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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT AGREEMENTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that postemployment  
2 restrictive covenants impede the development of businesses  
3 within the State by driving skilled workers to other  
4 jurisdictions and by requiring local businesses to solicit  
5 skilled workers from out of the State. Eliminating restrictive  
6 covenants for employees of the technology business sector will  
7 stimulate Hawaii's economy by preserving and providing jobs for  
8 employees in this sector and by providing opportunities for  
9 those employees to establish new companies and new job  
10 opportunities in the State.

11           A restrictive covenant not to compete with a former  
12 employer imposes a special hardship on employees of technology  
13 businesses as these highly specialized professionals are trained  
14 to perform specific jobs in the industry. Because the  
15 geographic area of Hawaii is unique and limited, noncompete  
16 agreements unduly restrict future employment opportunities for  
17 these workers and have a chilling effect on the creation of new  
18 businesses within the State by innovative employees.



1 Hawaii has a strong public policy promoting the growth of  
2 new businesses in the economy, and academic studies have  
3 concluded that embracing employee mobility is a superior  
4 strategy for nurturing an innovation-based economy. In  
5 contrast, a noncompete atmosphere hinders innovation, creates a  
6 restrictive work environment for technology employees in the  
7 State, and forces spin-offs of existing technology companies to  
8 choose places other than Hawaii to establish their businesses.

9 In *Technicolor, Inc v. Traeger*, 57 Haw. 113, 551 P. 2d 163  
10 (1976), the Hawaii supreme court ruled that noncompete covenants  
11 and agreements that are not per se violations under section  
12 480-4(b), Hawaii Revised Statutes, may be enforced in Hawaii as  
13 long as they pass a reasonableness analysis. Employers' trade  
14 secrets are already protected under the federal Uniform Trade  
15 Secrets Act and under section 480-4(c)(4), Hawaii Revised  
16 Statutes, therefore, the benefits to the employer of noncompete  
17 or nonsolicit agreements are unnecessary and overreaching  
18 protections that unreasonably impose undue hardship upon  
19 employees of technology businesses and the Hawaii economy.

20 The purpose of this Act is to stimulate Hawaii's economy by  
21 prohibiting noncompete agreements and restrictive covenants that



1 restrict beyond one year any post-employment competition for  
2 employees of a technology business.

3 SECTION 2. Section 480-4, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **"§480-4 Combinations in restraint of trade, price-fixing**  
6 **and limitation of production prohibited.** (a) Every contract,  
7 combination in the form of trust or otherwise, or conspiracy, in  
8 restraint of trade or commerce in the State, or in any section  
9 of this State is illegal.

10 (b) Without limiting the generality of [~~the foregoing~~]  
11 subsection (a), no person, exclusive of members of a single  
12 business entity consisting of a sole proprietorship,  
13 partnership, trust, or corporation, shall agree, combine, or  
14 conspire with any other person or persons, or enter into, become  
15 a member of, or participate in, any understanding, arrangement,  
16 pool, or trust, to do, directly or indirectly, any of the  
17 following acts, in the State or any section of the State:

- 18 (1) Fix, control, or maintain, the price of any commodity;  
19 (2) Limit, control, or discontinue, the production,  
20 manufacture, or sale of any commodity for the purpose



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or with the result of fixing, controlling or  
maintaining its price;

(3) Fix, control, or maintain, any standard of quality of  
any commodity for the purpose or with the result of  
fixing, controlling, or maintaining its price;

(4) Refuse to deal with any other person or persons for  
the purpose of effecting any of the acts described in  
paragraphs (1) to (3) [~~of this subsection~~].

