



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 1279, S.D. 2, H.D. 1, RELATING TO EMPLOYMENT AGREEMENTS.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Wednesday, April 1, 2015

TIME: 2:30 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Rodney I. Kimura, Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Attorney General submits comments on this bill.

First, the proposed subsection (d) declares that any employment contract containing a noncompete or nonsolicit clause relating to an employee of a technology business “shall be void and of no force or effect.”

This wording in this bill will therefore render the entire contract void and of no force or effect as opposed to only voiding the noncompete clause or the nonsolicit clause. As a result, the prohibition will adversely impact provisions completely unrelated to the offending clauses, as well as provisions that may benefit to the employee.

We suggest that the wording on page 6, lines 1 to 4, be replaced with the following:

Except as provided in subsection (c)(4), any employment contract containing a noncompete or nonsolicit clause relating to an employee of a technology business is prohibited. Such clause shall be void and of no force and effect.

The replacement wording is the same as the wording set forth in H.B. No. 1090, H.D. 2, S.D. 1.

Second, if the Committee approves the replacement wording above, the Committee should also consider whether the term “revenue” on page 6, line 18, should be replaced with “gross income,” which is the term used in H.B. No. 1090, H.D. 2, S.D. 1.

Thank you for the opportunity to testify on this matter.

Written Statement of
ROBBIE MELTON
Executive Director & CEO
High Technology Development Corporation
before the
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Wednesday, April 1, 2015
2:30 p.m.
State Capitol, Conference Room 325
In consideration of

SB1279 SD2 HD1 RELATING TO EMPLOYMENT AGREEMENTS.

Chair McKelvey, Vice Chair Woodson, and Members of the Committee on Consumer Protection & Commerce.

The High Technology Development Corporation (HTDC) **respectfully offers comments** on SB1279 SD2 HD1 relating to employment agreements.

HTDC comments that the bill favors employee mobility which can provide benefits of retaining spin-off companies and entrepreneurial employees within the state. Furthermore, companies can utilize nondisclosure agreements to protect its intellectual property and corporate knowledge. However, eliminating all non-compete agreements may cause a disadvantage for small technology businesses to protect its business strategy and customers, especially in cases where a single customer account is critical for the business and the company has invested significant time and resource in securing the customer.

HTDC suggests that a small business should be afforded some opportunity to protect its business strategy and investments. SB1279 SD2 attempted to clarify the definition of “reasonable period of time” by disallowing non-competes exceeding one year. SB1279 SD2 HD1 removed the language. HTDC does not offer comment on the suitability of a “reasonable time period” other than to suggest that this may provide an opportunity to find a middle ground that is reasonable to both the employee and small business. Thank you for the opportunity to offer these comments.



April 1, 2015

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Chair McKelvey, Vice Chair Woodson, and Members of the Committee on Consumer Protection and Commerce

I am contacting you on behalf of the 750 individual members of the IEEE in Hawaii to express our support for provisions in SB1279, SD2 HD1, that prohibit the use of non-compete agreements for employees of technology businesses. This simple change to Hawaii's employment law would dramatically improve the flexibility and innovativeness of our state's economy, particularly in our most critical and high growth fields.

The IEEE (Institute of Electrical and Electronics Engineers) is the world's largest technical professional society. Founded by Alexander Graham Bell and Thomas Edison, we represent individual computer programmers, hardware designers, aerospace engineers and other technical professionals involved with the creation and development of advanced technologies. Hawaii's 750 IEEE members, part of the 436,000 IEEE members around the globe, are the very heart of our modern high-tech economy.

As such, we are acutely aware of how fast our dynamic high-tech economy advances. Technology is always changing, evolving, dying – and companies have to move fast just to keep up. Nobody would argue that restricting any company's ability to change product lines, business models or strategies is in anyone's best interest.

Yet that is exactly what employees are required to do when they sign a non-compete agreement. Such agreements are designed to prevent employees from being flexible and deny them the ability to respond to changing market conditions. In doing so, non-compete agreements reduce the overall flexibility of the Hawaii's economy – and thereby reduce our state's overall competitiveness.

Companies already have the means to keep talented employees -- provide appropriate, competitive compensation and a desirable work environment. Companies that are unable or unwilling to do that should have difficulty holding on to their employees. Employers have the right to choose whom to employ, but workers also ought to have the right to work for whichever companies they want. That is how the free market works.

We thank you for the opportunity to testify.

Sincerely,

John Borland
Chair, IEEE Hawaii Section



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Wednesday, April 1, 2015, 2:30PM

State Capitol Conference Room 325

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

My name is Matt Marx. I am the Assistant Professor of Technological Innovation, Entrepreneurship, and Strategic Management at the MIT Sloan School of Management. My research, supported by others in my field, concludes regional “brain drains” are directly related by public policy affecting employee mobility. I strongly support SB 1279 SD HD1, as a means for Hawaii to retain its top talent.

2014 marked an inauspicious anniversary: 600 years since the first employee non-compete lawsuit was filed. It was in northern England, in the very high-tech industry of clothes-dyeing. An apprentice was sued by his master for setting up his own clothes-dyeing shop in the same town in 1414. The judge, appalled that the master would try to prevent his own apprentice from practicing his profession, threw out the case and threatened the plaintiff with jail time.

