

SB 155

Measure Title:	RELATING TO ATHLETIC TRAINERS.
Report Title:	Athletic Trainers; Registration
Description:	Creates registration requirements and qualifications for athletic trainers in this State; provides exemptions; prescribes penalties.
Companion:	
Package:	None
Current Referral:	CPN, WAM



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
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KEALI'I S. LOPEZ
INTERIM DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

Thursday, February 3, 2011
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 155, RELATING TO ATHLETIC TRAINERS.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Celia Suzuki, Acting Licensing Administrator for the Professional and Vocational Licensing Division ("Division"), Department of Commerce and Consumer Affairs ("Department"). The Division appreciates the opportunity to present testimony on Senate Bill No. 155, Relating to Athletic Trainers.

The bill proposes to regulate the practice of athletic training by requiring athletic trainers to be registered with the Department. On the matter of whether to regulate this new profession, we oppose this proposal as it is contrary to the recommendations of the Auditor's analysis which was completed in 2010. The sunrise study suggested that regulation and registration of athletic trainers is not warranted.

The Regulated Industries Complaints Office also has concerns about the bill as it lacks key provisions for a regulatory law and as is written, would be difficult to implement and enforce.

However, should this proposal advance in the Legislature, we would be willing to work with the proponents of the bill to try and reach a compromise measure.

Also, should the Legislature consider this proposal and it becomes enacted, we would like to mention that the athletic trainers will bear the burden of subsidizing the program through fees, the cost of the Department's resources to start-up, implement, and maintain this new program.

This bill also provides that this act shall take effect on July 1, 2011. We request that should this bill pass, the effective date be that of July 1, 2012 to allow us sufficient time to ensure a smooth and efficient transition for the regulation of athletic trainers. A one year delayed effective date has been consistently supported by the Legislature.

Thank you for the opportunity to testify on Senate Bill No. 155.



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

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2011

THURSDAY, FEBRUARY 3, 2011
9:00 A.M.

TESTIMONY ON SENATE BILL NO. 155
RELATING TO ATHLETIC TRAINERS

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND THE HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 155, Relating to Athletic Trainers. My name is Jo Ann Uchida of the Department's Regulated Industries Complaints Office ("RICO"). RICO does not support this bill in its current form and offers the following comments:

1) Scope of practice. "Practice of athletic training" as provided for in this bill overlaps into a number of other licensed professions, without offering a specific

exemption for existing licensees. Senate Bill No. 155 also does not explicitly address the extent to which scope of practice impacts other licensees. In addition, including the phrase "by a registered and certified athletic trainer" in the definition of "practice of athletic training" would preclude RICO from pursuing cases involving unregistered athletic trainer activities.

2) Practice of medicine; supervisory responsibility of treating physician. "Practice of athletic training" as set forth in this bill appears to fall within the definition of the practice of medicine under Chapter 453, Hawaii Revised Statutes ("HRS"). RICO is concerned that the bill as drafted would trigger possible unlicensed practice of medicine violations.

Also, the bill appears to provide for the participation of a treating physician who would supervise the athletic trainer. However, the bill does not have an affirmative statement that the athletic trainer may render treatment only under the direction of a treating physician. From an enforcement perspective, it would be difficult to take enforcement action if the relative responsibilities of the athletic trainer and the treating physician are not set forth in the respective licensing laws.

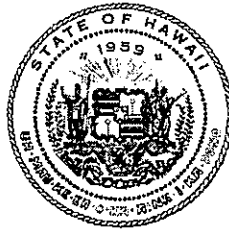
3) National Athletic Trainers Association Board of Certification. The bill as drafted provides for registration if the applicant has a current, unencumbered certification from the National Athletic Trainers Association Board of Certification. In checking the Board of Certification website, it appears that the organization has promulgated Professional Practice and Discipline Guidelines and Procedures that provide for a fairly detailed, confidential hearings process before adverse action is

taken on a certification. From an enforcement perspective, information on any investigations and hearing processes involving registrants would be critical. Senate Bill No. 155 in its current form does not require the registrant to timely disclose and authorize the release of all records relating to those investigations and proceedings as a condition of continued registration.