(c) Notwithstanding [~~the foregoing~~] subsection (b) and  
without limiting the application of [~~the foregoing~~] subsection  
(a), it shall be lawful for a person to enter into any of the  
following restrictive covenants or agreements ancillary to a  
legitimate purpose not [~~violative~~] in violation of this chapter,  
unless the effect [~~thereof~~] may be to substantially [~~to~~] lessen  
competition or to tend to create a monopoly in any line of  
commerce in any section of the State:

(1) A covenant or agreement by the transferor of a  
business not to compete within a reasonable area and  
within a reasonable period of time in connection with  
the sale of the business;



- 1           (2) A covenant or agreement between partners not to  
2                    compete with the partnership within a reasonable area  
3                    and for a reasonable period of time upon the  
4                    withdrawal of a partner from the partnership;
- 5           (3) A covenant or agreement of the lessee to be restricted  
6                    in the use of the leased premises to certain business  
7                    or agricultural uses, or covenant or agreement of the  
8                    lessee to be restricted in the use of the leased  
9                    premises to certain business uses and of the lessor to  
10                  be restricted in the use of premises reasonably  
11                  proximate to any such leased premises to certain  
12                  business uses;
- 13          (4) A covenant or agreement by an employee or agent not to  
14                    use the trade secrets of the employer or principal in  
15                    competition with the employee's or agent's employer or  
16                    principal, during the term of the agency or  
17                    thereafter, or after the termination of employment,  
18                    within such time as may be reasonably necessary for  
19                    the protection of the employer or principal, without  
20                    imposing undue hardship on the employee or agent.



1        (d) Except as provided in subsection (c)(4), any  
2 employment contract, post-employment contract, or separation  
3 agreement containing a noncompete or nonsolicit clause relating  
4 to an employee of a technology business with a duration beyond  
5 one year shall be void and have no force or effect.

6        As used in this subsection:

7        "Information technology" means any equipment or  
8 interconnected system or subsystem of equipment that is used in  
9 the automatic acquisition, storage, manipulation, management,  
10 movement, control, display, switching, interchange,  
11 transmission, or reception of data or information. The term  
12 includes computers, ancillary equipment, software, firmware and  
13 similar procedures, services, and support services, and related  
14 resources.

15        "Noncompete clause" means a clause in an employment  
16 contract, post-employment contract, or separation agreement that  
17 prohibits an employee from working in a specific geographic area  
18 for a specific period of time after leaving employment with the  
19 employer.

20        "Nonsolicit clause" means a clause in an employment  
21 contract, post-employment contract, or separation agreement that



1 prohibits an employee from soliciting employees of the employer  
2 after the employee leaves employment with the employer.

3 "Software development" means the creation of coded computer  
4 instructions.

5 "Technology business" means a trade or business that  
6 derives the majority of its revenue from software development,  
7 information technology, or both. "Technology business" excludes  
8 any trade or business that is considered by standard business  
9 practice as part of the broadcast industry."

10 SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect on January 7, 2059.



**Report Title:**

Technology; Employment Covenants or Agreements

**Description:**

Prohibits noncompete agreements and restrictive covenants that restrict beyond one year post-employment competition of employees of a technology business. Effective 01/07/2059.  
(SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*







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

**Date:** 03/24/2015

**Time:** 09:00 AM

**Location:** 312

**Committee:** House Economic Development &  
Business

**Department:** Education

**Person Testifying:** Kathryn S. Matayoshi, Superintendent of Education

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

**Purpose of Bill:** Prohibits noncompete agreements and restrictive covenants that restrict beyond one year post-employment competition of employees of a technology business. Effective 01/07/2059. (SD2)

**Department's Position:**

The Department of Education would like to provide comment and a recommendation on SB1279, SD2. The original intent of this measure is to prohibit noncompete covenants. As one of the largest technology employers in the state, finding experienced individuals to fill openings in the Department is a challenge for a number of reasons.

On occasion, the Department has had qualified consultants/ applicants express the interest in positions in the department. However, because noncompete agreements prevent them from seeking subsequent employment at organizations that their current employer does business with, the application must be eliminated from consideration. The Department suggests that limiting the use of noncompete agreements would help to increase the pool of technology employees in Hawaii. This would encourage innovation and growth in the technology industry, as a whole.