Much has changed in 600 years, but employee non-compete agreements still bear painful resemblance to medieval practices. As a professor at the MIT Sloan School of Management, my research focuses on the implications of non-competes for individuals, firms, and regions. I am not alone in this effort; during the last ten years, several scholars have contributed to a body of work including

- Toby Stuart of the University of California at Berkeley
- Olav Sorenson of Yale University
- Mark Garmaise of UCLA
- Mark Schankerman of the London School of Economics
- Lee Fleming of the University of California at Berkeley
- Jim Rebitzer of Boston University
- April Franco of the University of Toronto
- Ronald Gilson of Stanford University
- Ken Younge of Purdue University
- Sampsa Samila of the National University of Singapore
- Ivan Png of the National University of Singapore

My work, as well as that of those of these scholars, has almost universally found non-competes to be detrimental to individual careers and regional productivity. Non-competes, do not, as is often claimed, spur R&D investment by companies. Just to summarize a few points:



- Although it is frequently claimed that non-competes are usually only a year in duration, a survey I conducted of more than 1,000 members of the IEEE engineering organization revealed that fully one-third of these are longer than one year and 15% are longer than two years.
- An article of mine in the American Sociological Review reveals that firms rarely tell would-be employees about the non-compete in their offer letter. Nearly 70% of the time, they wait until after the candidate has accepted the job and, consequently, has turned down other job offers. Half the time the non-compete is given on or after the first day at work. At this point it is too late for the employee to negotiate—indeed, I found that barely one in ten survey respondents had a lawyer review the non-compete.
- Several articles including my own with Lee Fleming and Debbie Strumsky in Management Science, by Jim Rebitzer and two Federal Reserve economists in the Review of Economics and Statistics, by Mark Garmaise in the Journal of Law, Economics, and Organization find that non-competes make it difficult for employees to change jobs. Instead, workers are trapped in their jobs with little possibility of moving elsewhere.

In the remainder of my testimony I wish to comment on the “chilling effect” non-competes can have regardless of the best intentions of judges and the possible implications for regional economic performance.

Jay Shepherd of the Shepherd Law Group reports that there were 1,017 published non-compete decisions in 2010. The Bureau of Labor Statistics reported that there were 154,767,000 workers in the U.S. as of June 2010. If the effect of non-competes were limited to the courtroom, simple math would suggest that 0.0007% of workers were affected by non-competes. Yet data from my IEEE survey indicate that nearly half of engineers and scientists are required to sign non-competes (including states where they are unenforceable). Why are 50% of workers asked to sign non-competes when barely a thousandth of a percent of them ever involve a court case? It is because of *the chilling effect*—because non-competes affect worker behavior even in the absence of a lawsuit. Thus it is essential to account for and anticipate how non-competes affect workers outside the courtroom.

In my own research including interviews with dozens of workers, I have rarely if ever come across an actual lawsuit. However, I have seen several instances where workers have taken a *career detour*, leaving their industry for a year or longer due to the non-compete. They took a pay cut and lost touch with their professional colleagues—not because they were sued, but for other reasons. They may have been verbally threatened by their employer; they may not have been threatened but have assumed that if they were sued, they would lose due to the expense of defending themselves; in some cases they felt that they were under obligation to honor the agreement they had signed—no matter how overreaching it might have been.

Non-compete reform is not just about protecting workers; it is also about growing the economy. Some will say it is impossible to operate their business without non-competes. Perhaps it is easier not to worry about people leaving, but one need look no further than California’s Silicon



Valley or the San Diego biotech cluster for proof that a thriving economy does not depend on non-competes. Non-competes have been banned in California for more than 100 years. Again, I acknowledge that as a manager life is easier when you can rely on employees not leaving for rivals thanks to the non-compete they were required to sign. When I was managing a team of engineers in Boston, I never really worried about people quitting. Whereas when I managed a team in Silicon Valley, I realized that we as a company had to keep them engaged. We had a saying: “you never stop hiring someone.” I think it made us a better company, and it made me a better manager.

Non-competes hurt the economy because it is more difficult to start new companies and also to grow those companies. Professors Olav Sorenson of Yale University and Toby Stuart of the University of California at Berkeley published a study in 2003 showing that the spawning of new startups following liquidity events (i.e., IPOs or acquisitions) is attenuated where non-competes are enforceable. Professor Sorenson followed up this study with a more recent article, coauthored with Professor Sampsa Samila at the National University of Singapore. They show that a dollar of venture capital goes further in creating startups, patents, and jobs where non-competes are not enforceable. Their finding is moreover is not just a Silicon Valley story but holds when Silicon Valley is excluded entirely.

Non-competes not only make it more difficult to start a company; they make it harder to grow a startup. One of the randomly-selected interviewees in my *American Sociological Review* article said that he “consciously excluded small companies because I felt I couldn’t burden them with the risk of being sued. [They] wouldn’t necessarily be able to survive the lawsuit whereas a larger company would.” Also, whereas large companies are able to provide a holding-tank of sorts for new hires to work in a different area while waiting for the non-compete to expire, this is more difficult for smaller firms.

