEARCH FOR YOUR MAKE AND MODEL

Enter make (ex: Ford, Toyota, Audi)

Enter model (ex: Mustang, Corolla, A4)

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Search the U.S. Department of Transportation's automobile recall list. >

Source: National Highway Transportation and Safety Administration
Credits: Ken Schwencke, Thomas Suh Lauder

In Case You Missed It...



South L.A.: Promise and Peril



Mapping L.A. Neighborhoods



L.A. Farmers Markets



The Homicide Report



L.A. Noir: The Gangster Squad

Oregon Department of Justice Attorney General John Kroger

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Be InFORmed: Search For Consumer Complaints

At the Oregon Department of Justice we believe a well informed consumer is less likely to become a victim of consumer fraud. In an effort to provide more resources to Oregon consumers we offer this online database of complaints submitted to our [Consumer Hotline](#).

To find information about a specific business or about businesses in your area, please offer at least one search term. You may also search by partial criteria. For example, a search for "ale" in the City field will return "Alexandria," "Salem," "Glendale" etc.

Search Name

Business Description

City:

ZIP:

Complaint Opened - Date Range: (mm/dd/yyyy)

Start:

End:

Results per page

The database of consumer complaints is derived from consumer contacts since January 1, 2008 and is for information only. This database may not offer a completely accurate or comprehensive account of every incident. Several factors, including a company's size and volume of transactions, may affect the likelihood of a consumer complaint being filed. The number of complaints about a business may not be a reliable measure as to whether it is appropriately conducting business.

The information in this database is updated as soon as possible. However, recently submitted complaints may not be immediately available for view.

The statements in this database do not necessarily reflect the opinion of the DOJ.



Missouri Attorney General



Know MO -- Check on a Business

Each year, almost 100,000 Missourians contact the Attorney General's office with questions and complaints about consumer issues. Missouri consumers have a tool to help them in making decisions about buying goods or contracting for services.

"Know MO" enables consumers to look up complaints the Attorney General's Office has received about individuals and businesses. Simply enter the name of a person or a business in the search form below, and you will be able to see information from a database of more than 100,000 consumer complaints.

Educated consumers are one of the best weapons against fraud. Use this page as a tool to help yourself be a better informed consumer. If you want to file a consumer complaint with the Attorney General's office, you can do that [here](#).

Begin your search here:

Enter company name:

[Search Tips](#)



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February 13, 2012

The Honorable Gilbert S.C. Keith-Agaran, Chair
House Committee on Judiciary

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 2298, H.D. 1, Relating to Privacy Rights

HEARING: Monday, February 13, 2012, at 2:00 p.m.

Aloha Chair Keith-Agaran, Chair Herkes, 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 is in **strong support** of H.B. 2298, H.D. 1, which specifies the disclosure of complaints made against professional or vocational licensees upon determination the licensee was given an opportunity to respond to the allegation.

HAR believes in the public's right to have access to information regarding disciplinary actions taken against state-licensed professionals in various occupations. However, under the present practice of the Hawai'i Department of Commerce and Consumer Affairs (DCCA), complaints against licensed professionals are disclosed on a website to the public regardless of the outcome, without any minimum standard of due process provided by law. These complaints are posted online before there is any conclusive evidence of wrongdoing and, in some occasions, where a licensee is not offered an opportunity to officially respond to allegations made.

As a government agency, there is a presumption of validity to complaints especially when information against licensees is posted on a government sanctioned website. HAR believes simply having the complaint information validates the information to be true.

Moreover, HAR believes that it is appropriate to create minimum safeguards and a procedure in the law that provides a balanced approach for the disclosure of complaints against licensees under the Professional and Vocational License Division. While HAR believes H.B. 2298, H.D.1 does not truly accomplish this goal, it is a first step to require licensees an opportunity to respond to the allegation and to establish a minimum standard.





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As an alternative, HAR would support a legislative task force comprised of government and industry groups to review due process rights of licensees in other jurisdictions and the processes in which they manage complaints. Prior to the convening of the 2013 session, this group would be required to provide a report to the Legislature on their findings as well as any recommendations, if any.

Mahalo for the opportunity to testify.

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