

LATE TESTIMONY

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
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HONOLULU, HAWAII 96813
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To: House Committee on Economic
Revitalization & Business

From: Cheryl Kakazu Park, Director

Date: January 31, 2012, 8:30 a.m.
State Capitol, Conference Room 312

Re: Testimony on H.B. No. 2298
Relating to Privacy Rights

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices ("OIP") has concerns about this bill, and recommends that the bill be amended as described below.

OIP administers Hawaii's public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (UIPA). Since its adoption in 1988, the UIPA has made clear that any individual granted any type of license in the State does not have a significant privacy interest in "the record of complaints including all dispositions" so that the UIPA's privacy exception provided in HRS section 92F-13(1) could not apply to exempt such records from public disclosure. Thus, currently under the UIPA, the public has access to complaint records about any and all licensees.

This bill carves out an exception to the UIPA's recognition that any and all licensees have no significant privacy interest in complaint records. Specifically, this bill's proposed new exception applies only to licensees under HRS chapter 436 and further limits the UIPA's "no significant privacy" recognition only

to complaints about these licensees when (1) they are “referred for legal action” and (2) the licensees are given the opportunity to respond.

By carving out an exception only for those persons licensed under HRS chapter 436B, this bill alters the legislative scheme behind the UIPA of providing uniform disclosure provisions for government records. If your Committee seeks to impact the complaint records only about persons licensed under HRS chapter 436B, then OIP recommends that your Committee not amend the UIPA in HRS Chapter 92F, and instead address the disclosure of complaints directly in HRS chapter 436B itself. By doing so, the specific complaints disclosure provision in HRS section 436B would prevail over the UIPA’s general disclosure provisions and would not unnecessarily impact the UIPA.

If the bill is not amended to remove its references to the UIPA, then OIP is concerned that the bill is vague and ambiguous because it does not explain what it means when a complaint is “referred for legal action.” Even more confusing is that the exception being proposed is described as “a record of complaints for which the applicable licensing authority has determined the following shall be disclosed pursuant to this subparagraph.”

If the phrase “referred for legal action” is interpreted to be when a complaint was sent to the appropriate licensing board or other legal authority to initiate disciplinary proceedings, then the bill would have the effect of preventing the public from obtaining any complaint history information, except in those rare instances when disciplinary proceedings are initiated. OIP further notes that the amount of time a complaint is pending may be protracted, and that a complaint may take longer to resolve when the allegations are of a serious nature and are 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 improper professional or vocational activity to protect their reputation. However, in originally providing express access to licensees' complete complaint history information, the Legislature apparently believed that consumers had a right to access such information that could potentially protect them and that the public could give appropriate weight to pending complaints or complaints not referred for legal action in deciding whether to use a licensee's service. Accordingly, OIP has long agreed that even where there is no referral for legal action, the disclosure of complaint information may be important to the consumer as well as 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.

If the committee nevertheless decides, as a matter of policy, to pass this bill out of committee, then OIP strongly recommends that it (1) make amendments directly to HRS Chapter 436B and not to the UIPA, HRS Chapter 92F, and (2) clarify what is meant by the phrase "referred for legal action."

Thank you for the opportunity to testify.



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January 30, 2012

VIA FACSIMILE 586-8479

The Honorable Angus L.K. McKelvey
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, 8:30 a.m.

Dear Chair McKelvey, Vice Chair Choy, and Members of the Committee:

Thank you for the opportunity to speak in support of House Bill 2298
RELATING TO PRIVACY RIGHTS.

I am Joe Paikai, a Broker-In-Charge with Keller Williams Realty and current President of the Honolulu Board of REALTORS®, an O'ahu Association of 5500 members.

HB 2298 attempts to balance between the rights and protections of consumers with those of the professional and vocational licensees.

The Honolulu Board of REALTORS® strongly supports the rights and protections of consumers and recognizes that government has a strong role in providing some of these protections. In addition to what government provides, the Honolulu Board and all of the Neighbor Island REALTOR® members subscribe to the National Association of REALTORS® Code of Ethics and Standards of Practice. The Code and Standards are what distinguish REALTORS® and have been our tradition for over 50 years.

Part of assuring the rights and protections of consumers requires that consumers have access to timely and accurate information. When a complaint is filed, regardless of whether there are facts to support a complaint and prior to any investigation of the issue, the name of the licensee is posted on the DCCA public website. Although the website does include a small print disclaimer, the fact is that simply having the complaint information listed on the state sponsored website publication validates the information. For licensees who depend on "reputation" in order to succeed in business, publicly posting an as yet undetermined complaint can be deadly.

RE: H.B. 2298 Relating to Privacy Rights
January 30, 2012
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For your information and consideration, I have attached a copy of the DCCA website disclaimer which supports my earlier point that the information contained on the DCCA website may not always have any basis in fact or truth. Posting an unfounded complaint is misleading to the consumer as well as unfair to the licensee.

Thank you. I am happy to respond to any questions you may have. I would also like to introduce Suzanne Young who is HBR's Director of Programs who may also answer questions relating to this issue.

