

HB 1138

SD1



Collection Law Section

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Steven Guttman

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William J. Plum

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Yuriko J. Sugimura
Thomas J. Wong

Reply to:

STEVEN GUTTMAN, CHAIR
220 SOUTH KING STREET, SUITE 1900
HONOLULU, HAWAII 96813
TELEPHONE: (808) 536-1900
FAX: (808) 529-7177 E-MAIL: sguttman@kdubm.com

March 29, 2011

Senator David Y. Ige, Chair
Senator Michelle Kidani, Vice Chair
Senate Ways and Means Committee
State of Hawaii

TESTIMONY IN SUPPORT OF HB 1138

**RE: HB 1138 / RELATING TO ATTORNEY'S LIENS
HEARING 4/1/11 @ 9:00 AM**

Dear Senator Hee and Committee Members:

The Collection Law Section of the Hawaii State Bar Association supports passage of HB 1138.¹ HB 1138 amends HRS 507-81 to delete the one year deadline for filing the lien with the court or arbitrator and generally improves the section by offering a more consistent use of terms.

For background, HRS 507-81 was enacted in 2004 in response to a taxation issue concerning individuals who had obtained a settlement or judgment, and then found that the Internal Revenue Service ("IRS") was taking the position that certain parts of certain settlements or judgments recovered by those individuals could be taxed without a deduction for the attorney's fees those individuals paid to obtain the settlement or judgment in the first place. Moreover, after taxing those individuals, the IRS again taxed those same attorney's fees on the *attorney's personal income tax return*; thereby amounting to what could effectively be called, double taxation. HRS 507-81 clearly defines the attorney's portion of the recovery as belonging to the attorney and therefore provides assistance to the individual who has obtained a settlement or judgment and does not want to pay taxes on the amount his or her attorney received for their services (please keep in mind, the attorney pays taxes on his or her fees for services rendered no matter if HRS 507-81 exists or not).

¹ The opinions of the Collection Law Section are not necessarily the opinions of the Hawaii State Bar Association proper.

Senator Ige
March 29, 2011
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HRS 507-81, as currently written, states that the attorney has, at the outside, a one year period after entry of the settlement or judgment, to file the HRS 507-81 notice of lien. If however, the attorney forgets to file a lien with the court or arbitrator, or if the attorney does not know about HRS 507-81, or if an individual needs to hire another attorney to collect on the judgment a few years later, or if the judgment is older than 2003, the lien never is perfected; causing obvious taxation problems for the individual/client. SB 1489 corrects this by eliminating the one year time limit.

Lastly, SB 1489 cleans up HRS 507-81 so that it reads more clearly. HRS 507-81 became a Hawaii statute as a "cut and paste" of an Oregon statute. With all due respect to the Oregon Legislature, legal terms of art in the Oregon law were not used with great consistency. Further, litigation trends are favoring a move towards using arbitration. SB 1489 clarifies and states without any doubt that HRS 507-81 includes settlements and judgments obtained through arbitration.

Thank you.

Respectfully,

/s/ Bill Plum

Bill Plum
Vice Chair

cc: Steve Guttman
Lyn Flanigan

\hb1138b



HAWAII COURT REPORTERS & CAPTIONERS ASSOCIATION

P.O. Box 4681, Honolulu, Hawai'i 96812

March 28, 2011

Senate Ways and Means Committee
Hawaii State Legislature

Re: HB 1138, SD1

Honorable Chair Ige, Vice Chair Kidani and Esteemed Committee Members:

The Hawaii Court Reporters and Captioners Association supports HD1138, SD1 legislation regarding payment for court reporting services.

Freelance and official court reporters record and provide transcripts of depositions, arbitrations, hearings, and sworn statements, etc., and bill for these services both to the noticing attorney and other counsel who order copies.

Reporters and agencies often have difficulties receiving payment for their services. They are told, after being stalled for a long period, that he/she, the attorney, is not responsible for the bill, but that his or her client is responsible even though this was not made known at the outset. This puts the reporters who work independently and agencies who utilize their services in the very difficult position of trying to get paid for their services.

Thirty-four states support this position and have changed their business code, rules or laws to take care of this problem. Our National Court Reporters Association states: "NCRA advocates that attorneys are liable for court reporting fees unless they expressly disclaim liability in advance. This policy conforms to the modified agency rule adopted in the majority of states with respect to court reporter fees that takes into account custom and usage and modern litigation practices in which attorneys, rather than their clients, handle and maintain control over all aspect of litigation, including hiring reporter or other expert services."

