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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

Date: Monday, March 19, 2012
Time: 2:00 pm
Conference Room: 325

**TESTIMONY ON SENATE BILL NO. 2758 S.D. 1
RELATING TO BUSINESS REGISTRATION**

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

Thank you for the opportunity to testify. My name is Tung Chan, Commissioner of Securities and head of the Business Registration Division of the Department of Commerce and Consumer Affairs (Department). The Department strongly supports this administrative bill and the changes made by Senate Draft 1, which contains technical and non-substantive amendments. We note that on February 2, 2012, this Committee heard and passed the companion bill H.B. No. 2496 in its unamended form.

The business registration chapters of the Hawaii Revised Statutes (HRS) contain some errors, ambiguities, and inconsistencies. This housekeeping measure corrects these errors, ambiguities, and inconsistencies.

The bill makes corrections in the following areas:

1. Act 55, Session Laws of Hawaii (SLH) 2009, the Hawaii Registered Agents Act, was codified as Chapter 425R, HRS. Act 55 consolidated the provisions for registered agents to Section 425R-4, HRS, necessitating the revisions and deletions to the registered agent act provisions scattered throughout the statutes governing the different entities. Several of these scattered provisions were not covered in the previous legislative session. This bill makes the corrections in Chapters 414D (relating to nonprofit corporations), 415A (relating to professional corporations), and 425E (relating to limited partnerships), so that the registered agent provisions in these chapters are properly revised to delete some text and now point to the new Section 425R-4. These are technical amendments to make the statutes comply with Act 55.

2. Currently, to reinstate a business entity that has been dissolved or terminated by DCCA, a registrant must obtain from the Department of Taxation ("DOTAX") a certificate indicating tax clearance, a payment plan or an appeal. DOTAX provides letters, but not "certificates" for payment plans or appeals. The bill changes language in the statutes to include a "certificate or other writing" in order to clarify that DCCA will accept DOTAX's various written confirmations.

3. This bill addresses situations in which a business applies for a name that is substantially identical to another name already registered with DCCA. This bill clarifies that it is the subsequent filer that must register a new name and revises the

language so that it is consistent with the parallel provisions in each business registration chapter.

4. This bill makes technical corrections to Act 37, SLH 2011 to: (1) clarify that membership action may be taken by ballot as provided in the Model Nonprofit Corporation Act ("MNCA") and the Revised Model Nonprofit Corporation Act ("RMNCA") unless expressly prohibited by a nonprofit corporation's bylaws, and (2) conform the definition of the term "'approved by the members" or "approval by the members"' to the definition contained in the MNCA and the RMNCA by adding language stating that approval must be, at a minimum, a majority of a quorum.

Also relating to nonprofit corporations, this bill amends Section 414D-182, HRS, to clarify that proposed amendments to articles of incorporation may be submitted at a regular membership meeting. Currently, the statute specifies only annual and special meetings and erroneously omits regular meetings.

5. Lastly, this bill allows the Business Registration Division to accept filings signed by persons of foreign LLCs who have such legal authority, but do not have the specific title of "manager" or "member". Without this amendment, Chapter 428, HRS, would prohibit a foreign LLC that does not have a "manager" or "member" structure from filing as a foreign LLC in Hawaii. The bill helps clarify that foreign LLC's can file in Hawaii as long as they have someone who has legal authority to bind the LLC.

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To make the corrections and revisions enumerated above, we ask that the committee pass this bill in the Senate Draft 1 version that is currently before this committee. Thank you for the opportunity to testify.



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TESTIMONY TO
THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

RE: SB 2758 SD1 – Relating to Business Registration

Chair Herkes, Vice Chair Yamane and the members of the committee,

My name is Robert Witt and I am executive director of the Hawaii Association of Independent Schools (HAIS), which represents 99 private and independent schools in Hawaii and educates over 33,000 students statewide.

HAIS supports SB2758 SD1 which contains technical corrections to Hawaii's Nonprofit Corporations Act, which will make clear that nonprofit corporations who wish to take advantage of today's modern technology may do so in order to increase membership participation.

Thank you for the opportunity to testify.