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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-EIGHTH STATE LEGISLATURE
REGULAR SESSION, 2016**

**MONDAY, FEBRUARY 1, 2016
2:00 P.M.**

**TESTIMONY ON HOUSE BILL NO. 1565
RELATING TO INFORMATION PRACTICES**

**TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND TO THE HONORABLE JUSTIN H. WOODSON, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No.1565, Relating To Information Practices. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department opposes this bill.

House Bill No. 1565 amends §92F-14, Hawaii Revised Statutes ("HRS"), to delete "the record of complaints including all dispositions" as an exception to the

types of information in which an individual has a significant privacy interest.

Similar bills have been introduced in the past several years, most notably House Bill No. 1212 (2010), which was vetoed by the Governor, and House Bill No. 717 (2013), which was not heard.

House Bill No. 1565 would preclude government from disclosing the existence of consumer complaints unless and until those complaints result in disciplinary action by the government agency. Several of the Department's programs, including RICO, would be impacted by this bill to the extent they currently provide licensee complaints information to the public and encourage consumers to check licensing and complaints history prior to hiring licensed professionals.

House Bill No. 1565 would also prevent the Department from informing consumers of the existence of pending investigations. This is particularly significant information when businesses fail or shutdown or when consumers are evaluating whether to hire a licensed professional. In these instances, the Department would no longer be able to assure consumers that it is investigating a particular business or licensee or to inform consumers of the number of pending complaints that have been filed. It is important that the Department have the ability to provide timely and meaningful information to consumers when they need it most.

Currently, and in accordance with §92F-14(b)(7), HRS, RICO provides complaints information to consumers through its complaints website and upon telephone or written request. Website information, in the form of a Complaint

History Report, includes the respondent's name, case number, general allegations, and outcome once a complaint is closed. For pending complaints that are reported, the website contains the case number, but indicates that no further information is available. As the repository of complaints information, the Department has endeavored to report the information online in a manner that is as neutral and objective as possible and believes that the specific, limited complaints information it currently discloses appropriately balances a licensee's significant privacy interests against the benefit to consumers in accessing information about the individuals they may hire.

The Department notes that many complaints are not included in RICO's public complaints database. Upon receipt of a complaint, there is a concerted effort to determine whether there is sufficient cause to investigate the complaint and to include in the Complaint History Report only those cases in which an investigation is warranted.

Website usage data shows that the RICO complaints history website was viewed 401,658 times in 2015. Such data confirms that consumers are accessing RICO's complaints information online. Under House Bill No. 1565, these consumers will no longer have the benefit of any complaints information.

In addition to the adverse impact House Bill No. 1565 would have on the availability of complaints information to consumers, the Department believes that House Bill No. 1565 would preclude it from disclosing information on pending cases or cases closed without legal action to 1) investigative and expert witnesses who may possess information or documentary evidence relating to a pending

Testimony on House Bill No. 1565

February 1, 2016

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investigation; 2) other divisions within the Department, including the Professional and Vocational Licensing division and the Office of Administrative Hearings; and 3) the licensing boards. Such restrictions would require the Department to extensively modify its current operations.

For the foregoing reasons, the Department respectfully opposes this bill.

Thank you for the opportunity to testify in opposition to House Bill No. 1565. I will be happy to answer any questions the Committee may have.

OFFICE OF INFORMATION PRACTICES

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EMAIL: oip@hawaii.gov

To: House Committee on Consumer Protection & Commerce

From: Cheryl Kakazu Park, Director

Date: February 1, 2016, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 1565
Relating to Information Practices

Thank you for the opportunity to submit testimony in opposition to this bill.

The Office of Information Practices (“OIP”) administers Hawaii’s public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (UIPA). Since its adoption in 1988, the UIPA has made clear that any individual granted any type of license in the State does not have a significant privacy interest in “the record of complaints including all dispositions” so that the UIPA’s privacy exception provided in HRS section 92F-13(1) could not apply to exempt such records from public disclosure. Thus, currently under the mandatory disclosure requirements of the UIPA, the public has access to complaint records about any and all licensees.

