

STAND. COM. REP. NO.

1139

Honolulu, Hawaii

March 27, 2015

RE: S.B. No. 1279
S.D. 2
H.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Sir:

Your Committee on Economic Development & Business, to which was referred S.B. No. 1279, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT AGREEMENTS,"

begs leave to report as follows:

The purpose of this measure is to stimulate economic development in Hawaii's technology business sector by prohibiting the use of noncompete agreements or restrictive covenants in employment contracts that restrict beyond one year any post-employment competition for employees of a technology business.

Radical Synergies LLC, eHana LLC, New England Venture Capital Association, O & A Consulting LLC, and several concerned individuals testified in support of this measure. PacRim Marketing, Inc., and PRTech, LLC testified in opposition to this measure. The Department of Education, High Technology Development Corporation, and Techmana LLC provided comments.

Noncompete agreements or non-solicit clauses are often contained in employment-related contracts, particularly in the technology sector. These restrictive covenants effectively prevent an individual from working at an organization with which a former employer competes or does business. Your Committee finds that these restrictive covenants impede the development of businesses within the State by limiting skilled workers' mobility within the State, forcing many of these workers to seek employment

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in other jurisdictions, and requiring local businesses to solicit skilled workers from outside the State. Eliminating these restrictive covenants in contracts for employees in the technology business sector will stimulate Hawaii's economy by preserving and providing jobs and provide opportunities for these employees to establish new companies and new job opportunities in the State.

However, your Committee understands the concerns raised about the broad application this measure may have and has amended this measure by:

- (1) Narrowing the scope of the prohibition on non-compete and non-solicit clauses relating to an employee of a technology business to employment contracts only;
- (2) Deleting the one year duration restriction on noncompete agreements and restrictive covenants;
- (3) Specifying that a technology business is one that derives a majority of its revenue from the sale or license of products or services resulting from its own software or information technology development;
- (4) Deleting the definition of "information technology" and instead defining "information technology development" to mean the design, integration, deployment, or support services for software;
- (5) Excluding any telecommunications carrier as defined in section 269-1, Hawaii Revised Statutes, which holds a franchise or charter enacted or granted by the legislative or executive authority of the State or its predecessor governments as a technology business; and
- (6) Stipulating that the prohibition on noncompete or nonsolicit clause relating to an employee of a technology business shall apply to all written, binding noncompete and nonsolicit clauses entered into after June 30, 2015.

Technical, nonsubstantive amendments were also made for conformity, clarity, consistency, and style.



As affirmed by the record of votes of the members of your Committee on Economic Development & Business that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1279, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1279, S.D. 2, H.D. 1, and be referred to the Committee on Consumer Protection & Commerce.

Respectfully submitted on
behalf of the members of the
Committee on Economic
Development & Business,



DEREK S.K. KAWAKAMI, Chair



