



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 2494, RELATING TO THE UNAUTHORIZED PRACTICE OF LAW.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Monday, February 3, 2014

TIME: 2:10 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Robyn B. Chun, Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Attorney General would like to make the following comments on this bill:

This bill amends the current law on the unauthorized practice of law by more specifically identifying the actions or conduct that constitute the unauthorized practice of law in the State and the actions or conduct that are expressly excluded from that term.

As presently drafted, this bill provides that the unauthorized practice of law includes appearing on behalf of any person or entity in any hearing or proceeding in the State before a public agency or governmental body in a dispute resolution process with respect to any matter involving:

- (A) The rights or obligations of any person or property in the State; or
- (B) Any dispute to be resolved wholly or in part under the laws of the State;

(see p. 4, lines 3-19).

The inclusion of appearances on behalf of individuals in hearings before public agencies or governmental bodies in dispute resolution proceedings conflicts with present administrative rules that permit individuals (not only attorneys) to act in a representative capacity on behalf of others before a commission or hearings officer. See, e.g., Haw. Admin. R. § 2-14.2-5 (individual may appear on behalf of another individual before the Campaign Spending Commission); Rule 2, Section Two B., Judiciary Merit Appeals Board Rules (in any proceeding under these rules, an individual, employee organization or public employer may be represented by counsel or any other authorized person). The Attorney General recommends amending this bill to exclude those

proceedings before governmental bodies where administrative rules allow for representation by individuals who are not members of the Bar.

In enumerating the conduct that does not constitute the unauthorized practice of law, this bill uses the phrase “services customarily provided by” licensed real estate brokers and agents, title and escrow companies, accountants, lobbyists, and others. See p. 5, line 18- p. 6, line 13. The phrase “services customarily provided by” is vague, ambiguous, and subject to interpretation.

This bill limits standing or enforcement authority to the Attorney General. This limitation on enforcement is unwarranted. The current law authorizes both the Attorney General and “any bar association in this State”, section 605-15.1, Hawaii Revised Statutes (HRS), to maintain actions for the violation of section 605-14, HRS. The consumer protection law prohibiting unfair and deceptive trade practices authorizes the Attorney General to enforce civil and criminal violations but also allows the Attorney General to require that the corporation counsel or the prosecuting attorney of any county bring an action to enforce that law. HRS § 480-20(b). In addition, the director of the Office of Consumer Protection has concurrent jurisdiction to bring civil enforcement actions. HRS § 480-20(c). The Attorney General recommends broadening, rather than limiting, enforcement authority to help ensure prompt action to restrain violations.

The Attorney General has met with some of the proponents of this measure to discuss the foregoing comments and understands that they will be considered in amendments to be made in a forthcoming draft.

Thank you for the opportunity to make these comments.



The Judiciary, State of Hawai'i

Testimony to the House Committee on Consumer Protection and Commerce

Representative Angus McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

Monday, February 3, 2014, 2:10 p.m.
State Capitol, Conference Room 325

By
Elizabeth Zack
Supreme Court Staff Attorney

Bill No. and Title: House Bill 2494, Relating to the Unauthorized Practice of Law.

Purpose: Specifies acts that constitute the unauthorized practice of law and exempted acts. Establishes requirements for out-of-state attorneys to practice in Hawai'i.

Judiciary's Position:

The Judiciary respectfully opposes this bill and offers the following for consideration.

The supreme courts of the fifty states oversee and regulate the examination, licensing, and discipline of each respective state's attorneys. In Hawai'i, to address these duties, the Hawai'i Supreme Court, in accordance with HRS § 605-1 and HRS 605-6, established the Board of Examiners to review applications and administer the examinations for admission to the Hawai'i bar. Additionally, the supreme court adopted the Hawai'i Rules of Professional Conduct and established the Disciplinary Board and the Office of Disciplinary Counsel to oversee the conduct of attorneys. The other forty-nine states have similar entities.

The judiciary understands and agrees with the need to protect consumers. Nevertheless, with regard to the statements in section 1 setting forth harm experienced by Hawai'i residents due to the actions of out-of-state attorneys, there are existing remedies available. For example, such conduct can be reported to the attorney disciplinary authority in the state where the attorney is licensed to practice law. By proceeding in such a manner, the disciplinary authority can impose sanctions against the attorney, including, if warranted, disbarment from the practice of law. If any Hawai'i attorneys are involved in the action, a complaint can be filed with the Hawai'i Office of Disciplinary Counsel for review and imposition of sanctions, if warranted.