As supportive as the Department is of the intent of the original language content of SB1279, the current amended form creates a one year limitation which will continue to impede the workforce growth opportunities. Generally speaking, employers, public or private, would prefer not to wait one year to fill positions with the most qualified candidates available. We suggest that the phrase "with a duration beyond one year" be struck from Section 2 (d).

Written Statement of  
**ROBBIE MELTON**  
**Executive Director & CEO**  
High Technology Development Corporation  
before the  
**HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS**  
Tuesday, March 24, 2015  
9:00 a.m.  
State Capitol, Conference Room 312  
In consideration of

**SB1279 SD2 RELATING TO EMPLOYMENT AGREEMENTS.**

Chair Kawakami, Vice Chair Kong, and Members of the Committee on Economic Development & Business.

The High Technology Development Corporation (HTDC) **respectfully offers comments** on SB1279 SD2 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. HTDC comments that companies utilize nondisclosure agreements to protect its intellectual property and corporate knowledge. HTDC also comments that eliminating all non-compete agreements may not be advantageous for some small technology businesses to protect its business strategy and customers.

HTDC suggests that companies should have the right to protect its company knowledge for a reasonable time period. SB1279 SD2 attempts to clarify the definition of “reasonable period of time” by disallowing non-competes exceeding one year.

Thank you for the opportunity to offer these comments.

From: Jeff Hong <jeffhong@techmanahawaii.com>  
Sent: Sunday, March 22, 2015 9:40 PM  
To: edbtestimony; Rep. Derek Kawakami; Rep. Sam Kong  
Cc: 'ken.hiraki@hawaiiantel.com' (ken.hiraki@hawaiiantel.com); Chris Leonard; Jackson, Andrew C  
Subject: Requested Amendments SB1279 SD2

Chair Kawakami, Vice-Chair Kong, and Members of the Committee:

We would like to suggest changes to SB 1279 SD2 for consideration in the Committee on Economic Development and Business hearing on March 24th. Hawaiian Telcom and the Hawaii Association of Broadcasters testified in opposition to any adjustment to the current enforcement of noncompete agreements in their industries during the initial hearing for the companion bill, HB 1090. During the drafting process, we have worked together to address concerns the bill would inadvertently target their industries. Hawaiian Telcom has acknowledge their concerns have been addressed with these amendments. The broadcasters feel this is better language but still have reservations with any adjustments to non-competes.

This bill will provide new opportunities for growth in Hawaii's technology industry. We respectfully submit these amendments to SB1279 SD2 for your consideration.

We have included the suggested amendments from the House CPN and Senate JDL committee reports.

1. From SECTION 2 subsection (d) remove the clause " with a duration beyond one year". A one year non-compete would severely reduce the effectiveness of the bill to stimulate our technology industry. Replace the word "agreement" with "clause" in the last sentence. This was a recommendation from the Attorney General.

(d) Except as provided in subsection (c)(4), any employment contract, post-employment contract, or separation agreement containing a noncompete or nonsolicit clause relating to an employee of a technology business with a duration beyond one year is prohibited. Such clause shall be void and of no force and effect.

2. Modify the definition "Information technology" to "Information technology development". This addresses many of the scope concerns from the broadcasters and the House CPN committee.

"Information technology development" means the design, integration, deployment, or support services for software.

3. Significant changes to the definition "Technology business" to narrow the scope of the covered businesses. The addition of the explicit exemption for broadcasters and local telecom carriers. Clarifying the definition of "Majority of its revenue" to "Majority of it gross income". Gross income is defined in the IRS code. This addresses the concerns of "vagueness" in the Senate JDL Committee report.

"Technology business" means a trade or business that derives the majority of its gross income from the sale or license of products or services resulting from its software development or information

technology development, or both. "Technology business" excludes any trade or business that is considered by standard business practice as part of the broadcast industry or any telecommunications carrier as defined in section 269-1, which holds a franchise or charter enacted or granted by the legislative or executive authority of the State or its predecessor governments.

