
Sunrise Analysis: Mixed Martial Arts

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 07-02
February 2007



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawai'i State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

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2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
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OVERVIEW

Sunrise Analysis: Mixed Martial Arts

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Summary

Mixed martial arts events, bouts that combine various styles of fighting and martial arts, is the fastest growing sport in the country. In Hawai'i, the events are currently permitted under an exemption from the prohibition against no rules combat, or extreme fighting. The 2006 Legislature requested the Auditor to analyze a proposal to license mixed martial arts events as their own sport. The request, contained in Senate Concurrent Resolution No. 37, Senate Draft 1, invokes the Hawai'i Regulatory Licensing Reform Act, Chapter 26H, Hawai'i Revised Statutes, which requires the Auditor to evaluate proposals to regulate previously unregulated professions or vocations. The proposed regulatory scheme is presented in House Bill No. 3223, House Draft 1 of the 2006 session.

Mixed martial arts (MMA) events have international origins, with various individuals and organizations establishing their own definitions and rules. Since the first MMA event in the U.S. in 1993, the shows now command large gate and television revenues and significant TV viewership. Mixed martial arts events have become significant revenue sources for states and tribal commissions. Since 2001, promoters have achieved regulatory approval in 24 states. Two main motivations for new regulation were: (1) to protect the fighters' health and remove the stigma of barbaric, no rules brawling, and (2) to provide a satisfying spectacle for viewers.

In Hawai'i, the number of MMA events has grown from eight in 2000 to 29 in 2005. Most local fighters fight for free or for a few hundred dollars, although the top fighters can make \$50,000 to \$75,000 per fight.

Act 54, Session Laws of Hawai'i 2005, later codified as Chapter 440D, Hawai'i Revised Statutes, permits MMA competitions if promoters obtain an exemption from the Department of Commerce and Consumer Affairs (DCCA) and under certain conditions. The Regulated Industries Complaints Office (RICO) at DCCA is responsible for enforcing Chapter 440D, including sending two investigators to attend each contest. Because most contests are held in the evenings and on weekends, RICO says it is incurring significant overtime costs and promoters' fees are insufficient to cover RICO's costs.

The exercise of the State's police powers through the regulation of occupations is premised on the need to protect the public from harm in the purchase of services from the occupation. In the case of mixed martial arts, as in boxing, the potential for harm has been extended to contestants as well. Although scientific research on the incidence of injury in mixed martial arts is meager, sufficient evidence exists that MMA events are potentially hazardous to contestants. We conclude that regulation of mixed martial arts is warranted to protect contestants from injury and



the public from potential harm. At certain events, attendance has reportedly exceeded capacity, liquor laws are being violated, and security is insufficient to control unruly crowds.

We also conclude that Chapter 440D should be repealed and replaced by an amended H.B. No. 3223, H.D. 1, that could provide stronger, more effective regulation. Chapter 440D creates a curious hybrid that is neither a licensing program nor a true enforcement program. Since it is not a licensing program, it was not assigned to the Professional and Vocational Licensing Division of DCCA. Instead, RICO investigators must, among other tasks, review promoters' applications for each event and data on each contestant. Information on contestants and criteria by which to judge whether they are medically fit are hard to come by.

The provisions in H.B. No. 3223, H.D. 1, offer stronger protections but could be further enhanced with reporting of recent medical examinations, a formal registry of fighters, medical insurance for contestants, at least two physicians at ringside, HIV and hepatitis testing, improved sanitary conditions in the ring, a ban on the use of stimulants, and other provisions.

Two options have been proposed for the regulating authority: (1) create a new Mixed Martial Arts Commission or (2) expand the jurisdiction of the Boxing Commission and rename it the Athletic Commission. We propose a third alternative—placing the program directly under the director of commerce and consumer affairs. Option 1 is offered in the 2006 bill we analyzed. That would create two athletic commissions, something none of the other 49 states has done. Option 2 is opposed by mixed martial arts supporters who say that the Boxing Commission is not knowledgeable about martial arts and may be hostile to the sport. Our alternative of direct regulation offers more streamlined administration, increased accountability, and greater efficiency. This regulatory model is in place in several other states. The director could appoint an advisory committee to help in developing unified rules.

Recommendations and Response

We recommend that House Bill No. 3223, House Draft 1 of the 2006 session be enacted with the amendments discussed above.

The Department of Commerce and Consumer Affairs generally agrees with our recommendations but deferred comment on the regulatory scheme until it reviews the legislation to implement the recommendations. The department emphasizes the need for knowledgeable persons to be available to advise the department and the need for the additional costs to be borne by those regulated.

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Submitted by

THE AUDITOR
STATE OF HAWAI'I

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Foreword

This “sunrise” report on mixed martial arts was prepared in response to a provision in the Hawai‘i Regulatory Licensing Reform Act, Chapter 26H, Hawai‘i Revised Statutes, that requires the Auditor to evaluate proposals to regulate previously unregulated professions or vocations.

In Senate Concurrent Resolution No. 37, Senate Draft 1 of the 2006 legislative session, the Legislature requested an analysis of the proposal to regulate mixed martial arts as provided by House Bill No. 3223, House Draft 1 of the 2006 session. This analysis, prepared by consultant Ms. Diana M. Chang, presents our findings and recommendations on whether the proposed regulation complies with policies in the licensing reform law and whether a reasonable need exists to regulate mixed martial arts to protect the health, safety, or welfare of the public.

We wish to express our appreciation to the Department of Commerce and Consumer Affairs and other organizations and individuals that we contacted during the course of the analysis.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

This report on the proposed regulation of mixed martial arts responds to a “sunrise” provision in the Hawai‘i Regulatory Licensing Reform Act—Chapter 26H, Hawai‘i Revised Statutes (HRS). The sunrise provision requires that, prior to enactment, legislative bills proposing regulation of previously unregulated professions or vocations be referred to the State Auditor for analysis. House Bill No. 3223, House Draft 1 of the 2006 legislative session proposes to regulate mixed martial arts. The Legislature specifically requested an analysis of this proposal in Senate Concurrent Resolution No. 37, Senate Draft 1 of the 2006 legislative session. The Auditor is to assess whether the proposed regulation is necessary to protect the health, safety, or welfare of consumers and is consistent with the regulatory policies in Chapter 26H, HRS. In addition, the Auditor is to examine the probable effects of the proposed regulation and assess alternative forms of regulation.

Background

To better understand issues relating to mixed martial arts, we provide some background on the sport, its current regulation, regulation in other states, and the proposed regulation.

Development of mixed martial arts

Mixed martial arts (MMA) events are bouts between two trained athletes who compete using a hybrid style combining boxing, wrestling, chops, kicks, and various styles of martial arts. Fighters generally use four-ounce gloves. Bouts may be presented either in a standard boxing ring or in an octagonal shaped cage. Bouts usually consist of three, five-minute rounds with championship bouts consisting of five, five-minute rounds. Generally, fighters can win by knockouts, technical knockouts, submission (where a fighter signals defeat either verbally or by tapping on the ground or on the opponent three times), or by the judges’ decision.

Many trace the roots of mixed martial arts to the Greek sport of pankration, an ancient Olympic sport combining Hellenic boxing and wrestling.¹ The only rules then were no biting and no eye gouging. Pankratiasts often fought to the death, and strangulation was the most common cause of death.

A form of pankration resurfaced in Brazil with the Gracie family who had been trained in judo and ran a jiu-jitsu academy. To promote their style of fighting, the Gracies issued the “Gracie Challenge,” offering to take on all comers in *vale-tudo* (Portuguese for no rules) contests.

Participants included boxers, representatives of karate schools, and other contact sports. The sport became immensely popular in Brazil and eventually made its way to the United States.

The first MMA event in the United States was held in 1993. A Gracie family member and two partners established the “Ultimate Fighting Championship (UFC).” The goal of the UFC organization was to promote events that would determine the best athletes among those skilled in various martial arts, including karate, jiu-jitsu, boxing, kickboxing, grappling, wrestling, sumo, and other combat sports. The winner would be the ultimate fighting champion.²

The UFC promoted itself as a blood sport with few rules or safety protections for fighters. It had no weight classes, time limits, or judges. This emphasis on violent, brutal contests eventually backfired. Arizona Senator John McCain sought to outlaw the contests as barbaric. He sent letters to all 50 governors asking them to ban ultimate fighting. Subsequently, many states began to ban these types of ultimate or extreme forms of fighting.

In 2000, new owners purchased the UFC; one of them was a member of the Nevada State Athletic Commission. The owners sought to bring respectability to the UFC by embracing new rules and pushing for its legalization in all the states. The sport had also begun to evolve. Contestants had learned through experience the strategies and the combinations of fighting styles that would be most effective. A new breed of fighters emerged who were trained and skilled in multiple martial arts disciplines including boxing, kickboxing, and grappling.

