

Presentation To  
House Committee on Judiciary  
March 18, 2014 at 2:00 p.m.  
State Capitol Conference Room 325

**Testimony in Support of Senate Bill 2072**

TO: The Honorable Karl Rhoads, Chair  
The Honorable Sharon E. Har, Vice Chair  
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eleven FDIC insured depository institutions operating in the State of Hawaii.

The Hawaii Bankers Association supports the intent of SB 2072, specifying the manner in which a summons for a civil action is served in this State. We understand that there will be a proposal by the Hawaii Financial Services Association to limit the scope of this bill to "assumpsit" actions. We do not object to that proposed amendment.

Thank you for the opportunity to submit this testimony and please let us know if we can provide further information.

Edward Y. W. Pei  
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## Collection Law Section

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March 17, 2014

Rep. Karl Rhoads, Chair  
Rep. Sharon E. Har, Vice-Chair  
House Judiciary Committee

**Re: SB 2072 Relating to Service of Process**  
**Hearing: March 18, 2014, 2:00 p.m.,**

Dear Chair Rhoads, Vice-Chair Har and Members of the Committee:

This testimony is being submitted on behalf of the Collection Law Section of the Hawaii Bar Association ("CLS").<sup>1</sup> The CLS supports this bill and urges that it be passed out of this Committee, with one change. That to avoid any conflict with other statutes, we recommend that the scope of this bill be narrowed to apply to only **"civil actions in the nature of assumpsit."**

The need for this bill is based on an unpublished Hawaii Intermediate Court of Appeals decision in Manderville v. Black, CAAP 12-1-653 on November 13, 2013. There, the court found that there was no statutory authority or court rule that allowed for service of a summons and complaint by Certified US Mail on a resident of the State of Hawaii, if that person could not be served after reasonable attempts to serve by personal service. This bill would codify the practice used by attorneys and the courts prior to Manderville to effect service of process on residents of the state when personal service was not successful.

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<sup>1</sup> *The comments and recommendations submitted reflect the position/viewpoint of the Collection Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.*

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Without the expressed authority to serve by way of the US Postal Service using Certified, Registered or Express Mail, a number of parties to court actions who need to effect service on other parties will encounter problems. For example, sometimes there are parties who intentionally evade service or are otherwise difficult to locate, who can be served by way of the US Postal Service. Then there are the situations where personal service is difficult or impossible because the party to be served only has a post office box and no postal street address, as is the case in many rural areas of this state. Another example is where a party lives in a gated community or secured condominium or apartment building. The potential parties who come before the court and who need to see service effected include individuals, corporations, and even the State of Hawaii.

Lastly, without the expressed authority to serve by way of the US Postal Service, parties who need to affect service but cannot personally serve, are left with the only other option available, publication of the summons in the newspaper. Publication is the method of last resort and is not the preferred method of service, since service by publication adds substantial cost to a case and is a less precise method of service than service by the US Postal Service.

We therefore encourage you to pass the above legislation.

Thank you.

/S/ William J. Plum

William J. Plum  
Vice-Chair

cc: Steven Guttman  
Patricia A. Mau-Shimizu



*Mortgage Bankers Association of Hawaii*  
*P.O. Box 4129, Honolulu, Hawaii 96812*

March 17, 2014

The Honorable Karl Rhoads, Chair,  
The Honorable Sharon E. Har, Vice Chair, and  
Members of the House Committee on Judiciary  
State Capitol, Room 325  
Honolulu, Hawaii 96813

Re: SB 2072 Relating to Service of Process

**Chair Rhoads, Vice Chair Har, and Members of the House Committee on Judiciary:**

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate or support the origination of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

The MBAH supports the intent of Senate Bill 2072 which will bring consistency in the manner of serving a summons in the State of Hawaii for a civil action.

Thank you for the opportunity to present this testimony.

