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

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

TWENTY-SIXTH STATE LEGISLATURE  
REGULAR SESSION, 2010

MONDAY, JANUARY 31, 2011  
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 315  
RELATING TO CONTROL OPERATORS

TO THE HONORABLE ROBERT N. HERKES, CHAIR,  
AND TO THE HONORABLE RYAN I. YAMANE, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 315, Relating To Control Operators. My name is Jo Ann Uchida of the Department's Regulated Industries Complaints Office ("RICO"). RICO supports the language on page 1, lines 8 to 10 of the bill, and takes no position as to the language at page 2, lines 7 to 12 of the bill.

Testimony on House Bill No. 315  
January 31, 2011  
Page 2

House Bill No. 315 clarifies the responsibilities of pest control operators in performing termite inspections. At the present time, the standards for termite inspections are not set forth in the pest control law or its rules, so it is difficult to determine whether a termite inspection was performed adequately. As such, the language on page 1, lines 8 to 10 of the bill, will aid in enforcement.

Thank you for this opportunity to testify on House Bill No. 315. I will be happy to answer any questions that the members of the Committee may have.

**PRESENTATION OF THE  
PEST CONTROL BOARD**

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

Monday, January 31, 2011  
2:00 p.m.

*opposed*

**TESTIMONY ON HOUSE BILL NO. 315, RELATING TO PEST CONTROL  
OPERATORS.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Dr. Julian Yates, Vice-Chairperson of the Pest Control Board ("Board"). Thank you for the opportunity to present testimony on H.B. No. 315, which: (1) clarifies the Board's authority to establish standards to perform a termite inspection and to complete a termite inspection report; (2) requires a Pest Control Operator be held responsible for all termite infestations, visible or not, at the time of inspection; and (3) sets the liability of pest control operators so high that the unintended consequence may be a refusal of all pest control operators to perform any termite inspections, to the detriment of the public because residential real estate transactions will come to a halt. The Board has major concerns with page 2, lines 7-12.

While the Board feels it already has the authority to promulgate rules to establish standards to perform termite inspections, we are not opposed to further clarification on page 1, lines 8-10.

In fact, the Board is currently working on this project upon the recommendation by Jo Ann Uchida, Complaints and Enforcement Officer, that such standards would aid in licensing enforcement activities.

The Board is strongly opposed to the amendments on page 2, lines 7–12 which repeal the statutory requirement that licensees are only responsible for infestations that are visibly present at the time of the inspection. Due to the biology and cryptic nature of termites, the fact that “visible” signs such as droppings are not present does not mean that termites are not present and an infestation does not exist. It is unfair to hold a pest control operator responsible for areas that are inaccessible for inspection nor for infestations that may be present but which display no visible signs, or where visible signs were vacuumed or swept away before the pest control operator arrived.

The Board also opposes the repeal of the language on page 2, lines 11–12 because guarantees and warranties are provided by the pest control operator who provides the termite treatment and should not be imposed on the pest control operator who merely performs the inspection report. “No guarantees or warranties” merely means that the pest control operator is not responsible for any hidden infestation or damage which are not detected visually (e.g. between double walls, in back of built-in appliances, beneath flooring materials, etc). The repeal of the current language sets the pest control operator’s risk so high that this cost will be passed on to the consumer by requiring that the structure being inspected be first fumigated and ground treated prior to the issuance of an

inspection report, which may cost consumers upwards of \$2,500.00 for both treatments, or worst-case scenario, that pest control operator will refuse to do any inspection reports and halt all residential real estate transactions.

For these reasons, the Board requests the language on page 2, lines 7-12 be left unamended and remain as currently written.

Thank you for the opportunity to testify on this measure.

**William J. Nagle, Attorney At Law  
A Law Corporation**

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January 31, 2011

By E-mail: [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)

**House Committee On Consumer Protection & Commerce  
Representative Robert N. Herkes**

**RE: HB 315; Relating To Control Operators**

Dear Representative Herkes and Committee Members:

For the past 25 years, I have provided informal legal counsel to the Hawaii Pest Control Association ("HPCA"), on a "pro bono basis". During that time, it has been a privilege to assist and advise HPCA and its members on critical projects to pest control operators, such as the revisions to the State-mandated Termite Inspection Report, ("TIR") form PC-9 in 1992 and 2008. In addition, at the request of HPCA's Board Of Directors, I have provided advice and counsel on pending legislative matters, such as the instant bill. Because of professional commitments, I cannot attend the hearing today; this letter memorializes my testimony on the proposed amendments.

The amendments to §460J-19, Hawaii Revised Statutes are poorly thought out, would seriously harm the pest control industry and unnecessary for the protection of consumers. Each of the proposed amendments are discussed below.

A. The proposed amendment to subsection (a) of §460J-19, HRS is unnecessary and may be outside of the jurisdiction of the State Structural Pest Control Board. HPCA's Industry Improvement Committee produced its "Best Practices For Termite Inspections And Reports" within the last five years. This handbook contains recommendations for conducting termite inspections and preparing the PC-9 form reports. Therefore, there is no need for the Structural Pest Control Board to prepare "prescribed standards" for the conduct of termite inspections or reports.