Mixed martial arts is now the fastest growing sport in the country. UFC’s first show in Atlantic City, New Jersey, in 2001 sold only 2,500 tickets for a gross of \$115,000. By July 2006, at a bout at the Mandalay Bay Events Center in Las Vegas, Nevada, the UFC sold ringside seats for up to \$700 and expected to gross close to \$4 million at the gate and receive an equal amount on pay-per-view.³ It is a force on cable television with four shows on Spike TV. The UFC’s “Ultimate Fighter” on Spike TV, a reality show in which 16 aspiring fighters seek a title fight, is considered to be the most popular sports show on TV today. The final episode of the show in Spring 2006 drew 2.8 million viewers and had higher cable ratings among men 18 to 34 years old than baseball, the National Basketball Association playoffs, and the National Hockey League playoffs.⁴

Mixed martial arts in the U.S. has become largely defined by the UFC, a Las Vegas based company. The Pride Fighting Championships, based in Tokyo, Japan, are the most popular in Asia. Pride planned to present its first major U.S. event in October 2006 in Las Vegas. The World

Fighting Alliance is another new organization hoping to take advantage of the sport's popularity. It put on its first event, "King of the Streets," in Los Angeles, California, in July 2006.

Because mixed martial arts events are highly profitable, a number of new professional mixed martial arts organizations have emerged worldwide. No single set of rules or unifying body governs the sport today. Each organization has its own rules. Those associated with the UFC use UFC rules. Others use modified Greek pankration rules, Japanese Shooto rules, or Pride rules. Pride rules differ from those of the UFC by requiring the fight to be held in a ring with an opening round of ten minutes and two subsequent rounds of five minutes each.

Regulation in other states

Mixed martial arts has become a significant revenue source for states and tribal commissions.⁵ Its rising popularity has led to significant changes in regulation over the past ten years. States have rushed to sanction mixed martial arts to capitalize on revenues generated by the sport and to control unlicensed brawls.

Since 2001, promoters have achieved regulatory approval in 24 states. Two main motivations for new regulations were: (1) to protect the health of the fighters and to remove the stigma of barbaric, no rules brawling; and (2) to provide a satisfying spectacle for viewers. The rules sought to promote good fighters in action-packed bouts.⁶

The UFC has aggressively promoted regulation. It has worked with regulatory authorities to establish regulation in the two most lucrative fight markets, Nevada and New Jersey. The New Jersey State Athletic Commission authorized mixed martial arts events and established *Unified Rules for Mixed Martial Arts* for all MMA events in 2001. That same year, the Nevada Athletic Commission also approved MMA events and adopted similar rules for these events. The UFC recently hired the former executive director of the Nevada State Athletic Commission to spearhead efforts to regulate the sport in other jurisdictions. It is targeting Texas for regulation in 2007.⁷

New Jersey's *Unified Rules for Mixed Martial Arts* is an attempt to create a standardized set of rules from the myriad of rules and regulations used by different MMA organizations.⁸ The unified rules seek to increase public trust and confidence in the integrity of the sport and improve the health and safety of competitors. Among other provisions, the unified rules provide for nine weight classes; specify such requirements as protective equipment, apparel, the length of rounds, judging and scoring criteria; and list a number of fouls and ways for the bout to end. Fouls include head butting, eye gouging, biting or spitting, hair pulling, groin

attacks, strikes to the spine or back of the head, throat strikes, and other unsportsmanlike actions. Nevada and California have similar rules.

More and more states are beginning to regulate mixed martial arts. In June 2006, the Ohio State Athletic Commission removed its ban on mixed martial arts events and approved new rules.⁹ In December 2005, California dropped its ban on mixed martial arts and in June 2006, California's new Athletic Commission Program assumed the duties of the former California State Athletic Commission and began regulating boxing, kickboxing, and mixed martial arts.¹⁰ A seven-member advisory committee assists in regulating the program.

The regulating authority in most states is either a State Boxing Commission or a State Athletic Commission. Five states regulate mixed martial arts events under their departments of licensing, commerce, or professional regulation. Some states, including New York, Maine, South Carolina, and Utah, continue to ban mixed martial arts or ultimate fighting. Some 20 states have no regulatory provisions for the sport.

Mixed martial arts in Hawai'i

Mixed martial arts contests are booming in Hawai'i, paralleling their popularity on the mainland. Exhibit 1.1 shows the growth in the number of mixed martial arts events in Hawai'i. In 2000, eight events were presented, but by 2005, the number of events had more than quadrupled to 29 events. The number of events is also growing on the Neighbor Islands. As of July 31, 2006, nine events had been held on O'ahu and eight on the Neighbor Islands for a total of 17 mixed martial arts events.

Exhibit 1.1
Number of Mixed Martial Arts Events in Hawai'i by Year¹¹

Year	2000	2001	2002	2003	2004	2005
Oahu	7	10	12	7	9	19
Neighbor Island	1	0	1	4	4	10
Total	8	10	13	11	13	29

Mixed martial arts events are now one of Hawai'i's most popular spectator sports. Professional fights at the Neal Blaisdell Center Arena on O'ahu draw sellout crowds of over 7,000, with local promoters staging most of the contests. Icon Sport (formerly Superbrawl and Future Fight Productions) and Rumble World Entertainment (also known as Prodigy Productions) are two of the largest promoters of MMA events in Hawai'i. Icon Sport reports that it began presenting bouts in 1995 and

has held over 500 bouts in Hawai‘i since 1996. In 2005, the company earned over \$4 million in gross revenues.¹² Over 7,000 people attended an Icon Sport event at the Neal Blaisdell Center Arena in September 2006. Rumble World Entertainment stages the Rumble on the Rock events. Shooto is a Japan-based organization that has also been associated with mixed martial arts events in Hawai‘i. Most local fighters either fight for free or for a few hundred dollars, although the top fighters can make \$50,000 to \$75,000 per fight.¹³

Current regulation

Prior to 2005, the Legislature prohibited no rules combat, extreme, ultimate fighting, and other similar contests. No rules fighting was defined as “a combination of combative contact techniques including punches, kicks, chokes, joint locks and other maneuvers, with or without the use of weapons, that place contestants at an unreasonably high risk of bodily injury or death.”¹⁴ These contests were technically illegal. However, promoters continued to stage mixed martial arts contests through a loophole in the law that allowed contests that involved the exclusive use of boxing, wrestling, kickboxing, or martial arts.

In 2005, concern was raised by reports of men staging unregulated fights and brawls. Also, in 2005, a 14 year-old boy was pitted against a 32 year-old man in a mixed martial arts contest. The Legislature found the prior law to be unclear and not properly enforced.¹⁵ It sought to improve the regulation of no rules combat and other dangerous competitions by repealing the prior law and replacing it with Act 54, Session Laws of Hawai‘i 2005, later codified as Chapter 440D, Hawai‘i Revised Statutes.

The new law permits mixed martial arts competitions if promoters obtain an exemption from the Department of Commerce and Consumer Affairs and if the contests are held:

- Between medically fit, adult contestants not disqualified in another jurisdiction at the time of the match;
- Pursuant to the promoter’s rules that protect the safety of the contestants;
- Under the direction of an adult referee with at least one year’s experience and who has passed a physical and eye examination by a licensed physician;
- Under the medical supervision of a licensed physician at ringside; and
- In a manner that would promote maximum safety for the contestants.

In addition, 30 days prior to the contest, the promoter must provide information and documents prescribed by the department together with an enforcement fee of \$500. After the event, the promoter must also provide the department with an unedited video record of the contest.

Currently, the Regulated Industries Complaints Office (RICO) at the Department of Commerce and Consumer Affairs is responsible for enforcing Chapter 440D, HRS. It has developed enforcement procedures and a “No Rules Combat Event Review Application” that all promoters must complete and submit. The application requests information such as the applicant’s business name, the date, time, and location of the event, the rules used for the event, information on each contestant and the date of their last physical examination, referee information, and physician information.

Investigators from RICO check each application to verify that ringside physicians have medical licenses, referees have had physical examinations, promoters have submitted rules to govern the contest, and other information. They review the contestants’ information and determine whether contestants are fighting in the proper weight classes and have had physical examinations. Prior to the mixed martial arts event, they attend the weigh-ins to check that the contestants are the ones represented in the application form and meet the weight limits.

The Regulated Industries Complaints Office reports that it monitored 29 events in 2005. Generally two investigators attend each contest to ensure that no violations occur. The office says that it is incurring substantial overtime costs since most of the contests are held in the evenings and on weekends. It says that its costs exceed the fees paid by the promoters.

Proposed regulation

The proposed regulation, House Bill No. 3223, House Draft 1, seeks to increase the current level of regulation to a licensing program. In requesting the Auditor to review the proposed bill, the Legislature found that the term “mixed martial arts” was not clearly defined. It said that the sport is sometimes confused with toughman contests or “no rules” contests that are banned in Hawai‘i. It stated that mixed martial arts is a full contact sport that is inherently dangerous and that regulation may be needed to protect the health, safety and welfare of participants.¹⁶

Initially, House Bill No. 3223 repealed existing laws on no rules combat and expanded the jurisdiction of the State Boxing Commission by renaming it the State Athletic Commission. The new commission would regulate both boxing and mixed martial arts. The bill increased the number of members of the new commission from five to seven. The proposed law mirrored most of the requirements in the law for boxing and replaced boxing with the term “unarmed combat.”