Finally, and perhaps of even greater concern, is that non-competes chase some of the best talent out of a region. I have included my research on a 1985 change in public policy in Michigan to start enforcing noncompetition agreements. My research indicated that the change accelerated the emigration of inventors from the state and moreover to other states that continued not to enforce non-compete agreements. This finding is not simply an artifact of the automotive industry or general westward migration; in fact, it is robust to a variety of tests including pretending that the policy change happened in Ohio or other nearby, mid-sized Midwestern states. Worse, this “brain drain” due to non-compete agreements is greater for the most highly skilled workers. It stands to reason that a change in public policy like SB 1279 SD1 would promote the retention of top talent in Hawaii.



References

Fallick, Bruce, Charles Fleischman, and James Rebitzer, "Job-Hopping in Silicon Valley: Some Evidence Concerning the Micro-Foundations of a High Technology Cluster," *The Review of Economics and Statistics*, 88 (2006), 472-481.

Garmaise, Mark, "The Ties That Truly Bind: Noncompetition Agreements, Executive Compensation, and Firm Investment," *Journal of Law, Economics, and Organization*, 27(2):376-425.

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Marx, Matt, Deborah Strumsky, and Lee Fleming, "Mobility, Skills, and the Michigan Non-Compete Experiment," *Management Science*, 55 (2009), 875-889.

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M. Marx and L. Fleming. "Non-compete Agreements: Barriers to Entry...and Exit?" in J. Lerner and S. Stern, eds., *Innovation Policy and the Economy* 12. (2012)

Samila, Sampsa, and Olav Sorenson. "Noncompete covenants: Incentives to innovate or impediments to growth." *Management Science* 57.3 (2011): 425-438.

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TESTIMONY IN SUPPORT FOR SB 1279 SD2 HD1

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Wednesday, April 1, 2015, 2:30PM

State Capitol Conference Room 325

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am a technology entrepreneur who grew up in Waimanalo. At 21 years old I left college on the mainland and returned to Hawaii to co-found a company building Electronic Health Records software for local social service agencies. I've been running and growing that company, eHana, for 13 years.

I support SB 1279 SD2 HD1 because it will enable technology employers to grow in Hawaii, enable talented employees to remain in Hawaii, and because it represents a more humane approach to business.

In 2006 my company opened an office on the East Coast, and we've since found it substantially easier to recruit and retain technical talent there. The reality of Hawaii's unique geographic location and relatively limited high-tech employment opportunities mean that talented product managers, business analysts, software developers, quality assurance personnel, and the like are always in short supply. Any tool that serves to restrict employer access to Hawaii's already-limited pool of technical talent--and I count non-compete agreements in this category, because they remove qualified employees from the workforce--serves only to further reduce Hawaii's competitiveness and encourage growing employers like eHana to seek talent elsewhere.

Additionally, once an employee who is covered by a broad non-compete leaves their job, they have little choice but to look elsewhere for employment if they want to keep their technical skills sharp and prevent an awkward gap on their resume (as an employer I can speak to how deadly that is when reviewing applications). In some respects Hawaii employees are lucky: California, hotbed of innovation and a state completely ambivalent if not hostile to non-competes, is just a short flight away. Hawaii's loss is Silicon Valley's (usually permanent) gain.

Finally, non-competes are simply a terrible way to do business. As an employer, I'm likely to interview and hire dozens, hundreds, or thousands of people, while as an employee you are likely to accept a new job at most only a few times a decade. It's a completely asymmetric relationship and non-competes generally exploit this asymmetry. They are often buried in "onboarding" paperwork on the employee's first day--at this point the employee has already

left their previous position--and they are usually non-negotiable. This is an abuse of power that many employees acquiesce to (if they even realize the non-compete clause is there in the first place).

I recently attempted to hire a talented senior engineer with experience in our industry who had been laid off from her previous position. While she would have been an exceptional fit, she was covered by a non-compete agreement with her previous employer, and we were unable to accept the legal risk associated with bringing her on. Incredibly, even though the previous employer had let her go, and had no ongoing financial relationship with her, it held her to an agreement she had signed twelve years earlier in the normal course of her employment paperwork. She ended up leaving the industry she loved entirely rather than spend a year twiddling her thumbs.

Hawaii is a unique and beautiful place, and I can speak from experience in saying that its climate, people and attitude make it a fabulous location from which to start and grow a high-tech business. Today's interconnected and networked world has made it more feasible than ever to do so. The biggest challenge has always been, and continues to be, access to trained technical talent, and SB 1279 SD2 HD1 will eliminate one barrier to addressing this challenge.

Thank you for your consideration.

Jacob Buckley-Fortin
eHana LLC

From: Jay Fidell <jay.fidell@me.com>
Sent: Tuesday, March 31, 2015 8:41 AM
To: CPCtestimony
Cc: Jeff Hong
Subject: TESTIMONY IN SUPPORT FOR SB 1279 SD2 HD1

SUBJECT LINE: TESTIMONY IN SUPPORT FOR SB 1279 SD2 HD1

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Date: April 1, 2015

Testimony in support SB 1279, SD2 HD1

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am writing to provide testimony in STRONG SUPPORT of SB 1279, SD2 HD1 which is currently before your committee for consideration. This measure won't cost the state anything, but is likely to greatly improve the prospects for the development of a tech industry in Hawaii, a diversification critical to our state's economy and our future.

Today's noncompete laws in Hawai'i inhibit equal employment opportunities for technology professionals by limiting options to work within their field of specialty. I am encouraging you to pass SD 1279, SD2 HD1 because it would provide fair competition amongst local companies for the information technology workforce.