LINDA NAKAMURA  
Mortgage Bankers Association of Hawaii

# HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

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March 18, 2014

Rep. Karl Rhoads, Chair  
Rep. Sharon E. Har, Vice Chair  
and members of the House Committee on Judiciary  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 2072 (Service of Process)**  
**Hearing Date/Time: March 18, 2014, 2:00 p.m.**

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

**The HFSA supports this Bill, and offers a proposed amendment.**

The purpose of this Bill is to specify the manner of serving summons within the State for a civil action.

## **Background:**

The word "summons" in this Bill and in this testimony refers to a notice which is attached to a civil complaint filed by a plaintiff against a defendant. Depending on which court issues the summons, the summons will either require the defendant to (a) file a written answer to the complaint within 20 days after service of the summons, or (b) appear in court on a date and time specified to answer the complaint.

If a defendant cannot be served personally with the summons, there are provisions in the Hawaii Revised Statutes ("HRS") which allow the summons to be served by mail. These include HRS Sec. 633-28 (registered or certified mail), HRS Sec. 634-24 (registered or certified mail), and HRS Sec. 634-36 (certified, registered, or express mail).

However, HRS Sec. 633-28 only involves small claims cases. HRS Sec. 634-24 only applies to cases where the complaint involves property. And, HRS Sec. 634-36 is only triggered for cases (a) under HRS Sec. 634-33 (involving the operation of motor vehicles), (b) under HRS Sec. 634-34 (involving boat operators), or (c) under the "long arm statute", i.e. HRS Sec. 634-35 (when the defendant who had transacted business or committed torts in Hawaii cannot be found in Hawaii).

Besides the types of cases covered by HRS Secs. 633-28, 634-24, and 634-36, there are other types of civil cases where a summons should be allowed to be served by certified, registered, or express mail. These include civil cases which are filed in the District Court (Regular Claims Division) or the Circuit Court "**in the nature of assumpsit**". The Hawaii Supreme Court has stated that "assumpsit" is a "common law form of action which allows for the recovery of damages for non-performance of a contract, either express or implied, written or verbal, as well as quasi[-] contractual obligations." Blair v. Ing, 96 Hawai'i 327, 332, 31 P. 3d 184, 189 (2001).

For assumpsit cases, there are situations where the summons can't be served personally on a defendant who resides in the State of Hawaii. One instance is where the only known address for the defendant is a post office box address, and not a physical address. Another instance is where the

defendant is avoiding service of the summons or is otherwise unavailable to be served personally in Hawaii by a process server. See also the facts in the unpublished Hawaii Intermediate Court of Appeal's Summary Disposition Order in the case of Manderville v. Black filed on November 21, 2013. In Manderville, the Court of Appeals held that the defendant was not properly served with the District Court summons when he received the summons by certified mail in the State of Hawaii. The Court said that service by certified mail in that case "is not permitted under [District Court Rule 4(d)] or any applicable statute." The statute in that case was HRS Sec. 634-36. (That case was in the nature of assumpsit because it was an action seeking the return of monies.)

### **What this Bill does:**

This Bill is needed because there isn't a statute to allow for service of a summons by certified, registered, or express mail for assumpsit cases involving the above situations. Here's what this Bill does:

1. It creates a new section in the Hawaii Revised Statutes when a civil summons needs to be served by certified, registered, or express mail on a defendant who is in the State of Hawaii.

2. This Bill requires that an attempt be first made to serve the summons by personal delivery. If, however, a reasonable attempt at personal delivery is not successful, then the summons can be served by certified, registered, or express mail sent to the addressee only. Importantly, this Bill requires that the service by mail can only be made pursuant to a court order.

The proposed manner in this Bill for serving a summons by certified, registered, or express mail is consistent with the procedures in various statutes, including HRS Secs. 633-28, 634-24, and 634-36, all of which are referenced above.

### **Proposed amendment:**

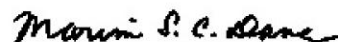
This Bill doesn't specifically state that it's limited to assumpsit actions. Accordingly, **we recommend an amendment to this Bill to limit this Bill to "actions in the nature of assumpsit"**. We have prepared a proposed House Draft 1 in this regard. See the attached Exhibit "A".