In reviewing the proposed amendments to HRS § 605-14, we note that in proposed subsection HRS § 605-14(b), which defines the behavior that constitutes the unauthorized practice of law, the listings are so extensive that the subsection may criminalize behavior that would not always be considered the practice of law.

In reviewing the proposed HRS § 605-14(c), which sets forth the exceptions to the law, it seems the exceptions are so generally defined that there are circumstances where individuals will be uncertain whether their actions fit under the exceptions. Moreover, some of the exceptions, such as the exception provided for law students in clinical programs (subsection (c)(10)(a)), and attorneys working for non-profit organizations providing legal services to indigent clients (subsection (c)(12)), are already addressed by supreme court rules. Including these exceptions within this proposed law clearly infringes on the supreme court's authority to adopt rules for the practice of law in Hawai'i. Further, subsection (c)(12) actually conflicts with the present Rule 1.16 of the Rules of the Supreme Court, which sets forth the requirements for limited admission of attorneys employed by non-profit organizations providing legal services to economically disadvantaged persons.

Finally, subsection (c) provides no exception for court clerks who sometimes assist self-represented parties in completing forms or documents. Consequently, the proposal, if adopted, may infringe upon access to justice for those individuals who choose to represent themselves, which is allowed under both the federal and state constitution.

With regard to proposed HRS § 605-14(d), which addresses the *pro hac vice* admission of out of state attorneys, we note that Rule 1.9 of the Rules of the Supreme Court of Hawai'i already sets forth the requirements for admission *pro hac vice* for attorneys who are not licensed in Hawai'i. The proposed language regarding *pro hac vice* admission conflicts with Rule 1.9 and infringes upon the supreme court's governance of practitioners as set forth in HRS § 605-6 such as restricting *pro hac vice* admission solely to instances in which the work cannot be competently performed by a Hawai'i attorney.

In summary, we recognize the need to protect consumers from unscrupulous attorneys, whether licensed in Hawai'i or elsewhere. The supreme court takes seriously its mandate to establish rules and regulations governing the practice of law in Hawai'i. To meet this mandate, the supreme court, in accordance with the law, established rules and procedures regarding the examination, licensing and discipline related to the practice of law. The supreme court is always open to discussion regarding proposed changes to any of these existing rules and we welcome any questions regarding these matters. Consequently, based upon all of the reasons set forth above, we respectfully oppose this bill.

Thank you for the opportunity to testify on House Bill 2494.

TESTIMONY

House Consumer Protection and Commerce Committee
Hearing: Monday, February 3, 2014 @ 2:10 p.m.

TO: Chair Angus McKelvey and Members of the House
Committee on Consumer Protection and Commerce

FROM: Calvin E. Young
President, Hawaii State Bar Association

RE: HB 2494 Relating to the Unauthorized Practice of Law

The comments provided are submitted on behalf of the Hawaii State Bar Association (HSBA).

The issue of the unauthorized practice of law is of great interest and importance to the members of the HSBA as it impacts the quality of legal services offered and provided to the people of the State of Hawaii. Negligent, or worse, intentionally misleading information, which is relied upon by unsuspecting consumers does not serve the public interest. Moreover the potential adverse impact, or adverse impact caused through the offering of misleading or erroneous legal advice may tarnish the reputation of Hawaii's legal community, which strives to uphold standards of high quality services and high ethical practices.

Due to time constraints and the fast pace of the legislative process, the Board of the HSBA has not had an opportunity to complete its review and analysis of this version of HB 2494 as introduced. The Board will continue its due diligence review, and will offer comments as the measure progresses. Thank you for the opportunity to provide our perspective.

OFFICERS

Calvin E. Young, President
Gregory K. Markham, President-Elect
Jodi Kimura Yi, Vice-President
Ronette M. Kawakami, Secretary
Mark M. Murakami, Treasurer

DIRECTORS

Nadine Y. Ando
Russ S. Awakuni
Cecelia C.Y. Chang
Steven J.T. Chow
Rebecca A. Copeland
Vladimir Devens
Rhonda L. Griswold
Geraldine N. Hasegawa (East Hawaii)
Karin I. Holma
Carol S. Kitaoka (West Hawaii)
Derek R. Kobayashi
Mei-Fei Kuo
Laurel K.S. Loo (Kauai)
Timothy P. McNulty (Maui)
Stephanie A. Rezens

YLD PRESIDENT

Malcolm L. Barcarse, Jr.

