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LAWRENCE M. REIFURTH
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TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION
AND COMMERCE AND JUDICIARY

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Thursday, February 21, 2008
2:00 p.m.

WRITTEN ONLY

**TESTIMONY ON HOUSE BILL NO. 2736, HOUSE DRAFT 1 – RELATING TO THE
SMALL BUSINESS BILL OF RIGHTS.**

TO THE HONORABLE ROBERT N. HERKES AND TOMMY WATERS, CHAIRS; AND
MEMBERS OF THE COMMITTEES:

My name is Lawrence M. Reifurth, and I am the Director of Commerce and Consumer Affairs (“Department”). The Department appreciates the intent behind any proposal to afford small business equal and fair treatment, reduce roadblocks to business success, and to cause more investment and job growth in Hawaii. However, we are concerned about any proposal that purports to “set forth specific ‘rights’ that small businesses should have” when those “rights” are either aspirational (e.g., section 2(5)), or have not been defined and can not be effectively enforced. Such an approach could undercut the Department’s ability to protect the interests of consumers.

Furthermore, we understand that in testimony submitted to the House Committee

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on Economic Development and Business Concerns, the Small Business Regulatory Review Board ("SBRRB") has indicated that it believes that businesses would be better serviced by a Bill of Rights brochure, which it developed and launched at the end of 2007. The brochure focuses on the existing rights held by businesses. I concur with the SBRRB's position that its Bill of Rights brochure already accomplishes the purposes of this legislation.

If the Legislature, nevertheless, prefers to adopt an uncodified "bill of rights" which will create rights not presently in existence and direct that the Ombudsman enforce those rights, then there are several operational concerns which must be addressed before the bill's purpose can be realized.

Section 2(5) of the bill would provide "the right to a one-stop permitting process that includes a centralized Internet website-based application system," and would provide individuals and businesses the right to lodge a complaint with the Ombudsman in the event such a system is not available. The Department is particularly supportive of efforts to provide businesses and consumers with electronic access to government services. We spearheaded the successful Hawaii Business Express, a program that pulls together diverse government agencies in one location for the convenience of those wanting to open new businesses in Hawaii. In addition, we have tasked all of our programs with the responsibility for getting as many consumer services online as quickly as possible. However, there are limitations to what can be done in the very short term.

As a result of our focus on that goal and appreciation for its value, we are

sensitive to the current state of the technology and the work involved in moving from paper-based to paper-less processes. There are many, very significant hurdles to overcome before a one-stop permitting process that includes state and county permits, licenses, registrations, and approvals can be implemented. While a laudable goal, stating this as a "right" raises the question of whether the entire "bill of rights" is intended to confer rights or mere expectations. Either the bill should be amended to make clear that these rights are not enforceable or sections such as this should be removed until they become reasonably feasible.

The "right to automatic renewal of essential ... licenses" includes a provision that license non-renewal requires notice on the part of the agency. See section 2(7). It is the Department's experience that non-renewal is frequently the consequence of a licensee's failure to satisfy renewal requirements (no tax clearance, no continuing education certificate, no bond, etc.). We respectfully note that the law no longer requires the "automatic renewal" of licenses, and recommend that the agency should not be charged with what appears to be an additional affirmative duty to remind a licensee that they have failed to do what they are already on notice of the need to do.

The notice of intent requirement in section 2(7) has even more far-reaching effects as it relates to enforcement agencies charged with investigating and prosecuting violations. Combined with the presumption of innocence established in section 2(8), this provision will stall enforcement efforts, and will have the ultimate effect of putting consumer protection at risk. Section 2(8) should be revised along the lines of the SBRRB Brochure (section X), which provides that "Whenever a contested case hearing

is provided by law in the event a regulatory agency takes an adverse action against a business, the right to expect: ...”.

The right to a thirty-day notice of “any adverse action” in section 2(9) is particularly troublesome in the area of enforcement. Ultimately, it is not clear what amounts to an “adverse action.” The initiation of an investigation might be deemed to be an adverse action. A licensee’s failure to renew his/her license, and the resulting non-renewal of the license, might also be deemed to be an adverse action. This should not be the agency’s obligation.