House Bill No. 3223, House Draft 1, amended the initial bill by establishing a separate Mixed Martial Arts Commission. It defines mixed martial arts as unarmed combat involving the use of a combination of techniques from different disciplines of martial arts including grappling, kicking, and striking. It prohibits no rules combat, extreme, or ultimate fighting, which is defined in the bill as contests with few or no rules where contestants use a combination of combative techniques, including punches, kicks, chokes, joint locks, or other maneuvers that place contestants at an unreasonably high risk of bodily injury or death.

The bill requires all contests to be approved by the commission and for promoters to be licensed before they can hold a mixed martial arts event. Promoters have to provide proof of financial integrity, and that they have satisfied all the applicable requirements of the commission. To apply for a license to hold an event, promoters must pay a fee; provide proof of medical insurance for contestants; provide a bond in the amount determined by the commission; furnish all contracts between the promoter, the contestants, and the venue; and provide cashier's or certified checks payable to contestants.

In addition, the bill requires promoters to pay a license fee of 3 percent of the first \$50,000 of the total gross receipts from admission fees; 5 percent of the total gross receipts over \$50,000 from admission fees; 5 percent of the total gross sales from broadcasting, television, internet, or films; and 5 percent of the gross receipts from subscription fees from simultaneous telecasts of a contest.

To protect the fighter, the bill requires that each contestant:

- Be at least 18 years of age;
- Be examined by a physician one hour prior to the contest;
- Have a mandatory neurological examination if a contestant has been knocked out;
- Have an eye examination as part of the contestant's annual physical examination; and
- Receive an automatic medical suspension if the contestant has been knocked out from head blows or has received a severe beating about the head.

In addition, the bill calls for procedures to be instituted to ensure that no contestant is permitted to compete while under suspension from another governmental jurisdiction for having been knocked out, under a physician's denial of permission to compete, or after failure of a drug

test. The bill requires promoters to provide confirmation that an ambulance with paramedics and adequate security has been obtained.

The bill also provides for the licensing of physicians, referees, judges, matchmakers, managers, timekeepers, seconds, and contestants. In addition, the bill has provisions relating to sham contests, revocations, suspensions, disciplinary actions, and penalties.

Testimony on House Bill No. 3223, House Draft 1

Those who testified on the bill had no objection to the regulation of mixed martial arts events. However, those engaged in mixed martial arts stated that regulation should not be under the jurisdiction of the Boxing Commission or an athletic commission but under a separate Mixed Martial Arts Commission. They believed that only a commission composed of those knowledgeable in mixed martial arts would be able to develop appropriate regulations.

The chair of the Boxing Commission supported a sunrise analysis of the proposed regulation. He was concerned that the bill would subsume amateur boxing under mixed martial arts and apply professional boxing standards to amateur boxing. He suggested that the current statute on boxing, Chapter 440, HRS, be bifurcated with one part consisting of the existing boxing statute and the second part consisting of new regulations on mixed martial arts. He noted that Chapter 440, HRS, does not require members of the Boxing Commission to be knowledgeable and experienced in boxing and that, historically, members have served productively without such knowledge. He maintained that the same situation should hold true for mixed martial arts.

Objectives

The objectives of this analysis were to:

1. Determine whether there is a reasonable need to regulate mixed martial arts contests to protect the health, safety, or welfare of the public.
2. Assess the probable effects of regulation.
3. Make recommendations, as appropriate, based on our findings.

Scope and Methodology

To assess the need to regulate mixed martial arts as proposed in House Bill. No. 3223, House Draft No. 1, we applied the criteria set forth in Section 26H-2, HRS, of the Hawai‘i Regulatory Licensing Reform Act. The Legislature established these policies to ensure that regulation of an

occupation occurs only when needed to protect consumers. Since regulation is an exercise of the State's police power, it should not be imposed lightly. Its primary purpose is not to benefit the practitioners of the occupation who often seek regulation for reasons that go beyond consumer protection. For example, some practitioners believe that licensing will enhance their professional status and upgrade the occupation.

The consumer protection purpose of regulation is clearly articulated in Section 26H-2, HRS. These policies state that:

- The State should regulate professions and vocations only where reasonably necessary to protect consumers;
- Regulation should protect the health, safety, and welfare of consumers and not the profession;
- Evidence of abuses should be given great weight in determining whether a reasonable need for regulation exists;
- Regulation should be avoided if it artificially increases the costs of goods and services to the consumer, unless the cost is exceeded by potential dangers to the consumer;
- Regulation should be eliminated when it has no further benefit to consumers;
- Regulation should not unreasonably restrict qualified persons from entering the profession; and
- Aggregate fees for regulation and licensure must not be less than the full costs of administering the program.

The national Council on Licensure, Enforcement and Regulation also offers guidance on the regulation of occupations. In its publication *Questions a Legislator Should Ask*,¹⁷ the council says that the primary guiding principle for legislators is whether the unregulated profession presents a clear and present danger to the public's health, safety, and welfare. If the answer is no, regulation is unnecessary and wastes taxpayers' money.

In addition to regulatory policies in Chapter 26H, HRS, we used additional criteria for this analysis, including whether:

- The incidence or severity of harm based on documented evidence is sufficiently real or serious to warrant regulation;

- No alternatives provide sufficient protection to consumers (such as federal programs, other state laws, marketplace constraints, private action, or supervision); and
- Most other states regulate the occupation for the same reasons.

In assessing the need for regulation and the specific regulatory proposal, we placed the burden of proof on proponents of the measure to demonstrate the need for regulation. We evaluated their arguments and data against the above criteria. We examined the regulatory proposal and assessed whether the proponents provided sufficient evidence for regulation. In accordance with sunrise criteria, even if regulation *may* have *some* benefits, we recommend regulation only if it is *demonstrably* necessary to protect the public.

We scrutinized the appropriateness and the regulatory approach taken by the proposed legislation. Three approaches are commonly taken to occupational regulation:

- *Licensing*, the most restrictive form, confers the legal right to practice to those who meet certain qualifications. Penalties may be imposed on those who practice without a license. Licensing laws usually authorize a board that includes members of the profession to establish and implement rules and standards of practice.
- *Certification* restricts the use of certain titles (for example, social worker) to persons who meet certain qualifications, but it does not bar others who offer such services without using the title. Certification is sometimes called *title protection*. Government certification should be distinguished from professional certification, or credentialing, by private organizations. For example, social workers may gain professional certification from the National Association of Social Workers.
- *Registration* is used when the threat to the public health, safety, or welfare is relatively small or when it is necessary to determine the impact of the operation of an occupation on the public. A registration law simply involves having practitioners enroll with the State so that a roster or registry is created and the State can keep track of practitioners. Registration may be mandatory or voluntary.

In addition to assessing the need for regulation and the specific legislative proposal, we considered the appropriateness of other regulatory alternatives. We also assessed the cost impact on the proposed regulatory agency and the regulated group.

To accomplish the objectives of our analysis, we searched the literature on mixed martial arts including the history of the sport, its current regulation, and regulation in other states. We conducted interviews with promoters of mixed martial arts contests, physicians, referees, and others involved with the sport. We interviewed staff at the Department of Commerce and Consumer Affairs. We conducted our assessment from June 2006 to September 2006.

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Chapter 2

Stronger Regulation of Mixed Martial Arts Events Is Necessary

This chapter presents our findings and recommendations on the need to regulate mixed martial arts (MMA). Unlike other occupations where regulation is instituted to protect consumers, regulation of mixed martial arts events, just as in boxing, is needed primarily to protect contestants from injury. Regulation is also needed to protect the public from potential harm. The current Chapter 440D, Hawai‘i Revised Statutes (HRS), fails to provide the needed protections and should be replaced by a stronger and more appropriate law.

Summary of Findings

1. There is sufficient evidence that regulation of mixed martial arts is warranted to protect contestants from injury and the public from potential harm.
2. Chapter 440D, HRS, should be repealed and replaced by an amended House Bill No. 3223, House Draft 1, that could provide stronger, more effective regulation.

Evidence of Harm and Potential Harm Exists

The exercise of the State’s police powers through the regulation of occupations is premised on the need to protect the public from harm in the purchase of services from the occupation. In the case of mixed martial arts, as in boxing, the potential for harm has been extended to contestants as well.

House Bill No. 3223, H.D. 1, defines mixed martial arts as “...unarmed combat involving the use, subject to any application limits set forth in this chapter and any rules adopted to implement these limits of a combination of techniques from different disciplines of martial arts, including grappling, kicking and striking.” The bill continues to ban no rules, extreme, or ultimate fighting contests that have few or no rules or place contestants at an unreasonable risk of injury.