IMMEDIATE PAST PRESIDENT

Craig P. Wagnild

HSBA/ABA DELEGATE

James A. Kawachika

EXECUTIVE DIRECTOR

Patricia Mau-Shimizu

Testimony of the
HAWAII STATE BAR ASSOCIATION'S CONSUMER PROTECTION COMMITTEE
HB2494 – Relating to the Unauthorized Practice of Law

To: House Committee on Consumer Protection and Commerce
The Honorable Angus L.K. McKelvey, Chair
The Honorable Derek S.K. Kawakami, Vice Chair

From: A. Bernard Bays
Co-Chair, Hawaii State Bar Association's Consumer Protection Committee

Hearing: Monday, February 3, 2014, 2:10 p.m., Conference Room 325

Dear Chair McKelvey, Vice Chair Kawakami, and Members of the Committee on Consumer Protection and Commerce:

My name is Bernie Bays. I am co-chair of the Hawaii State Bar Association's Consumer Protection Committee and a licensed attorney practicing law in Hawaii for over forty years. While we support HB2494, we ask that the Committee defer consideration of this bill.

HB2494 was introduced to address the unauthorized practice of law in Hawaii by out-of-state attorneys. The practice of law by out-of-state attorneys in Hawaii is a growing concern because it affects the quality of services provided to Hawaii clients. Over the past few decades, there has been an influx of out-of-state attorneys with no understanding of Hawaii's laws and customs coming to Hawaii to engage in the unauthorized practice of law. This is a concern because many aspects of Hawaii law, which are grounded in Hawaii's unique heritage and culture, are different from other jurisdictions. For example, in Hawaii, there are two different systems of land registration, (1) the Regular System and (2) the Land Court System (i.e. Torrens). Hawaii law also incorporates many Hawaiian concepts (such as "kuleana" and "ahupua'a") and Hawaiian traditions (such as Native Hawaiian traditional and customary rights). Further, Hawaii's system of water rights is very different from other states because of its origins in Hawaiian traditions.

It is a problem for out-of-state attorneys to engage in the unauthorized practice of law in Hawaii because they are unfamiliar with Hawaii's laws and are unable to foresee these unique issues and adequately represent clients in Hawaii. The experiences of many in the community show that there are serious consequences stemming from out-of-state attorneys' lack of understanding. In my own experience, I have seen cases in which out-of-state attorneys have made serious errors based on their lack of understanding of the Hawaii legal system that have cost their clients millions of dollars.

The existing Statute is not sufficient to protect consumers from the unauthorized practice of law by out-of-state attorneys. Currently, out-of-state attorneys continue to engage in the practice of law in Hawaii without consequence. To address this issue, we sought to introduce

HB2494, which is aimed to protect consumers of legal services by deterring unlicensed out-of-state attorneys from engaging in the unauthorized practice of law in Hawaii.

Subsequent to the filing of HB2494, we met with various organizations and received valuable input regarding HB2494. We would like to address the concerns raised by those affected by this legislation while still fulfilling the aim of HB2494. In order to meaningfully account for these concerns, we require more time to work on our proposal. Therefore, we respectfully ask that this Committee defer HB2494.

We appreciate your consideration of HB2494. Thank you for this opportunity to testify.

**BEFORE THE HOUSE COMMITTEE
ON CONSUMER PROTECTION AND COMMERCE**

**Monday, February 3 at 2:10 p.m.
State Capitol, Conference Room 325**

**Regarding House Bill 2494
(Unauthorized Practice of Law)**

**Testimony of the Hawaii Society of
Certified Public Accountants**

Chair McKelvey, Vice-Chair Kawakami, and Members of the Committee:

My name is Michael Tanaka, president of the Board of Directors of the Hawaii Society of Certified Public Accountants. Our testimony is not in opposition of the intent of HB 2494, however, we have a concern about the Bill in its present form.

We think it should be clarified so that it does not unintentionally limit the activities that a Certified Public Accountant may perform. Under current law, a CPA may, for example, represent a taxpayer in an appeal before the Board of Review, challenging a tax assessment. Under federal law, a CPA may (after passing an examination) represent a client in the United States Tax Court. There are various other situations in which a CPA may lawfully and properly represent a client before various administrative agencies or tribunals.