"Majority of its gross income" means greater than 50% of the gross income reported by said business on its federal tax returns for the prior tax year in which said contract was executed. If the trade or business has not filed a federal tax return for the prior year, gross income shall be the gross income recognized at the time the contract was executed.

Thank you for considering these changes and the opportunity to testify.

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

March 21, 2015

Jacob Buckley-Fortin  
eHana LLC

Chair Kawakami, Vice Chair Kong, and Members of the Committee on Economic Development and Business,

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 SB1279 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 will eliminate one barrier to addressing this challenge.

Thank you for your consideration.

Jacob Buckley-Fortin  
eHana LLC



March 23, 2014

The Honorable Derek S.K Kawakami, Chair, Committee on Economic Development and Business  
Honolulu, HI.

Dear Chair Kawakami, Vice-Chair Kong, and Members of the Committee:

My name is C.A. Webb and I am the Executive Director of the New England Venture Capital Association where I represent 90 venture capital firms investing \$50 billion in assets in early stage and high growth tech and healthcare companies. Together, along with our 1,000+ Massachusetts portfolio companies, we work to make Massachusetts the best place in the world to start and grow new companies.

**WE STRONGLY SUPPORT SB1279 to enhance Hawaii as a more attractive place for venture capital investment.** Our community supports employment mobility in technology industries to make America more competitive in the global economy. The venture capital community negatively views jurisdictions with enforcement of non-compete agreements because these agreements create unnecessary roadblocks to the innovation economy of the geography.

Let me emphasize that our community cares deeply about corporate protections and advocates for the continued routine use of non-disclosure agreements in order to prevent employees from sharing confidential information. Hawaii already supports the enforcement of intellectual property protection by its adoption of the Uniform Trade Secrets Act.

This type of bill provides the rare opportunity for a legislature to act to drive state revenues without raising taxes or spending funds. It will add an additional positive reason to support investment in the state.

Thank you,

A handwritten signature in blue ink that reads "CA Webb" with a stylized flourish at the end.

C.A. Webb  
Executive Director

From: Chuck Kirby <ckirby350@gmail.com>  
Sent: Monday, March 23, 2015 8:20 AM  
To: edbtestimony  
Subject: TESTIMONY IN SUPPORT FOR SB 1279, SD2

**Committee on Economic Development & Business**

**Date: March 24, 2015**

**Time: 9:00am**

**Place: Room 312**

**Testimony in support SB 1279, SD2**

Chair Kawakami, Vice Chair Kong, and Members of the Committee on Economic Development and Business,

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

The limiting noncompete environment in Hawaii makes it very difficult for technology companies to operate and discourages companies from trying to work here. I am encouraging you to pass SB 1279 because it would provide a more 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,  
Chuck Kirby  
President of Radical Synergies LLC

March 23, 2015

**Aloha Chair Kawakami, Vice Chair Kong, and Members of the Committee on Economic Development and Business,**

I am writing in strong support of SB1279 SD2 – 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 end.

Jim Takatsuka  
Enterprise Account Manager  
Microsoft Corporation

kong2 - Brenden

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From: Jacqueline Miyashiro  
Sent: Monday, March 23, 2015 9:41 AM  
To: samkong@hawaii.rr.com; kong2 - Brenden  
Subject: FW: TESTIMONY IN SUPPORT FOR SB 1279 SD2



Sam and Brenden,  
FYI  
Jackie

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From: JDLTestimony  
Sent: Sunday, March 22, 2015 9:25 PM  
To: Rep. Sam Kong; Rep. Derek Kawakami  
Subject: FW: TESTIMONY IN SUPPORT FOR SB 1279 SD2

Hello, Representatives Kawakami & Kong:

Forwarding testimony we received regarding SB1279 SD2 that showed up in our JDL account.