Mixed martial arts is thus unlike other martial arts such as judo, wrestling, jiu jitsu, and kickboxing that are established and recognized single disciplines. Instead, mixed martial arts draws from and *combines* techniques from these other disciplines. The focus of this analysis is thus

on this new and evolving hybrid form of sporting activity that as yet has no national governing authority nor standardized rules.

Evidence of injury to contestants

All martial arts are physically demanding and potentially hazardous. Proponents of mixed martial arts events say that the incidence of injury in mixed martial arts is no higher than that in boxing or any other athletic activity, including football. They say that no one has died in an MMA event. They also note that an MMA fight can be ended in numerous ways and at any time by a referee, thereby reducing the potential for injury.

Although scientific research on the incidence of injury in mixed martial arts is meager, sufficient evidence exists that MMA events are potentially hazardous to contestants. Data on injury rates are beginning to appear in the literature, and numerous individual cases have been reported.

Injuries range from mild to severe. Mild injuries, the largest category, consist predominantly of damage to soft-tissues such as contusions, lacerations, and sprains. Moderate injuries include fractures, dislocations, and disruptions to nerves. Severe injuries can be life threatening. Kicks, punches, and falls can produce thoracic trauma, rib fractures, and bleeding into the chest. In addition, all organs within the abdominal cavity may be at risk of trauma including the liver, spleen, and kidneys.¹ Head injuries can range from mild concussions to intracranial bleeds.

The *Sports Injury Bulletin* reports that, in a survey of four MMA tournaments over a four-month period, it found 103 episodes of cervical neck injury in 427 respondents. Five cases required hospitalization and had resulted in neurological deficit.² The researchers found that the motion and forces applied to the cervical spine were characteristic of whiplash produced by vehicle impacts.

So far, only one significant study has been published on the incidence of injury in professional MMA competitions. Researchers from the Department of Emergency Medicine at the Johns Hopkins University School of Medicine gathered data from all professional MMA events that took place in Nevada between September 2001 and December 2004. They reviewed a total of 171 MMA matches involving 220 different fighters. They found no deaths, but the data showed that 78 fighters had a total of 96 injuries. Of the 171 matches fought, 69, or 40.3 percent, had resulted in at least one injured fighter. The overall injury rate was 28.6 injuries per 100 contestants. Facial lacerations were most common followed by hand, nose, and eye injuries. They found that the injury rate in MMA events was comparable with that of other sports involving striking, such as boxing.³ The authors recommended that MMA events

continue to be properly supervised by trained referees and ringside physicians, and that states strictly enforce their rules, including rules on weight classes, limited rounds, proper safety gear, and the banning of devastating attacks.

Potential harm to the public

The public may be subject to potential injury at mixed martial arts events. In Hawai'i, these events are held in public facilities such as gymnasiums, county auditoriums or arenas, or in private facilities such as bars and ballrooms. There have been reports that crowds have exceeded occupancy loads at certain events and may be in violation of state and county fire codes. Should a fire break out in an overcrowded room or bar, the consequences could be dire. Under Florida law, it is a second-degree misdemeanor if a promoter sells more admission tickets than can be accommodated by the seating capacity of the premises where the match is to be held.⁴ Other hazards that have been reported are violations of liquor laws at local MMA events and security insufficient to control unruly crowds. Some events have had only bouncers to control the crowd.

Current Regulation Needs To Be Replaced

The current Chapter 440D, HRS, does not adequately protect the contestant or the public. It is vague and difficult to administer and enforce. Unlike other professional regulatory programs, the law does not establish criteria for approving those who are qualified to engage in the occupation. Instead, the law establishes conditions under which mixed martial arts events can be *exempted* from a ban against no rules, extreme, or ultimate fighting events. As a result, each event must be reviewed and investigated to assess whether it can be approved as exempt. Moreover, the conditions for approving an exemption are vague and difficult to enforce. This makes enforcement time-consuming and ineffective. Furthermore, the bill proposed in the 2006 legislative session, House Bill No. 3223, House Draft 1, needs stronger provisions.

Chapter 440D, HRS, is a hybrid misfit

Chapter 440D, HRS, creates a curious hybrid that is neither a licensing program nor a true enforcement program. It is a misfit among regulatory programs. Responsibility for implementing the program has been a concern. Since it is not a licensing program, it has no place in and was not assigned to the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs. This division is responsible for implementing licensing provisions for the 46 different regulated professions. It handles applications, licenses, renewals, and maintains license records. The division provides guidance on

implementing regulatory laws for the 46 licensing areas. It determines which activities are subject to regulatory oversight and which ones are prohibited.

Chapter 440D, HRS, could be considered an enforcement program since it bans all “no rules combat” except those held under certain conditions. To enforce this ban, the Department of Commerce and Consumer Affairs assigned responsibility to its Regulated Industries Complaints Office (RICO). RICO is the investigative and enforcement arm of the department. It responds to complaints about licensing programs by receiving, investigating, and prosecuting complaints. It enforces violations through citations, injunctions, and other penalties.

Since Chapter 440D, HRS, is a hybrid program, this means that RICO must carry out both enforcement and licensing functions. However, the law gives RICO few enforcement powers. It does not have the power under Chapter 440D, HRS, to issue citations. While the law gives RICO the power to assess penalties for violations, it provides few grounds for establishing whether violations have occurred. At the same time, RICO must carry out a licensing function, that is, deciding whether an activity (MMA) is permissible. This is a function normally carried out by the department’s Professional and Vocational Licensing Division.

Current law presents problems in enforcement

Those in the martial arts industry give high marks to RICO investigators for taking the time to learn about the sport and to set up appropriate enforcement procedures. However, under current conditions, enforcement can only be weak and inefficient.

Promoters submit applications for each event with information on their organization, the scheduled event, contestants, referees, and attending physician. RICO investigators must then review the application to determine if the organization is a properly registered business, if the referee has the necessary experience and has had a physical examination, and if the physician has a medical license. Investigators also review information on each contestant even though data on contestants are limited and hard to assess.

Investigators have few criteria to determine whether contestants are medically fit. They have difficulty ascertaining which contestants have been suspended in other jurisdictions since no national database exists for this information. To do so, they have to check with individual state athletic or licensing agencies or Internet sites. In addition, the law provides no criteria to help RICO investigators assess whether the rules submitted by promoters adequately protect the safety of contestants or that events are conducted in a manner that would promote maximum safety for the contestants.

In an effort to properly implement the law, RICO now sends two investigators to monitor each event to make sure that licensed physicians are at ringside, that experienced referees officiate the event, and that contestants match those listed in the promoters' application. The day before the event, investigators attend the weigh-in to make sure that contestants make their weight. Given the increasing number of MMA events, these new responsibilities have taken a great deal of staff time. In addition, since most events occur on evenings and weekends, RICO has sustained substantial overtime costs.

A new licensing law with clear provisions to protect contestants and the public would be much more effective and easier to implement. It would reduce staff time and costs. The Professional and Vocational Licensing Division could approve licenses for qualified participants and approve permits for events that meet specific criteria. The division could revoke the licenses of promoters who violate the new licensing law or who continue to promote questionable events.

A stronger, more effective law could better protect contestants

House Bill No. 3223, H.D. 1, offers a stronger level of protection, but it could be improved. Several amendments are needed to protect contestants from injury and to protect the public from potential harm.

Mixed martial arts demands training and a level of skill and fitness in order to compete without injury. The proposed House Bill No. 3223, H.D. 1, has added some protections by requiring that:

- Each contestant be at least 18 years of age and possess the physical, mental, and moral qualifications to entitle the applicant to a license;
- Each contestant to be examined by a physician one hour prior to the contest;
- At least two physicians licensed to practice in Hawai'i be at ringside;
- An ambulance with paramedics be present;
- Mandatory neurological examinations for contestants who have been knocked out;
- Physicians' examinations and reports on contestants who have been knocked out or who suffered severe beatings about the head; and
- Automatic suspensions for those who have been injured.

In addition, the proposed bill requires that contestants be issued an identification card and that a mixed martial arts registry be established.

While the above provisions are an improvement over the current law, other provisions are needed to adequately protect contestants.

Medical reports

House Bill No. 3223, H.D. 1, requires that procedures be established to evaluate the professional records and physicians' certifications of each mixed martial arts contestant to determine whether they meet the requirements of the proposed law. This cannot be done without requiring that contestants supply information such as that described below.

The law should require contestants to submit a report of a complete medical examination done within six months of the MMA event. If the contestant has been knocked out or has suffered head injuries, a CAT scan should be required. Nevada requires contestants to supply their birth certificates, results of medical examinations including results of tests showing they are not infected with the human immunodeficiency virus or the hepatitis virus, a written statement from the physician as to the physical fitness of applicants, and their records in contests or proof of their ability to compete. Hawai'i should require contestants applying for licensure to supply this same information in order to assess their fitness to compete. An identification card should be issued only when a license has been approved. This information is also needed to create an adequate registry.

