

TESTIMONY OF
CONSUMER LAWYERS OF HAWAII
IN OPPOSITION TO
S.B. NO. 2583

Consumer Lawyers of Hawaii (“CLH”) appreciates this opportunity to testify in opposition to S.B. No. 2583.

The Highway Safety Act of 1966 sought to improve traffic safety and reduce injuries and deaths related to traffic accidents through several safety programs. One program was the Hazard Elimination Program that required states to study and evaluate dangerous public roads. States were reluctant to systematically collect data that would identify dangerous roads for fear that such data would be used against it in lawsuits. As a result, data compiled by the state for the Hazard Elimination Program was given confidentiality by federal law.

Some states, like Hawaii, claimed that county accident reports eventually collected by the state for the Hazard Elimination program became confidential and could not be obtained from either the state or county police department. Other states decided that accident reports gathered by the state were confidential and could not be obtained from the state’s Hazard Elimination program’s files, but could still be obtained from the county police. In 2003, the U.S. Supreme Court settled the matter in Washington v. Guillen, when it ruled that police reports created for law enforcement purposes were not confidential and could be obtained from county police, but those same reports could not be obtained from the state, if the state obtained the reports to comply with the Hazard Elimination program. The court reasoned that the purpose of confidentiality was to “prohibit federally required record-keeping from being used as a tool in litigation” against the state. The court concluded that there was “no reason to interpret [the Act] as

prohibiting the disclosure of information compiled or collected for purposes unrelated to [the Act] held by government agencies [police department] not involved in administering [the Act].

This measure therefore correctly provides in section (a)(1) that information gathered by the state for purposes of highway hazard evaluation is confidential. Section (a)(2) of the measure incorrectly extends that confidentiality to county police accident reports. County police departments prepare accident reports for their own purposes. The fact that the state might later obtain a copy for highway hazard evaluation does not make the original report kept at the police department confidential. This issue was decided by the U.S. Supreme Court in 2003 and any claim by the state that confidentiality of police reports is required by federal law is no longer true.

In addition, this measure would conflict with other provisions of the Hawaii Revised Statutes, such as section 663-10.9(4) that require a showing of other accidents in highway maintenance and design cases.