This bill proposes to eliminate the UIPA’s mandatory disclosure requirements for all licensees’ complaints records so that these records would potentially be eligible for protection from public disclosure under the UIPA’s exception for a “clearly unwarranted invasion of personal privacy.” **In effect, this bill would overturn the current policy that has existed for more than 25**

years of allowing the public access to complaint records about licensees. This bill would have a dramatic and widespread effect because it seeks to eliminate public access to the complaint records pertaining to any and all individuals licensed by any agency in the State, such as nursing home operators, doctors, travel agents, and teachers.

Additionally, this bill would require OIP to conduct a case-by-case analysis of whether a licensee's significant privacy interest in complaint records is outweighed by the public interest in disclosure of the records. With such a potential increase in workload, **OIP would need additional staffing and resources.**

OIP understands the desire of persons falsely accused of improper professional or vocational activity to protect their reputation. However, in originally providing express access to licensees' complaint history information, the Legislature apparently believed that consumers had a right to access licensee complaint information that could potentially protect them and that **the public could give appropriate weight to pending complaints or complaints that resulted in no findings of misconduct.** Accordingly, OIP has long agreed that **the disclosure of complaint information is valuable to consumers and furthers the public interest in ensuring accountability of government agencies in carrying out administration of laws and regulations governing businesses and designed to protect consumers.** Therefore, we urge this Committee to reject this bill.

Thank you for the opportunity to testify.

February 1, 2016

The Honorable Angus L.K. McKelvey, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 1565, Relating to Information Practice

HEARING: Monday, February 1, 2016 at 2:00 p.m.

Aloha Chair McKelvey, Vice Chair Woodson, 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 8,800 members. HAR **supports** H.B. 1565 which removes a record of complaint as a type of information that is subject to disclosure as a public document.

HAR believes that it is fair and reasonable to remove complaints from a licensee's record which do not result in any violation after an investigation is conducted by the Regulated Industries Complaints Office.

HAR believes this measure would treat Hawaii's regulated licensees and businesses like most other states from a due process perspective. As such, only complaints that have been resolved and violations were found should be disclosed to the public.

Mahalo for the opportunity to testify.

Hawaii State Legislature
State House of Representatives
Committee on Consumer Protection and Commerce

Representative Angus L. K. McKelvey, Chair
Representative Justin H. Woodson, Vice Chair
Committee on Consumer Protection and Commerce

Monday, February 1, 2016, 2:00 p.m. Room 325
House Bill 1565 Relating to Information Practices

Honorable Chair Angus L. K. McKelvey, Vice Chair Justin H. Woodson and
members of the House Committee on Consumer Protection and Commerce,

My name is Russel Yamashita and I am the legislative representative for the Hawaii Dental Association and its 960 member dentists. I appreciate the opportunity to testify in support of HB 1565 Relating to Information Practices. The bill before you today would seek to provide basic due process for those licensees who have complaints filed against them with any State or County agency.

Since 2008, the HDA, along with other concerned professions and vocations, have sought to obtain a semblance of justice from the Legislature in the blatantly unfair and unconscionable act of the public listing of unfounded and unsubstantiated complaints against licensees. It is important to note that Hawaii is the only state that provides for the unresolved and uninvestigated complaints to be listed for the public.

The information practices law was enacted in 1986 and remains essentially unamended. No law is the holy grail and should be amended or repealed as necessary when experience and usage provide basis for change. Currently, the Professional and Vocational Licensing (PVL) Division alone issues 48 different licenses and has over 150,000 licensees. The Regulated Industries Complaints Office (RICO) is tasked to investigate and prosecute licensees for any violations of their respective licensing statutes or rules.

As the HDA has stated time and time again, the listing of all complaints on the RICO website which have been unresolved and, in many cases, even when no violation has been determined by an investigation has continued unabated. Efforts by RICO to segment the complaint information on the website really serves neither the public or any licensee.

In the end, what really needs to be done is to provide the public the same level of real protection by our government by providing quick investigations, rapid prosecution of violations, and quick resolution of complaints which result in proper and just sanctions when violations are found to be valid. In those cases where sanctions are imposed, then that information should be fully disclosed to the public.

