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From: mailinglist@capitol.hawaii.gov
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To: JUDtestimony
Cc: garibaldi@hawaiiinsurerscouncil.org
Subject: Submitted testimony for HB88 on Jan 29, 2013 14:00PM
Attachments: HB 88 tst, and.or.doc

HB88

Submitted on: 1/28/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
John Garibaldi		Oppose	Yes

Comments:

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January 28, 2013

Rep. Karl Rhoads, Chair
Committee on Judiciary
House of Representatives
Hawai'i State Legislature

Testimony in Opposition to HB 88, Relating to Construction of Laws

Date: Tuesday, January 29, 2013
Time: 2:00 p.m.
Place: Conference Room 325
State Capitol
415 South Beretania Street

Chair Rhoads and Members of the Committee:

My name is Tom Grande. I am an attorney in private practice and am testifying as an individual on this proposed legislation.

HB 88 seeks to repeal a long-standing rule of statutory construction that the terms "or" and "and" have the meaning of the other or of both.

At first glance, the change makes sense – words should be used in their ordinary meaning. However, if you look at the rationale behind the rule and at an example of its application, there are cogent reasons not to alter this rule of statutory construction.

This rule is applied "in order to arrive at a reasonable construction" "in construing ambiguous statutory language [to determine] the true meaning of ambiguous words ... by examining the context in which they are used." *Wee v. Board of Accountancy*, 51 Haw. 80, 84, 452 P.2d 94, 97 (Hawai'i 1969)(substituting "and" for "or" in construing HRS § 164-1(b); *In re Pratt*, 34 Haw. 935, 1939 WL 8141, *4 (Haw. Terr. 1939)(substituting "or" for "and" in construing Section 4850, R. L. 1935).

The rationale for the rule is to allow the court to construe "the sense of a word which harmonizes best with the whole context of the statute and promotes in the fullest manner the apparent policy and objects of the legislature" *In re City & County of Honolulu Corporation Counsel*, 54 Haw. 356, 374, 507 P.2d 169, 178 (1973).

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An example of how this statutory construction rule is used is the prohibition on “unfair or deceptive acts or practices” contained in HRS § 480-2, which prohibits “Unfair...acts or practices” and “Deceptive...acts or practices.”

Read literally (as would be required by the proposed amendment) a practice that is both unfair and deceptive is not actionable; the act or practice must be either unfair or deceptive; similarly, the action must be either an act or a practice, not both, to be actionable.

This is just one example. Unless the legislature is willing to go back through all of its statutes to amend them to conform to the new rule of statutory construction, this proposed amendment is ill-advised.