

# SB 1265

Measure Title: RELATING TO CONTRACTS.  
Report Title: Owner's Agreement; Attorney's Fees; Unclaimed Property  
Description: Exempts an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim from the application of section 523A-25, Hawaii Revised Statutes.  
Companion: HB1150  
Package: None  
Current Referral: CPN/JDL  
Introducer(s): SHIMABUKURO, BAKER, CHUN OAKLAND, ENGLISH, Espero, Green, Ihara, Kim, Tokuda, Wakai

<b><u>Sort by Date</u></b>		<b>Status Text</b>
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/28/2013	S	Referred to CPN/JDL.
2/12/2013	S	The committee(s) on CPN/JDL has scheduled a public hearing on 02-20-13 10:00AM in conference room 016.



## Collection Law Section

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February 18, 2013

Senator Clayton Hee  
Chair, Senate Judiciary & Labor Committee  
Hawaii State Capitol  
Honolulu, Hawaii

**RE: SB 1265 - RELATING TO ATTORNEY'S FEES TO ASSIST IN  
THE RECOVERY OF UNCLAIMED PROPERTY UNDER HRS  
CHAPTER 532-A**

### TESTIMONY IN SUPPORT OF SB 1265

Dear Senator Hee and Committee Members:

The Collection Law Section ("CLS") of the Hawaii State Bar Association ("HSBA") requests that you support SB 1265 relating to the attorney's fees allowed in the assistance of the recovery of unclaimed property under Hawaii Revised Statutes (HRS) Chapter 523A.<sup>1</sup> Chapter 523A deals with property that has escheated to the State Department of Finance (the Dept.). Typically, this includes such property as bank accounts, insurance proceeds, proceeds from a decedent's estate, and the like. The reason for the proposed change is to deal with a limitation enacted last year under Act 229 capping fees for *anyone* who assists another in recovering unclaimed funds from the Dept. to 10% of the amount recovered.

While there may be reasons for applying a 10% cap to non-attorneys who provide services in this area, applying a 10% cap to attorneys severely limits the public's ability to engage an attorney to assist them to recover property they believe is theirs. For example, the vast majority of the accounts held by the Dept. are below \$5,000. To obtain property held, a claimant must meet the Dept.'s criteria for release of the property. If any difficulty or complexity is encountered in the claims process, including competing claims for the same property or bringing an action for review of the Dept.'s decision in Circuit Court, even the most simple involvement of an attorney is quickly going to go above the 10% limit in all but the very largest of cases. In the end, retaining an attorney by the hour, or on a contingency basis (if the

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

February 18, 2013

Page 2

claimant does not have the funds to pay up front or if the claimant does not want to take the *risk* involved if no recovery is obtained), is *not* going to be possible for the majority of the public.

Furthermore, there is evidence to suggest that placing a 10% cap in Act 229 on every person or company potentially available to help a claimant obtain a recovery *may* have been an oversight. For instance, HRS §523A-25(a) bars the retention of potential service providers within the first 24 months after the Dept. receives an account, yet the same subsection provides an *exemption* that allows claimants to *retain attorneys* during this period. In other words, the law, as currently written, recognized that attorneys offer a different set of services and that some people may want, or need, to hire an attorney to assist them with their claim. Those who fall into that class of individuals include the elderly, the less sophisticated, personal representatives of estates, receivers, former Hawaii residents now residing on the mainland or abroad, foreign nationals, or people who, for whatever reason, would simply prefer to have an attorney handle the claims process for them.

Enacting the proposed legislation would allow members of the public more options and greater ability to recover funds than is possible with the current restrictions. **If the idea of the Unclaimed Property Program is to get the funds or other property to the person entitled to receive those funds or property, then introduction and enactment of this proposed legislation will move the law one step closer to achieving that goal.**

Thank you.

Respectfully,

Bill Plum \S\

Bill Plum  
Vice Chair  
The Collection Law Section  
of the Hawaii State Bar  
Association

cc: HSBA  
Steven Guttman

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