This means that technology professionals who have a very specific skill set would no longer be forced to look for employment opportunities outside of Hawai'i when looking for new career opportunities, stopping the "brain drain" of our best and most talented individuals.

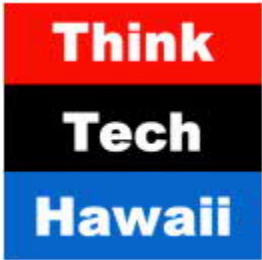
With your continued support during this 2015 legislative session, it is our hope that this bill will be signed into law, allowing IT professionals to rightfully utilize their skills without having to leave Hawaii, and fostering the growth of competition and skills within the IT industry statewide. It is our belief that only a complete ban on non-competition agreements will have a positive effect for the technology industry since very few people can afford to remain unemployed in their specialized field for a year or more.

As someone working in and with the technology industry, I thank you for your support.

Best,

Jay

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From: Jeff Hong <jeffhong@techmanahawaii.com>
Sent: Tuesday, March 31, 2015 6:06 AM
To: Rep. Angus McKelvey; Rep. Justin Woodson; CPCtestimony
Cc: Rep. Derek Kawakami; Rep. Chris Lee; 'ken.hiraki@hawaiiintel.com'
(ken.hiraki@hawaiiintel.com); Chris Leonard; Jackson, Andrew C
Subject: Requested Amendments SB1279 SD2 HD1

Chair McKelvey, Vice-Chair Woodson and Members of the Committee on Consumer Protection & Commerce,

My name is Jeff Hong, I am the Chief Technology Officer of Techmana LLC, a Hawaii based technology business. I would like to ask for your consideration of some minor technical amendments to SB1279 SD2 HD1.

We have worked through the drafting process with input from Hawaiian Telcom, the Hawaii Association of Broadcasters, and the various committee hearings for an amended bill with a narrow scope that still delivers a boost across Hawaii's industries.

We would like to suggest minor clarifying changes to SB 1279 SD2 HD1 for consideration by the Committee developed during the drafting process. This language has been reviewed by Hawaiian Telcom, the Hawaii Association of Broadcasters, and is incorporated in the companion bill HB1090 HD2 SD1.

1. In subsection (d) void the offending clause of the employment agreement rather than the entire agreement. This was a recommendation from the Attorney General to make the section consistent.

(d) Except as provided in subsection (c)(4), any employment contract containing a noncompete or nonsolicit clause relating to an employee of a technology business ~~shall be void and have no force or effect.~~ **is prohibited. Such clause shall be void and of no force and effect.**

2. Replace the word "revenue" with "gross income". This addresses "vagueness" in the definition of "Majority of its revenue" from the Senate JDL committee report of the companion bill. "Gross income" is defined in the IRS code.

"Technology business" means a trade or business that derives the majority of its ~~revenue~~ **gross income** from the sale or license of products or services resulting from its software development or information technology development, or both.

We respectfully ask for your consideration of these amendments.

Thank you for the opportunity to testify.

Jeffrey Hong
Chief Technology Officer
Techmana LLC
808-398-6738

Edward Pileggi
Lunasoft LLC
Honolulu, HI 96815

April 1, 2015

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Wednesday, April 1, 2015, 02:30 PM

State Capitol Conference Room 325

Aloha Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

As a technology professional with over 15 years of experience, I'm strongly in favor of SB 1279 SD2 HD1 because it would help Hawaii retain technology professionals.

I have first-hand experience with the negative impacts of non-compete agreements. I moved to Hawaii in September 2013 to work for Hawaiian Airlines. While I do enjoy working for Hawaiian Airlines, there is a staffing agency between myself and Hawaiian Airlines that has been treating me unfairly. Unfortunately my options are limited due to the non-compete clause put in place by the staffing agency and as a result I'm faced with either accepting the unfair treatment or moving back to California.

“Perform services directly on this project at any of the client’s or client’s client...”

I believe that Hawaii does an excellent job of recruiting talented technology professionals, but it has a difficult time retaining these individuals due in large part to non-compete agreements. Supporting SB 1279 SD2 HD1 will help alleviate the need for technology professionals to seek employment opportunities outside of Hawaii.

Mahalo,

Edward Pileggi
Owner & Founder
Lunasoft LLC

REGULAR SESSION OF 2015

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

DATE : Wednesday, April 1, 2015
TIME : 2:30 PM
PLACE : Conference Room 325
State Capitol
415 So. Beretania Street

TESTIMONY OF PACRIM MARKETING GROUP, INC. & PRTECH, LLC
IN OPPOSITION TO SB 1279, HD 2, SD1

On behalf of PRTech, LLC., and PacRim Marketing Group, In. as an advocate for small business, we would like to present testimony opposing SB 1090, HD 2, SD1. RELATING TO EMPLOYMENT AGREEMENTS. Prohibits non-compete agreements and restrictive covenants that forbid post-employment competition for employees of a technology business.

First, I would like to introduce myself. My name is Dave Erdman and I am the President and CEO of PacRim Marketing Group, Inc. and PRTech, LLC. I founded PacRim 25 years ago to help bridge cultural gaps and gain market entry for companies in Hawaii and North America seeking to do business in Japan, China, Korea, and other Pacific Rim regions. This vision and ability to help Hawaii's businesses gain market entry into Asia and to embrace change in the marketplace—especially the emerging AIT (Asian International Traveler) markets from Korea, China, and Taiwan—have positively impacted Hawaii's largest industry (tourism) and contributed to the firm's growth.