Need for a registry

Unlike boxing where there is a national registry of professional fighters, there is no nationwide registry of mixed martial arts contestants. No central data bank exists that would provide information on whether the contestant has been suspended, how many fights the contestant has participated in, the record of wins and losses, and other needed information. Only a few states, such as Nevada and New Jersey, have begun to create an informal registry. In the meantime, they rely on information from Internet sites that cover MMA events such as <http://www.sherdog.com>.

Currently, Chapter 440D, HRS, requires contests to be between medically fit adult contestants who have not been disqualified from competition in another jurisdiction at the time of the event. This provision is difficult to enforce. Physicians interviewed say that the nature of MMA events makes it difficult to determine the health status of contestants or when or where they last competed. Last minute substitutions are often made, for example, when a contestant gets hurt in

training or in another bout. Many contestants compete several times in a month. Moreover, they may be from another state. Local physicians say that they have created their own informal registry to keep track of fighters. If Hawai'i decides to regulate mixed martial arts events, it should plan to develop a formal registry system or databank for contestants. The registry should include licensure information as well as other information on their health status and fight record. Hawai'i should also work with other states that license MMA events to develop a national database on licensed contestants.

Need for insurance

The proposed House Bill No. 3223, H.D. 1, requires promoters to provide medical insurance for contestants. Most contestants here in Hawai'i lack medical insurance. Often, contestants fail to follow-up on needed care because they lack insurance or the funds to obtain treatment. Nevada law requires promoters to provide insurance that would cover medical, surgical, and hospital care for contestants who are injured during a contest. Promoters say that they would be willing to purchase insurance for each fighter for the event and that this is available at relatively low cost. Rules to implement any new regulation of mixed martial arts should specify insurance coverage of medical, surgical, hospital and follow-up costs for contestants.

Need for medical care at all events

Both Chapter 440D, HRS, and the proposed bill require mixed martial arts events to be under the medical supervision of a licensed physician and to have paramedics and an ambulance in attendance. These provisions are important. The proposed bill calls for at least two physicians at ringside. Physicians who were interviewed agree that at least two licensed physicians should be in attendance at ringside. Providers of MMA events may stage 12 bouts with 24 contestants. Ringside physicians say they have experienced occasions when one fighter needs care and no other physician is in attendance at ringside. Sometimes two fighters need attention at the same time leaving no one available at ringside should another injury occur. They say that fighters can be seriously injured even though the injuries may not be life threatening. They have seen a number of cases of facial fractures, severe hematomas, and fractured backs.

The *Sports Injury Bulletin* notes that preparation is essential and that health professionals should make sure adequate facilities are present to cope with life and limb-threatening injuries. It says that health professionals should have a sound knowledge of the principles of trauma resuscitation, cervical spine immobilization, and splinting of injured limbs.⁵

Physicians in Hawai'i who were interviewed also agree that paramedics and an ambulance should be available at mixed martial arts events. They say that paramedics and the ambulance provide a different set of services than those that may be required of a physician. They say that ambulances have been put to use at almost all MMA events.

Need for HIV and hepatitis testing

Many states require testing for HIV and hepatitis. Mixed martial arts events result in many lacerations and are often quite bloody. While there is no evidence that infections have been contracted through bouts, to veer on the side of safety, a number of states now require testing for these diseases.

The proposed bill does not require contestants to undergo hepatitis or HIV testing. Several states, including Nevada, California, New Jersey, and Washington, require contestants to undergo testing for both. While New Jersey does not require testing to obtain a license, it does require a complete HIV examination and complete hepatitis B and C testing done within six months of the MMA event.

Need for sanitary conditions

Mixed martial arts contests are often bloody, and contestants tend to spend more time on the canvas than in boxing contests. RICO investigators have commented that sanitary conditions could be improved. Also, often no effort is made to segregate bloody towels or to clean up bodily fluids. In July 2005, California proposed amending its rules on full contact martial arts to make the promoter responsible for ensuring that sanitary conditions are met. The proposed rules would require the ring to be cleaned before the event and prior to each fight.⁶

Ban on use of stimulants

The proposed bill does not prohibit the use of alcohol, stimulants, and other banned drugs or injections. It only says that contestants who have been suspended in other jurisdictions because they failed a drug test would not be able to compete. Many states prohibit the use of alcohol, stimulants, drugs, or injections both before and during a contest. Those who use drugs are subject to disciplinary action. California reports finding an increasing number of cases where contestants have tested positive for banned drugs. The Nevada Athletic Commission now conducts drug tests after each bout and holds the purse of contestants until they pass the drug test.

Licensing for referees

Referees are an important line of defense against injury. It is important that they be experienced and licensed. They have to be familiar with mixed martial arts, recognize when contestants might be in trouble and facing potential injury, and know when to stop the fight. Inexperienced referees may not recognize the potential for serious injury or may not recognize when a fighter has been hurt. Physicians interviewed point to the importance of experienced referees in preventing injuries. They say that referees have been very responsive in working with them to prevent injuries in fighters.

Referees interviewed say that their primary concern is the safety of the fighter. The proposed bill contains numerous other duties for referees such as giving them the power to recommend forfeiture of the fighters' purses. These provisions are unnecessary and distracts from the referees' sole purpose of protecting contestants from injury.

Licensing unnecessary for judges, matchmakers, and timekeepers

House Bill No. 3223, H.D. 1, also proposes to license judges, matchmakers, and timekeepers. There is no evidence that their licensing would contribute to protecting the health, safety, or welfare of the contestants or the public. Some say that judges need to be licensed to ensure fairness and the integrity of the sport. Currently, promoters select the judges, and it is in the promoters' interests to ensure fair decisions. The role of judges is important but their responsibility is to determine the outcome of a contest and is unrelated to protecting the fighters or the public.

Today, most mixed martial arts bouts are presented by promoters who work directly with contestants. Matchmakers are only beginning to play a role. Matchmakers may be important in setting up contests with competitors of relatively equivalent levels of skill thereby protecting them from injury. However, licensing matchmakers would not prevent mismatches.

The licensing of timekeepers is not necessary to protect the health and safety of fighters. The timekeeper merely needs to know how to handle a stopwatch.

Need to regulate amateur events

The proposed bill makes no distinction between amateur and professional mixed martial arts events. It gives a proposed mixed martial arts commission jurisdiction over all MMA contests to be held within the

state. Since no provision is made for amateur events, presumably, any amateur MMA contest would have to comply with the same provisions as professional MMA events. This would make it difficult to stage amateur events where contestants and other participants could develop their skills. In addition, special provisions may be needed for amateur events. The *Sports Injury Bulletin* reports that amateur participants are the most likely to sustain injuries and sprains.⁷ Inexperienced fighters often lack technique, flexibility, or adequate conditioning.

We suggest that the proposed bill specify that the regulating authority has jurisdiction over amateur mixed martial arts events. However, the bill should contain a provision that exempts contests and exhibitions held by schools, colleges, and associations and any organizations associated with schools, colleges and universities where participants are students. In addition, responsibility for regulating amateur events could be delegated to amateur sports associations recognized and approved by the regulating authority. This is done in boxing where Section 440-30, HRS, allows the Boxing Commission to place amateur contests under the control and supervision of any recognized national amateur athletic association that has been approved by the commission. California waives direct application of its licensing laws for approved non-profit organizations or clubs that have safety and fairness standards that exceed those of its commission. It requires a physician to be present and medical insurance for all contestants.⁸

In Washington State, the law authorizes a local organization known as the United Full Contact Federation to conduct amateur MMA contests and exempts these contests from regulation. Another organization, the International Sport Combat Federation (ISCF), advertises itself as a national, neutral sanctioning body that supports all MMA groups and events both amateur and professional. For a fee, the ISCF says it will do background checks on all amateur MMA fighters, oversee weigh-ins and the entire event to assure that all rules and regulations are followed for the safety of fighters, and assist in providing experienced and qualified officials for these events.

A stronger law could better protect the public

Requiring promoters to be licensed and to obtain permits for each event that they stage would enhance public protection. The proposed bill says that promoters should be licensed, but it is unclear whether the license is for each event or for an annual period of time. Some of the requirements in the proposed bill relate to the qualifications of the promoter and some to individual events. These two sets of requirements should be clearly differentiated. The qualifications for the promoter should be the basis for *licensing* the promoter. The requirements relating to a mixed martial arts event should be the basis for obtaining a *permit* for the event. Other

provisions to enhance public protection would be requirements relating to security, fire and safety, and criminal record checks.