There are other, similar, areas of concern in this bill. We discussed these concerns with the Department of Business, Economic Development and Tourism and the SBRRB when a similar measure, S.B. No. 1380 was considered by the Legislature during the 2005 and 2006 legislative sessions. We join with the SBRRB’s belief that increased efforts be made to educate small businesses about their existing rights by means of the SBRRB brochure, a copy of which is attached, rather than an uncodified law that would subject agencies to an investigation for the failure to immediately achieve what are, unarguably, laudatory goals.

Thank you for the opportunity to testify on this bill.

HAWAII SMALL BUSINESS BILL OF RIGHTS

Small business owners and operators should be informed of their rights, responsibilities and obligations and be assured that these rights will be protected throughout their contact with agencies and departments of the State of Hawaii, among them:

I. The right to expect agencies to provide a prompt, accurate, and courteous response to a request for information and to work together to assure ready access to the information needed to assist business in their relationship with the State;

II. The right to question the actions and decisions of agencies and elected officials without the fear of retaliation and retribution;

III. The right to expect agencies to ensure the accuracy, integrity, objectivity, and consistency of any data that is used when preparing proposed rules and when completing an analysis of the proposed rule;

IV. The right to a clear, stable, and predictable regulatory and record-keeping environment with easily accessible information and administrative rules in as clear and concise language as practicable, including posting of all proposed administrative rules changes on the Internet website of the Office of the Lieutenant Governor;

V. The right to timely notice of an agency's rule making proceedings when requested. The notice shall be mailed to all persons who have made a written request for such a notice;

VI. The right to be treated equally and fairly, with reasonable access to State services;

VII. The right to expect government's efforts toward implementing a one-stop permitting process that includes a centralized internet website. The site shall have quick and responsible timeframes to process state and county permits, licenses, registrations, and approvals, when appropriate, to simplify and reduce the filing of forms affecting business;

VIII. The right to timely response to an application for a permit, license, registration, or approval necessary to operate the small business, within the established maximum period of time for the agency in accordance with Hawaii Revised Statutes (HRS) Section 91-13.5;

IX. The right to be informed of the reasons for a denial of an application for a permit, license, or approval, including renewals of the same, with such reasons clearly stated and pursuant to the law;

X. Whenever a contested case hearing is provided by law in the event a regulatory agency takes an adverse action against a business, the right to expect:

- A timely hearing;
- An impartial official conduction of the hearing;
- The ability to present both oral and written evidence and an explanation of any alleged violation, deficiency, or wrongdoing;

- Having that evidence fully considered by the hearing official;
- Judicial review pursuant to HRS Section 91-14 in the event of an unfavorable decision;

XI. The right to privacy protections regarding confidential and proprietary business information when competing for state procurement funds;

XII. The right to all of the protections afforded in the Hawaii Taxpayer Bill of Rights;

XIII. The right to submit complaints regarding agencies' administrative acts with the Office of the Ombudsman, in accordance with HRS Chapter 96;

XIV. The right to request information and an opinion from the Office of Information Practices under HRS Chapters 92 and 92F to access to information from public meetings or the release of government documents;

XV. The right to provide information to the Division of Consumer Advocacy in the Department of Commerce and Consumer Affairs under HRS Chapter 269 regarding issues under the purview of the Public Utilities Commission;

XVI. The right to request information from the Office of Consumer Protection under HRS Chapter 487 regarding business and consumer issues;

XVII. The right to access the Small Business Advocate in the Department of Business, Economic Development and Tourism regarding disputes with agencies to make sure government resources are coordinated on behalf of small business and the rights of businesses are being upheld;

XVIII. The right to request a review of administrative rules pursuant to the Small Business Regulatory Flexibility Act by filing a request with the Small Business Regulatory Review Board in accordance with HRS Section 201M-6;

XIX. The right to expect agencies to work together to help small business by providing education, training and support needed to start and run a business;

XX. The right to expect agencies to have fair dealings with small business with no requirement for gratuity, gifts or other unusual financial compensation from the business in order to have access to all the rights outlined in this document;

