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

TO THE HOUSE COMMITTEE ON
ECONOMIC REVITALIZATION & BUSINESS

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2012

TUESDAY, JANUARY 31, 2012
8:30 A.M.

TESTIMONY ON HOUSE BILL NO. 2298
RELATING TO PRIVACY RIGHTS

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND TO THE HONORABLE ISAAC W. CHOY, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Regulated Industries Complaints Office ("RICO") of the Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 2298, Relating To Privacy Rights. My name is Jo Ann Uchida, RICO's Complaints and Enforcement Officer. RICO offers the following comments.

House Bill No. 2298 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 complaint was referred for legal action and the licensee was provided an opportunity to respond to the complaint.

RICO 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).

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.

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

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 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

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.

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 Bill No. 2298 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.

At the present time, RICO is involved in further refinements to the online Complaints History website that will (1) segregate RICO cases from cases investigated by the Office of Consumer Protection; (2) revise RICO's online complaints history report to capture two, rather than, five years of non-legal action complaints; and (3) archive certain complaints that did not result in legal action.

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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. I will be happy to answer any questions that the members of the Committee may have.



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January 31, 2012

The Honorable Angus L.K. McKelvey, Chair
House Committee on Economic Revitalization & Business
State Capitol, Room 312
Honolulu, Hawaii 96813

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

HEARING: Tuesday, January 31, 2012, at 8:30 p.m.

Aloha Chair McKelvey, Vice Chair Choy, 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, which specifies the disclosure of complaints made against professional or vocational licensees upon determination that the complaint was referred for legal action and 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 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.

Moreover, even where there is a finding that a case lacks evidence or merit, such complaints are retained on the DCCA website for 5 years. This has two potentially negative effects—the public may be misled about a licensee's complaint history, and a licensee may be unfairly judged because of the disclosure.

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. HAR believes that H.B. 2298 accomplishes this goal, because it provides for the disclosure of complaints only when a legal action has been filed, and after the accused individual has been provided the opportunity to respond to the complaint.

HAR is willing to work with the Committee, the DCCA and other stakeholders to address any concerns and to fine-tune the language in this bill.

Mahalo for the opportunity to testify.

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January 31, 2012

Testimony To: House Committee on Economic Revitalization & Business
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, CAE
Executive Director

Subject: H.B. 2298 – REALTING TO PRIVACY RIGHTS

Chair McKelvey and Members of the Committee:

I am Tim Lyons, Executive Director of the Roofing Contractors Association of Hawaii and we support this bill.

We think it is highly unfair that complaints, legitimate and otherwise, are posted for all to see before they are even investigated or adjudicated. We have had at least two (2) of our members indicate to us that they think they have lost jobs as a result of information potential customers obtained from RICO that a "complaint was pending".

Based on the above, we support this bill.

Thank you.

Hawaii State Legislature
State House of Representatives
Committee on Economic Revitalization
and Business

Representative Angus L. K. McKelvey, Chair
Representative Isaac W. Choy, Vice Chair
Committee on Consumer Protection and Commerce

Tuesday, January 31, 2012, 8:30 a.m. Room 312
House Bill 2298 Relating to Privacy Rights

Honorable Chair Angus L. K. McKelvey, Vice Chair Isaac W. Choy and
members of the House Committee on Economic Revitalization and Business,

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 2298 Relating to Privacy Rights. The bill before you today would seek to provide basic due process for those who have complaints filed against them with the Department of Commerce and Consumer Affairs.

For the last three 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. 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.

This bill provides statutory 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.

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