Licensing for promoters

The proposed bill has adequate provisions for the licensing of promoters, but could be improved. Section 9 of the proposed bill requires promoters to obtain a license before they can stage an event. To obtain a license, the bill would require promoters to show proof of financial integrity, satisfy requirements of the Business Registration Division of the Department of Commerce and Consumer Affairs, and to not have been convicted of any crime related to gambling or directly related to the sport of mixed martial arts. Promoters must also provide proof of financial integrity, and that they have the necessary physical, mental, moral, and financial qualifications to be entitled to a license. The proposed bill should be amended to remove subjective licensing criteria. Section 10 of the proposed bill states that licenses are valid for a year and may be renewed. The bill states that promoters would also be subject to additional rules that would be adopted by the new commission.

Permit to hold events

At the same time, the bill requires promoters to have a license and to pay a fee to hold a mixed martial arts contest. Among other requirements, promoters must provide a bond; submit for approval all contracts between managers, contestants, and venues; submit ring records of all contestants, cashier's or certified checks for the amounts due each contestant; provide written confirmation of the presence of an ambulance and paramedics; and provide for two ringside physicians and an experienced referee. These provisions are scattered throughout various sections of the proposed bill.

The bill does not make clear whether a license to stage an event is the same as the promoters' license or whether it is a separate license to conduct an event. To differentiate between the two, the amended bill should specify that no event can be staged unless a *licensed* promoter has obtained a *permit* approving the event. The scattered provisions should be brought together under a single section on *permits*. This would distinguish event requirements from the requirements for licensure as a promoter. It would create a clear two-step process where promoters would apply for an annual license to be qualified to stage events. Licensed promoters must then apply for permits to conduct MMA contests. Should violations occur, it would be a simple matter to enforce the law by revoking the organization's promoter license.

Provisions for security

RICO investigators report that some events have lacked sufficient security. Since alcoholic beverages, such as beer, are permitted at the some of the venues, members of the crowd have become disorderly or belligerent. Some promoters have retained private security to ensure crowd safety, but there is no requirement that they do so. The proposed bill should require promoters to provide security in sufficient numbers to maintain crowd control and protect members of the audience.

Compliance with safety codes

The bill should also require promoters to be in compliance with all local health, safety, and fire codes. Some events have been held in facilities where the crowd has exceeded the capacity of the venue and were probably in violation of the fire code. New Jersey requires promoters of mixed martial arts events to notify the director of public safety (or a designated public safety officer) of the municipality in which the event is to be staged and receive approval for the event. If the public safety officer rejects the proposed event, the New Jersey State Athletic Board will not approve the event.⁹ California requires promoters to provide evidence that the facility or facilities in which events will be held meet state and local fire and safety requirements.¹⁰ The amended House Bill could make permit approval contingent on the licensee providing evidence that tickets sold would not exceed occupancy capacity of the venue and that adequate security arrangements had been made.

Criminal checks

It has been suggested by some interviewees that it would be important to maintain the integrity and legality of mixed martial arts events by protecting them from criminal elements. They want to prevent gambling and other undesirable elements from creeping into the sport. Some states authorize criminal background checks for promoters and other licensees. It may be useful to add these requirements to the proposed bill.

Some contestants in Hawai'i have been accused of assault or domestic abuse. It would be appropriate for contestants to undergo a criminal records check before they are issued an identification card that would allow them to compete. Contestants could apply to the Hawai'i Criminal Data Justice Center for a criminal history check. The results would be sent directly to the appropriate regulating authority. The bill should be amended to authorize the Criminal Data Justice Center to release this information to the regulating authority.

Authority to cite violations

The proposed bill gives the proposed commission the authority to take disciplinary action, revoke and suspend licenses, impose fines, assess penalties, and enjoin a person from continuing to violate the law. The bill should also give the regulating authority the power to cite licensees for violations. This would make for more efficient and effective enforcement. For example, Section 444-10.5, HRS, of Hawai‘i’s contractors law gives investigators the power to issue citations for violations. The citation would describe its basis, the specific statutory provisions alleged to have been violated, an order to cease and desist from the violation, and an assessment of civil penalties. Those cited may request a hearing.

Financial protections

The key to the quality of mixed martial arts events is the promoter. Hawai‘i is a small community. Those active in mixed martial arts say that it is easy to distinguish qualified promoters from unreliable and unscrupulous ones. They say that good promoters are concerned about the welfare of the fighters and take steps to ensure that fighters are protected and that the public is satisfied with the event.

One way House Bill No. 3223, H.D. 1, seeks to accomplish this is by requiring promoters to be bonded so that there is some assurance that the promoter will pay all expenses associated with events and that fighters receive their purses. This requirement is unnecessary. We found in our *Sunset Evaluation Update: Boxing Contests*, Report No. 94-8, that the Department of Commerce and Consumer Affairs had not been enforcing the requirements for a bond or trust or surety accounts. The department merely requires the promoters to deposit certified or cashier’s checks made payable to the Boxing Commission. This system has worked to ensure proper payment to contestants and has made the requirement for a bond unnecessary. The same would hold true for MMA events.

Excessive fees

House Bill No. 3223, H.D. 1, imposes substantial fees on promoters in addition to the initial licensing fees. These requirements are unrelated to protecting the fighter or the public and should be eliminated. The bill would require promoters to pay a license fee of 3 percent of the first \$50,000 of the total gross receipts from admission fees; 5 percent of the total gross receipts over \$50,000 from admission fees; 5 percent of the total gross sales from broadcasting, television, internet, or films; and 5 percent of the gross receipts from subscription fees from simultaneous telecasts of a contest. These fees would be deposited to the Compliance Resolution Fund.

***Director of commerce
and consumer affairs
should be the
regulating authority***

Regulation should not be viewed as an opportunity to generate revenues for the State. Regulation, as it is currently administered, is revenue neutral. The Department of Commerce and Consumer Affairs establishes licensing fees in amounts that would support costs for administering the regulatory program. We believe that the regulation of mixed martial arts should not be an exception to this practice.

Two alternatives have been proposed for a regulating authority. The first is to create a new Mixed Martial Arts Commission. The second is to expand the jurisdiction of the Boxing Commission and rename it the Athletic Commission. We propose a third alternative that we believe would be the most effective—placing the program directly under the director of commerce and consumer affairs.

A new mixed martial arts commission

House Bill No. 3223, H.D. 1, proposes to establish a new Mixed Martial Arts Commission administratively attached to the Department of Commerce and Consumer Affairs consisting of five members to be appointed by the governor. One member of the commission would be a person with experience as a mixed martial arts contestant. The commission is to have sole jurisdiction, direction, management, and control over all MMA contests to be held in the State. This would result in Hawai‘i having both a Boxing Commission and a Mixed Martial Arts Commission.

None of the other 49 states has two commissions or a commission dedicated solely to mixed martial arts. States that do regulate mixed martial arts do so either under their Boxing Commission, Athletic Commission, or department of professional licensing or regulation. We believe that it would be unnecessary and confusing to have two commissions. The duality may result in questions relating to jurisdiction and overlapping authority.

An athletic commission

A second alternative is to place mixed martial arts under the Boxing Commission and rename it the Hawaii Athletic Commission. This would expand the scope of regulation and simplify its administration. This alternative is not popular with those in the realm of mixed martial arts since they say that the Boxing Commission is not knowledgeable about martial arts and members of the Boxing Commission may be hostile towards the sport. Those who favor this alternative say that members of the Boxing Commission are not required to be knowledgeable about boxing or any other specific sport. Moreover, even if a new martial arts commission were to be created, the bill would require only one member of the proposed five-member commission to be knowledgeable about

mixed martial arts. Also, if a new athletic commission were created, two new members would be added and more new members would come on board as the terms of current members of the Boxing Commission expire.

One benefit of creating a new athletic commission for the two sports is the justification it offers to maintain oversight over boxing despite that sport's decline. In calendar years 2003 and 2004 there were no boxing events in Hawai'i. In 2005, there were two events. So far, in 2006, there have been no events. A new athletic commission would continue the scope of the Boxing Commission in case interest in boxing is rekindled.

The disadvantage of having a new commission is that it may be more inefficient. Development of rules and implementation of regulation would have to await the appointment of members to the commission. It would take time to find and appoint members of a new commission. It may be difficult to find persons knowledgeable about a young sport who would be willing to serve on a commission, although knowledge of a sport is not necessary for service on its commission as in boxing. Most of those active in mixed martial arts are affiliated with schools, participate in events, or are involved in the field. Detractors of a commission proposal maintain it is often difficult to hold members of a commission accountable for its actions. In addition, commission decisions on licensing and other matters must await scheduled commission meetings, thereby creating delays.

Direct regulation under the director of commerce and consumer affairs

A better alternative is to have a mixed martial arts program administered directly by the director of commerce and consumer affairs. Currently, Chapter 26-9, HRS, gives the Department of Commerce and Consumer Affairs (DCCA) responsibility to enforce all laws and rules governing the licensing, operation of, and supervision of the conduct of trade, businesses, and professions. Giving the director authority for the program would streamline its administration, increase accountability, and probably be more efficient.