4) Civil penalties. The civil penalties referred to in section 8 of this bill (§436B-26.5, HRS) apply to situations in which unlicensed activity has occurred. Penalties should not be limited only to situations involving unlicensed activity.

5) Standards of Ethics. It appears that the National Athletic Trainers' Association has adopted a Code of Ethics, and the Board of Certification, Inc., has adopted a separate Standards of Professional Practice that includes practice standards and a Code of Professional Responsibility. Senate Bill No. 155 does not identify the standards of ethics that would be applied to registrants.

Thank you for this opportunity to testify on Senate Bill No. 155. I will be happy to answer any questions that the members of the Committee may have.



**TESTIMONY OF MARION M. HIGA, STATE AUDITOR
ON SENATE BILL NO. 155, RELATING TO ATHLETIC TRAINERS**

Senate Committee on Commerce and Consumer Protection

February 3, 2011

Chair Baker and Members of the Committee:

Thank you for this opportunity to express our concerns about Senate Bill No. 155. This bill proposes to regulate athletic trainers by offering title protection. This means that no one could represent, advertise, or announce oneself, either publicly or privately, as an athletic trainer or registered athletic trainer unless registered with the Department of Commerce and Consumer Affairs (DCCA). Registration would require athletic trainers to have a current certification issued by the Board of Certification, Inc. (BOC)—the independent credentialing body for the athletic training profession accredited by the National Commission for Certifying Agencies.

The bill references the sunrise analysis we performed in Report No. 10-08 in response to Act 108, SLH 2010. We analyzed Senate Bill No. 2601, Senate Draft 1, (S.B. No. 2601, S.D.1) of the 2010 session, which contains identical provisions as Senate Bill No. 155 (S.B. No. 155) relating to registration requirements and qualifications. We concluded that, as measured by the Hawai'i Regulatory Licensing Reform Act, the regulation of athletic trainers is not reasonably necessary to protect the public. The DCCA's Office of Consumer Protection has no records of any complaints relating to athletic trainers and the Hawai'i Athletic Trainers Association could provide only anecdotal evidence of harm. Although Hawai'i's athletes need appropriate care, other protections are in place.

Moreover, while some adjustments in S.B. No. 155 have been made to address flaws noted in S.B. No. 2601, S.D. 1, the regulatory process still appears more akin to licensure. For example, language in Section -7 creates licensure for an athletic trainer who is registered even though the bill is entitled “Athletic Trainer Registration Act.” Also, the addition of section -8 provides for civil penalties under the Uniform Professional and Vocational Licensing Act, Chapter 436B, Hawai‘i Revised Statutes. Licensure is the most restrictive form of regulation whereby the state issues a license that confirms that only licensees may practice in a well-defined scope of work. Generally the work is guided by rules and standards of practice and enforced by DCCA. Senate Bill No. 155 merely restricts the *use* of the title of “athletic trainer” to those who have been certified by the BOC. It does not restrict the *practice* to certified athletic trainers. Consequently, the proposed program offers no assurance that Hawai‘i’s athletes would receive specialized emergency care and appropriate treatment and rehabilitation.

If a *licensure* program is intended, state standards for minimum competency are not ensured. It is unclear whether the standards for minimum competency are covered under the general rulemaking provision in Section -9. In addition, no mechanisms are created to report and remedy malpractice or ethical violations. As we noted in our report, Section -7 in S.B. No. 155, like Section -6 in S.B. No. 2601, S.D. 1, seems related only to enabling reimbursement from third party insurance payers. Contrary to the policies established by the Legislature in the Hawai‘i Regulatory Licensing Reform Act, the bill’s primary purpose appears aimed at enhancing the profession and gaining reimbursement from insurers since most third party payers will reimburse only *licensed* health care providers.