XXI. The right to enjoy a favorable business culture that encourages and supports small business, including a favorable tax climate, non-punitive user fees or charges, competitive rates for worker's compensation insurance, affordable health insurance for small businesses and their employees, and reasonable access to the same incentives and services available to large businesses.



www.hawaii.gov/dbedt

808-586-2594

Message from Ted Liu

Director, Department of Business,
Economic Development & Tourism

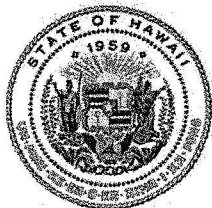


Small businesses are the heart of Hawaii's economy and are central to our way of life. The State of Hawaii recognizes that more than 95% of all businesses in Hawaii are small businesses and they employ more than 60% of Hawaii's workforce. Accordingly, Hawaii's citizens should be able to expect and enjoy a business culture that encourages and supports small business.

The Small Business Bill of Rights is an explanation or summary of the rights and expectations of small business.

This Bill of Rights outlines some of the more important rights and tenants that are available to small business owners and affect the way they do business in Hawaii.

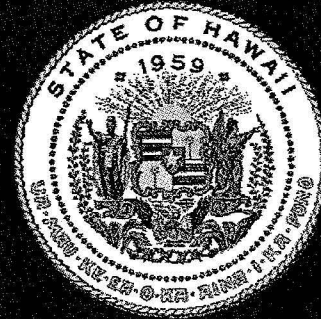
As Hawaii's business advocate, the Small Business Regulatory Review Board is dedicated to achieving complete fulfillment of the following rights, and believes that adherence to them will be mutually beneficial to all businesses in our State.



Department of Business,
Economic Development & Tourism

Small Business Bill of Rights

State of Hawaii



Small Business
Regulatory Review Board
"Hawaii's Business Advocate"

www.hawaii.gov/dbedt

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**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of
THEODORE E. LIU
Director

Department of Business, Economic Development, and Tourism
before the

**HOUSE COMMITTEES ON
CONSUMER PROTECTION & COMMERCE
AND
JUDICIARY**

Thursday, February 21, 2008
2:00 p.m.

State Capitol, Conference Room 325

in consideration of
HB 2736, HD 1

RELATING TO THE SMALL BUSINESS BILL OF RIGHTS

Chair Herkes, Chair Waters, Vice Chair McKelvey, Vice Chair Oshiro and

Members of the Committees:

The Department of Business, Economic Development & Tourism (DBEDT) understands the intent behind House Bill 2736, HD1 "Relating to the Small Business Bill of Rights," however, we believe that a statutory mandate is not the most effective way to set forth or to enforce these rights. The Small Business Regulatory Review Board has instead determined that educating and advising small businesses of their rights and having them expect and demand these are a better approach. The SBRRB has developed a brochure to inform small businesses of their rights and will be undertaking a broader educational campaign.

This bill is the result of an initial effort that began in the 2003 legislative session. It lead to the adoption of SCR 76, asking the Small Business Regulatory Review Board,

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administratively attached to DBEDT, to provide such a “Bill of Rights” for consideration in the 2004 legislative session. This is a far-reaching measure that affects nearly all state and county agencies, many boards and commissions and a large number of businesses defined as “small” for these purposes. We note the difficulty that many agencies may have in determining whether a business that has been cited or denied a permit has fewer than one hundred (100) employees and thus would not know if that business was entitled to these rights as compared to larger companies, not specifically entitled to them. It would appear to require that a central registry be established so that agencies could verify the size of any entity they are dealing with.

Thank you for the opportunity to provide this testimony.



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
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Michael Yee
2nd Vice Chairperson
Oahu

Peter Yukimura
Kauai

Dorvin Leis
Maui

Bruce E. Bucky
Oahu

Charles Au
Oahu

Donald Dymond
Oahu

Richard Schnitzler
Hawaii

To: Chair Herkes, Vice Chair McKelvey, Chair Waters, Vice Chair Oshiro, and House Committee Members on Consumer Protection & Commerce and Judiciary

Re: HB 2736, HD1 – “Relating to the Small Business Bill of Rights.”

Hearing Date: February 21, 2008

Aloha:

My name is Lynne Woods and I offer testimony as Chairperson of the Small Business Regulatory Review Board on behalf of our Board Members.

It can be said that all of the issues in the Bill of Rights are dealt with in existing laws; however, the actions against the business community over the past two decades indicate a lack of acknowledgement of the existing laws or regulations. Businesses have been denied licenses to operate, suffered from police, such as raids on their business locations as political retaliation, and forced into hearings held by partisan individuals extracting large penalties for issues brought by angry employees seeking retaliation.

The Board spent many hours researching the original Bill of Rights. When we established the concept of the Small Business Bill of Rights bill five years ago, we were not asking for considerations for criminal activities, but for the understanding that businesses should be innocent until proven guilty. Basic rights extended to all citizens of the United States.

Our Board is most appreciative of the change of attitude towards business shown over the past few years. The support we are receiving from current department directors and from many elected officials is gratifying. We urge the passing of this proposed bill in order to ensure that future administrations and those holding public office will continue the work on behalf of business and support our rights.

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However, while we are appreciative of your re-establishing these most important basic business rights, the Board feels that given the misunderstandings and difficulties the Small Business Bill of Rights suffered during previous legislative sessions, we believe businesses would be better served by a Bill of Rights brochure. The Bill of Rights brochure, which was created by this Board and launched at the end of calendar year 2007, focuses on the existing rights held by businesses in the State of Hawaii.

On behalf of the members of the Small Business Regulatory Review Board, I thank you for your attention to the issues our Hawaii's business community.

Yours truly,



Lynne Woods
Chairperson
Small Business Regulatory Review Board

February 21, 2008



Robin K. Matsunaga
Ombudsman

David T. Tomatani
First Assistant

**OFFICE OF THE OMBUDSMAN
STATE OF HAWAII**
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**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,
ON H.B. NO. 2736, H.D.1, A BILL FOR AN ACT
RELATING TO THE SMALL BUSINESS BILL OF RIGHTS**

**HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
HOUSE COMMITTEE ON JUDICIARY
FEBRUARY 21, 2008**

Chair Herkes, Chair Waters, and Members:

Thank you for this opportunity to testify on H.B. No. 2736, H.D. 1. My testimony pertains only to those portions of the bill that relate to the Office of the Ombudsman, for which I have the following concerns.

First, paragraph 12 of Section 2 of the bill provides small businesses:

The right to request information relating to administrative actions of state agencies from the office of the ombudsman, in accordance with chapter 96, Hawaii Revised Statutes, except where prohibited by law.

I believe that as currently written, this provision may cause a small business to incorrectly assume that the Ombudsman is authorized to disclose information relating to a complaint about an administrative act within the Ombudsman's jurisdiction. However, Section 96-9, HRS, requires the Ombudsman to keep confidential all matters coming before the Ombudsman, except as necessary to carry out the Ombudsman's duties and to support the Ombudsman's recommendations. Therefore, **I am requesting that the current language in paragraph 12 be replaced with the following:**

The right to submit complaints regarding the administrative actions of state and county agencies with the office of the ombudsman, in accordance with chapter 96, Hawaii Revised Statutes.

The revised language I am requesting more accurately describes the services that are available to small businesses and other members of the public from the Office of the Ombudsman.

Second, Section 3 of the bill authorizes any person injured by reason of any violation of the Small Business Bill of Rights to file a complaint with the Ombudsman, and also requires the Ombudsman to promptly investigate the complaint and render findings, opinions, and recommendations. However, requiring the investigation of every complaint conflicts with the existing statutory authority provided to the Ombudsman to determine whether a complaint is appropriate for investigation. In effect, this will create a class of complainants that is treated separately, if not preferentially, from the general public. There are a number of reasons why the Ombudsman may decide not to investigate a complaint. Some of these reasons include:

1. The complaint is not timely.
2. There is an available process to remedy the complaint.
3. The complaint was previously investigated.
4. The complainant refuses to be identified.
5. The office lacks the resources to investigate the complaint.
6. The office lacks the expertise to investigate the complaint.

Retaining the discretion to determine which complaints to investigate is very important to the overall functions and effectiveness of the Ombudsman, given the finite resources of the office. Therefore, **I am requesting that this bill be amended by deleting Section 3.** (Since the existing law already allows any person, including a small business, to submit a complaint to the Ombudsman, if this committee agrees that the Ombudsman should not be required to investigate every complaint lodged by persons who are injured by reason of any violation of the Small Business Bill of Rights, then none of the language in Section 3 is necessary.)

Finally, **I am also requesting the deletion of Section 4 of this bill**, which proposes to add "a violation of the Small Business Bill of Rights" as a specific subject that would be appropriate for investigation by the Ombudsman. Since this bill would establish the Small Business Bill of Rights in law, any administrative act which allegedly violates a provision of the Small Business Bill of Rights would also be an alleged violation of the law, and an administrative act that is contrary to law is already listed in Section 96-8, HRS, as an appropriate subject for the Ombudsman's investigation. Therefore, the proposed amendment is not necessary.

Your favorable consideration of the requested amendments to H.B. No. 2736, H.D. 1, would be greatly appreciated.

If you should have any questions, I would be happy to answer them.



Representative Robert Herkes, Chair
Representative Angus McKelvey, Vice Chair
Committee on Consumer Protection & Commerce

Representative Tommy Waters, Chair
Representative Blake Oshiro, Vice Chair
Committee on Judiciary

State Capitol, Honolulu, Hawaii 96813

HEARING Thursday, February 21, 2008
 2:00 pm
 Conference Room 325

RE: HB2736, HD1, Relating to the Small Business Bill of Rights

Chairs Herkes and Waters, Vice Chairs McKelvey and Oshiro, and Members of the Committees:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. More than 50% of our members have fewer than fifty employees, and of those, two-thirds have fewer than ten.

RMH supports HB 2736, HD1 and applauds the Legislature for recognizing the benefit of small business to Hawaii's economy and the indomitable spirit of our entrepreneurs. Acknowledging the special challenges of small businesses, our Board of Directors is committed to continue focusing considerable resources on this vital segment of our industry.

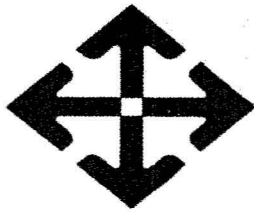
Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in cursive script, appearing to read "Carol Prigall".

President

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The Hawaii Business League

820 Mililani St., Ste. 810 Honolulu, Hawaii 96813-2938
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February 21, 2008

Testimony To: House Committee on Consumer Protection & Commerce
Representative Robert N. Herkes, Chair

House Committee on Judiciary
Representative Tommy Waters, Chair

Presented By: Tim Lyons
President

Subject: H.B. 2736, HD 1 - RELATING TO THE SMALL BUSINESS BILL OF RIGHTS.

Chair Herkes, Chair Waters and Members of the Committees:

I am Tim Lyons, President of the Hawaii Business League, a small business service organization.
We support this bill.

We are not sure that there is much in this bill, by way of granting rights to small businesses that they do not already have however, we think that a clear and concise statement enumerating those rights is very much in order. As the bill points out, small businesses are the "driving engine" behind Hawaii's economy and anything we can do in order to provide clarity as to procedures when they are dealing with government, we think will be an asset.

Based on the above, we support this bill.

Thank you.

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**Before the House Committees on
Consumer Protection and Commerce
and Judiciary**

DATE: Thursday, February 21, 2008

TIME: 2:00 p.m.

PLACE: Conference Room 325

**Re: HB 2736, HD1
Relating to the Small Business Bill of Rights
Testimony of Melissa Pavlicek for NFIB Hawaii**

Thank you for the opportunity to testify. On behalf of the thousands of business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we ask that you pass **HB 2736, HD1**. NFIB supports this measure in its current form.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

We believe that a small business bill of rights will be an important step toward supporting Hawaii's small businesses.

Thank you for the opportunity to testify.