A number of states including Illinois, Iowa, and Washington regulate mixed martial arts directly under their departments of licensing or professional regulation. Washington's Department of Licensing reports that it has been regulating mixed martial arts events since 1999. The office approves the events, all match-ups, and generally follows the UFC rules. The office says that regulation has progressed very smoothly and attributes this to the consistency of decisions made by the office.

If the program were placed under the director of commerce and consumer affairs, the director would be responsible for implementing a

MMA program expeditiously. Any problems and issues could be brought to the director without having to wait for a scheduled commission meeting. The program would likely be more efficient since the department could take action and decide on approvals or denials as situations arose without waiting for commission meetings. Those who appeal decisions or have complaints about the licensing program would still have recourse to the department's Hearings Office as is done for all the other regulatory programs.

Urgent need for unified rules

Section 26-9(k), HRS, states that the director may adopt, amend, or repeal rules to effectuate the purposes of all laws within the jurisdiction of the department. If the proposed bill were enacted, unified rules of conduct for mixed martial arts should be adopted expeditiously to implement the law. The rules would flesh out licensing requirements for promoters, contestants, physicians, and referees. They would spell out medical, insurance, and security requirements. The rules would contain regulations on disciplinary actions and other sanctions that might be taken for violations of the law.

Most importantly, unified rules are needed on fouls and other offenses that could result in injury. New Jersey and Nevada have unified rules that list fouls that apply to all mixed martial arts. California is developing proposed rules that have identified standard fouls based on input from various martial arts organizations. The listings of fouls and penalties are designed to protect fighters from foreseeable harm or danger and to prevent an unfair advantage of one fighter over another.

The director could immediately appoint an advisory committee pursuant to Section 26-9(s), HRS, to help in developing these rules. A basis for these rules could be those adopted in California, New Jersey, and Nevada. Since an advisory committee does not have decision-making responsibilities, the director could tap the expertise of those knowledgeable about mixed martial arts without being restricted by questions about conflict of interest.

Should the Legislature enact regulation of mixed martial arts, it should consider postponing the effective date of such regulation to July 1, 2008. The development of appropriate rules to properly implement the program will take time. Even should the director of commerce and consumer affairs move expeditiously to adopt rules, the process would still require the appointment of knowledgeable and interested persons, thoughtful consideration of this new and evolving sport, and public hearings. In the interim, regulation of MMA events could continue under the current Chapter 440D, HRS.

Conclusion

We believe that regulation is needed to protect both mixed martial arts contestants and the public from injury. This could be accomplished by repealing Chapter 440D, HRS, and enacting an amended House Bill No. 3223, H.D. 1. The bill should be amended to provide additional safeguards to prevent harm to mixed martial arts contestants by adding provisions such as health insurance and HIV, hepatitis, and drug tests. The amended bill should also provide greater protections to the public through provisions on security and compliance with local fire and safety codes. Finally, we believe that a regulatory program administered directly by the director of commerce and consumer affairs would result in the most efficient and effective implementation of regulation.

Recommendations

1. We recommend that House Bill No. 3223, House Draft 1 of the 2006 legislative session be enacted with the following amendments. The amended bill should:
 - a. Establish a regulatory program for mixed martial arts under the director of commerce and consumer affairs.
 - b. Clarify that, in addition to an annual license, promoters need to obtain a permit for each event to be staged.
 - c. Require promoters to comply with the following to obtain a permit:
 - Furnish evidence that they will have security in sufficient numbers to exercise crowd control and to protect spectators at mixed martial arts event.
 - Provide evidence that they will be in compliance with local fire codes.
 - Require promoters to maintain sanitary conditions at events.
 - d. Require contestants to obtain a criminal records history from the Hawai'i Criminal Data Justice Center and authorize the center to release the resulting information to the regulating authority.
 - e. Remove the requirement for promoters to pay additional fees on percentages of gross receipts.
 - f. Remove the requirement for promoters to obtain a bond to be licensed.

- g. Require contestants to furnish a medical report done within six months of the scheduled event along with their fight records to demonstrate their fitness to compete, and the results of HIV and hepatitis testing.
 - h. Prohibit the use of stimulants and banned substance before and during a contest.
 - i. Remove licensing for matchmakers, judges, and timekeepers.
 - j. Require the development of a proper registry or data bank on mixed martial arts contestants.
 - k. Make provisions for amateur contests.
 - l. Establish an effective date of July 1, 2008 for the law.
2. We recommend that, upon the enactment of the bill, the director of commerce and consumer affairs move expeditiously to appoint an advisory committee for mixed martial arts to help develop rules so that the new law can be implemented properly.

Notes

Chapter 1

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7. "UFC targets Texas for expansion in '07," *Houston Chronicle*, July 30, 2006.
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9. "MMA Reinstated in the Buckeye State," *Sherdog*, June 24, 2006, www.sherdog.com/news.
10. California Department of Consumer Affairs, News Release, "California State Athletic Commission to Sunset at Midnight," June 30, 2006.
11. Department of Commerce and Consumer Affairs, Regulated Industries Case List, August 1, 2006.
12. "Lawmakers kill proposal to outlaw extreme combat," *Honolulu Advertiser*, February 8, 2006.
13. "Extreme-fighting law has no teeth," *Honolulu Advertiser*, May 24, 2005.
14. Act 130, Session Laws of Hawai'i 1997.

15. Standing Committee Report No. 655 on Senate Bill No. 768, 2005.
16. Senate Concurrent Resolution No. 37, S.D. 1, 2006.
17. Benjamin Shimberg and Doug Roederer, *Questions a Legislator Should Ask*, Second Edition, The Council on Licensure, Enforcement and Regulation, Lexington, Kentucky, 1994.

Chapter 2

1. "Martial arts injury overview," *Sports Injury Bulletin*, www.sportsinjurybulletin.com/archive/martial-arts.html.
2. *Ibid.*
3. Gregory H. Bledsoe, et. al, "Incidence of Injury in Professional Mixed Martial Arts Competitions," *Journal of Sports Science and Medicine*, 2006, v.5, Combat Sports Special Issue, p. 136-142.
4. Section 548.037 Florida Statutes.
5. *Op. cit.*, *Sports Injury Bulletin*.
6. California State Athletic Commission, Initial Statement of Reasons, Subject Matter of Proposed Regulations: Mixed Martial Arts and Kickboxing, Hearing Date, January 26, 2005 Rules, Section 524. Sanitation.
7. *Op. cit.*, *Sports Injury Bulletin*.
8. California Code of Regulation, Chapter 4, Amateur Full Contact Martial Arts, Section 702.
9. Title 5, Section 5:2A-18, New Jersey Statutes.
10. California Code of Regulation, Chapter 2 Full-Contact Martial Arts and Kickboxing, Section 541.

Response of the Affected Agency

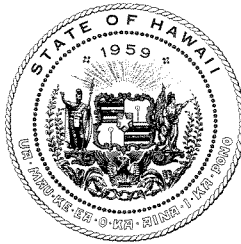
Comments on Agency Response

We transmitted a draft of this report to the Department of Commerce and Consumer Affairs on December 20, 2006. A copy of the transmittal letter to the Department is included as Attachment 1. The response from the Department is included as Attachment2.

The Department of Commerce and Consumer Affairs is generally in agreement with the recommendations in our report. It prefers to defer comment, however, on the level of oversight that would be appropriate for the regulation of MMA pending its review of proposed legislation based on the report. The department says that it will need the assistance of a board or advisory committee to develop rules and to implement the program. It also says that the requirements for licensing and permitting should be specific in order to properly implement the program. We believe that many of the specifics relating to licensing should and could be developed and adopted as rules instead of legislation. The department also warns that rulemaking may take more than two years and that regulation may be costly. Finally, the department suggests that proposed regulation not include amateur events at this time.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawai'i 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

December 20, 2006

COPY

The Honorable Mark E. Recktenwald, Director
Department of Commerce and Consumer Affairs
King Kalakaua Building
335 Merchant Street
Honolulu, Hawai'i 96813

Dear Mr. Recktenwald:

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Sunrise Analysis: Mixed Martial Arts*. We ask that you telephone us by Friday, December 22, 2006, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Tuesday, January 2, 2007.

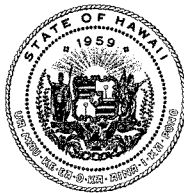
The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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MARK E. RECKTENWALD
DIRECTOR

LAWRENCE M. REIFURTH
DEPUTY DIRECTOR

RECEIVED

January 2, 2007

2007 JAN -2 PM 3:41

Ms. Marion M. Higa
State Auditor
Office of the Legislative Auditor
465 S. King Street, Room 500
Honolulu, HI 96812-2917

OFC. OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Higa:

Thank you for providing the Department of Commerce and Consumer Affairs ("Department") the opportunity to comment on your draft report entitled, "Sunrise Analysis: Mixed Martial Arts." We will comment on the recommendations as they are listed on pages 29-30 of the draft report.