We acknowledge the attempts to improve on the bill we analyzed, but regrettably cannot support the new bill. I would be pleased to answer any questions you may have.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Written Testimony Presented Before the
Committee on Commerce and Consumer Protection
February 3, 2010, 9:30 a.m.
Conference Room 229

By
Carl R. Clapp
Associate Director of Athletics
University of Hawai'i at Mānoa

SB 155 RELATING TO ATHLETIC TRAINERS

Chair Baker, Vice Chair Taniguchi, and members of the Committee:

I am Carl Clapp, Associate Director of Athletics for the University of Hawai'i at Mānoa, and I am presenting testimony for the University of Hawai'i regarding SB 155 relating to Athletic Trainers. We are aware that the National Athletic Trainers Association (NATA) and the Hawai'i Athletic Trainers Association support the registration of athletic trainers and that the Hawai'i is one of only a few states that does not require athletic trainers to be registered.

Athletic trainers at the University of Hawai'i are in compliance with the requirements of this bill including the following:

1. Having an unencumbered certification from the National Athletic Training Association (NATA) Board of Certification; and
2. Receiving direction for their work from a physician.

Athletic training is recognized by the American Medical Association (AMA) as an allied healthcare profession, and the AMA recommends athletic trainers in every high school to keep America's youth safe and healthy. Specifically, the Certified Athletic Trainer has demonstrated knowledge and skill in six practice areas or domains:

- Prevention
- Clinical Evaluation and Diagnosis
- Immediate Care
- Treatment, Rehabilitation and Reconditioning
- Organization and Administration
- Professional Responsibility

As part of a complete healthcare team, the athletic trainer works under the direction of a physician and in cooperation with other healthcare professionals, athletic administrators,

coaches and parents. The athletic trainer gets to know each patient individually and provides injury prevention, treatment, and rehabilitation.

The University of Hawai'i's practice in the past, and going forward, is to employ individuals that have the credentials required to be eligible for registration in the State of Hawai'i

Thank you for the opportunity to testify.

Testimony by:
Ann Frost, PT
SB 155, Relating to Athletic Trainers
Sen CPN, Thurs. February 3, 2010
Room 229, 9:00 am

Position: Opposed As Written, Amendments Offered



Chair Baker and Members of the Sen CPN Committee:

I am Ann Frost, P.T., President of the Hawaii Chapter – American Physical Therapy Association (HAPTA) and member of HAPTA’s Legislative Committee. HAPTA represents 1400 physical therapists and physical therapist assistants employed in hospitals, nursing homes, the Armed Forces, the Department of Education and Department of Health (DOH) systems, and private clinics throughout our community. Physical therapists work with everyone, from infants to the elderly, to restore and improve function and quality of life. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Physical therapy services are a vital part of restoring optimum function from neuromusculoskeletal injuries and impairments, improving wellness, and teaching prevention.

HAPTA opposes SB 155 as currently written. As discussed in the 2010 Session’s hearings for this issue, we strongly believe that definitions must be included for the terms “athlete” and “athletic injury” in the definitions section. These definitions recognize the specific population that certified athletic trainers are educated and trained to work with, primarily people who are preparing for or participating in competitive sports activities. Without the definition of those terms, consumer protection is extremely limited because the term “athlete” can be and has been applied very broadly to include everyone from those who are “week-end warriors” to those who exercise in any way, including going for a walk. HAPTA strongly recommends that definitions for both the term “athlete” and “athletic injury” be added to ensure consumer safety.

Recommended Definitions:

1. "Athlete" means a person who prepares for or participates in organized sports or sports-related activities, amateur or recreational sports involving athletic competition, performance arts, including interscholastic, intercollegiate, intramural, semi-professional and/or professional sports activities”
2. “Athletic Injury” means an injury that affects the preparation for or participation in organized sports or sports-related activities, amateur or recreational sports involving athletic competition, performance arts, including interscholastic, intercollegiate, intramural, semiprofessional and/or professional sports activities.”

