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

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH STATE LEGISLATURE  
REGULAR SESSION, 2014

MONDAY, MARCH 17, 2014  
2:10 P.M.

TESTIMONY ON SENATE BILL NO. 2076  
RELATING TO UNLICENSED CONTRACTOR FRAUD

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND TO THE HONORABLE DEREK S.K. KAWAKAMI, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 2076, Relating to Unlicensed Contractor Fraud. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following testimony in support of this bill.

Senate Bill No. 2076 amends §708-8302, Hawaii Revised Statutes ("HRS"), to clarify that the "intent to deprive" under the offense of unlicensed contractor fraud may be formed before or after a person obtains or exerts control over the

property of another. The bill provides additional guidance for enforcement of the offense of unlicensed contractor fraud by specifying when the "intent to deprive" may be formed. This Committee heard a similar bill, House Bill No. 1639, and passed out that bill without amendments.

As background, §708-8302, HRS, was enacted in 2012 as part of Act 244 and represents the collaborative work of the Unlicensed Contractor Law Enforcement Task Force. RICO was a member of the Task Force. Act 244 added an existing misdemeanor unlicensed contracting offense to the Penal Code and created new offenses for habitual unlicensed contracting activity and unlicensed contractor fraud. RICO supports Senate Bill No. 2076 because it will assist law enforcement efforts to prosecute the offense of unlicensed contractor fraud.

Thank you for this opportunity to testify on Senate Bill No. 2076. I will be happy to answer any questions that the members of the Committee may have.

**PRESENTATION OF THE  
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2014

Monday, March 17, 2014  
2:10 p.m.

**TESTIMONY ON SENATE BILL NO. 2076, RELATING TO UNLICENSED  
CONTRACTOR FRAUD.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Peter H.M. Lee, Chair of the Contractors License Board's Legislative Committee. Thank you for the opportunity to testify in support of Senate Bill No. 2076, which proposes to clarify the offense of unlicensed contractor fraud by specifying that the "intent to deprive" may be formed before or after the person obtains or exerts control over the property of another. The Contractors License Board supports this measure as it provides consumer protection by enhancing the prosecution of unlicensed contractor fraud.

Thank you for allowing us the opportunity to testify on Senate Bill No. 2076.

# *SAH - Subcontractors Association of Hawaii*

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March 17, 2014

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

Presented By: Tim Lyons  
President

Subject: S.B. 2076 - RELATING TO UNLICENSED CONTRACTOR FRAUD.

Chair McKelvey and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following nine separate and distinct subcontracting organizations.

Those organizations are:

HAWAII FLOORING ASSOCIATION  
ROOFING CONTRACTORS ASSOCIATION OF HAWAII  
HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION  
TILE CONTRACTORS PROMOTIONAL PROGRAM  
PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII  
SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII  
PAINTING AND DECORATING CONTRACTORS ASSOCIATION  
PACIFIC INSULATION CONTRACTORS ASSOCIATION  
ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

We support this bill.

The subject of unlicensed contractors is often the number one complaint that licensed contractors have. We find it particularly objectionable to complain about unlicensed contractors on the one hand and aid and abet them on the other hand.

Therefore, since this bill will allow the Board to discipline licensees for assisting unlicensed contractors we agree and support it.

Thank you for the opportunity to testify.

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**THE HONORABLE ANGUS MCKELVEY, CHAIR**  
**HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**  
Twenty-Seventh State Legislature  
Regular Session of 2014  
State of Hawai'i

March 17, 2014

**RE: S.B. 2076; RELATING TO UNLICENSED CONTRACTOR FRAUD.**

Chair McKelvey, Vice-Chair Kawakami, members of the House Committee on Consumer Protection & Commerce, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony, in **strong support** of S.B. 2076. The purpose of this bill is to clarify that "intent to deprive" may be formed before or after a perpetrator obtains control over a victim's property, for purposes of the Unlicensed Contractor Fraud statute.

Section 708-8302, Hawaii Revised Statutes, defines Unlicensed Contractor Fraud using two "terms of art": "deception," and "intent to deprive." When this statute was enacted in 2012, it included a definition of "deception" in subsection (2), such that: "Deception, as defined in section 708-800, includes deception as to a person's status as a licensed contractor or as to permits required to engage in the activity." However, the statute does not include a definition of "intent to deprive."

Current language of the Unlicensed Contractor Fraud statute requires that the perpetrator's intent to deprive exist "while engaged" in unlicensed contractor activities. Yet it is unclear from the statute whether that intent must also exist *before* the perpetrator obtains control over the victim's property. The proposed definition removes that ambiguity by clarifying that the intent to deprive may be formed before or after the perpetrator obtains control over the victim's property, provided that the perpetrator is engaged in unlicensed contractor activities at that time.

The proposed definition is consistent with the recent Hawaii Supreme Court case, State v. Atwood, which recognized that an "intent to deprive" could be formed before or after the perpetrator obtained control over the victim's money. See Atwood, 129 Hawaii 414, 421, 301 P. 3d 1255, 1662 (2013). The Court further held that a breach of contract, accompanied by an intent to deprive, was sufficient to establish criminal liability. See Atwood, 129 Hawaii at 420, 1261.

For the foregoing reasons, the Department of the Prosecuting Attorney, City and County of Honolulu, strongly supports S.B. 2076. Thank you for the opportunity to testify on this matter.