In terms of protecting the public, CPAs are subject to stringent examinations, educational requirements, licensing procedures and disciplinary mechanisms. The Hawaii Board of Public Accountancy (the "Board") is responsible for the oversight and regulation of the practice of public accounting in Hawaii – Chapter 466, Hawaii Revised Statutes. Specifically, to be eligible to practice public accountancy a person must demonstrate good moral character, meet rigorous educational requirements, pass a national Uniform CPA Examination, and meet specific work experience requirements. HRS §466-5. CPAs must also comply with stringent continuing professional education requirements to maintain their right to practice.¹

Thus, it is unnecessary and inappropriate to restrict CPAs from performing services that they have historically been allowed to perform. To make it clear that HB 2494 would not do so, we suggest revising the language of paragraph 605-14(c)(6) to read:

¹ CPAs must complete 40 hours per year (80 hours per biennium) of continuing professional education, compared with only 3 hours per year for attorneys in Hawaii.

(c) This section shall not apply to the following:

...

(6) Services customarily provided by accountants including but not limited to preparing federal, state, or county tax returns, performing audits or reviews of financial statements, interpreting statutes, rules, and regulations relating to taxes or tax audits, representing taxpayers before administrative agencies or tribunals as allowed by the rules of such agencies or tribunals, and any other services in the State that are subject to regulation by the Board of Accountancy under Chapter 466;

We request your consideration to the suggested revision above. Thank you for the opportunity to testify.

Respectfully submitted,

Michael Tanaka, CPA
President
HSCPA Board of Directors

House Committee on Consumer Protection and Commerce
Representative Angus McKelvey, Chair
Representative Derek Kawakami, Vice Chair

Hearing Date: February 3, 2014 at 2:10 PM – Room 325

RE: HB 2494 – Relating to the Unauthorized Practice of Law

Chair McKelvey, Vice Chair Kawakami and members of the Committee, NAIFA (National Association of Insurance and Financial Advisors) Hawaii, is an association made up insurance agents/producers and financial advisors across Hawaii.

We respectfully **request an amendment to HB 2494, in Section 605-14(c) that identifies the exemptions to include Section 431, HRS, Hawaii’s Insurance Code.** A list of occupations that will be exempted and the services they perform are described in (c).

Insurance agents/producers are regulated by state law (Chapter 431, HRS) from the time they sit for the exam for their insurance license. Insurance agents, as part of their service continue to be regulated when they meet with clients, review policies, offer advice on policies, explain the myriad requirements, rules and regulations regarding the various insurance policies available in the marketplace. Additionally after licensing, insurance agents have to complete 24 hours of continuing education every two years to maintain their licenses.

Rather than harming consumers, insurance agents inform and educate their clients on the financial and insurance products they have purchased. This service to the clients usually do not require attorneys to be involved.

If insurance agents were banned from providing these services, service fees will have to be imposed on insurance consumers and costs may become prohibitive. Insurance agents do not provide professional legal advice or services based on legal competency. We agree with the U.S. Justice Department and the Federal Trade Commission in their comments to the Hawaii Supreme Court dated January 25, 2008, that they “are not aware of evidence of consumer harm arising from non attorneys providing services such as those referenced above that do not require the skill or knowledge of a lawyer but may still fall within the scope of the Rule.”

We appreciate this opportunity in offering this amendment to include Chapter 431, HRS in the listing of exemptions. Mahalo for your favorable consideration.

Cynthia Takenaka
Executive Director

February 3, 2014

The Honorable Angus L.K. McKelvey, Chair

House Committee on Consumer Protection and Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 2494, Relating to the Unauthorized Practice of Law

HEARING: Monday, February 3, 2014, at 2:10 p.m.

Aloha Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,300 members. HAR submits **comments** on H.B. 2494, which specifies acts that constitute the unauthorized practice of law and establishes requirements for out-of-state attorneys to practice law in Hawaii.

Through this measure, it would make clear that real estate brokers and salespersons established, regulated, and active under Hawaii Revised Statutes, Chapter 467, and Hawai'i Administrative Rules, Chapter 99, would not be deemed to practice law when performing services pursuant to their real estate license.