As a separate matter, the Committee should question how such "prescribed standards" would be enforced, as a matter of practicality. At present, RICO investigates complaints from consumers concerning TIR's and inspections based upon the language of §460J-19, HRS and its attendant regulations. Because each structural which pest control operators inspect, present their

own unique idiosyncracies of design, construction and modification/renovation, the manner in which such "prescribed standards" would be enforced raises substantial questions both of fairness to pest control operators and consumers, as well as the cost and effectiveness of any such enforcement. The Committee should reject this proposed amendment.

B. The proposed amendments to subsection (b) would cripple the pest control industry's ability to conduct termite inspections, report their findings, and defend such findings in court. Termite infestation, particularly from Formosan (or subterranean) termites, occurs in areas of a structure which are inaccessible to visual inspection by the inspector and is extremely volatile in the speed of destruction of wood structures. Similarly, infestation from West Indian (or drywood) termites frequently occurs in inaccessible areas such as the void spaces between wood flooring and concrete slabs (particularly in condominiums), behind wood cabinetry, and in wood baseboards. I recommend that the Committee read paragraph (a) of the "Scope Of Inspection" section of the PC-9 form for additional information on the definition of "inaccessible areas" and examples of such spaces. Suffice to state, termite inspectors can only view, and report on, areas of the structures which are visible to them; they cannot observe areas which are enclosed or obstructed to view.

Technology does not exist which would enable anyone to discover and/or opine whether any such enclosed or obstructed space may contain evidence of termite infestation. While a number of devices which would purportedly accomplish this feat have been advertised, none has demonstrated consistency or accuracy in Hawaii.

Termite inspectors are not free to damage or destroy portions of the structure under inspection, in order to determine whether evidence of Formosan or West Indian termites may be located in such inaccessible areas. For these reasons, the retention of "visible" in subsection (b)(6) remains highly significant.

The proposed amendments to subsection (b) would strip pest control operators of a necessary, critical legal protection for conducting and reporting termite inspections. If the Committee deletes the "visible" element of reporting termite infestation locations, and requires pest control operators to report **all infestations, visible or not**, the Committee would create a statutory requirement which would be impossible for pest control operators to obey or comply, to the substantial detriment of consumers. Alternatively, the Committee would reduce termite inspections and reports to a matter of guesswork which would serve neither pest control operators nor consumers.

Similarly, the deletion of the sentence which reads "The licensee shall not be responsible for an infestation which was not visible to the licensee at the time of the inspection" is rooted in the reality for inspectors described above. Since the Legislature enacted this protection for pest control operators in Hawaii in the late 1980's, changes in house designs as well as construction methods and the scope of renovations of original structures have proliferated, making termite inspections more difficult than even before. This legal protection remains critical for the pest control industry to survive in Hawaii - whether liability insurance would be available at acceptable rates to cover consumer claims for termite inspections is dubious, at best, given the

unsettled and expensive prospects for small business owners.

The deletion of the prohibition against “guarantees or warranties” is also necessary to avoid claims that termite inspection reports are “good” for extended periods of time after the inspection. Because Formosan termite infestation remains highly dynamic as well as destructive in inaccessible areas, no one can “guarantee” or warrant the absence of termite infestation for longer than the 15 days described in the TIR. To delete the prohibition against “guarantees or warranties” would seriously mislead consumers viewing the TIR, to their detriment.

For these reasons, I recommend that the Committee reject the proposed amendments to §460J-19, Hawaii Revised Statutes. As an example of the confusion and misunderstanding which will probably arise if the proposed amendments are approved, I have attached a copy of a letter to Sandra Ann Wong, Esq., which describes the issues discussed above.

Very truly yours,

/s/ William J. Nagle, III

William J. Nagle, III

Encl.





**PEST CONTROL, INC.**

*"ASK A FRIEND ABOUT US - WE'VE MADE LOTS OF THEM"*

January 28, 2011

Testimony to: House Committee on Consumer Protection and Commerce  
Representative Robert N. Herkes, Chair

Presented by: Alvin F. Fukuyama  
State Termite & Pest Control, Inc.

Subject: HB 315-Relating to Control Operators

Mr. Chairman and Members of the Committee:

My name is Alvin Fukuyama, President of State Termite & Pest Control, Inc. and I oppose HB 315.

Termites do not always show signs that they are present. Droppings are pushed out randomly and may not be pushed out for over a year. If "visible" is removed from the PC-9 form, then the only way to ensure that there are no problems would be to recommend fumigation and ground termite treatment for all inspections if the property does not have a current warranty. The cost to do both treatments can average \$2,500.00. Also, the cost of the inspections will rise because of increased liability. How can this be good for the consumer?

Thank you for the opportunity to testify.



