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

TO THE HOUSE COMMITTEE
ON
JUDICIARY

TWENTY-NINTH STATE LEGISLATURE
REGULAR SESSION, 2017

FRIDAY, FEBRUARY 24, 2017
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 1081 H.D.2
RELATING TO CITATIONS FOR BEAUTY CULTURE VIOLATIONS

TO THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR,
AND TO THE HONORABLE JOY A. SAN BUENAVENTURA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 1081 H.D.2, Relating to Citations for Beauty Culture Violations. 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 strongly supports Section 1 of this Administration bill and offers comments on Section 2 of the bill.

Section 1 of House Bill No. 1081 H.D.2 authorizes RICO to issue citations to beauty culture licensees for certain violations of the beauty culture laws. The

— ATTACHMENT 1 —

citation process requires personal service of the citation upon the licensee and affords the licensee the opportunity to request a hearing to contest the citation within twenty calendar days. Section 1 also provides that failure to pay any assessed fine within thirty calendar days may subject the licensee to further disciplinary action.

Section 1 of House Bill No. 1081 H.D.2 establishes a citation process as an additional enforcement tool to address the following specific, technical beauty culture violations by licensees or permittees: (1) failure to conspicuously display a license or permit while engaged in the practice of cosmetology; (2) failure of a beauty shop owner or beauty school to ensure that only appropriately licensed or permitted individuals engage in the practice of cosmetology in the beauty shop or beauty school; (3) failure of a beauty shop to conspicuously display a sign indicating that a price list is available upon request; (4) failure of a beauty school to identify instructors and instructor-trainees with appropriate name tags; (5) failure of a beauty school to operate with an instructor-student ratio of one instructor for every twenty-five students or with a minimum of two licensed instructors; and (6) failure of a beauty school that performs work on members of the public to conspicuously display a sign indicating work is performed by students under supervision.

Section 1 of House Bill No. 1081 H.D.2 will expedite RICO's enforcement of certain technical violations of the beauty culture laws and will promote swift compliance by licensees and permittees. Section 1 will also enable RICO staff to concentrate its efforts and resources on other violations.

Section 2 of House Bill No. 1081 H.D.2 requires a cosmetology license for persons who sell or demonstrate beauty products or techniques for promotional purposes, unless the person is not compensated and obtains written consent to provide the service from the person receiving the service.

RICO notes HAR §16-78-36(4) specifically exempts manufacturer's representatives or sales persons who sell beauty products or techniques for promotional purposes without compensation from cosmetology licensing requirements. While we appreciate enforcement concerns about the sale and demonstration of beauty products, we are concerned that requiring licensure for anyone who is paid to sell beauty products would require licensure for conduct not traditionally covered under Hawaii law. We believe to address the inconsistency and facilitate appropriate enforcement, specific amendments to the definitions of "cosmetologist" and "cosmetology" would be necessary and that further discussion with the Board and stakeholders is appropriate.

Thank you for the opportunity to testify in strong support of Section 1 of House Bill No. 1081 H.D.2 and to offer comments on Section 2 of the bill. I will be happy to answer any questions the Committee may have.



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AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Rosalyn Baker, Chair
Committee on Consumer Protection and Health
Hawaii State Senate

LATE TESTIMONY

Hearing: March 14, 2017 at 9:00am; Room 229

Re: HB 1081, HD2 --- Relating to Citations For Beauty Culture Violations

Dear Chair Baker and Honorable Committee Members:

My name is Peter Fithian and I am the Legislative Chair for the Airports Concessionaires. Our Committee represents the majority of the concessions at Hawaii's public airports. Airport concessionaires historically generate more than 50% of the airport-systems operations which are supported by special-fund appropriations.

We support the intent of this bill with amendment to a section in the bill as noted below. Some of our members sell and demonstrate beauty-type products at our public airports. It's one of several sources of revenue for the airport system which is paid rents/fees by the concession operators.

The amendment we seek to the proposed new law is to remove the requirement that "sales persons" who are simply selling or demonstrating a product to a customer must first get the "written consent" before doing so. A "sales person" should not need a written consent from a person before the "sales person" can sell or demonstrate a product to the person.

The purpose of the bill is to help control and regulate licensed and permitted people in the cosmetology/beauty industry and not "sales persons" who are simply trying to sell or demonstrate a product to a person for sales purposes.

The effect of this bill if not amended will require "sales persons" (which may include a cashier trying to answer a customer's questions prior to product purchase) to obtain cosmetology, permits and/or other licenses just so they can sell or demonstrate a product to a person without having to first ask a person to sign a written consent. You can imagine how awkward asking for a written consent will be and the likelihood of frightening to the customer.

It is our understanding a cosmetology license requires up to 1800 hours of school instruction and 3600 hours of apprenticeship with high school/GED diploma. Are you going to impose such a requirement on people simply trying to sell something or demonstrate a product?

Unfortunately, the House Judiciary Committee while recognizing this serious problem was not able to make appropriate amendments to the bill in time. Please see House Judiciary Committee report.

Further, DCCA also recognizes this problem which it alludes to in its testimony before the House Judiciary Committee but DCCA likewise makes no proposed language change to correct this problem. See Attachment 1, DCCA testimony, marked portion.

In view of the foregoing and with no one providing language and in the interest of doing so at least for discussion purposes, we propose this section of the bill proposing new law be amended as follows (deleted language in ~~strikethroughs~~ and added language in CAPS):

(c) The licensing requirements in this chapter and in any corresponding administrative rules that govern the practice of cosmetology shall NOT apply to any person selling or demonstrating beauty products or techniques for promotional purposes, unless the person IS BEING COMPENSATED ÷

~~(1) Is not compensated for practicing cosmetology;~~

and

~~(2) Before performing any cosmetology service,
obtains written consent to provide the service
from the person receiving the service."~~

Thank you for allowing us to testify. We apologize for the late testimony.