HAR respectfully submits the following language, to ensure that real estate brokers and salespersons are exempted:

Page 5, lines 18-20, and page 6, lines 1-3:

(3) A person currently licensed as an active real estate broker or salesperson in Hawaii pursuant to chapter 467, when acting in the capacity of a real estate broker or salesperson in accordance with customary industry standards; [~~Services customarily provided by licensed real estate brokers and salespersons for the sale or rental of real estate in the State;~~

~~(4) Services customarily provided by licensed real estate brokers and agents in the management of rental properties in the State;]~~

Mahalo for the opportunity to testify.



ALOHA SOCIETY OF ASSOCIATION EXECUTIVES
ASAE-Hawaii
P.O. Box 282
Honolulu, Hawaii 96809-0282

February 3, 2014

Testimony To: House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, Legislative Chairman
Aloha Society of Association Executives

Subject: H.B. 2494 – RELATING TO THE UNAUTHORIZED PRACTICE OF LAW.

Chair McKelvey and Members of the Committee:

I am Tim Lyons, Legislative Chairman for the Aloha Society of Association Executives. ASAE Hawaii is composed of individuals who, as a part of their daily activities manage non-profit trade associations. It is typical that the Association Executive acts as the administrative person for the Association and represents its members.

We think that this bill is entirely too broad. As defined, the unauthorized practice of law includes appearing on behalf of the Association before any arbitrator, mediator, public agency or hearings officer. It is not unusual for Association Executives to be called as expert witnesses regarding the standards of a particular industry. It would seem to us that at that point they are appearing on behalf of an entity. I am reminded recently of my own personal activities before the Public Utilities Commission in determination proceedings over a dispute as to whether they should be covered in the One Call Center law. I have also heard of Executive Directors appearing before hearing officers to

testify on behalf of a member regarding industry practices. It would appear to us that this is prohibited by the proposed Section 605-14(b)(2). In the case of the Public Utilities Commission, this included preparing documents on behalf of the Association "Instituting A Proceeding..." and "Information Requests" that was then submitted to a public agency. It would even seem that perhaps preparing the annual filing with the Business Registration Division as a document that is submitted to a public agency. This is routinely done by administrative staff not attorneys.

We are also troubled by Section 605-14(b)(4) which defines someone advising an entity in the state regarding the laws of the State. Certainly, Association Executives should not be providing legal advice, however it is quite common for us to receive questions from entities both in and out-of-state as to what the laws are regarding, as an example, a contractor's license (Chapter 444 HRS); who must have one and how you comply with the HAR to obtain one.

So while we appreciate the exemption that is allowed for in Section 605-14(c)(7) for lobbyists, it should probably extend as well to Association Executives who sometimes act as a lobbyist, but much of the time act as Association Executives.

In conclusion, while we can sympathize with the legal profession regarding their problem with unlicensed attorney's, as we have the same problem with a variety of professions and their unlicensed activity, we don't think that this bill solves the problem and it seems to go a long way towards furthering the legal profession for employment for a whole variety of reasons.

Based on the above, we oppose this bill as written.

Thank you.

Aloha Society of Association Executives – Hawaii Chapter **Membership List**

AlohaCare
Sheet Metal Contractors Association
Sales & Marketing Executives International - Honolulu
Hawaii Association of Independent Schools
Hawaii Society of CPAs
Organizations Management, LLC
Western Museums Association
Hawaii Association of Realtors
Waikiki Improvement Association
Painting & Decorating Contractors Association
Hawaii Tourism Wholesalers Assn.
General Contractors Association of Hawaii
Hawaii Orthopedic Association
Skal International Hawaii
Hawaii Wall & Ceiling Industry Association
St. Francis Healthcare System
The Legislative Center, Inc.
Hawai'i Alliance of Nonprofit Organizations
Hawaii Jewelers Assn/Hawaii Executives Assn.
Hawaii Association of Realtors
PROcom Hawaii
Pacific Telecommunications Council
CFA Society Hawaii
Building Industry Association of Hawaii
Hawaii Optometric Association, Inc.
Hawaii Bankers Association
Hawaii Insurers Council
Retail Merchants of Hawaii
Hawaii Transportation Association
Retail Merchants of Hawaii
Plumbing & Mechanical Contractors Association
Hawaii Association of Realtors
National Association of Insurance & Financial Advisors Hawaii
Hawaii Credit Union League
Honolulu Board of Realtors
Hawaii Lodging & Tourism
World History Association

TESTIMONY OF MICHAEL TANOUE

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Rep. Angus L.K. McKelvey, Chair
Rep. Derek S.K. Kawakami, Vice Chair

Monday, February 3, 2014
2:10 p.m.