In 2003, with a client pushing us to help them develop a type of system that Asian travelers could use to book hotel rooms. We began development on a hotel booking engine, through a new company founded to specialize in technology and on-line marketing, PRTech, LLC. **Both companies have grown organically, with NO outside investment.**

PRTech's flagship product today known as MyRez 4.0 is a multilingual, online reservations booking system which works as a booking engine on a hotel's website displaying information in Japanese, Korean, Simplified Chinese and/or Traditional Chinese. Travelers are allowed to complete reservations in their own language, including submitting questions and special requests. MyRez then communicates all reservation-related requests between hotels and travelers, providing an optimal online user environment.

I am very proud of the recognition our companies have received over the past years. In 2014, the U.S. SBA (Small Business Administration) recognized me on behalf of our companies, as the “Small Business Person of the Year” for the State of Hawaii, recognized for: developing an outstanding growing business with increasing sales; innovations in products and services; responsiveness to adversity; and for his companies’ contributions to the travel and retail industry as well as for supporting community-oriented volunteer activities and monetary contributions.

PRTech, LLC. was named one of Hawaii’s fastest growing technology firms for four consecutive years, from 2008 to 2011.

This past Friday Pacrim Marketing Group, LLC and PRTech, LLC was recognized as one of the “Best Places to work in Hawaii” in the small business category, **voted by our employees, who all have non-compete agreements.**

Both companies have utilized a non-compete agreement of a number of years. This requirement was prompted by several instances where management employees armed with delicate and potentially damaging proprietary information have left the company to join other competing companies, created their own companies offering competitive services and products, or recruited and hired key employees of both companies. As a result, PacRim Marketing Group and PRTech have suffered financial setbacks resulting from the loss of actual and potential revenue, the loss of key staff members and the concomitant "brain drain," the cost of litigating such violations, and the misuse of goodwill created by both companies with their clients. This litany of legal and financial pitfalls underscores a key point in support of non-compete and confidentiality agreements. Both are good, but when it comes to providing protection to the employer, **they don't offer a full measure of protection.**

The use of a non-compete agreement would prevent such future episodes from becoming a financial nightmare. Otherwise, PacRim Marketing Group and PRTech will be faced with the dilemma of being left with no legal option to protect its future proprietary and financial interests. The argument to continue use of a non-compete agreement is obvious on its face. First, the agreement protects the employer's legitimate business interests by preventing former employees from gaining an unfair advantage in future competition and by protecting confidential information in a highly competitive market. Second, the agreement is reasonable because it results in little, if any hardship to the former employees and the public. Third, the agreement imposes time and territorial limits that are no greater than necessary to protect the employer's business interest. Lastly, the goodwill developed by an employer with its clients is a critical asset and the use of a non-compete agreement prevents former employees from capitalizing on that goodwill.

Being a small business in the State of Hawaii, in a specialized niche market staff leaving the company has high ramifications. The learned skills and techniques, business best practices are always taken with them.

- a. Having staff work for client

- b. Having staff work for a competitor
 - c. Having staff start their own business
2. As a small business it is difficult to find/retain tech people in Hawaii
 - a. We invest in work visas (H-1B – Green cards) and bring tech people from outside country
 - b. Recruit from the Mainland – paying steep headhunter fees
 - c. We have had big companies poach on recruited and trained staff with their high salary and benefits packages
 3. Many say that non-competes prevents economic growth. There are over 105,000 small businesses here in Hawaii. For small businesses this bill will hinder growth and thus affect our economy. Here in Hawaii a lot of” tech companies” fall under the small business classification and try to develop and survive in the current market. It seems like a never ending circle if we can’t attract employees to Hawaii because of the non-competes. When we do limit or remove non-competes we won’t attract employees because they will go and work for large scale business who have big compensation packages and whose corporate headquarters may not even be in Hawaii.
 4. Our non-compete agreements are written to protect the company’s investment in its training and development of good employees. We have not prohibited the movement of employees from company to company; however we have tried to protect our companies’ well-recognized interests for a reasonable period of time and geography
 5. This vote will likely have impact on potential other industries forbidding non-compete agreements as well, further damaging our opportunities and other small businesses and organizations opportunities to survive, where we need to thrive and grow.
 6. Headhunters, human resource talent specialist, and human resource managers’ at large companies don’t want non-compete so they can have a larger pool of talent and candidates to fill their openings.
 7. Our opportunities have been to use off-shore talent, from India or mainland, but that does not help Hawaii. We have focused on having our team and headquarters in Hawaii.

I suppose that every argument can be counter argued. For PRTech and for small businesses that will fall in the “Technology business”, minimizing non-compete timeframe will counter balance everything it has tried to build. It will be harder to find talent because they are all being recruited for the large businesses. **Eliminating non-competes entirely will be a devastating blow to the growth and survival of many small businesses here in Hawaii.**

I think that the intent of the bill initially was to try and limit the time frame of the non-competes but perhaps it should look to set some limitations to how much an individual can be limited. i.e. can't work for a competitor/customer/for the same type of industry vs. another organization in Hawaii – more reasonable and specific to the business vs so broad and general. Now we have a bill that has very little restrictions except to say that one can't use trade secrets in competition with the employee.