PC-689

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# Diversified EXTERMINATORS

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January 28, 2011

To: Representative Robert N. Herkes , Chair

From: Mohinder S. Maan President Diversified Exterminators

Subject: HB-315 Relating to Control Operators

*OPPOSED*

I am not in favor of HB 315 and I hope that you can help to kill it. My reasons and thoughts are as follows:

A). as of now the TIR inspection requires that termite infestation must be visible for us (Pest control Operators) to report them. If this clause is deleted from the PC-9 as proposed then I suppose it means it will make us responsible for infestations that are invisible. This is an extremely risky proposition for many of us and some of us may be out of this business altogether. This will put the consumer in a difficult and awkward position.

b.) At present the TIR inspection requires us to offer that the report is reliable for 15 days. And the proposal to delete this requirement will destroy the industry termite inspection standard and discipline. And on top of this I believe the warranty or guarantee offerings by the Pest Control Operators will run amuck in order to procure termite inspection business. And such business practices will not be in the best interest of the consumer.

I thank you for this opportunity to write to you and give my views on the above subject

Sincerely,

  
Mohinder S. Maan

President

# HILO TERMITE & PEST CONTROL, LTD.

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(808) 935-8301 FAX (808) 969-7907

January 27, 2011

Testimony to: House Committee on Consumer Protection and Commerce Representative  
Robert N. Herkes, Chair

Presented by: Rodney N. Ono  
Hilo Termite & Pest Control, Ltd.

Subject: HB 315-Relating to Control Operators

Mr. Chairman and Members of the Committee:

My name is Rodney N. Ono, President of Hilo Termite & Pest Control, Ltd. and I oppose HP 315

Reason being:

1. We are all licensed professionals and each company has their own method of inspecting a home for termites, but even though we all use different methods the results end up the same. We all find and identify the termites a standard wouldn't work.
2. The deletion of the requirement that termite infestations must be visible in order for the termite company to be required to report them. In doing a termite inspection report we use visual evidence of termite infestations as the only means of reporting them on the report. We cannot see in areas where it is inaccessible to the naked eyes, such as in between double walls and open beam ceilings, under bathtubs, under and behind cabinets, cabinet false bottoms etcetera. If this is the case why do termite inspection reports instead require all homes or buildings to be treated for subterranean (ground termites) and drywood termites even though no termites were found in the structures. This will be the case if this bill passes.
3. As far as giving a warranty for termite inspections it seems to me that this is hardly consumer protection because it's unrealistic. This is not an area the law should get into.

Thank you for the opportunity to testify.

James L. Eschle, PhD  
JLE, Inc.  
Entomologist & Pest Management Consultant  
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January 27, 2011

Testimony to: House Committee on Consumer Protection & Commerce  
Representative: Robert N. Herkes, Chair

Presented by: James L. Eschle, PhD  
Entomologist & Pest Management Consultant  
JLE, Inc.

Mr. Chairman and Members of the Committee:

My name is James L. Eschle, Entomologist & President of JLE, Inc and I oppose HB315 for the following reasons:

1. A termite inspection is basically visual. In other words we look for evidence of termites. We have no other method of detecting infestations other than looking, visually, for them.
2. Termites are by nature cryptic and often found in places that are not accessible for a visual inspection. For example:
  - a. Double walls.
  - b. Attic spaces or crawl spaces under houses that are too low for access.
  - c. Under and behind wall and floor cabinets against wall.
  - d. Closets and shelves that are full of personal belongings.
  - e. Drywood termites can be infesting a baseboard, door frame or other portion of the building for 2 or 3 years before they become detectable as they do not start expelling droppings (fecal pellets) until then. Fecal pellets are one of the major types of evidence we look for visually.
3. If the word "visual" is removed, it will imply that a termite inspector is responsible for infestations of termites that are not detectable. Such a liability will be unacceptable to many inspectors and either they will not do inspections or the fees for inspections will be highly increased. At this time prices range from \$150 to \$500 or \$600 per inspection. With the word visual eliminated, the prices would likely triple or even quadruple. This would be a hardship not only the Real Estate Industry but also the Sellers they represent. Also, to be safe, inspectors will need to recommend treatments "just in case" there are infestations that they cannot see. This is not a responsible way to utilize toxic chemicals such as Vikane gas and ground termite chemicals.
4. Traditionally a warranty is provided only when a termite treatment is done. Such a warranty specifies the time that the company will return and provide additional treatment should evidence of infestations return during the specified period. A termite inspection is not a treatment and thus there is nothing to warrant. The PC9 states that the inspection is

reliable within 15 days of the inspection. This is not a warranty but only an arbitrary time that the Termite Industry feels is a reasonable period for the report to be reliable. In fact, infestations can show up the day after an inspection. Nevertheless, most reliable inspectors will return to re-inspect if the customer feels there are still termites, even after the 15 days.

5. Standards. Basically the PC9 as presently written provide adequate standards for doing a termite inspection. In addition, the Hawaii Pest Control Association has developed a document and sponsors a course to teach inspectors how to inspect and complete forms etc. If standards are mandated, it will be close to impossible to prove either way whether or not an inspector followed the standards.

Thank you for the opportunity to testify.