HB 2494

Chair McKelvey, Vice Chair Kawakami, and members of the Committee on Consumer Protection and Commerce, my name is Michael Tanoue, counsel for the Hawaii Insurers Council, a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately one third of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council requests that HB 2494 be amended.

HB 2494 seeks to amend Section 605-14, Hawaii Revised Statutes, by adding four new subsections – subsections (b), (c), (d) and (e).

The Hawaii Insurers Council offers no comments regarding subsections (b), (d) and (e).

However, in the view of the Hawaii Insurers Council, subsection (c), which specifies certain services that are not prohibited by Section 605-14, is underinclusive. Omitted from the list of services exempted from the unauthorized practice of law are services customarily provided by insurers, insurance adjusters, insurance bill reviewers, and insurance producers licensed to conduct business in the State, as well as their respective employees.

The Hawaii Insurers Council requests that HB 2494 be amended to also exempt customary insurance services from the prohibition against the unauthorized practice of law. Insurance underwriters are frequently called upon to explain to consumers (i.e., the policyholders) the various policy provisions and their relationship to the Insurance Code. Loss control or risk management specialists advise clients about safety laws, regulations and standards, and ways to avoid losses. Insurance adjusters, those employed by an insurer or separately operating as third-party adjusters, often discuss legal issues with policyholders in the context of pending claims, mediations, arbitrations, and lawsuits. Insurance bill reviewers must apply the provisions of the Insurance Code and Hawaii court precedent to their review of submitted bills and may be required to explain their bill adjustment results to health care providers. On a daily basis, insurance producers are expected to explain policy coverages, exclusions and limits to their clients, the policyholders, and to provide guidance and advice about which insurance policies to purchase.

A law that requires insurers, adjusters, bill reviewers, producers, or the policyholders to retain a licensed attorney to advise about all insurance issues as they relate to Hawaii law would place an unreasonable and unnecessary financial burden on all participants in the insurance process.

Based on the foregoing, the Hawaii Insurers Counsel requests that HB 2494 be amended to insert, in an appropriate part of proposed subsection (c) of Section 605-14, the following additional exemption:

(c) This section does not apply to the following:

* * * *

(-) Services customarily provided by insurers, insurance adjusters, insurance bill reviewers, and insurance producers, as well as their respective employees;

* * * *

Thank you for the opportunity to testify.

**HOUSE COMMITTEE
ON
CONSUMER PROTECTION AND COMMERCE**

February 3, 2014

House Bill 2494 Relating to Unauthorized Practice of Law

Chair McKelvey and members of the House Committee on Consumer Protection and Commerce, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm).

State Farm proposes amendments to House Bill 2494. As currently worded, House Bill 2494 would prohibit the general counsel of the company from engaging in any activities involving the insurance division, including answering questions or handling referrals, or appearing on behalf of the company in legislative task forces and the like. It would even preclude ordinary “meet and greets” in social settings with division personnel.

We do not believe that this was or is the intent of the measure.

We therefore propose a revised section 9 to address this issue:

- (9) Services performed for a corporation by the director, officers, or employees of the corporation; provided that the services relate directly to the business of the corporation and do not involve appearance appearing in a formal hearing before a judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer, or governmental body in a dispute resolution process unaccompanied by a licensed attorney; this section shall not be interpreted as prohibiting a corporation from appearing through its director, officers, or employees, whether or not accompanied by a licensed attorney, at any hearing to provide testimony, a settlement conference, or a mediation.

We humbly request the amendment as proposed. Thank you for the opportunity to present this testimony.

Ronald I. Heller
700 Bishop Street, Suite 1500
Honolulu, Hawaii 96813

phone 808 523 6000 fax 808 523 6001
rheller@torkildson.com

**Before the House Committee
ON CONSUMER PROTECTION AND COMMERCE**

**Monday, February 3 at 2:10 p.m.
State Capitol, Conference Room 325**

**Regarding House Bill 2494
(Unauthorized Practice of Law)**

Chair McKelvey, Vice-Chair Kawakami, and Members of the Committee:

While I do not oppose the intent of House Bill 2494, I have a concern about the Bill in its present form.