1. *We recommend that House Bill No. 3223, House Draft 1 of the 2006 legislative session be enacted with the following amendments. The amended bill should:*
 - a. *Establish a regulatory program for mixed martial arts ("MMA") under the director of commerce and consumer affairs.*

At this time, the Department defers comment on the level of oversight that would be appropriate for the regulation of MMA because we understand that your office will be proposing legislation based on this report. We look forward to reviewing the details of that bill to examine the responsibilities placed on the Department and the resources we would need. For now, we offer the following comments.

The report recommends that MMA be regulated by the director of the Department. We must stress the importance of the Department having available a body of knowledgeable persons to assist us with

licensing and event approvals under any form of regulation. Our experience with boxing events has shown that technical, sport-specific issues often arise with which our staff has very limited expertise or experience. As an example, a board, commission or advisory panel would be more likely able than staff to determine the fairness of a promoter's matchmaking practices or approve the substitute of another participant or equipment changes at the 11th hour.

- b. Clarify that, in addition to an annual license, promoters need to obtain a permit for each event to be staged.*

The Department agrees that licensing and event approval are important, but recommend that promoters be required to renew their license on a biennial basis similar to the other regulated professions and vocations of the Department.

- c. Require promoters to comply with the following to obtain a permit:*
- Furnish evidence that they will have security in sufficient numbers to exercise crowd control and to protect spectators at mixed martial arts event.*
 - Provide evidence that they will be in compliance with local fire codes.*
 - Require promoters to maintain sanitary conditions.*

The Department agrees with these recommendations provided that the bill explains specifically what the promoter must do in order to comply with these requirements.

- d. Require contestants to obtain a criminal records history from the Hawaii Criminal Data Justice Center and authorize the center to release the resulting information to the regulating authority.*

The Department agrees with this recommendation, provided that the cost is borne by the applicant or promoter.

- e. Remove the requirement for promoters to pay additional fees on percentages of gross receipts.*

As stated in your report, 29 MMA events were held in Hawaii in 2005 and MMA events are now one of Hawaii's most popular spectator sports. RICO has sent two investigators to each MMA

event to monitor the weigh in and the event itself. The new responsibilities have taken a great deal of staff time and RICO has sustained substantial overtime costs.

Given the growing popularity of the sport and the complex nature of the license approval process and pre-fight oversight activities, it is likely that the costs to regulate MMA under this bill will be high. The following is a list of possible activities that will need to be addressed by the regulating entity:

Application process

- Review various application documents to determine if the applicant possesses the necessary physical, mental, and moral qualifications for licensure.
- Review financial and insurance documents to ensure the promoter can meet all of his/her financial obligations.
- Prepare a list of payments to be provided to the promoter so that checks are prepared prior to the event.
- Review match contracts to verify that the agreed upon compensation is paid at the conclusion of each event.
- Review proposed card to ensure that each bout is fairly matched based on the respective win/loss records.

Prior to the event

- Review evidence of sufficient security measures, compliance with local fire and building codes.
- Review evidence of sufficient emergency medical personnel and ambulance service.
- Inspect the venue for sufficient lighting, seating, ring requirements, separate dressing rooms, etc.
- Assign respective corners to participants; assign seating for all officials and the media. Coordinate the color of the apparel so that the participants can be easily distinguished.

- Supervise the weigh in to ensure that each participant makes their designated weight. Assign physicians to perform checkups at the weigh in.
- Receive and take custody of participants' compensation for distribution after the event.

At the event

- Ensure that all the assigned officials have reported for duty on time.
- Keep the opponents apart from one another.
- Inspect the equipment of the corner persons.
- Observe the dressing by participants to ensure that illegal substances or equipment are not used.
- Final examination performed by physicians.
- Have physicians examine and clear any participant that has been knocked out or appears to have sustained injuries, especially to the head. Ensure that participants do not leave the venue until cleared by the physician.
- Coordinate after-event drug testing, if required.
- Have participants sign for their compensation.

After the event

- Evaluate the event and suggest improvements, including statutory or rule amendments.

As a result, while the Report seems to envision that the Department's Regulated Industries Complaints Office ("RICO") will not be involved in supervising events on a regular basis, the costs associated with the regulation appear likely to significantly exceed the resources currently devoted to MMA regulation. Consequently, the Department believes that any proposed regulation of MMA will

require additional staffing and funding to administer. Since the Department is self-funded, these costs have to be paid for by the program, and it may not be possible to recover all of the costs from up-front fees.

f. Remove the requirement for promoters to obtain a bond to be licensed.

The Department agrees with this recommendation but disagrees with the following statement found on page 25:

"We have found in our Sunset Evaluation Update: Boxing Contests, Report No. 94-8, that the Department of Commerce and Consumer Affairs has not been enforcing the requirements for a bond...."

The Department and the Boxing Commission have been and will continue to enforce the \$5000 surety bond requirement. The bond is used to ensure that individuals and businesses that have a contractual relationship with the promoter, in conjunction with the event, are paid.

g. Require contestants to furnish a medical report done within six months of the scheduled event along with their fight records to demonstrate their fitness to compete, and the results of HIV and hepatitis testing.

The Department agrees with this recommendation, provided that the costs are borne by the promoter.

h. Prohibit the use of stimulants and banned substance before and during a contest.

The Department agrees with this recommendation, provided that the costs of determining compliance are borne by the promoter.

i. Remove licensing for matchmakers, judges, and timekeepers.

The purpose for licensing officials such as referees and judges is to ensure that they meet minimum qualifications to protect the health, safety, and welfare of the public.

On page 21, the report states that, "Currently, promoters select the judges, and it is in the promoters' interests to ensure fair decisions." We would like to add that the promoters also select the referees for each event.

The Boxing Commission, on the other hand, assigns all officials to each event to remove any perception of collusion or conflict of interest between the officials and the promoter.

The Department believes that judges should also be licensed to remove any possible perception of a conflict of interest between a promoter and officials.

We agree with non-licensure of matchmakers and timekeepers.

- j. Require the development of a proper registry or data bank on mixed martial arts contestants.*

The Department does not object to working with other jurisdictions to create a national database, provided that it will have the means and resources to do so. We therefore request that instead of making this a requirement, that it be made discretionary, dependent on the Department's ability to do so.

- k. Make provisions for amateur contests.*

HB 3223 H.D.1 defines a "mixed martial arts contest" as a contest or exhibition using mixed martial arts for money, prize, purse or other forms of compensation. In this regard, it does not appear that HB 3223 H.D.1 was intended to apply to amateur events. While we do not dispute the Auditor's assertion that there is a high potential for injury in amateur events, it may be unrealistic to expect the Department to rely on local non-profit organizations to oversee amateur events until and unless such organizations are established. In the absence of such organizations, regulation of amateur promoters, fighters, and events through laws designed for professionals would be difficult for the Department as well as for the amateur event promoters and participants being regulated. As such, we suggest that the proposed legislation not be expanded to include amateur events at this time.

- l. Establish an effective date of July 1, 2008 for the law.*

DCCA agrees with this recommendation but with the additional comments expressed in 2. below.

2. *We recommend that, upon the enactment of the bill, the director of commerce and consumer affairs move expeditiously to appoint an advisory committee for mixed martial arts to help develop rules so that the new law can be implemented properly.*

The Department agrees that it will require assistance to develop rules and implement this new licensing area. We have grave concerns, however, with the proposed one-year time frame in which to develop rules in light of the bill's current lack of specificity. If the proposed legislation will not have sufficient details for the Department to implement licensing and we must rely upon rulemaking, the rulemaking process will still be a lengthy one. From past experience, the rulemaking process could take as long as up to two years to complete. It therefore may be unrealistic to expect the Department to commence licensing within one year unless the bill is in such form and sufficiently detailed such that the Department and a body of experts can implement the new law without rule making.

In addition to our comments provided thus far, the Department would also like to provide the following comments:

The scope needs to be clearly defined.

While the report touched on the Legislature's finding that the term "mixed martial arts" was not clearly defined, it is extremely important to emphasize that legislation should provide clear definitions that set forth (a) conduct that would be permissible (currently this category includes activities such as traditional martial arts, entertainment wrestling and kickboxing), (b) conduct subject to licensure; and (c) conduct that would be banned under all circumstances. If not, implementation and enforcement of this law will be very problematic for the Department.

Authority to cite violations.

The report on page 25 suggests that the bill provide for the ability to issue citations, including a cease and desist order, for violations. At the present time, the DCCA has the authority under Haw. Rev. Stat. section 436B-26.5 and 444-10.5 to issue citations; however, these citations are based on violations involving unlicensed activity. To the extent the bill would provide for citations to be issued for other types of violations, we suggest that the violations that would trigger a citation be clearly and unambiguously spelled

Ms. Marion M. Higa
January 2, 2007
Page 8

out in the bill, especially if the citation's cease and desist order will result in the cancellation or termination of an event.

Thank you for the opportunity to comment. If you have any questions or comments, please call me at 586-2850.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Mark E. Recktenwald".

Mark E. Recktenwald
Director

c: Ms. Noe Noe Tom