James L. Eschle, PhD  
Entomologist & Pest Management Consultant

January 29, 2011

Testimony to: House Committee on Consumer Protection and Commerce  
Representative Robert N. Herkes, Chair

Presented by: Robert H. Koide, 95-156 Wailawa Street, Mililani, HI 96789.

Subject: HB 315-Relating to Control Operators.

Mr. Chairman and Members of the Committee:

My name is Robert Koide, former owner of Environ Control, Inc., Past President of Hawaii Pest Control Association, and a member of the Hawaii Pest Control Board. I oppose HB 315.

**The Termite Inspection Report** is required by the Lending Institution as a means of verifying the structure, which is to be mortgaged, is free of water and termite infestation/damages.

The Seller has an interest in obtaining the best possible selling price for the structure.

The Buyer has an interest in insuring the best possible value in the structure being purchased.

All three parties have their own self-interests. The Seller's interest is being taken care of by the Seller's real estate agent. The Buyer's interest is being taken care of by the Buyer's real estate agent. The Lending Institution's interest is being taken care of by the Termite Inspection Report. All three parties want a Termite Inspection Report which states there are no water and termite infestation/damages.

The Termite Inspector is usually an employee of a company licensed by the State of Hawaii in the performance of this type of work. The Termite Inspection Report requires the inspector to note any visual signs of water and termite infestation/damages. A sketch is provided, showing all areas with water and termite infestation/damages. This report is good for a period of fifteen (15) days.

The experience of a Termite Inspector may be reflected on the Termite Inspection Report. The Hawaii Pest Control Association with the University of Hawaii provides "Termite Inspection" training by professionals in the construction, legal and educational areas. Individuals, who have taken this course, receive a certification of completion.

**The Termite Inspector or Company is under no obligation to do any treatments.** They are hired to do a Termite Inspection Report. After the report is submitted to the Lending Institution, a copy to the Seller and Buyer, a decision would be made as to the recommendation made by the Termite Inspector or Company. **The Lending Institution, Seller and Buyer are under no obligation to use the services of the Termite Inspector or Company.** They can hire the services of any company licensed by the State of Hawaii in the performance of services needed.

**The company or companies which provide the services necessary to repair water damages and termite treatment and repairs would usually provide the warranties or guarantees.**

A **“No warranty or guarantee”** clause means the Termite Inspector or Company will not be responsible for any hidden infestation or damages which are not able to be detected visually. Areas most commonly not accessible would include: Back of plumbing walls of kitchen and baths, bottom of toe-kick space, beneath cabinets, between double walls, back of built-in appliances, between ceiling and floor joists, attic space, crawl space, beneath flooring material (carpet, vinyl tile, ceramic tile, laminated, parquet) and closets, pantry, cabinets, drawers, which are full of things - not able to visually inspect.

In order to remove “No warranty or guarantee” clause, the risk would be solely upon the Termite Inspector or Company. The greater the risk is to the Termite Inspector or Company, the greater the cost will be to the Lending Institution, Seller and Buyer. The usual cost of a Termite Inspection Report for \$100-\$500, would most likely go up to \$1000-\$5000. There are methods available to inspect back of walls and construction materials with very expensive and time consuming equipment.

If the Termite Inspector or Company suspects any water or termite infestation/damage, they most likely would require the Seller to open up walls, ceilings, remove cabinets and flooring material. The Seller would have to assume the added costs and pass it on to the Buyer. The Real Estate Industry would be greatly affected and also the Lending Institutions.

Whose best interests should the Consumer Protection Agency protect? Hopefully, it's for the Lending Institution, Seller, Buyer and the Termite Inspector or Company.

Thank you for the opportunity to testify.



# HAWAII PEST CONTROL ASSOCIATION

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Telephone (808) 533-6404 • Fax (808) 533-2739

January 31, 2011

Testimony To: House Committee on Consumer Protection & Commerce  
Representative Robert N. Herkes, Chair

Presented By: Tim Lyons, CAE  
Executive Director

Subject: H.B. 315 – RELATING TO CONTROL OPERATORS

Chair Herkes and Members of the Committee:

I am Tim Lyons, Executive Director of the Hawaii Pest Control Association and we are in opposition to this bill.

This bill was brought as a result of dissatisfaction of one customer of one company over one report. Termite inspection reports are issued on virtually every transaction that goes through escrow and obtains a mortgage for the purchase of a residence. They are issued for the benefit of all readers regarding the termite condition of the structure at the time that the inspector was there. No treatment is performed only a report is offered.

We think it is important to note that while termite inspection reports were at one time the subject of a great deal of litigation, since the 1990's those complaints have all but "all dried up".



This is partially due to efforts by our Association which conducts termite inspector training classes and in fact, this is the only complaint that we are aware of since that time. We don't think it is good legislative policy to be changing the law based on the dissatisfaction of one customer when thousands of these reports are written on an annual basis.