Specifically, I think it should be clarified so that it does not unintentionally limit the activities that a Certified Public Accountant may perform. Under current law, a CPA may, for example, represent a taxpayer in an appeal before the Board of Review, challenging a tax assessment. Under federal law, a CPA may (after passing an examination) represent a client in the United States Tax Court. There are various other situations in which a CPA may lawfully and properly represent a client before various administrative agencies or tribunals.

In terms of protecting the public, CPAs are subject to stringent examinations, educational requirements, licensing procedures and disciplinary mechanisms. The Hawaii State Board of Public Accountancy (the "State Board") is responsible for the oversight and regulation of the practice of public accounting in Hawaii. *See* Chapter 466, Hawaii Revised Statutes. Specifically, to be eligible to practice public accountancy a person must demonstrate good moral character, meet rigorous educational requirements, pass a uniform national CPA examination, and meet specific work experience requirements. HRS §466-5. CPAs must also comply with stringent continuing professional education requirements to maintain their right to practice.¹

¹ CPAs must complete 40 hours per year (80 hours per biennium) of continuing professional education, compared with only 3 hours per year for attorneys in Hawaii.

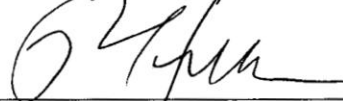
Thus, it is unnecessary and inappropriate to restrict CPAs from performing services that they have historically been allowed to perform. To make it clear that HB 2494 would not do so, I would suggest revising the language of paragraph 605-14(c)(6) to read:

(c) This section shall not apply to the following:

...

(6) Services customarily provided by accountants including but not limited to preparing federal, state, or county tax returns, performing audits or reviews of financial statements, interpreting statutes, rules, and regulations relating to taxes or tax audits, representing taxpayers before administrative agencies or tribunals as allowed by the rules of such agencies or tribunals, and any other services in the State that are subject to regulation by the Board of Accountancy under Chapter 466;

Respectfully submitted,



Ronald I. Heller

Marcella Alohalani Boido, M. A.
Certified Spanish Court Interpreter

2733 Kaaha Street A5
Telephone: 946-2558

Honolulu, Hawaii 96826-4736
E-mail: boido@hawaii.edu

TO: Rep. Angus L. K. McKelvey, Chair; Rep. Derek S. K. Kawakami, Co-Chair;
And all members, House Committee on Consumer Protection & Commerce

FROM: M. Alohalani Boido, M. A., Certified Court Interpreter

HEARING: February 3, 2014; 2:10 p.m., Rm. 325

RE: **SUPPORT with amendments, HB 2494,**
Relating to Unauthorized Practice of Law; Out-of-State Attorneys

Chair, Co-chair, and members of this Committee, thank you for hearing this bill. I am Marcella Alohalani Boido, a certified Spanish court interpreter. I am also a founding member of Hawaii Interpreter Action Network (HIAN) and the Chair of HIAN's Legislative Action Committee. Today I am testifying as a private citizen.

As a Spanish court interpreter, I have been made aware of problematic situations involving bilinguals who claim to provide legal advice and other legal services to our immigrant population. Specifically exempted from these situations are the provision of written translation of legal documents, a task that does not require a license to practice law.

Below I outline these situations. I leave the drafting of amendments to others.

- People who have or claim to have a law degree and/or have or have had a license to practice law from another country.
- Bilingual persons who claim to provide a sight translation only (reading out loud of a document written in one language, into another language) of immigration or other documents. Sight translation alone is legitimate. However, it would be very difficult to get someone to pay for that unless the person doing the sight translation is also giving

legal advice about how to fill out the document(s). One's client base might not grow if one limited oneself to sight translation alone.

- People who claim to be a *notario publico*. A *notario publico* is not a notary public. In some Spanish-speaking and European countries, a *notario publico* is a licensed attorney who also holds a special license from the government to provide services which in the U.S. are normally provided by government agencies. Such services include the registration, issuance, and the making of certified copies of certificates of birth, death, marriage, and divorce. A *notario publico* can also provide legal services.

The *notario publico* scam is very common on the Mainland, and several states have passed laws prohibiting it. Hawaii should also prohibit it. The American Bar Association has a page on its web site about this form of fraud, from which I quote:

“The term "notario publico" is particularly problematic in that it creates a unique opportunity for deception. The literal translation of "notario publico" is "notary public." While a notary public in the United States is authorized only to witness the signature of forms, a notary public in many Latin American (and European) countries refers to an individual who has received the equivalent of a law license and who is authorized to represent others before the government.”ⁱ

Please support HB 2494 with amendments. Thank you.

http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud/about_notario_fraud.html. Accessed on 1/31/2014.