For the reasons stated above, we urge your Committee to **pass this Bill with the above amendment**.

### **Companion bill:**

This Bill crossed over from the Senate on February 4, 2014. The companion bill is H.B. 1656. Your Committee held a hearing on H.B. 1656 on February 25, 2014. At that hearing, we didn't ask your Committee to limit H.B. 1656 to actions in the nature of assumpsit. Accordingly, H.B. 1656 was not changed in that regard. H.B. 1656 passed your Committee with only a "defective" effective date. H.B. 1656 passed the House on March 4, 2014 and crossed over to the Senate.

Thank you for considering our testimony.



MARVIN S.C. DANG  
Attorney for Hawaii Financial Services Association



JAN 15 2014

S.B. NO. 2072

Proposed H.D. 1

## A BILL FOR AN ACT

RELATING TO SERVICE OF PROCESS.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the manner by which summons are served within this State for civil actions should be consistent with other provisions of the Hawaii Revised Statutes.

The purpose of this Act is to specify the manner by which summons are served for civil actions within this State.

in the nature of  
assumpsit

SECTION 2. Chapter 634, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

For civil actions in the nature of assumpsit, when

"§634- Manner of service within the State. / When service of summons is required by law, court rule, or court order, service on the defendant within the State shall be:

(1) By personal delivery by a person authorized to serve process; or

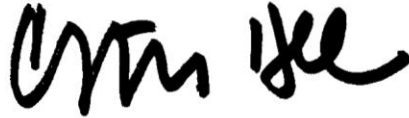
(2) If a reasonable attempt at personal delivery has not been successful, then by certified, registered, or express mail sent to the addressee only, as ordered by the court.



1 Service pursuant to paragraph (1) and proof of personal service  
2 shall be made in the manner prescribed by law, court rule, or  
3 court order. If service is made pursuant to paragraph (2), a  
4 return receipt or other proof of service provided by the postal  
5 service shall be filed showing delivery to the addressee within  
6 the State."

7 SECTION 3. New statutory material is underscored.

8 SECTION 4. This Act shall take effect upon its approval.

9  
INTRODUCED BY: 





# S.B. NO. 2072

**Report Title:**

Service of Process

**Description:**

Specifies the manner of serving summons within the State for a civil action.

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in the nature of assumpsit

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



NEIL ABERCROMBIE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

919 Ala Moana Boulevard, 4th Floor  
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**Shawn Tsuha**  
Deputy Director  
Law Enforcement

TESTIMONY ON SENATE BILL 2072  
RELATING TO  
SERVICE OF PROCESS  
by  
Ted Sakai, Director  
Department of Public Safety

House Committee on Judiciary  
Representative Karl Rhoads, Chair  
Representative Sharon E. Har, Vice Chair

Tuesday, March 18, 2014; 2:00 p.m.  
State Capitol, Conference Room 325

Chair Rhoads, Vice Chair Har, and Members of the Committee:

The Department of Public Safety (PSD) **supports** this bill, which will make the service of summons within the State for civil actions consistent with the Hawaii Revised Statutes. Section 634-24 of the Hawaii Revised Statutes already allows for service outside of the State of Hawaii by registered or certified mail with a request for a return receipt for service. This measure will ensure the due process rights of the respondents and the interests of the plaintiffs are satisfied in a timely and legally accountable manner.

Thank you for the opportunity to present this testimony.



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Testimony to the House Committee on Judiciary  
March 18, 2014

Testimony in support of the intent of SB 2072, Relating to Service of Process

To: The Honorable Karl Rhoads, Chair  
The Honorable Sharon Har, Vice-Chair  
Members of the Committee on Judiciary

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 75 Hawaii credit unions, representing approximately 804,000 credit union members across the state.

We are in support of the intent of SB 2072, which would bring clarity to the law. We are also in support of the Hawaii Financial Services Association's proposed amendments of this bill.

Thank you for the opportunity to testify.