

**SENATE COMMITTEE
ON
JUDICIARY AND LABOR**

January 30, 2015

Senate Bill 143 Proposing an Amendment to the Hawaii Constitution to Change the Threshold Value in Controversy Requirement for Jury Trials in Civil Cases at Common Law from \$5,000 to \$10,000

Chair Keith-Agaran and members of the Senate Committee on Judiciary and Labor, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm).

State Farm opposes and has concerns with SB 143:

The right to a jury trial in the United States originates in English common law, and is preserved in the United States Constitution in the Seventh Amendment. Our federal Constitution reads thusly:

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

Most scholars agree that the intent was to afford jury trials in all cases and that the twenty dollar limitation was intended to eventually fade away as a requirement. The Seventh Amendment is not directly applicable to the states although states have adopted monetary limitations as evidenced by the provisions in Hawaii’s own Constitution.

Our system of justice is based on the notion that the ordinary people that make up a jury are best able to hear the evidence and come to a reasonable decision based on their everyday experiences. This is no less true in cases where the amount in controversy is less than \$5,000.

The right to a jury trial, even in cases where the claimed damages are less than \$5,000 is fundamental to our sense of justice. Taking away this right will deny those with lesser claims the chance to have their matters fairly heard. This would be telling these individuals that their rights are worth less just because the amount in controversy is less.

Likewise, those who are contesting these claims have a fundamental right to have the issues decided by a jury. Just because the amount they stand to lose is \$5,000 or less does not mean that this right has less value.

In checking the requirements across the 50 states and D.C., only two states have a jury trial threshold greater than Hawaii: Louisiana (\$50,000) and Maryland (\$15,000). The vast majority (41 jurisdictions) have no threshold (although in some of these it might be \$20, depending on case law interpretation of what existed at common law before the state's constitution was enacted). Certainly anything over \$250 is out of the ordinary.

- 1 state \$50,000: Louisiana
- 1 state \$15,000: Maryland
- 2 states have \$1,500: New Hampshire, Oklahoma
- 3 states have \$250: Alaska, Connecticut, Kentucky (in the Fayetteville District Court)
- 2 jurisdictions specifically state \$20: D.C., West Virginia

Thank you for the opportunity to present this testimony.

**Testimony of Edward C. Kemper
Relating to SB143 and SB144**

Raising Jury Demand from \$5,000 to \$10,000

I am a practicing attorney in the various courts in the State of Hawaii, and I am one of the designated reporters for judge-lawyer meetings held in 2012 and 2013 (commonly called "The Bench-Bar Conference"). The Bench-Bar Conferences were created by the Committee on Judicial Administration of the Hawaii State Bar Association.

One of the purposes of the Bench-Bar Conference was to come up with proposals that would benefit the court, the attorneys, and the parties before the court.

One of the suggestions was that the Constitution of the State of Hawaii and any related statutes be amended to increase the threshold for a jury trial in Circuit Court from \$5,000 in damages to \$10,000. (See, Hawaii Bar Journal Report on the Bench Bar conference, volume 15, no. 3 at page 31 (2013).

By way of background, jury trials may only be held in Circuit Court and not in District Court. As a result, the cost to the parties and the Court system are significantly greater than if a matter is tried in District Court. Simply stated, District Court handles matters much more expeditiously with less cost than in Circuit Court. Furthermore, the burden on the citizens of the State who would have to be summoned for jury duty on a relatively small claim would be removed with this amendment.

Given the fact that the \$5,000 threshold was enacted in Hawaii's Constitution many years ago, inflation alone calls for an increase.

At this time, I do not know whether the Judiciary has a position for or against this provision, but I do believe that it is in everyone's best interest to be realistic about the need for a jury trial given the increase of costs for all parties concerned.