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 01, 2014 1:55 PM
To: CPCtestimony
Cc: frncsmont@gmail.com
Subject: Submitted testimony for HB2494 on Feb 3, 2014 14:10PM

HB2494

Submitted on: 2/1/2014

Testimony for CPC on Feb 3, 2014 14:10PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Francisco Montes	Individual	Support	No

Comments: I am a Hawaii State Judiciary Certified Court Interpreter and I am writing in STRONG SUPPORT of HB 2494. I regularly see Spanish-speaking defendants or parties in court being given legal advice by unethical private interpreters who have absolutely no qualifications to be giving legal advice. This is very dangerous for the non- English speaking people that they are taking advantage of. Accordingly, I strongly encourage you to strengthen the laws against such practices by passing HB 2494. Thank you for your consideration, Francisco Montes Kula, Maui

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 31, 2014 9:29 AM
To: CPCtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB2494 on Feb 3, 2014 14:10PM*

HB2494

Submitted on: 1/31/2014

Testimony for CPC on Feb 3, 2014 14:10PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

LATE

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN OPPOSITION TO HB 2494, RELATING TO
THE UNAUTHORIZED PRACTICE OF LAW

February 3, 2014

Via e mail

Honorable Representative Angus L. K. McKelvey, Chair
Committee on Consumer Protection and Commerce
State House of Representatives
Hawaii State Capitol, Conference Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair McKelvey and Committee Members:

Thank you for the opportunity to testify in opposition to HB 2494, relating to the unauthorized practice of law.

Our firm represents the American Council of Life Insurers (“ACLI”), a Washington, D.C., based trade association with approximately 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. Two hundred twenty-five (225) ACLI member companies currently do business in the State of Hawaii; and they represent 92% of the life insurance premiums and 90% of the annuity considerations in this State.

Section 2 of HB 2494 defines the unauthorized practice of law to include the following acts by “. . . any person who has not been admitted to practice law in this State . . . :

. . .

(4) Advising any person or entity located in the State regarding the laws of the State. Page 4, at lines 3 -5; and page 5, at lines 8-9.

While the proposed bill exempts the “services customarily provided” by licensed realtors and accountants as constituting the unauthorized practice of law, the activities and services which insurers and a licensed life insurance producer authorized to do business in this State are not.

Insurers and their personnel process and negotiate claims made under the policies and contracts they issue to individuals and businesses. In many instances, this involves advising the insured of the insurer’s obligations, duties and rights to the insured under the laws of this State.

The services customarily provided by life insurance producers include advising individuals and businesses in securing life, disability and long term care insurance to provide financial security

and protection to individuals and their families as well as businesses resulting from death, illness and injury.

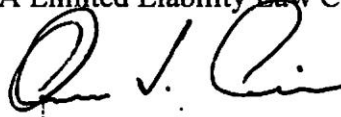
In the sale of life insurance products producers frequently provide information pertaining to Hawaii's laws of concern and importance to consumers and businesses alike such as estate and income tax, government provided benefits, including Medicaid, employer mandated health, disability and work-related injury benefits, and retirement income. Life insurance producers may recommend life insurance products such as life insurance, disability and long term care insurance and annuities as part of a plan to address these concerns. These products often play a key role in securing a business' continuity and ownership succession following the death or illness of a business owner and the financial security for families in the event of a bread winner's unexpected illness, injury or death.

A life insurer's activities and the activities of its producer's, as described above, may well be regarded as giving advice to "any person or entity located in the State regarding the laws of this State". If so, the personnel of all life insurers and their producers would be barred from engaging in the activities stated unless they were attorneys.

ACLI submits, therefore, that Section 2 of the proposed bill be amended to include an additional exemption as follows: "Services customarily provided by insurers and insurance producers authorized to do business in this State under the laws of this State."

Again, thank you for the opportunity to testify in opposition to HB 2494, relating to the unauthorized practice of law.

LAW OFFICES OF
OREN T. CHIKAMOTO
A Limited Liability Law Company



Oren T. Chikamoto
1001 Bishop Street, Suite 1750
Honolulu, Hawaii 96813
Telephone: (808) 531-1500
Facsimile: (808) 531-1600
E mail: otc@chikamotolaw.com