Aloha,  
Susan S. Wong  
Office of Senator Gilbert Keith-Agaran

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From: Aaron Schnieder [<mailto:aaron@techmanahawaii.com>]  
Sent: Sunday, March 22, 2015 6:54 PM  
To: JDLTestimony  
Subject: TESTIMONY IN SUPPORT FOR SB 1279 SD2

**Committee on Economic Development & Business**  
**Date: March 24, 2015**  
**Time: 9:00am**  
**Place: Room 312**

Testimony in support SB 1279 SD2

Chair Kawakami, Vice Chair Kong, and Members of the Committee on Economic Development and Business,

I thank you for the opportunity to testify. I strongly support Bill SB 1279 SD2. Policies that provide for a larger pool of technology talent in Hawaii is needed.

I came from the mainland in 2003 and worked for both small and "larger" Hawaii businesses as a software developer. It was very difficult to find interesting work or a community of technology talent and entrepreneurs in Hawaii.

I founded my company, Church Office Online LLC, while living in Hawaii. For the past 5 years we have seen growth of 40+% year over year. The limited opportunities and lack of mentors in Hawaii were major factors in my decision to relocate my family to the mainland where there were greater opportunities.

While the issue of non-competes is not common, when you hear about them it involves the intelligent, entrepreneurial developers you would want to keep. These key individuals form the heart of a community and losing just a few has repercussion to all.

I look forward to passage of this bill so that I can someday witness a Hawaii with a vibrant technology community.

Respectfully

Aaron Schnieder

From: Kiyoshi Kusachi <kiyoshi@kusachi.com>  
Sent: Monday, March 23, 2015 12:28 PM  
To: edbtestimony  
Subject: TESTIMONY IN SUPPORT FOR SB 1279, SD2

**Committee on Economic Development & Business**

**Date: March 24, 2015**

**Time: 9:00am**

**Place: Room 312**



**Testimony in support SB 1279, SD2**

Chair Kawakami, Vice Chair Kong, and Members of the Committee on Economic Development and Business,

I am writing to provide testimony in support of SB 1279, SD2 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 skill-set 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

Cynthia Miller  
Owner

O&A Consulting LLC  
Honolulu, HI 96816

**LATE**

## TESTIMONY IN SUPPORT FOR SB 1279, SD2

Committee on Economic Development & Business  
Tuesday, March 24, 2015, 09:00 AM  
State Capitol Conference Room 312

Chair Kawakami, Vice Chair Kong, and Members of the Committee on Economic Development and Business,

I strongly support SB 1279 SD2 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". 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 SB 1279 SD2 bill will support local businesses and employees in Hawaii and solidifying 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

**LATE**

Jeffrey D. Hong  
TechMana LLC  
Honolulu, HI, 96813

## **HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS**

Tuesday, March 24, 2015, 09:00 AM  
State Capitol Conference Room 312

Aloha Chair Kawakami, Vice-Chair Kong, and Members of the Committee:

Thank you for the opportunity to testify on SB1279 SD2. We strongly support the bill with the suggested amendments. We have incorporated input from Hawaiian Telcom, the Hawaii Association of Broadcasters, and the various committee hearings for an amended bill that narrowly defines the scope of a technology business. Only a small slice of Hawaii businesses will be affected by this legislation. They must obtain a majority of their gross income from development of software or information technology. Many of these technology businesses are supportive of the legislation. This legislation provides leveraged benefits across the state due to the current small size of our technology community.

- Increased Revenue for the State - Contract staff typically pay state income taxes in the jurisdictions from where they are staffed. Now employee staff will pay local taxes.
- Lower costs for businesses - Costs of local talent is significantly lower than paying for time and expenses of external resources. This will lessen the cycle of training transient staff only to see them leave and need to train again.
- Grow 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.
- Attracts Investments - The venture capital community supports this legislation as a positive for investing in Hawaii businesses.


This bill has been gaining supporters as people realize how it will positively affect Hawaii.

- 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 or have a wider 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. It provides a

strategic advantage that more than offsets the loss of any individual employee who would want to leave our employment.

Thank you for the opportunity to testify.