In response to those that say that having these bills passed with “help to stimulate the technology industry”, I do not agree. I do believe that this bill will only add to the constant churn for recruiters and more cost to companies in general. As business owners we all like to keep our turnover to a minimum because of the cost involved in recruiting, training, and acclimation, this will encourage the tech skilled to move around more so. It's not good for stimulating growth here in our island state. Supporting this bill, as written, will not help stimulate the “tech” sector.

I am surprised by the lack of opposition to this bill and perhaps it is not the lack of opposition but the lack of information and resources that most small businesses have. Small businesses lack the personnel and funding to hire a full time lobbyist or have a legal department following what is going on in the legislature. We actually read about the bill in the paper. We wish we could have been part of this opposition earlier in the process when the bills were first presented.

As an advocate for all small businesses I ask that small businesses be excluded from this bill. Small businesses can be classed by employee or gross revenue i.e. as classified by federal government or the Small Business Administration (SBA). For example; companies that have fewer than 25 employees or companies with gross revenue of less than 5 million annually.

We urge the members of the committee to hold or defer this bill. If any committee members or staff has questions regarding his testimony, please feel free to e-mail or call me at 808-479-6895 via email derdman@pacrimmarketing.com. Thank you very much for your time and considerations.

Dave Erdman | President & CEO
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HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Wednesday, April 1, 2015, 2:30PM

State Capitol Conference Room 325

Aloha Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am writing in strong support of SB 1279 HD2 SD1 that would eliminate restrictive post-employment non-compete agreements on employees of technology businesses.

Having worked in Hawaii as an IT consultant on several projects, I have both witnessed events and have heard stories of how these agreements have forced other professionals in my industry to shy away from doing business on the islands. Honest working people with talents in this industry are fortunate to have many options for contracting and permanent employment positions all over the globe. These types of covenants certainly make the choice of working in Hawaii a less desirable one. Certainly, people in the technology industry are expected to provide outstanding deliverables for an agreed upon salary. However, expecting those same people to not be able to continue to provide for their families after that engagement is complete goes against every basic hard working principle this country was founded upon. Hawaii is a uniquely beautiful place full of rich heritage and strong principles that should not be shrouded in the negative light of these types of intimidating corporate practices. Open competition and fair trade practices has always provided a solid foundation for growing an economy and harvesting talent. I sincerely hope you will support this bill to provide that type of foundation allowing for Hawaii's continued growth in the technology industry.

Mahalo,

William Kirby
President
Radical Synergies LLC

Robert F Martindale, Jr.
Architecting Innovation, LLC
Honolulu, HI, 96813

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Wednesday, April 1, 2015, 2:30PM

State Capitol Conference Room 325

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

As the Chief Technology Officer of a software company doing business locally in Hawaii, I strongly support SB 1279 SD2 HD1. The bill provides better opportunities for technology professionals to call Hawaii home. I have personally seen how noncompetition agreements are used in the technology industry costing jobs and productivity in Hawaii's business community. Furthermore, I have been the victim of noncompetition agreements in the past and in other states, which at one point in my career actually forced me to uproot my family and relocate elsewhere.

In my personal experience, enforcement of these agreements does much more than simply endanger the livelihood of the individual; they directly hinder the growth of the local economy of this beautiful state, discouraging both talented individuals and growing businesses from investing in our economy. I can personally testify that were it not for these restrictions, my own company would be much more willing to shift an increasing amount of resources and business to this state, helping to further grow the economy and talent pool here in Hawaii.

- Encourages broad and indiscriminate use of non-competes across many industries. This causes individuals to leave the State if they want to remain employed in their field.
- Discourages the formation of new businesses and competition in an already small and isolated marketplace.
 - Non-competes prevent innovators from creating businesses.
 - Non-competes and non-solicitation agreements prevent entrepreneurs from staffing locally.
- Discourages the formation of a critical mass of technology professionals in Hawaii
 - Discourages technology professionals from moving to a place of limited employment mobility.
 - Encourages our best local talent to leave because they are driven out by a covenant not to compete.
- Forces Hawaii employers to make expensive searches outside the State to fill a talent void.
 - Discourages the fruits of these searches from creating local roots.

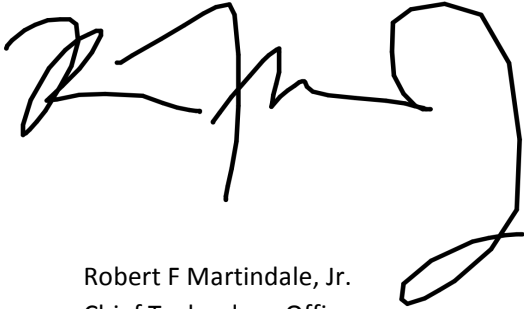
Robert "Sam" Martindale

February 23, 2015

Page 2

I thank you for the opportunity to testify. Please support this bill and encourage Hawaii's technology community to grow.

Mahalo,

A handwritten signature in black ink, appearing to read "R. F. Martindale, Jr.", with a large, stylized flourish at the end.

