

SB3126

SD1

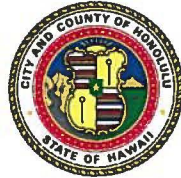
LATE

TESTIMONY

DEPARTMENT OF INFORMATION TECHNOLOGY
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 5TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-7684 # Fax: (808) 768-7807 # Internet: www.honolulu.gov

KIRK CALDWELL
MAYOR



MARK D. WONG
DIRECTOR AND CIO

KEITH G. H. HO
DEPUTY DIRECTOR

TESTIMONY
of
MARK D. WONG, DIRECTOR and CHIEF INFORMATION OFFICER
Department of Information Technology
City and County of Honolulu
before the
COMMITTEE ON JUDICIARY AND LABOR
on
Thursday, February 20, 2014
10:30 a.m.
State Capitol, Conference Room 016
In consideration of

SB 3126 SD1, RELATING TO EMPLOYMENT AGREEMENTS

Chair Hee, Vice Chair Shimabukuro and Members of the Committee on Judiciary and Labor:

My name is Mark Wong, and I am the Director for the Department of Information Technology and the Chief Information Officer for the City and County of Honolulu. I was previously Chief Executive Officer of Commercial Data Systems for twenty-four years.

I am testifying in support of SB 3126 and the elimination of restrictive employment covenants. These covenants, and noncompete clauses in particular, cause hardship to both employee and employer alike.

The base of skilled information technology workers is small relative to other states. With only a few mid- to large-size employers, the number of positions in Hawaii is limited, and the number of employers requiring a particular set of technological skills is even smaller. Opportunities are limited for any technology specialist, and separating employees under a noncompete agreement have the choice of choosing another profession or moving to another state where there are available positions. Such agreements penalize employees for choosing to work in Hawaii.

Testimony

Mark D. Wong, Director and Chief Information Officer
Department of Information Technology, City and County of Honolulu
COMMITTEE ON JUDICIARY AND LABOR

Thursday, February 20, 2014

10:30 a.m.

State Capitol, Conference Room 016

In consideration of SB 3126 SD1, RELATING TO EMPLOYMENT AGREEMENTS

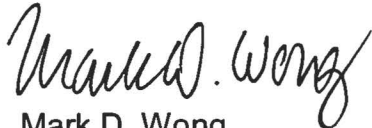
Page 2

Hawaii employers are also at a significant disadvantage because of the extremely small pool of technology workers in the state. When a qualified hire is prohibited from employment because of a noncompete clause, the employer often has to seek candidates from out-of-state. The challenges of relocation, housing, and acculturation make hiring from the mainland difficult.

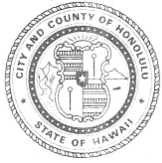
While these restrictive covenants are intended to prevent competition, they prevent the exchange of technological expertise. As a result, Hawaii's suffers instead from technological inbreeding.

I strongly encourage elimination of restrictive employment covenants and support SB 3126.

Respectfully yours,



Mark D. Wong
Chief Information Officer
Director, Department of Information Technology
City and County of Honolulu



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 202
HONOLULU, HAWAII 96813-3065
TELEPHONE: (808) 768-5010 • FAX: (808) 768-5011

STANLEY CHANG

Councilmember – District IV
Phone: (808) 768-5004
Fax: (808) 768-5000
cclldistrict4@honolulu.gov
www.honolulu.gov/council/d4

February 19, 2014
TESTIMONY OF STANLEY CHANG
CONCILMEMBER FOR THE CITY AND COUNTY OF HONOLULU
On
S.B. No. 3126, SD1, RELATING TO EMPLOYMENT AGREEMENTS
Committee on Judiciary and Labor
Thursday, February 20, 2014
10:30 a.m.
Conference Room 016

Dear Chairs Hee and Committee Members:

Thank you for allowing me the opportunity to submit testimony in support of S.B. 3126, SD1 Relating to Employment Agreements in my capacity as Councilmember of the City and County of Honolulu.

