

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER  
LAWYERS OF HAWAII IN OPPOSITION TO H.B. NO. 1040**

February 9, 2009

To: Chairman Ken Ito and Members of the House Committee on Water, Land, & Ocean Resources:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to H.B. No. 1040.

The purpose of this bill is to make Act 170, Sessions Laws of Hawaii, 2002, as amended, permanent. Currently, Act 170 regarding the immunity from negligence for lifeguards is scheduled to sunset on June 30, 2010, and this was enacted by the legislature with the knowledge of all of the parties concerned, including the state and counties. The sunset provision in the original bill passed in 2002 was included to "allow for an evaluation of this measure after sufficient experience has been obtained." See Conference Committee Report No. 66-02 on S.B. 796, C.D.2. The sunset date was extended several times and during the 2007 legislative session, the conference committee, in a bill pertaining to several prior Acts pertaining to lifeguards, beach liability and public recreational lands, determined that it would be best to extend the sunset date to 2010 for Act 170.

Act 170 was passed in 2002 and it was not until July 1, 2008, less than one year ago, that lifeguards were placed on Ke'e Beach on Kauai, which was one of the dangerous beaches which was at the heart of this legislation. We feel that it is reasonable to let the sunset date of 2010 remain and that the legislature can look at the information during the 2010 session.

Please note that the 2002 legislature set the sunset date on this Act for 2007, five years after enactment, on the assumption that lifeguards would be placed on that particular beach and other beaches on Kauai by the end of that year and that there would be at least four years of experience to review. Currently, as to that dangerous beach, we have less than one year of experience.

A sunset provision is included to give the proponents of the legislation as well as others the opportunity to collect sufficient information to present to the legislature so that the members could make a reasonable and informed decision as to whether the law they passed has worked and is still working in the way they intended.

Because this Act has a major impact on consumer rights, HAJ feels it is more prudent to first obtain sufficient information on how the law has worked; that is, that immunity from negligence has had the effect it was intended to have – that it helped lifeguards do a better job in protecting beachgoers, residents and tourists alike. We feel that the legislature should wait to fully assess the impact of this law during the 2010 session when it is scheduled to sunset and when the legislature can make it permanent or modify it according to the information presented.

Thank you for the opportunity to testify on this bill.

**Testimony for HB1040 on 2/9/2009 9:00:00 AM**

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**Sent:** Sunday, February 08, 2009 8:41 PM

**To:** WLOtestimony

**Cc:** [REDACTED]

**LATE TESTIMONY**

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Testimony for WLO 2/9/2009 9:00:00 AM HB1040

Conference room: 325

Testifier position: support

Testifier will be present: Yes

Submitted by: James E. Coon

Organization: Individual

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Submitted on: 2/8/2009

**Comments:**

I support this bill. Please pass it as written.