Mahalo,

A handwritten signature in black ink that reads "Jeffrey D. Hong". The signature is written in a cursive style with a large, stylized 'J' and 'H'.

Jeffrey D. Hong  
Chief Technology Officer  
TechMana LLC

The following are the recommended amendments to SB1279 SD2.

1. From SECTION 2 subsection (d) remove the clause " with a duration beyond one year". A one year non-compete would severely reduce the effectiveness of the bill to stimulate our technology industry.  
Replace the word "agreement" with "clause" in the last sentence. This was a recommendation from the Attorney General.

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

2. Modify the definition "Information technology" to "Information technology development". This addresses many of the scope concerns from the broadcasters and the House CPN committee.

**"Information technology development" means the design, integration, deployment, or support services for software.**

3. Significant changes to the definition "Technology business" to narrow the scope of the covered businesses.  
The addition of the explicit exemption for broadcasters and local telecom carriers.  
Clarifying the definition of "Majority of its revenue" to "Majority of its gross income". Gross income is defined in the IRS code. This addresses the concerns of "vagueness" in the Senate JDL Committee report.

"Technology business" means a trade or business that derives the majority of its gross income from the sale or license of products or services resulting from its software development or information technology development, or both. "Technology business" excludes any trade or business that is considered by standard business practice as part of the broadcast industry or any telecommunications carrier as defined in section 269-1, which holds a

franchise or charter enacted or granted by the legislative or executive authority of the State or its predecessor governments.

"Majority of its gross income" means greater than 50% of the gross income reported by said business on its federal tax returns for the prior tax year in which said contract was executed. If the trade or business has not filed a federal tax return for the prior year, gross income shall be the gross income recognized at the time the contract was executed.

kong2 - Brenden

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From: mailinglist@capitol.hawaii.gov  
Sent: Monday, March 23, 2015 9:10 AM  
To: edbtestimony  
Cc: jerwin@pacrimmarketing.com  
Subject: Submitted testimony for SB1279 on Mar 24, 2015 09:00AM



**SB1279**

Submitted on: 3/23/2015

Testimony for EDB on Mar 24, 2015 09:00AM in Conference Room 312

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dave Erdman	Individual	Oppose	Yes

Comments: Attached please find the testimony of PacRim Marketing, Inc. and PRTech, LLC in opposition to SB 1279 HD2 and HB 1090, HD 2. Said testimony is to be submitted to the Committee on Economic Development & Business The hearing is scheduled for Tuesday, March 24 at 9:00 a.m. at room 312, State Capitol, 415 So. Beretania Street, Honolulu, Hawaii.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

SUBJECT LINE: TESTIMONY IN SUPPORT FOR SB 1279, SD2

Committee on Economic Development & Business  
Date: March 24, 2015  
Time: 9:00am  
Place: Room 312



Testimony in strong support SB 1279, SD2

Chair Kawakami, Vice Chair Kong, and Members of the Committee on Economic Development and Business,

I write today as a private citizen, but as someone who has built the University of Hawaii System's Academy for Creative Media on the proposition that we need to do a better job educating our students and incubating new, intellectual property companies that will chart Hawaii's future in the broadband-connected economy.

I write in strong support for SB 1279, SD2 in order to make Hawaii a more competitive economy – particularly in the 21<sup>st</sup> century knowledge-based skill sets that all of our students need if we are to diversify our island away from its reliance service jobs and limited opportunities for the generations to come.

Current 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 SB 1279 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 which only contributes to the "brain drain" of our best and most talented individuals. Our students don't need any more reasons to move to the mainland.

I appreciate the growing support for this legislation during this session and note the exponential number of both public and private entities such as the DOE who have endorsed ending Hawaii's non-compete laws. With your support at this critical stage, it is our hope that this bill will be signed into law, allow IT professionals to rightfully utilize their skills without having to leave Hawaii, and foster 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.

Thank you for the opportunity to testify.

I sincerely appreciate your consideration of support for this vital piece of legislation.

Sincerely,