March 28, 2011

Page 2

Senate Ways and Means Committee
Hawaii State Legislature

The Hawaii Court Reporters & Captioners Association is requesting the adoption of HD1138, SD1.

It should be noted that the passage of this bill requires no funding or appropriation of funds by the State of Hawaii.

Respectfully submitted, HAWAII COURT REPORTERS & CAPITONERS
ASSOCIATION

Sharon Mujtabaa, President
Madeline Gable, Treasurer
Sami Silvia, Secretary
Tristan Joseph, Board Member
Leslie Takeda, Board Member
Laurie Savo, Board Member
Valerie Swiderski, Board Member
Louis A. Carnazzo, Committee Member

KATHERINE EISMANN, CSR, RDR, CRR

Official Reporter
U.S. District Court
300 Ala Moana Boulevard, C-338
Honolulu, Hawaii 96850

March 28, 2011

Senate Ways and Means Committee
Hawaii State Legislature

Re: HB 1138, SD1

Honorable Chair Ige, Vice Chair Kidani and Esteemed Committee Members:

I am a official reporter in Federal Court and a member of the Hawaii Court Reporters and Captioners Association. I strongly support HD1138, SD1 legislation regarding payment for court reporting services.

I have been a reporter for 35 years and have worked both as an official reporter and a freelance reporter. As an official reporter, I bill the ordering attorney directly. As a freelance reporter, the billing was handled by the freelance agency.

Reporters and agencies often have difficulty receiving payment for their services. They are told long after the fact that the attorney or his firm is not responsible for the bill, but that his or her client is responsible even though this was not made know at the outset. This puts the reporters who work independently and agencies who utilize their services in the very difficult position of trying to get paid for their services perhaps by someone they've never had any contact with whatsoever.

Thirty-four states support this position and have changed their business code, rules or laws to take care of this problem. Our National Court Reporters Association states: "NCRA advocates that attorneys are liable for court reporting fees unless they expressly disclaim liability in advance. This policy conforms to the modified agency rule adopted in the majority of states with respect to court reporter fees that takes into account custom and usage and modern litigation practices in which attorneys, rather than their clients, handle and maintain control over all aspect of litigation, including hiring reporter or other expert services."

I respectfully request the adoption of HD1138, SD1. ***It should be noted that the passage of this bill requires no funding or appropriation of funds by the State of Hawaii.***

Respectfully submitted,

/s/ Katherine Eismann

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: lisablanks1@gmail.com
Subject: Testimony for HB1138 on 4/1/2011 9:00:00 AM
Date: Tuesday, March 29, 2011 2:36:30 PM

Testimony for WAM 4/1/2011 9:00:00 AM HB1138

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Lisa Blanks
Organization: Individual
Address:
Phone:
E-mail: lisablanks1@gmail.com
Submitted on: 3/29/2011

Comments:
March 28, 2011

Senate Ways and Means Committee
Hawaii State Legislature

Re: HB 1138, SD1

Honorable Chair Ige, Vice Chair Kidani and Esteemed Committee Members:

Our Hawaii Court Reporters and Captioners Association supports HB1138, SD1 legislation regarding payment for court reporting services.

Freelance and official court reporters record and provide transcripts of depositions, arbitrations, hearings, and sworn statements, etc., and bill for these services both to the noticing attorney and other counsel who order copies.

Reporters and agencies often have difficulties receiving payment for their services. They are told, after being stalled for a long period, that he/she, the attorney, is not responsible for the bill, but that his or her client is responsible even though this was not made know at the outset. This puts the reporters who work independently and agencies who utilize their services in the very difficult position of trying to get paid for their services.

Thirty-four states support this position and have changed their business code, rules or laws to take care of this problem. Our National Court Reporters Association states: "NCRA advocates that attorneys are liable for court reporting fees unless they expressly disclaim liability in advance. This policy conforms to the modified agency rule adopted in the majority of states with respect to court reporter fees that takes into account custom and usage and modern litigation practices in which attorneys, rather than their clients, handle and maintain control over all aspect of litigation, including hiring reporter or other expert services."

I respectfully request the adoption of HD1138, SD1.

It should be noted that the passage of this bill requires no funding or appropriation of funds by the State of Hawaii.

Respectfully submitted,

Lisa A. Blanks

March 28, 2011

Senate Ways and Means Committee
Hawaii State Legislature

Re: HB 1138, SD1

Honorable Chair Ige, Vice Chair Kidani and Esteemed Committee Members:

Our Hawaii Court Reporters and Captioners Association supports HD1138, SD1 legislation regarding payment for court reporting services.

Freelance and official court reporters record and provide transcripts of depositions, arbitrations, hearings, and sworn statements, etc., and bill for these services both to the noticing attorney and other counsel who order copies.

