

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON TOURISM AND
GOVERNMENT OPERATIONS
ON
HOUSE BILL NO. 2145, H.D. 1

March 11, 2008

RELATING TO UNCLAIMED PROPERTY

House Bill No. 2145, H.D. 1, allows unclaimed property claimants to submit affidavits affirming that they are the owners of unclaimed property in lieu of documented proof of ownership.

The Department of Budget and Finance is opposed to this bill as it would allow claimants with similar names to claim property solely on the basis of an affidavit when proof of ownership should be required. While we understand and appreciate the intent of the bill, the mission of the unclaimed property program is to return property to its rightful owner. If claimants are not required to provide proof of ownership and the program will be required to accept affidavits as proof of ownership, property may be returned to persons other than the rightful owner. For example, the Program currently holds property for 50 persons named John Smith with differing personal information. A John Smith would be able to submit an affidavit for a number of these properties to which he may not be entitled to.

Claimants currently are required to provide documented proof of ownership to prevent possible abuse. The unclaimed property program currently subscribes to a

database comprised of many public records which provides confirmation of previous addresses for owners for up to the previous twenty years, providing many claimants

assistance in providing their documented proof of ownership. When requested, the unclaimed property staff provides suggestions for sources of proof of ownership and has also contacted the companies reporting property to assist owners in proving ownership.

Finally, the bill is unclear as to whether the Director of Finance shall be required to accept an affidavit as proof of ownership or if a claim may be denied even with the submittal of an affidavit. Clarification is requested regarding this language.

Thank you for the opportunity to provide testimony on this bill.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.B. NO. 2145, H.D. 1, RELATING TO UNCLAIMED PROPERTY.

BEFORE THE:

SENATE COMMITTEE ON TOURISM AND GOVERNMENT OPERATIONS

DATE: Tuesday, March 11, 2008 **TIME:** 3:00 PM

LOCATION: State Capitol, Room 229

Deliver to: State Capitol, Room 213, 1 copy

TESTIFIER(S): Mark J. Bennett, Attorney General
or Randall S. Nishiyama, Deputy Attorney General

Chair Nishihara and Members of the Committee:

The Department of the Attorney General takes no position on this bill, but we wish to bring to your attention the ramifications of the bill's use of the penalty of perjury in the swearing of an affidavit.

This bill allows individuals attempting to claim certain unclaimed property from the State to assert ownership through an affidavit signed "under penalty of perjury." However, the use of that phrase in statutes should be made with reference to the offense of perjury as specified by applicable state law.

Under section 710-1060(1), Hawaii Revised Statutes, "[a] person commits the offense of perjury if in any official proceeding the person makes, under an oath required or authorized by law, a false statement which the person does not believe to be true." Pursuant to section 710-1060(2), the false statement must be a "materially false statement" as defined by section 710-1000(9), Hawaii Revised Statutes. Perjury is a class C felony and a person convicted of a felony may be sentenced to a maximum term of imprisonment five years and to pay a maximum fine of \$10,000.

However, section 710-1061, Hawaii Revised Statutes, imposes a lesser penalty for the offense of false swearing in official matters. Section 710-1061 states:

§710-1061 False swearing in official matters.

(1) A person commits the offense of false swearing in official matters if the person makes, under an oath required or authorized by law, a false statement which the person does not believe to be true, and:

- (a) The statement is made in an official proceeding; or
- (b) The statement is intended to mislead a public servant in the performance of the public servant's official duty.

(2) False swearing in official matters is a misdemeanor.

False swearing in official matters is a misdemeanor and a person convicted of a misdemeanor may be sentenced to a maximum term of imprisonment of one year and to pay a maximum fine of \$2,000.

We defer to the Committee regarding the severity of the penalty it wishes to impose on a claimant making a false statement in an affidavit to claim certain unclaimed property from the State, but our State's offense of perjury may not fit the circumstances that would occur under section 523A-24(a), Hawaii Revised Statutes, as amended by the bill.