More specifically, the bill calls for standards by the State Structural Pest Control Board. We are not here to say we oppose standards however standards are typically developed by industry discussion not by legislation. This is so that they may be flushed out in detail based on internal discussions and with agreement and consensus as to what the minimum expectations should be.

The bill also deletes the current requirement that a termite infestation must be "visible" as a factor in it being listed on the report. We, as well as the employer, train and teach the inspectors to look for conducive conditions which an ordinary person may not see however, our members do not have the power to give them "superman vision" and see infestations that are invisible, and that is the effect of this deletion. Termites can often be in inaccessible areas, like between walls and, behind and under bath tubs and, under carpeted areas. Unless you want to require termite inspectors to do destructive testing, like opening up walls for a homeowner who is only trying to sell their property, it would appear unfeasible to require a report based on invisible infestations.

Lastly, the bill also deletes the prohibition on pest control operators offering a guarantee or a warranty. We believe that this prohibition is a matter of consumer protection and is a matter of

reality. You cannot guarantee something you did not do. Again, we are talking about the issuance of a report as to findings that were observed at the time that the inspector was there. There was no treatment performed. There are no pests that are dying. We think that to require a guarantee is to very likely result in all pest control operators requiring a treatment before they guarantee a report. We don't think that serves the purchaser or the buyer and it only adds to the cost of the transaction.

Based on the above, we cannot support this bill.

Thank you.

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January 28, 2011

Testimony to: House Committee on Consumer Protection and Commerce  
Representative Robert N. Herkes, Chair

Presented by: Jerry Edlao  
Accu-Pest & Termite Control Services

Subject: HB 315-Relating to Control Operators

Mr. Chairman and Members of the Committee:

My name is Jerry Edlao , Owner & Operator of Accu-Pest & Termite Control Services and I oppose HB 315.

This bill, should it move forward or be passed, will have a devastating effect of potential and current homeowners. Due to the cryptic nature of termites, it may not be possible to determine conclusively whether or not termites are present. Inspections has always been completed to accessible unobstructed areas, and visible evidence at the time of inspection(s). These areas are indentified on the FORM PC-9 883/987/792/1205 in the SCOPE OF INSPECTION section 12. Starting at line: 6.

The effects of this proposed bill will only add cost to future termite inspections for potential and current homeowners that will be I require to have an inspection for purchasing or refinancing. In addition, to provide and be responsible for infestations that are not visible at the time of inspection(s) due to inaccessible, obstructed and hidden infestations may add additional cost for additional time and or specialized equipment to be able to satisfy current homeowners, potential homeowners and financial lenders.

**This bill as proposed, will only bring on additional cost & hardships to consumers seeking our services to acquire their dream of homeownership in an already difficult economy.**

I believe our current Structural Pest Control Board has done a very good job over the years in protecting everyone with regards to inspections and other functions of our industry. Please leave our inspection requirements to them and not move this bill forward.

Thank you for the opportunity to testify.

January 28, 2011

Testimony to: House Committee on Consumer Protection and Commerce

Presented by: Carlton Agena, Terminix-Hawaii

Subject: HB 315 – Relating to Control Operators

Mr. Chairman and Members of the Committee:

My name is Carlton Agena, Technical Specialist for Terminix-Hawaii and I oppose HB 315. Due to the cryptic nature of termites, it may not be possible to determine conclusively whether or not termites are present within inaccessible areas. Making areas accessible may be destructive and damaging to the premises in order to detect infestation.

Thank you for the opportunity to testify.



**Bug Man Termite and Pest Control, Inc.**  
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Kahului, Hawaii 96732  
(808) 871-1283 Fax 872-9769  
PCO-671

January 28, 2011

Testimony to: House Committee on Consumer Protection and Commerce

Representative Robert N. Herkes, Chair

Presented by: Timothy Drake  
Bug Man Termite and Pest Control, Inc.

Subject: HB 315-Relating to Control Operators

Mr. Chairman and Members of the Committee:

My name is Timothy Drake, Vice President of Bug Man Termite and Pest Control, Inc., and I oppose HB 315 for the following reasons:

1. The additional statements being made on page 1, lines 8-10, give the Pest Control Board the ability to establish standards that all of my industry would have to comply with. I do not believe that the Board should be given this free pass to create a standard without any input from the industry or others possibly involved. This addition should include some guidelines for what the Board is to do.
2. The removal of statements on page 2, lines 7-12, will greatly affect my ability to continue to do Termite Inspection Reports (TIR) that

requires the use of a PC-9 form. The current wording provides a good deal of protection for the inspecting Company and is a prudent, especially when dealing with termites ability to cause damage to areas that are not visible without destructive inspections, and to keep themselves completely hidden from the eyes of inspectors.