Robert F Martindale, Jr.
Chief Technology Officer
Architecting Innovation, LLC

woodson2-Rachel

From: Admin Notification <admin@triangleoflove.com>
Sent: Tuesday, March 31, 2015 10:46 AM
To: CPCtestimony
Subject: TESTIMONY IN SUPPORT FOR SB 1279 SD2 HD1

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Date: April 1, 2015

Testimony in support SB 1279, SD2 HD1

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am writing to provide testimony in support of SB 1279, SD2 HD1 which is currently before your committee for consideration.

Today's non-compete laws in Hawai'i inhibit equal employment opportunities for technology professionals by limiting options to work within their field of specialty. I am encouraging you to pass SD 1279, SD2 HD1 because it would provide fair competition among local companies for the information technology workforce.

This means that technology professionals who have a very specific skill set would no longer be forced to look for employment opportunities outside of Hawai'i when looking for new career opportunities, stopping the "brain drain" of our best and most talented individuals.

With your continued support during this 2015 legislative session, it is our hope that this bill will be signed into law, allowing IT professionals to rightfully utilize their skills without having to leave Hawaii, and fostering the growth of competition and skills within the IT industry statewide. It is our belief that only a complete ban on non-competition agreements will have a positive effect for the technology industry since very few people can afford to remain unemployed in their specialized field for a year or more.

As someone working in the technology industry, I thank you for your support.

Sincerely,

The TriangleOfLove.com Team

From: Diane Arciga <d_arciga@yahoo.com>
Sent: Tuesday, March 31, 2015 10:49 AM
To: CPCtestimony
Subject: TESTIMONY IN SUPPORT FOR SB 1279 SD2 HD1

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Date: April 1, 2015

Testimony in support SB 1279, SD2 HD1

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

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Sincerely,

Diana Arciga

woodson2-Rachel

From: Pileggi, Edward <Edward.Pileggi@hawaiianair.com>
Sent: Tuesday, March 31, 2015 10:50 AM
To: CPCtestimony
Subject: TESTIMONY IN SUPPORT FOR SB 1279 SD2 HD1

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Date: April 1, 2015

Testimony in support SB 1279, SD2 HD1

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am writing to provide testimony in support of SB 1279, SD2 HD1 which is currently before your committee for consideration.

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As someone working in the technology industry, I thank you for your support.

Sincerely,

Edward Pileggi
Software Architect @ Hawaiian Airlines

March 31, 2015

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am writing in strong support of **SB1279 SD2 HD1**— 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 and a flourish extending to the right.

Jim Takatsuka
Enterprise Account Manager
Microsoft Corporation

From: Kiyoshi Kusachi <kiyoshi@kusachi.com>
Sent: Tuesday, March 31, 2015 10:41 AM
To: CPCtestimony
Subject: TESTIMONY IN SUPPORT FOR SB 1279 SD2 HD1

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Date: April 1, 2015

Testimony in support SB 1279, SD2 HD1

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am writing to provide testimony in support of SB 1279, SD2 HD1 which is currently before your committee for consideration.

Originally from the mainland, I have over the past 10 years been working in Hawaii locally building software for local companies. In all of my years here I have dealt with the challenge of keeping software engineering talent in Hawaii and have spent more than enough time finding new ways of bringing engineers with family ties back to Hawaii. There is a strong pool of talented mainland engineers with Hawaii ties that have the missing skillset that our local companies need. We should be encouraging this pool of talent to establish new small businesses in Hawaii, but instead non-competes have been discouraging the growth of innovation mobility.

We have to continue down the path of removing these barriers for local Hawaii IT that are resulting in Hawaii businesses investing elsewhere to find help. With an increasing dependency on a rapidly-changing breadth of technology in our everyday lives, local companies will need more and more engineering support. This window of opportunity for technology is something Hawaii should embrace to prepare our local businesses for the future.

Mahalo,

Kiyoshi Kusachi

Senior Manager, Commercial Applications, IT

Hawaiian Airlines

From: Nat <nkkinney@gmail.com>
Sent: Tuesday, March 31, 2015 2:21 PM
To: CPCtestimony
Subject: TESTIMONY IN SUPPORT FOR SB 1279 SD2 HD1

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Date: [April 1, 2015](#)

Testimony in support SB 1279, SD2 HD1

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am writing to provide testimony in support of SB 1279, SD2 HD1 which is currently before your committee for consideration.

Today's noncompete laws in Hawai'i inhibit equal employment opportunities for technology professionals by limiting options to work within their field of specialty. I am encouraging you to pass SD 1279, SD2 HD1 because it would provide fair competition amongst local companies for the information technology workforce.

This means that technology professionals who have a very specific skill set would no longer be forced to look for employment opportunities outside of Hawai'i when looking for new career opportunities, stopping the "brain drain" of our best and most talented individuals.

With your continued support during this 2015 legislative session, it is our hope that this bill will be signed into law, allowing IT professionals to rightfully utilize their skills without having to leave Hawaii, and fostering the growth of competition and skills within the IT industry statewide. It is our belief that only a complete ban on non-competition agreements will have a positive effect for the technology industry since very few people can afford to remain unemployed in their specialized field for a year or more.

As someone working in the technology industry, I thank you for your support.

Sincerely,

Nathaniel Kinney



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

LATE

Written Only

KATHRYN S. MATAYOSHI
SUPERINTENDENT

Date: 04/01/2015

Time: 02:30 PM

Location: 325

Committee: House Consumer Protection and
Commerce

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 1279, SD2, HD1 RELATING TO EMPLOYMENT AGREEMENTS.