S.B. 3126, SD1 prohibits non-compete agreements and restrictive covenants that forbid post-employment competition of employees of a technology business or licensed physicians.

Non-compete agreements are detrimental to individuals and businesses. Especially in an isolated state, non-compete agreements can be very detrimental. Individuals are faced with the choice of working “penalty box” jobs outside of their field which generally pay less and stagnate their careers or moving to the mainland to seek employment. Non-compete agreements actually stifle the formation of new businesses and hinder existing businesses from growing by increasing recruitment costs.

For these reasons, I respectfully ask for your favorable passage of S.B. 3126, SD1 Relating to Employment Agreements, and thank the Committee for allowing me to provide testimony.

Sincerely,

A handwritten signature in black ink, appearing to be "Stacy" or similar, written in a cursive style.

Stanley Chang
Councilmember, District IV



HAWAII MEDICAL ASSOCIATION

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

DATE: Thursday, February 20, 2014
TIME: 10:30 A.M.
PLACE: Conference Room 016

TO:
SENATE COMMITTEE ON JUDICIARY & LABOR
Sen. Clayton Hee, Chair
Sen. Maile S. L. Shimabukuro, Vice Chair

FROM: Hawaii Medical Association
Dr. Walton Shim, MD, President
Dr. Linda Rasmussen, MD, Legislative Co-Chair
Dr. Ron Kienitz, DO, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

Re: SB 3126 Relating to Employment Agreements

Position: Support

The HMA supports the idea and principal of barring contractual non-compete clauses in all employment contracts. Non-compete clauses are exceptionally damaging in the medical community as they force physicians, in most cases, to leave the island on which they are enforced, and in many cases, the state. Once gone, the chance that physician returns to Hawaii are remote at best. The state stands to lose its investment in the education and training of that physician, and more importantly the expertise and contribution to an already overtaxed medical workforce.

Mahalo for the opportunity to submit testimony on this important issue.

Officers

*President - Walton Shim, MD President-Elect – Robert Sloan
Secretary - Thomas Kosasa, MD Immediate Past President – Stephen Kemble, MD
Treasurer – Brandon Lee, MD Executive Director – Christopher Flanders, DO*

Cinthia Miller
Owner

O&A Consulting LLC
Honolulu, HI 96816

2/19/2014

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee on Judiciary & Labor

I strongly support SB3126 Restrictive Technology Employment Covenants or Agreements. As an IT consultant with more than 15 years of working with companies in Hawaii, I have experienced first-hand the negative impacts and fear that non-competition agreements generate for someone who is seeking employment locally.

I started my career in Hawaii working for a small technology startup. I was later offered a job with Microsoft in Hawaii. I was laid off in 2010 and was contractually restrained from seeking employment with most businesses in Hawaii for 1 year through their non-competition agreement, which also applied to businesses outside of Hawaii since they were nationwide. Although my old employer did not enforce said non-compete agreement, I was under continual fear that it would be imposed and I would be forced to move to another state or temporarily change my trade for the 1 year period. In the IT field, 1 year of non-practice heavily hinders your ability to keep up with new technologies and maintain your marketability in a fast-changing industry. Non-competes not only vastly limits employment options in Hawaii technology employees, but also prevents progress in building the pool of talent that is already inadequate to begin with.

I was offered several employment opportunities by existing Hawaii clients that I consulted for through Microsoft. The solicitations of employment by these clients were also prohibited and could have been legally enforced. Under these confining circumstances, I subcontracted to my existing client, Hawaii's leading health insurance company, through a new employer, a small, local consulting firm. This new employer also required a non-competition agreement. Working under two non-competes, I was continually worried that lawful action could be taken against me at any time during the 1 year period.