- a. In regards to line 7 and 8, inspectors are unable to tell, without visible evidence, if an area has an infestation, and many times the occupant of the structure has personal items stored in many areas around the house. The Industry would not reasonably be able provide this information, and I believe it also opens up the possibility of fraud in our industry, as inspectors would be able to state that there is an infestation in an area not currently visible, without any evidence of such. I also see that the Industry might start to lean towards that as being the answer to protecting ourselves in this situation, always stating that a inspected structure has an infestation and recommending treatment for it. The detection of termites is not a sure thing. The only way to tell for sure if a structure has termites or not, is to tear it down, piece by piece, inspecting all of the hidden wooden members as you go, and that is not acceptable to myself, homeowners, realtors, and the myriad of other individuals that would be affected.
- b. The removal of lines 9-12, could affect us if termites were to infest a structure after the inspection was performed, the inspection company could still be held liable for the infestation, as there is no definitive way to determine how long the infestation has been there.

So I believe that the passage of this bill could severely damage, if not wipe out the Termite Inspection portion of my business due to the things listed above.

Thank you for the opportunity to testify.



**Bug Man Termite and Pest Control, Inc.**  
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Kahului, Hawaii 96732  
(808) 871-1283 Fax 872-9769  
PCO-671

January 28, 2011

Testimony to: House Committee on Consumer Protection and Commerce

Representative Robert N. Herkes, Chair

Presented by: Jeffery Goo PCO-1149  
Bug Man Termite and Pest Control, Inc. PCO-671

Subject: HB 315-Relating to Control Operators

Mr. Chairman and Members of the Committee:

My name is Jeffery Goo, Termite Control Manager of Bug Man Termite and Pest Control, Inc., and I oppose HB 315 for the following reasons:

1. The additional statements being made on page 1, lines 8-10, give the Pest Control Board the ability to establish standards that all of my industry would have to comply with. I do not believe that the Board should be given this free pass to create a standard without any input from the industry or others possibly involved. This addition should include some guidelines for what the Board is to do.
2. The removal of statements on page 2, lines 7-12, will greatly affect my ability to continue to do Termite Inspection Reports (TIR) that

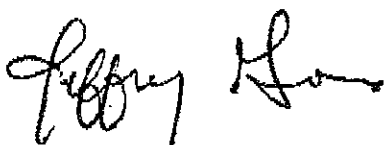


requires the use of a PC-9 form. The current wording provides a good deal of protection for the inspecting Company and is a prudent, especially when dealing with termites ability to cause damage to areas that are not visible without destructive inspections, and to keep themselves completely hidden from the eyes of inspectors.

- a. In regards to line 7 and 8, inspectors are unable to tell, without visible evidence, if an area has an infestation, and many times the occupant of the structure has personal items stored in many areas around the house. The Industry would not reasonably be able provide this information, and I believe it also opens up the possibility of fraud in our industry, as inspectors would be able to state that there is an infestation in an area not currently visible, without any evidence of such. I also see that the Industry might start to lean towards that as being the answer to protecting ourselves in this situation, always stating that a inspected structure has an infestation and recommending treatment for it. The detection of termites is not a sure thing. The only way to tell for sure if a structure has termites or not, is to tear it down, piece by piece, inspecting all of the hidden wooden members as you go, and that is not acceptable to myself, homeowners, realtors, and the myriad of other individuals that would be affected.
- b. The removal of lines 9-12, could affect us if termites were to infest a structure after the inspection was performed, the inspection company could still be held liable for the infestation, as there is no definitive way to determine how long the infestation has been there.

So I believe that the passage of this bill could severely damage, if not wipe out the Termite Inspection portion of my business due to the things listed above.

Thank you for the opportunity to testify.





**Bug Man Termite and Pest Control, Inc.**  
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(808) 871-1283 Fax 872-9769  
PCO-671

January 28, 2011

Testimony to: House Committee on Consumer Protection and Commerce

Representative Robert N. Herkes, Chair

Presented by: Vincent Mozina PCO-762  
Bug Man Termite and Pest Control, Inc. PCO-671

Subject: HB 315-Relating to Control Operators

Mr. Chairman and Members of the Committee:

My name is Vincent Mozina, President of Bug Man Termite and Pest Control, Inc., and I oppose HB 315 for the following reasons:

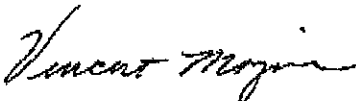
1. The additional statements being made on page 1, lines 8-10, give the Pest Control Board the ability to establish standards that all of my industry would have to comply with. I do not believe that the Board should be given this free pass to create a standard without any input from the industry or others possibly involved. This addition should include some guidelines for what the Board is to do.
2. The removal of statements on page 2, lines 7-12, will greatly affect my ability to continue to do Termite Inspection Reports (TIR) that

requires the use of a PC-9 form. The current wording provides a good deal of protection for the inspecting Company and is a prudent, especially when dealing with termites ability to cause damage to areas that are not visible without destructive inspections, and to keep themselves completely hidden from the eyes of inspectors.