Other Recommendations:

1. Deletion of Section 7: page 7, lines 19 to page 8, lines 1-9. This language would equate registration with licensure status. As written, it would degrade the more rigorous requirements of licensure, which requires rules and standards with a professional practice Board under DCCA.
2. Insertion of new language: page 8, lines 10. Section X. “The practice of athletic training does not include the practice of physical therapy.”

Ultimately, the physical therapy community is committed to health care provided by health care practitioners within their scope of education and training. We support regulation of allied health professionals’ scope of practice based on a national, standardized training curriculum to ensure that the consumers are receiving appropriate and safe care.

I can be reached at 382-2655 if you have any questions. Thank you for the opportunity to testify.



OCCUPATIONAL THERAPY ASSOCIATION OF HAWAII

1360 S. Beretania St., Suite 301, Honolulu, Hawaii 96814

Testimony by:

Avis Sakata, OTR

SB 155, Athletic Trainers

Senate CPN Hearing – Thurs. Feb. 3, 2011

Room 229 – 9:00 am

Position: Oppose, Amendments Offered

Chair Baker, and Members of the Senate CPN Committee:

I am Avis Sakata, OTR and president of the Occupational Therapy Association of Hawaii, (OTAH), which represents 603 occupational therapists (OTs) registered in Hawaii. OT's work in many settings throughout the State, including hospitals, schools, prisons, skilled nursing to private facilities and community-based programs.

Occupational Therapy is a science driven, evidenced-based profession that enables people of all ages, from infants to the elderly, to live life to its fullest by helping them promote health and prevent or live better with illness, injury or disability. Occupational Therapists are recognized members of the Healthcare Rehabilitation team which is comprised also of physicians, nurses, physical therapists, speech therapists, social workers and others. As a healthcare provider, OTs provide, but are not limited to: 1) assessment and evaluation of our patients/clients needs and development of an appropriate treatment plan, 2) interventions focused on daily living skills (including self-care), work readiness, play or educational performance skills, 3) and interventions that include sensorimotor, neuromuscular functioning, cognitive or psychosocial components.

OTAH supports the intent of this bill that would provide consumer protection from unqualified practitioners and protects qualified practitioners' rights to provide services. We agree that there is the potential for athletic trainers who have been censored in other states to practice in Hawaii and in the worst case scenario, an individual could set up his/her own practice and state that they provide athletic trainer services when in fact he/she may not have the professional qualifications which would definitely lead to consumer harm.

We recognize and appreciate the language in this bill that more clearly defines that the registered and certified athletic trainer may provide certain services to athletes. However, the bill does not address the definition of "athlete" or "athletic injury", which is critical to assuring consumers that they are seeking treatment from practitioners who are appropriately educated and trained for specific populations and care. As discussed in the 2010 Session, **we recommend the following definitions:**

Definition of athlete: A person who prepares for or participates in organized sports or sports-related activities, amateur or recreational sports involving athletic competition, or performance arts including interscholastic, intercollegiate, intramural, semiprofessional, or professional sports activities.

Definition of athletic injuries: Injuries that affect the preparation for or participation in organized sports or sports-related activities, amateur or recreational sports involving athletic competition, or performance arts including interscholastic, intercollegiate, intramural, semiprofessional or professional sports activities.

The insertion of these definitions will clearly state that the specific population that benefits from the existing education and training requirements of certified and registered athletic trainers will be assured of appropriate treatment.

I can be reached at 522-4602 if further information is needed. Thank you for the opportunity to submit testimony.