In 2012, I first experienced the negative impacts of an enforced non-compete when one of my old clients, Hawaii's biggest airline company, requested my services for specific IT needs that very few local consultants specialize in. Under the non-competition agreement with my new employer, I was not able to practice IT consulting outside of their employment, even if the client was my own to begin with. The agreement required me to start any new work by subcontracting through them. I was told that in order to conduct IT consulting independently without any enforcement of their non-compete, I would need to "make them whole" through monetary recompense. After many uncomfortable conversations and tedious negotiation, my new employer allowed an exception with the new airline client, opening up one small hole in the non-compete but leaving lots of room for potential "make them whole" situations in the future.

This is no way to do business in Hawaii, where there is a limited pool of employers and employees. Throw in restraints on which of those businesses you can work for and you're left with almost no hope in finding stable employment. For employers looking to fill their positions with IT specialists, soliciting even laid-off staff locked into non-competition agreements puts their companies at risk. Outsourcing their work offshore becomes an attractive option.

Supporting the SB3126 bill will support local businesses and employees in Hawaii and solidify a path for growth in Hawaii's IT industry. Please help us keep our local talent and provide us an autonomous and cultivating environment to work in.

Thank you for the opportunity to testify.

Cinthia Miller

Owner

O&A Consulting LLC

February 19, 2014

Jim Takatsuka
520 Lunalilo Home Road #230
Honolulu, HI 96813
jtakatsuka@outlook.com

**Chair Hee, Vice Chair Shimabukuro, and Members of the Committee on
Judiciary & Labor.**

I am writing in strong support of SB3126 – a bill to invalidate restrictive employment covenants or agreements. Research has shown that restrictions on employee mobility can inhibit innovation in high-velocity industries like information technology (IT) and can lead to an exodus of skilled workers (and their important knowledge) to other regions.

I have been a part of Hawaii's IT sector for 25 years working for Apple, Sun Microsystems, and currently as the Enterprise Account Manager for Microsoft. I testify today in a personal capacity. Over this time, I have seen Hawaii companies struggle to find enough skilled IT workers to help them best leverage their investments in information technology. Although there are certainly many skilled technology workers here, we have never approached the critical mass of IT professionals needed to drive our businesses forward.

When compared to their mainland peers, many Hawaii companies are far behind in their use of information technology, simply because the skills to deploy hardware and software are difficult to find. It is not uncommon to find companies here running on software that is more than 10 years old – an eternity in the IT world. The need and the desire to modernize are certainly there, but because skilled labor is difficult to find, many companies simply make do with outdated technology.

When Hawaii businesses do decide they need to push forward and innovate, they are often forced to look outside the state, which of course means shipping dollars to the mainland and beyond. Two recent projects that I have been involved with illustrate this point well:

- A large local company needed to redesign and rebuild their company web site, not just to improve their ability to market their products, but also to serve as a platform to transact hundreds of millions of dollars' worth of business. Using the internet allowed them to increase their reach, reduce their costs, and accelerate their growth. Their finished project allowed them to reach their goals, but the site was designed and built almost exclusively using out-of-state contractors.
- Another large local company needed to build a new system for managing their customer activity. The new system would allow them not only to keep track of

all customer interactions, but reveal new sales opportunities and help the company identify which products were successful and which were not. The system would allow the company to operate more efficiently (quicker, higher quality interactions) and effectively (the right product to the customer most likely to buy). This project was completed entirely by out-of-state contractors.

In both examples, the companies have strong ties to the Hawaii community and would very much have preferred to hire local and keep their spending in Hawaii (expenditures on the customer management project were well over \$1M and those for the web site were triple that). But in each case, the appropriate skills were not available locally and the companies were forced to import the technology skills required to meet their needs.

Of course, the paucity of skilled IT workers in Hawaii is not solely due to impediments to employee mobility. But in the technology industry, removing any restriction on employment would serve as an important step towards catalyzing growth in a sector that can have broad, meaningful impact in our community.

Thank you for your consideration,

A handwritten signature in blue ink, appearing to read 'Jim', with a large loop at the bottom.

Jim Takatsuka
Enterprise Account Manager
Microsoft Corporation