Sincerely,



Joseph Paikai
2012 President
Honolulu Board of REALTORS®

Attachment

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Current as of 01/30/2012 17:14

Complaint History Report

NOTE: THIS REPORT PERTAINS TO COMPLAINT HISTORY ONLY. FOR LICENSING INFORMATION, OR FOR BUSINESS INFORMATION ABOUT A PARTICULAR PERSON OR ORGANIZATION, OR TO CONDUCT ADDITIONAL COMPLAINTS HISTORY CHECKS, PLEASE GO TO [HTTP://WWW.BUSINESSCHECK.HAWAII.GOV](http://www.businesscheck.hawaii.gov). OR CONTACT THE CONSUMER RESOURCE CENTER AT (808) 597-3222.

The business & licensee complaints history database is designed to serve as a neutral repository of complaints filed with QCP or RICO. Users should judge a business' complaints history on the outcome of the complaints and not on the number of complaints or on the fact that a complaint was filed.

RICO complaints in which five or more years have passed from the year of final outcome are not included in this Complaint History Report, unless the respondent has not complied with the outcome.

BIA-HAWAII

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Testimony to the House Committee on Economic Revitalization & Business
 Tuesday, January 31, 2012
 8:30 a.m.
 State Capitol, Room 312

RE: H.B. 2434, Relating to Privacy Rights

Good morning Chair McKelvey, Vice Chair Choy, and members of the committee:

My name is Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, BIA-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 H.B. 2298, "Relating to Privacy Rights." H.B. 2298 specifies that a privacy interest does not apply to information regarding complaints made against a professional or vocational licensee if the applicable licensing authority determines that the complaint was referred for legal action and the licensee was given the opportunity to respond to 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 believes that many other licensed professionals 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 the foregoing reasons, BIA-Hawaii is in strong support of H.B. 2298.

Thank you for the opportunity to testify.

Karen I. Nakamura

EVP/CEO
BIA-Hawaii

LATE TESTIMONY

January 31, 2012

Testimony in SUPPORT OF THE CONCEPT of HB2298

RELATING TO PRIVACY RIGHTS

Presented to the House Committee on Economic Revitalization and Business

At the public hearing 8:30 a.m., Tuesday, January 31, 2012
in Conference Room 312, Hawaii State Capitol
Submitted by David H. Rolf, for the Hawaii Automobile Dealers Association
Hawaii's Franchised New Car Dealers

Chair McKelvey , Vice Chair Choy and members of the committee,

I'm David Rolf, representing Hawaii's franchised new car dealers.

HADA is in support of the concept of achieving a balance between the interests of the consumer and fairness to businesses.

Background:

*Hawai'i is the only State in the U.S. where complaints against businesses and licensed professionals are disclosed **before** they have been investigated or adjudicated, regardless of the outcome of such complaints or the length of the investigation.*

Reported complaints remain on a website (http://hawaii.gov/dcca/rico/business_online/check-out-abusiness-online.html) 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 Regulated Industries Complaints Office ("RICO") that a violation did not occur.

HADA believes that while the intent of posting such complaints is to alert consumers about unfair businesses activities, the posting, however, may unfairly prejudice customers against a business if the matter was later judged to be frivolous.

We believe that with further discussion, a method can be devised to fairly serve both consumers and businesses.

HADA respectfully requests that the committee move HB 2298 forward for further discussion.

Respectfully submitted,

David H. Rolf

For the members of the Hawaii Automobile Dealers Association

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LATE TESTIMONY

**House ERB Committee
Chair Angus McKelvey, Vice Chair Isaac Choy**

**Tuesday 1/31/12 at 8:30AM in Room 312
HB 2298 – Privacy Rights**

TESTIMONY

Nikki Love, Executive Director, Common Cause Hawaii

Chair McKelvey, Vice Chair Choy, and Committee Members:

Common Cause Hawaii opposes HB 2298. This bill will hide certain consumer complaints from public access. Currently, the record of all complaints is available for the public, allowing consumers to access it and make informed decisions. This bill would change the law so that only certain complaints related to professional and vocational licensees would be made public.

This bill proposes that in order for a complaint to be made public, the complaint would have to meet two criteria: (1) it has been referred for legal action, and (2) the target of the complaint has been provided an opportunity to respond. There are likely numerous complaints that may be meaningful and informative, but not necessarily severe enough as to require legal action; these complaints would not meet the first criteria, and therefore would be kept hidden from the public.

We are concerned about the bill's departure from principles of open government and public access to information. Complaints filed by consumers have been made available for some time now, and the public would lose this important access.

This also represents a major departure from the trend of growing public expectations of transparency. Thanks to consumer review websites and other online information, consumers have come to expect easy access to information to make decisions about what to purchase and whom to hire. Our government, with its wealth of information, should not move in the opposite direction by hiding the information it has obtained.

Mahalo for the opportunity to submit testimony.

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 8:36 PM
To: ERBtestimony
Cc: bsager42@gmail.com
Subject: LATE TESTIMONY - Testimony for HB2298 on 1/31/2012 8:30:00 AM

Testimony for ERB 1/31/2012 8:30:00 AM HB2298

Conference room: 312
Testifier position: Oppose
Testifier will be present: No
Submitted by: Bill Sager
Organization: Individual
E-mail: bsager42@gmail.com
Submitted on: 1/30/2012

Comments:

People need access to this information to avoid being ripped off. Original legislation struck a good balance between privacy and transparency.