In those cases where no violations are determined by investigators, then those complaints should never be disclosed to the public. Essentially, Hawaii is pretty much alone in allowing for public lynching of a licensee's reputation on an unfounded complaint. In today's world, one can see how websites like Yelp and Trip Advisor allow comments and complaints to be posted about any business with little recourse for the business.

After years of complaints and threats of law suits for defamation, at least Yelp has imposed some guidelines for posting of comments to provide at least some level of fairness for the affected business. In Hawaii's case, the information practices law only serves to allow any anonymous complaint to damage the reputation of a licensee of PVL with no effective recourse for the licensee.

It also serves to waste the limited governmental resources of agencies like RICO who are saddled with decisions to constantly screen the information on their own website for the three different types of complaints, how to apply three different time periods on the website, and which of the two sections the complaint belongs in. What a mind boggling set of rules for what essentially should be a simple task, inform the public of those licensees who have violated the law and have been sanctioned. This is not rocket science and there is no need for any convoluted decision making algorithm to run the website.

Please be aware that this legislation also addresses those public complaints against any licensee of any State or County agency. One only has to see the implications of how the current law is not being complied with many governmental agencies across the entire state. For example, look at each county's liquor commissions. If a member of the public wanted to see if a bar, restaurant or dispensing employee has a complaint, there would be no way any of the four agencies would be able to comply to a request in a timely manner. What would stop a member of the public from filing a law suit to force the compliance of the information practices act against a county? This kind of legal conundrum could easily run in to the millions of dollars to defend if all State and County agencies were sued in a class action lawsuit for failure to comply with the current law. Think about the financial impact to fully defend this law.

Finally, I would like to point out there are a class of licensees who hold a license which the current law does not apply to. Lawyers, yes the very people who make use of this law every day. The deputy attorney generals advising the boards and commissions, the RICO staff attorneys who prosecute the complaint violations, the hearings officers who render a ruling for the licensing agency, all of them, including myself, are safe from RICO's website because lawyers are licensed by the State Judiciary and disciplined by the Office of Disciplinary Counsel who is not required to comply with this law, since it only applies to the Executive Branch of Hawaii.

With that last bit of irony, the Hawaii Dental Association supports the passage of HB 1565.



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HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Monday, February 1, 2016, 2 pm, House Conference Room 325
HB 1565 RELATING TO INFORMATION PRACTICES
TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair McKelvey, Vice Chair Woodson, and Committee Members:

The League of Women Voters of Hawaii opposes HB 1565 which removes a record of complaint against a licensee as information subject to public disclosure under UIPA. We believe that the public interest in disclosure of complaints outweighs any potential for private harm.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 27, 2016 7:04 PM
To: CPCtestimony
Cc: dylanarm@hawaii.edu
Subject: *Submitted testimony for HB1565 on Feb 1, 2016 14:00PM*

HB1565

Submitted on: 1/27/2016

Testimony for CPC on Feb 1, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong	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.

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 29, 2016 2:03 PM
To: CPCtestimony
Cc: barbarapolk@hawaiiantel.net
Subject: Submitted testimony for HB1565 on Feb 1, 2016 14:00PM

HB1565

Submitted on: 1/29/2016

Testimony for CPC on Feb 1, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Oppose	No

Comments: The desire of some licensees to have criticisms of their work held in confidence comes up almost every year. In one recent year, I looked up the record of each of the dentists who signed a petition asking that complaints against them not be listed--and found that there were NO complaints listed against any of them! The fear that some licensees have that someone will file a false complaint is something that would rarely happen, since all complaints are screened before they are posted on-line. The interests of the general public clearly outweigh the interests of licensees in hiding complaints against them. The ability to check on complaints against a licensee helps protect the public against those who do shoddy work or should not be in the business. If this change is made in our laws, preventing the careful work that is done in screening complaints, people will turn instead to internet word-of-mouth sources where false or exaggerated complaints are much more likely to be found. This would do a disservice both to the licensees and to the public. I urge the committee to reject HB 1565.

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.

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 30, 2016 4:50 PM
To: CPCtestimony
Cc: patriciablair@msn.com
Subject: Submitted testimony for HB1565 on Feb 1, 2016 14:00PM

HB1565

Submitted on: 1/30/2016

Testimony for CPC on Feb 1, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Blair	Individual	Oppose	No

Comments: Absolutely oppose weakening this. Dumb idea.