Purpose of Bill: Prohibits noncompete agreements and restrictive covenants that forbid post-employment competition of employees of a technology business. Effective 01/07/2059. (SB1279 HD1)

Department's Position:

The Department of Education supports this measure. As one of the largest technology employers in the state, finding talented, experienced individuals to fill our openings is a challenge for a number of reasons. One being that there appears to be a lack of available candidates either qualified or available to work in this state.

On occasion, we have had extremely qualified consultants/applicants express the interest in positions at the Department. However, because their noncompete agreements prevent them from seeking subsequent employment at organizations their current employer does business with, they must effectively eliminate themselves from consideration. Some of these individuals work for large mainland technology companies and have very specialized skills, or might possibly be here on assignment, but have a strong desire to either remain as Hawaii residents or become Hawaii residents.

Most noncompete agreements effectively prevent an individual from working in any technology capacity at an organization which their employer competes or does business with. For employees of large consumer oriented companies which do business with nearly everyone, a noncompete agreement tends to eliminate nearly all viable options for employment within the state. This encourages technology workers to move out of state to secure employment in their chosen field, thus reducing the available candidate pool to fill our most experienced positions.

We believe that limiting the use of noncompete agreements would help to increase the pool of technology employees in the state of Hawaii, and encourage innovation and growth in the technology industry as a whole.



Chamber of Commerce HAWAII
The Voice of Business

LATE

**Testimony to the House Committee on Consumer Protection & Commerce
Wednesday, April 1, 2015 at 2:30 P.M.
Conference Room 325, State Capitol**

RE: SENATE BILL 1279 SD2 HD1 RELATING TO EMPLOYMENT AGREEMENTS

Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **expresses concerns on SB 1279 SD2 HD1**, which prohibits noncompete agreements and restrictive covenants that forbid post-employment competition of employees of a technology business.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber has concerns that SB 1279 SD2 HD1 may be overreaching into employer/employee matters. We believe that employers should have this ability. Some companies invest relatively large sums to recruit an employee, and they should be able to protect that investment. Non-compete agreements are helpful for some technology companies to build and develop a business to compete globally.

We do understand the need to address the shortage of IT employees in this state and hope there are other means to address this issue.

Thank you for the opportunity to testify.

LATE

Jeffrey D. Hong
TechMana LLC
Honolulu, HI, 96813

House Committee on Consumer Protection and Commerce

Wednesday, April 1, 2015, 2:30 PM
State Capitol Conference Room 325

Aloha Chair McKelvey, Vice-Chair Woodson, and Members of the Committee:

We strongly support SB1279 SD2 HD1. This legislation provides many leveraged benefits across the State as it helps to build our technology community:

- **Increased Revenue for the State** - Contract staff typically pay state income taxes in the jurisdictions from where they are staffed. New Hawaii employees will pay Hawaii State taxes.
- **Grow Our Innovation Community** - The innovation community has a chance to grow because they are free to work in their field in Hawaii. The best will not be driven from the State.
- **Lower Costs for Businesses** - Costs of local talent is significantly lower than paying for the time and expenses of external resources. This will eliminate the expensive cycle of training transient staff only to see them leave and require training new transient staff.
- **Attracts Investments** - The ability to keep innovation talent to spawn communities of expertise will make Hawaii a better place to make investments.

The bill has been gaining support as awareness has been raised on its positive effects to Hawaii. Over 50 pieces of testimony in support have been submitted from businesses, technology employees, economists, and others.

- **Technology Labor.** Many technology employees and Hawaii's largest technology professional association, the Institute of Electrical and Electronic Engineers (IEEE) with a **membership of over 700**, have supported this bill to grow Hawaii's technology industries and provide better employment opportunities. Not a single piece of testimony in opposition has been submitted by a technology employee.
- The **Editorial Board of the Star Advertiser** recommends "Giving Tech Workers Contract Freedom"
- The **Hawaii Venture Capital Association** and the **New England Venture Capital Association** have testified employee mobility makes Hawaii a better place to invest.
- Local non-technology organizations like Hawaiian Airlines and the DOE see an opportunity to staff their technology positions with a deeper pool of local talent.

- **"Technology businesses"** like my own, PACXA, and others. We see providing a stable environment for technology professionals as a way to grow-the-pie of technology business opportunities in Hawaii. This strategic growth advantage more than offsets any loss of an individual employee who leaves our employment. We are willing to compete for the best talent and gain a larger pool of talent.

We have worked through the drafting process with input from Hawaiian Telcom, the Hawaii Association of Broadcasters, and the various committee hearings for an amended bill with a narrow scope that still delivers a boost across Hawaii's industries. Only a small slice of Hawaii businesses are directly affected by this legislation. They must obtain a majority of their gross income from development of software or information technology.

This bill levels the legal playing field between Hawaii and California. Hawaii can now stand as an alternate choice to California when people seek to escape an odious noncompetition agreement from the mainland.

With Hawaii as a *"City of Refuge"* for technology employees, we can claim a modern twist to a Hawaiian concept as an **Innovation Pu'uhonua**.

Thank you for the opportunity to testify.

Mahalo,



Jeffrey D. Hong
Chief Technology Officer
TechMana LLC