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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON
JUDICIARY AND LABOR

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

TUESDAY, MARCH 29, 2016
9:30 A.M.

TESTIMONY ON HOUSE BILL NO. 2329, RELATING TO CONSUMER PROTECTION.

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND TO THE HONORABLE MAILE S.L. SHIMABUKURO, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“DCCA”), Office of Consumer Protection (“OCP”) supports this Administration Bill, Relating to Consumer Protection. My name is Stephen Levins and I am the Executive Director of the OCP.

House Bill No. 2329 seeks to repeal subsection (b) of Hawaii Revised Statutes (“HRS”) § 480-24, because there is no statute of limitations applicable to the state under HRS Chapter 480. This was made abundantly clear by the Legislature when it enacted HRS § 657-1.5 in 1991, with the following language:

“No limitation of actions provided for under this or any other chapter shall apply to bar the institution or maintenance of

any action by or on behalf of the State and its agencies, unless the State is specifically designated in such a statute as subject to the limitation period contained therein”.

Significantly, the Legislature, at that time, declared that the purpose of the bill was “to ensure the common law rule that statutes of limitation do not run against the State **applies to all limitations statutes provided for in the Hawaii Revised Statutes**”. (Emphasis added). In support of this position, it declared that “actions instituted by the State typically seek to protect important State interests and redress wrongs committed against the people of the State . . . and the passage of time should not destroy the furtherance of these interests and policies, or the ability to protect Hawaii’s people.” Senate SRep. 861 on H.B. No. 1008. (1991).

This codification of the longstanding common law rule that statutory limitations do not apply to actions initiated by the State made the pre-existing tolling language contained in HRS § 480-24(b) superfluous.

The Legislature has made it clear that unless there is a specific designation stating that a statute of limitations applies to actions initiated by the State, none exists, and since none exists in HRS § 480-24(b), the repeal of subsection (b) of HRS § 480-24 is both appropriate and necessary.

House Bill No. 2329 and Senate Bill No. 2858, S.D. 1, are companions. The only significant difference is that Senate Bill No. 2858, S.D. 1, has a defective effective date. In view of this, the OCP prefers the language contained in House Bill No. 2329.

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Thank you for the opportunity to testify in support of House Bill No. 2329. I am available for any questions that you may have regarding this Bill.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF H.B. NO. 2329**

Date: Tuesday, March 29, 2016

Time: 9:30 am

Room: 016

To: Chairperson Gilbert Keith-Agaran and Members of the Senate Committee on Judiciary and Labor:

My name is Bob Toyofuku and I am presenting testimony on behalf of the Hawaii Association for Justice (HAJ) in SUPPORT of H.B. No. 2329, relating to Consumer Protection.

The Hawaii Association for Justice supports this measure to preserve the right of the State to seek redress for unfair and deceptive acts perpetrated against the public.

Act 8 of the 1991 legislative session codified the common law rule that the State is not subject to statutes of limitations. At that time, section 480-24 already contained a tolling provision for claims brought by the State. As often happens, that section was overlooked and not repealed, as it should have been, when Act 8 was enacted in 1991.

How do we know that Act 8 was intended to supersede the tolling provision in section 480-24? We know that because Act 8 provided that no statute of limitations applies to the State “unless the State is specifically designated in such statute as subject to the limitations period contained therein,” thus, its purpose was to except the State from a statute and thereby extend the time the State had to pursue unfair and deceptive acts. The tolling provision in section 480-24 also “extended” the statute of limitations to give the State more time to protect the public, rather than restricting the time available to the state; therefore it would be inconsistent with the legislative intent in enacting Act 8 in 1991 to say that the legislature intended the State to be subject to a statute of limitations for section 480. It provides the State an exception to, not an inclusion in section 480-24’s statute of limitations. Senate Standing Committee Report 861 states:

Your committee has received testimony on behalf of the Department of the Attorney General and the Hawaii Academy of Plaintiffs’ Attorneys [HAJ’s predecessor] and found it

persuasive. Your Committee is in agreement with the testimonies that actions instituted by the State typically seek to protect important State interests and redress wrongs committed against the people of the State. Also, the passage of time should not destroy the furtherance of these interests and policies, or the ability to protect Hawaii's people.

Section 480 is one of the most important statutory tools given to the State to protect the people of Hawaii. It is obvious that the legislature intended to expand, not restrict, the State's ability to protect Hawaii's people but simply overlooked the need to amend that section when it passed Act 8. This housekeeping measure corrects that oversight.

HAI supported Act 8 because there are many good reasons that the State should be exempted from a 480 statute of limitations. First, section 480 permits actions by individuals and by the State. Individuals tend to become aware of the impact of unfair or deceptive acts as soon as they are perpetrated upon them. The State on the other hand, does not learn of these acts until 1) consumers have been injured and actually report these acts to State authorities, and 2) there are sufficient numbers of reports to indicate a problem with such widespread impact as to justify State action.

Second, injured individuals tend to be direct participants in the unfair or deceptive transactions, know the exact amount of harm done to them, and have the evidence and background necessary to commence action. The State on the other hand, requires an investigation to collect sufficient information to study the alleged violations, not only to a single consumer, but to all those who have reported the matter to State authorities, as well as those who have not reported their situation but will be included in any future State action since the State takes action on behalf of all affected Hawaii consumers – not just those who have complained.

Third, in many situations, the impact to any one individual may be too small to justify that person undertaking the time and expense of taking individual action, yet the cumulative effect to all Hawaii consumers may be enormous. In that case, action by the State may be the only practical recourse for past violations, as well as the only deterrent against future violations. The time needed for the State to discover, investigate and then prosecute is necessarily much longer than needed by an individual.

Fourth, the State serves as the protector of the public's welfare when it acts in its official capacity. The State is not representing the interests of any one individual but instead is the guardian of the public policy in fair dealings in transactions within the State and is thus concerned not only with redress for the harm done in that case but also deterrence against future violations by anyone else who would seek to take unfair advantage of Hawaii consumers. This overriding public policy should not be subject to a statute of limitations – as expressed by the legislature in the passage of Act 8 in 1991 when it exempted the State from statutes of limitations.

Thank you very much for allowing me to testify in support of this measure. Please feel free to contact me should you have any questions or desire additional information.