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.

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LATE

House Commerce + Consumer Protection Committee
Chair Angus McKelvey, Vice Chair Justin Woodson

Monday 02/01/2016 at 2:00 PM in Room 325
HB 1595 – Relating to Information Practices

TESTIMONY — OPPOSITION
Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair McKelvey, Vice Chair Woodson, and House Commerce + Consumer Protection Committee members:

Common Cause Hawaii opposes HB 1595 which would remove a record of complaint as a type of information that is subject to disclosure as a public document.

If passed, HB 1595 could make a record of complaint against a law enforcement officer completely private. As law enforcement officers are figures of authority, we believe that such information should be disclosed to the public.

Thank you for the opportunity to offer testimony opposing HB 1595.



LATE

**Monday February 1, 2016
2:00 PM.
Capitol Rm. 325**

To: HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Rep. Angus McKelvey, Chair
Rep. Justin Woodson, Vice Chair

From: Hawaii Medical Association
Dr. Scott McCaffrey, MD, President
Dr. Linda Rasmussen, MD, Legislative Co-Chair
Dr. Ronald Keinitz, MD, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

Re: HB 1565 - RELATING TO INFORMATION PRACTICES

IN SUPPORT, WITH AMENDMENTS

Chair, Vice Chair, and Committee Members:

The Hawaii Medical Association supports HB1565 in general, however expresses concern that the presence of a complaint against a professional license remain private until the point that investigation determines validity and disciplinary consideration and the licensee receives due process. The presence of a complaint on a professional license has real ramifications ranging from the ability to serve on professional boards and in hospitals, to the trust of our patients/clients. Please amend the bill to make this limitation clear and definitive.

Thank you for the opportunity to provide this testimony.

OFFICERS

**PRESIDENT – D. SCOTT McCAFFREY, MD, PRESIDENT ELECT – BERNARD ROBINSON, MD
IMMEDIATE PAST PRESIDENT – ROBERT SLOAN, MD, SECRETARY - THOMAS KOSASA, MD,
TREASURER – MICHAEL CHAMPION, MD, EXECUTIVE DIRECTOR – CHRISTOPHER FLANDERS, DO**

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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LATE TESTIMONY

House Committee on Consumer Protection & Commerce
Honorable Angus L.K. McKelvey, Chair
Honorable Justin H. Woodson, Vice Chair

RE: Testimony Commenting on H.B. 1565, Relating to Information Practices
Hearing: February 1, 2016 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony on H.B. 1565. The Law Center **opposes** this bill.

H.B. 1565 concerns the standard for public access to the history of complaints against licensed professionals. The 1988 Legislature correctly recognized that the public deserves timely access to information about the doctors, dentists, realtors, accountants, psychologists with whom consumers or patients will be entrusting their life, home, finances, and most intimate secrets. Muzzling access to officially filed complaints would be an egregious public disservice. And unless this Legislature plans to censor the Internet, H.B. 1565 will do nothing to save the reputations of licensed individuals against a motivated complainant who can post negative reviews and substantive complaints on any number of websites.

Moreover, the information currently made available preserves any potential privacy concerns. The Department of Commerce and Consumer Affairs (DCCA) does not publish mere allegations. While investigating a complaint, DCCA only reveals that a complaint is pending without detailing the nature of the complaint. Once the investigation is completed, DCCA posts the nature of the complaint and the outcome, including whether or not the individual violated licensing regulations and discipline, if any, imposed. Licensed individuals receive due process before negative information is disclosed, and DCCA publicly exonerates innocent licensees when appropriate.

For the practical implications of H.B. 1565, take the example of Lilly Geyer. Dr. Geyer was the licensed dentist implicated in the December 2013 incident that left 3 year old Finley Boyle in a coma until she died a month later. Without the DCCA's complaint history, the only official information about Dr. Geyer would reflect that she was licensed by the State of Hawai'i to practice dentistry through December 31, 2015. With the complaint history, the public would know that three official complaints are currently pending before the DCCA. When a professional is licensed by the State--