- a. In regards to line 7 and 8, inspectors are unable to tell, without visible evidence, if an area has an infestation, and many times the occupant of the structure has personal items stored in many areas around the house. The Industry would not reasonably be able provide this information, and I believe it also opens up the possibility of fraud in our industry, as inspectors would be able to state that there is an infestation in an area not currently visible, without any evidence of such. I also see that the Industry might start to lean towards that as being the answer to protecting ourselves in this situation, always stating that a inspected structure has an infestation and recommending treatment for it. The detection of termites is not a sure thing. The only way to tell for sure if a structure has termites or not, is to tear it down, piece by piece, inspecting all of the hidden wooden members as you go, and that is not acceptable to myself, homeowners, realtors, and the myriad of other individuals that would be affected.
- b. The removal of lines 9-12, could affect us if termites were to infest a structure after the inspection was performed, the inspection company could still be held liable for the infestation, as there is no definitive way to determine how long the infestation has been there.

So I believe that the passage of this bill could severely damage, if not wipe out the Termite Inspection portion of my business due to the things listed above.

Thank you for the opportunity to testify.



TESTIMONY IN **STRONG SUPPORT** OF HB315

To: House Committee on Consumer Protection & Commerce  
Hearing on January 31, 2011 at 2p.m. in Room 325

From: Sandie Wong

Aloha Chair Herkes and members of the committee: I am in strong support of this bill because currently there are no consequences if Pest Control Operators are negligent in performing their duties.

Currently, Hawaii Revised Statutes sec. 460J-19(b) states, "The licensee shall not be responsible for an infestation unless its presence was visible at the time of the inspection. There shall be no guarantees or warranties on the written inspection report." Also, currently there are no standards for Pest Control Operators. Thus, when a Pest Control Operator is negligent in the performing of his/her job, there are no consequences. The law as it currently stands leaves the consumer defenseless.

Regulated Industries Complaints Office cannot do anything because of the "no guarantees or warranties on the written inspection report" language and because the Pest Control Board has not adopted standards for the Pest Control Operators. Accordingly, this bill is vital to provide a remedy to the consumer when the inspector fails to use due care and/or is negligent.

It is important to note, that this bill will only work if the Pest Control Board adopts and implements standards. Thus, I respectfully encourage the Chair and the Committee to place a deadline on the Board to adopt and implement standards. Without standards, the consumers of Hawaii are without recourse and are at the mercy of the Pest Control Operators. Unfortunately, some of our Pest Control Operators are cognizant of this fact and are taking advantage of Hawaii consumers by providing less than optimal service to them.

Hawaii consumers are a captive audience. Not only does Hawaii have a prevalent termite problem, but whenever a Hawaii consumer applies for a mortgage to purchase a home, they must get a termite report. The Hawaii consumer relies on the termite report in making the decision to purchase or not purchase the home and at a fair price. If the termite report is inaccurate, it causes great detriment to the consumer.

In my personal experience, an inaccurate termite report resulted in my having to replace all my cabinets, floors, and doors in my newly bought condominium at a cost of over \$20 Thousand dollars. Its been difficult to incur these costs. In these difficult economic times such cost would overwhelm many Hawaii consumers and, thus, turn their dream of a new home into a nightmare.

Hawaii consumers should be able to rely on the termite report to provide accurate information and to know that the Pest Control Operator used due care in completing the report. Otherwise, it defies logic to have a termite report if there is no guarantee, warranty, and/or standards that it will be correct.

Therefore, I strongly urge the Chair and the Committee to pass this bill out and to set a deadline of the Pest Control Board to develop and implement standards. I would be more than willing to assist the Board with this vital job.

Thank you for the opportunity to provide testimony.

**TESTIMONY IN STRONG SUPPORT OF HB315**

To: House Committee on Consumer Protection & Commerce  
Hearing on January 31, 2011 at 2p.m. in Room 325

From: Sheryl Nojima

Aloha Chair Herkes and members of the committee: I am in strong support of this bill because currently there are no consequences if Pest Control Operators are negligent in performing their duties.

Currently, Hawaii Revised Statutes sec. 460J-19(b) states, "The licensee shall not be responsible for an infestation unless its presence was visible at the time of the inspection. There shall be no guarantees or warranties on the written inspection report." Also, currently there are no standards for Pest Control Operators. Thus, when a Pest Control Operator is negligent in the performing of his/her job, there are no consequences. The law as it currently stands leaves the consumer defenseless.

Regulated Industries Complaints Office cannot do anything because of the "no guarantees or warranties on the written inspection report" language and because the Pest Control Board has not adopted standards for the Pest Control Operators. Accordingly, this bill is vital to provide a remedy to the consumer when the inspector fails to use due care and/or is negligent.

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Therefore, I strongly urge the Chair and the Committee to pass this bill out and to set a deadline of the Pest Control Board to develop and implement standards.

Thank you for the opportunity to provide testimony.

**TESTIMONY IN STRONG SUPPORT OF HB315**

To: House Committee on Consumer Protection & Commerce  
Hearing on January 31, 2011 at 2p.m. in Room 325

From: Sophia Ogaza

Aloha Chair Herkes and members of the committee: I am in strong support of this bill because currently there are no consequences if Pest Control Operators are negligent in performing their duties.