Reporters and agencies often have difficulties receiving payment for their services. They are told, after being stalled for a long period, that he/she, the attorney, is not responsible for the bill, but that his or her client is responsible even though this was not made known at the outset. This puts the reporters who work independently and agencies who utilize their services in the very difficult position of trying to get paid for their services.

Thirty-four states support this position and have changed their business code, rules or laws to take care of this problem. Our National Court Reporters Association states: "NCRA advocates that attorneys are liable for court reporting fees unless they expressly disclaim liability in advance. This policy conforms to the modified agency rule adopted in the majority of states with respect to court reporter fees that takes into account custom and usage and modern litigation practices in which attorneys, rather than their clients, handle and maintain control over all aspects of litigation, including hiring reporter or other expert services."

I respectfully request the adoption of HB1138, SD1.

It should be noted that the passage of this bill requires no funding or appropriation of funds by the State of Hawaii.

Respectfully submitted,

/s/ Jamie S. Miyasato

Jamie S. Miyasato

March 29, 2011

Senate Ways and Means Committee
Hawaii State Legislature

Re: HB 1138, SD1

Honorable Chair Ige, Vice Chair Kidani and Esteemed Committee Members:

I, as a practicing official court reporter with the U.S. District Court, District of Hawaii and member of the Hawaii Court Reporters and Captioners Association, strongly support HB 1138, SD1 regarding payment for court reporter services.

I feel that the passage of HB 1138, SD1 will allow court reporters, independent and official, as well as court reporting firms some recourse in collecting payment for services rendered.

Respectfully submitted,

/s/ Gloria T. Bediamol

Gloria T. Bediamol
Court Reporter
U.S. District Court
300 Ala Moana Blvd., C257
Honolulu, Hawaii 96850

March 28, 2011

Senate Ways and Means Committee
Hawaii State Legislature

Re: HB 1138, SD1

Honorable Chair Ige, Vice Chair Kidani and Esteemed Committee Members:

Our Hawaii Court Reporters and Captioners Association supports HD1138, SD1 legislation regarding payment for court reporting services.

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I respectfully request the adoption of HD1138, SD1.

It should be noted that the passage of this bill requires no funding or appropriation of funds by the State of Hawaii.

Respectfully submitted,

Lynann Nicely

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 28, 2011 12:51 PM
To: WAM Testimony
Cc: islandcourtreporting@gmail.com
Subject: Testimony for HB1138 on 4/1/2011 9:00:00 AM

Testimony for WAM 4/1/2011 9:00:00 AM HB1138

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Lynn Sakai Gushiken
Organization: Individual
Address:
Phone:
E-mail: islandcourtreporting@gmail.com
Submitted on: 3/28/2011

Comments:
March 28, 2011

Senate Ways and Means Committee
Hawaii State Legislature

Re: HB 1138, SD1

Honorable Chair Ige, Vice Chair Kidani and Esteemed Committee Members:

Our Hawaii Court Reporters and Captioners Association supports HD1138, SD1 legislation regarding payment for court reporting services.

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I respectfully request the adoption of HD1138, SD1.

It should be noted that the passage of this bill requires no funding or appropriation of funds by the State of Hawaii.

Respectfully submitted,

Lynn Sakai Gushiken,
Certified Shorthand Reporter No. 129

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 28, 2011 9:34 PM
To: WAM Testimony
Cc: ritaking@gmail.com
Subject: Testimony for HB1138 on 4/1/2011 9:00:00 AM

Testimony for WAM 4/1/2011 9:00:00 AM HB1138

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Rita King
Organization: Individual
Address:
Phone:
E-mail: ritaking@gmail.com
Submitted on: 3/28/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 28, 2011 6:12 PM
To: WAM Testimony
Cc: sheila@hawaii.rr.com
Subject: Testimony for HB1138 on 4/1/2011 9:00:00 AM

Testimony for WAM 4/1/2011 9:00:00 AM HB1138

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Sheila Britt Lipton
Organization: Individual
Address:
Phone:
E-mail: sheila@hawaii.rr.com
Submitted on: 3/28/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 31, 2011 10:48 AM
To: WAM Testimony
Cc: cynthia_fazio@hid.uscourts.gov
Subject: Testimony for HB1138 on 4/1/2011 9:00:00 AM

Testimony for WAM 4/1/2011 9:00:00 AM HB1138

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Cynthia Fazio
Organization: Individual
Address:
Phone:
E-mail: cynthia_fazio@hid.uscourts.gov
Submitted on: 3/31/2011

Comments: