



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.B. NO. 3382, RELATING TO BANKRUPTCY.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Monday, February 4, 2008 **TIME:** 2:00 PM

LOCATION: State Capitol, Room 325
Deliver to: Vice Chair McKelvey's Office, Room 315, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Annette Y.W. Chock Kim, Deputy Attorney General

Chair Herkes and Committee Members:

We bring to your attention that this bill appears to be preempted by federal law.

The bill is entitled "RELATING TO BANKRUPTCY," which creates a new chapter entitled "CREDITORS' ACTIONS," and attempts to provide what appears to be a new bankruptcy system within the State of Hawaii.¹

The Federal Constitution, however, vests Congress with the power to enact "uniform Laws on the subject of Bankruptcies." U.S. Const. art. I, § 8, cl. 4. As the United States Supreme Court has found:

In respect of bankruptcies the intention of Congress is plain. The national purpose to establish uniformity necessarily excludes state regulation. . . . States may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations. [Emphasis added.]

International Shoe Co. v. Pinkus, 278 U.S. 261, 265, 49 S. Ct. 108, 110, 73 L. Ed. 318 (1929).

¹ We assume that this bill does not embrace a subject other than bankruptcy as set forth in the title of this bill. Article III, section 14, of the Constitution of the State of Hawaii provides: "No law shall be passed except by bill. Each law shall embrace but one subject, which shall be expressed in its title." Thus, if the bill pertained to any subject matter other than bankruptcy, it would be outside the scope of the title of the bill and would violate Article III, section 14, of the Constitution of the State of Hawaii.

Congress has broad authority to preempt state laws. . . . Preemption may be inferred where it is clear from the statute and surrounding circumstance that Congress intended to occupy the field, leaving no room for state regulation. . . . There can be no doubt that federal bankruptcy law is "pervasive" and involves a federal interest "so dominant" as to "preclude enforcement of state laws on the same subject." . . . The Bankruptcy Clause, which grants Congress the power to make bankruptcy laws, U.S. Const. Art. I, § 8, cl. 4, stresses that such rules must be "uniform." Bankruptcy law occupies a full title of the United States Code. It provides a comprehensive system of rights, obligations and procedures, as well as a complex administrative machinery that includes a special system of federal courts and United States Trustees.

Sherwood Partners, Inc. v. LYCOS, Inc., 394 F.3d 1198, 1200-01 (9th Cir. 2005).

In this case, the bill appears to provide a state bankruptcy system that already exists under federal law.

We recommend that this bill be held in Committee.