Currently, Hawaii Revised Statutes sec. 460J-19(b) states, "The licensee shall not be responsible for an infestation unless its presence was visible at the time of the inspection. There shall be no guarantees or warranties on the written inspection report." Also, currently there are no standards for Pest Control Operators. Thus, when a Pest Control Operator is negligent in the performing of his/her job, there are no consequences. The law as it currently stands leaves the consumer defenseless.

Regulated Industries Complaints Office cannot do anything because of the "no guarantees or warranties on the written inspection report" language and because the Pest Control Board has not adopted standards for the Pest Control Operators. Accordingly, this bill is vital to provide a remedy to the consumer when the inspector fails to use due care and/or is negligent.

It is important to note, that this bill will only work if the Pest Control Board adopts and implements standards. Thus, I respectfully encourage the Chair and the Committee to place a deadline on the Board to adopt and implement standards. Without standards, the consumers of Hawaii are without recourse and are at the mercy of the Pest Control Operators. Unfortunately, some of our Pest Control Operators are cognizant of this fact and are taking advantage of Hawaii consumers by providing less than optimal service to them.

Hawaii consumers should be able to rely on the termite report to provide accurate information and to know that the Pest Control Operator used due care in completing the report. Otherwise, it defies logic to have a termite report if there is no guarantee, warranty, and/or standards that it will be correct.

Therefore, I strongly urge the Chair and the Committee to pass this bill out and to set a deadline of the Pest Control Board to develop and implement standards.

Thank you for the opportunity to provide testimony.

TESTIMONY IN **STRONG SUPPORT** OF HB315

To: House Committee on Consumer Protection & Commerce  
Hearing on January 31, 2011 at 2p.m. in Room 325

From: Mark Duda

Chair Herkes and members of the committee: I am in strong support of this bill because currently there are no consequences if Pest Control Operators are negligent in performing their duties.

Regulated Industries Complaints Office cannot do anything because of the "no guarantes or warranties on the written inspection report" language and because the Pest Control Board has not adopted standards for the Pest Control Operators. Accordingly, this bill is vital to provide an explicit remedy to the consumer when the inspector fails to use due care and/or is negligent.

Thank you for the opportunity to provide testimony.

TESTIMONY IN **STRONG SUPPORT** OF HB315

To: House Committee on Consumer Protection & Commerce  
Hearing on January 31, 2011 at 2p.m. in Room 325

From: Rodney Kaulupali

Aloha Chair Herkes and members of the committee: I am in strong support of this bill because currently there are no consequences if Pest Control Operators are negligent in performing their duties.

Currently, Hawaii Revised Statutes sec. 460J-19(b) states, "The licensee shall not be responsible for an infestation unless its presence was visible at the time of the inspection. There shall be no guarantees or warranties on the written inspection report." Also, currently there are no standards for Pest Control Operators. Thus, when a Pest Control Operator is negligent in the performing of his/her job, there are no consequences. The law as it currently stands leaves the consumer defenseless.

Regulated Industries Complaints Office cannot do anything because of the "no guarantees or warranties on the written inspection report" language and because the Pest Control Board has not adopted standards for the Pest Control Operators. Accordingly, this bill is vital to provide a remedy to the consumer when the inspector fails to use due care and/or is negligent.

It is important to note, that this bill will only work if the Pest Control Board adopts and implements standards. Thus, I respectfully encourage the Chair and the Committee to place a deadline on the Board to adopt and implement standards. Without standards, the consumers of Hawaii are without recourse and are at the mercy of the Pest Control Operators. Unfortunately, some of our Pest Control Operators are cognizant of this fact and are taking advantage of Hawaii consumers by providing less than optimal service to them.

Hawaii consumers should be able to rely on the termite report to provide accurate information and to know that the Pest Control Operator used due care in completing the report. Otherwise, it defies logic to have a termite report if there is no guarantee, warranty, and/or standards that it will be correct.

Therefore, I strongly urge the Chair and the Committee to pass this bill out and to set a deadline of the Pest Control Board to develop and implement standards.

Thank you for the opportunity to provide testimony.



TESTIMONY IN **STRONG SUPPORT** OF HB315

To: House Committee on Consumer Protection & Commerce  
Hearing on January 31, 2011 at 2p.m. in Room 325

From: Natalie Sawyer

Chair Herkes and members of the committee: I am in strong support of this bill because currently there are no consequences if Pest Control Operators are negligent in performing their duties.

Currently, Hawaii Revised Statutes sec. 460J-19(b) states, "The licensee shall not be responsible for an infestation unless its presence was visible at the time of the inspection. There shall be no guarantees or warranties on the written inspection report." Also, currently there are no standards for Pest Control Operators. Thus, when a Pest Control Operator is negligent in the performing of his/her job, there are no consequences.

Does that mean that the inspector does not need to use due care in doing the inspection? Does it mean that he can be negligent in his duty, and there is no recourse for the consumer? In my humble opinion, this language needs to be clarified and provide an explicit remedy to the consumer when the inspector fails to use due care and/or is negligent. The law as it currently stands leaves the consumer defenseless.

Therefore, I ask that this bill be passed out.

Mahalo