Testimony to the Senate Commerce and Consumer Affairs Committee

Senate Bill 155 Relating to Athletic Trainers

To: Chairperson Rosalyn Baker and Members of the Senate Committee on Commerce and Consumer Protection

Position: Strongly Support

The Hawaii Athletic Trainers Association strongly supports SB 155. Hawaii is one of only three states who do not currently regulate the profession of athletic training and we believe it is necessary to safeguard the public. Our association has tried to be proactive in this endeavor. One of the domains of our profession is "prevention" of injury and our profession understands that the best way to treat an injury is to prevent it from ever occurring. We feel the same way about preventing harm to the public. There have been near misses and close calls. Some schools have hired unqualified personnel to serve as athletic trainers. For example, an individual lied about being certified when he was not, and another individual began working in Hawaii when he was under federal investigation in another state.

The Board of Certification Inc. reports that over the past 5 years they have issued 960 disciplinary actions to athletic trainers across the county. About half of these were for athletic trainers who did not report continuing education within required timeframes and guidelines. The other half were for such things as irregularities in certification exams and exam applications, fraud, conviction of a felony or misdemeanor including DUI's, child pornography, engaging in sexual relationships with minors, insurance fraud, leaving the scene of an accident, and vehicular homicide. It is inevitable that Hawaii will become a dumping ground for those who have been disciplined in other states. We do not want to wait until a Hawaii patient, whether it be a student athlete, recreational, or professional athlete is harmed before legislation is enacted. Several years ago one of our members called the DCCA and RICO to report a complaint that a person who was serving as an athletic trainer was unqualified. The

person was not certified and had not finished college. DCCA referred her to RICO who told her there was nothing they could do since Athletic Trainers are not regulated.

The Hawaii High School Athletic Association has 98 member schools and about 36% (36/98) do not currently employ certified athletic trainers. There are schools in every league that do not employ certified athletic trainers. In the ILH, 13 of 26 schools, 50 % do not have athletic trainers and only 5 ILH schools employ full time athletic trainers. In the OIA 8 out of 31 schools do not hire athletic trainers. These are predominately charter schools. Although the State of Hawaii requires BOC Certification for employment eligibility, nothing requires that private schools use the same standards. Athletic trainers work in a variety of settings and those who work in school settings cannot be at all practices and events. We want to ensure that all athletes are treated by competent, well qualified, and ethical certified athletic trainers wherever they participate. We want to know that whomever is providing athletic training services is current on standards of care in such areas as concussion management.

What we seek in this bill is title protection, scope of practice, and the ability for the state to levy sanctions on those who attempt to practice without meeting minimum competency. That is what this bill provides, we urge you to pass it. Thank you for the opportunity to testify.

Cindy Clivio

Darryl Funai

Representing the Hawaii Athletic Trainers' Association



BOARD OF CERTIFICATION

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January 31, 2011

Roz Baker, Chair
Senate Consumer Protection Committee
Hawaii Senate
Hawaii State Capital
Honolulu, HI

Dear Ms. Baker and Committee Members,

The Board of Certification, Inc. (BOC) was incorporated in 1989 to provide a certification program for entry-level Athletic Trainers (ATs). Currently, there are 47 states that have licensure, certification or registration as their athletic training regulation.

The BOC supports state regulation for athletic trainers (ATs). The BOC certification program is a voluntary program. As such, we have the ability to take the ATC® credential from an individual who violates our standards of professional practice but that is the extent of our authority. State regulation provides legal authority to stop someone from practicing, someone who is a risk to the public. We rely heavily on the state's authority to be able to stop someone we have disciplined from actually practicing. When the BOC takes disciplinary action that affects someone's BOC certification, such as suspension or revocation; we notify the state regulatory agency the person has on file with our office. The BOC has not been able to do so for Hawaii because ATs are not regulated. In addition, regulated states are required to report disciplinary actions to the National Practitioners Database (NPDB); the BOC does not report cases to the NPDB.

Hawaii, California and Alaska are all at risk for becoming the states where disciplined or incompetent "ATs" can go to practice without reporting to anyone their previous professional and/or criminal record. Hawaii can prevent this from occurring by regulating ATs.

If you have questions, please don't hesitate to contact me. Thank you for your consideration.

Sincerely,

Shannon Leftwich, MA, ATC
Director of Credentialing Services