



The Judiciary, State of Hawaii

Testimony to the Committee on Judiciary and Labor

Senator Gilbert S. C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

February 22, 2017, 9:00 a.m.
State Capitol, Conference Room 016

By

Calvin C. Ching

Deputy Chief Court Administrator, District Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 427, Relating to Small Claims Division of the District Court

Purpose: This bill establishes the exclusive jurisdiction of the small claims division of the district court over cases in which the amount claimed is \$1,000 or less exclusive of interest and costs. It also expands the small claims division's jurisdiction over personal property cases to include any personal property worth \$5,000 or less.

Judiciary's Position:

The Judiciary requests that this measure be **DEFERRED**.

The Judiciary is currently reaching out to members of the Collection Bar Section of the Hawaii State Bar Association to promote the benefits of small claims court to their members. The Judiciary requests that at this time this measure be deferred with the hope that legislation will not be necessary.

Thank you for the opportunity to testify on this measure.



Collection Law Section

Chair:
Steven Guttman

Vice Chair:
William J. Plum

Secretary:
Thomas J. Wong

Treasurer:
Arlette S. Harada

Directors:
Ann Correa
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William J. Plum
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February 16, 2017

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice-Chair
Senate Committee on Judiciary and Labor

**Re: SB 427, Relating to Small Claims Division of the District Court
Hearing: Wednesday, February 22, 2017, 9:00 a.m.**

Dear Chair Keith-Agaran, Vice-Chair Rhoads and Members of the
Committee:

This testimony is being submitted on behalf of the Collection Law
Section of the Hawaii State Bar Association (“CLS”)¹.

The CLS urges that the bill be amended to allow for an exception in
cases where attorneys are hired. Under the proposed exemption
amendment of the CLS, if any attorney represents a plaintiff in a civil
action in which the amount claimed is \$1,000 or less (exclusive of
interest and costs), that action can be filed in either the Small Claims
Division or in the Regular Claims of the District Court. Both courts
would have concurrent jurisdiction.

When an attorney is hired to represent the filing party, the choice to file
an action for a claim of \$1,000 or less in Regular Claims or Small
Claims should rest with the filing party. Currently, many plaintiffs who
retain an attorney prefer filing their cases in Regular Claims for the
following reasons:

- In Small Claims Division, the filing party does not have the right to
appeal the judge’s decision, whereas the filing party can appeal if
the case is heard in Regular Claims.

¹ The comments and recommendations submitted reflect the position and
viewpoint of the Collection Law Section of the Hawaii State Bar Association
(“HSBA”). The position and viewpoint has not been reviewed or approved by the
HSBA Board of Directors and is not necessarily the same as the position held by the
HSBA.

- As trials are oftentimes held on the same day as the answer date in the Small Claims Division, many plaintiffs would not be able to have a witness that day (whether if it's a witness from another island or from another state) or have their attorney file a Motion for Summary Judgment ahead of the trial.
- Neither the plaintiff (if the plaintiff has an attorney), nor the plaintiff's attorney, is required to appear on the return hearing day for Regular Claims; only the defendant who was served with the complaint and summons is required to appear. Additionally, in the Small Claims Division, the case is required to be filed on the island in which the defendant is located. For plaintiffs who are located on another island or the mainland, the burden would be substantial. Plus, one could find a plaintiff's attorney who would be required to appear in various courts potentially on the same day and time - whether or not the defendant has been served with the Statement of Claims and Notice.

Finally, we caution the State Legislature of the financial impact this proposed legislation would have if passed without our proposed amendment.

In Fiscal Year (FY) 2013-2014, a total of 5,544 cases filed in Regular Claims were for claims of \$1,000 or less. It is our understanding that if all of the 5,544 cases had to be filed in Small Claims, the economic impact to the Judiciary and to organizations that receive funds earmarked to serve the indigent (such as Legal Aid Society of Hawaii) would be significantly negatively impacted as show in the below table:

Circuit	Total cases < \$1,000 in FY 2013-2014 as reported by the Judiciary	Economic impact to Judiciary (Regular Claims filing fee LESS \$35 indigent surcharge LESS \$35 Small Claims filing fee)	Economic impact to organizations servicing the indigent (\$35 per case <\$1,000) as there is no indigent surcharge for Small Claims cases
First	3,443	\$ 292,655.00	\$ 120,505.00

Second	1,081	\$ 91,885.00	\$ 37,835.00
Third	706	\$ 60,010.00	\$ 24,710.00
Fifth	314	\$ 26,690.00	\$ 10,990.00
TOTAL	5,544	\$ 471,240.00	\$ 194,040.00

Please be reminded that there is no indigent surcharge fee for Small Claims cases that are filed whereas a \$35.00 fee is imposed for each Regular Claims case that is filed.

We urge you to consider our proposed amendment or to oppose this bill altogether.

Thank you for considering these comments.

Sincerely,



STEVEN GUTTMAN,
President
Collection Law Section

cc: Patricia A. Mau-Shimizu, HSBA



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Presentation To
Senate Committee on Judiciary and Labor
February 22, 2017 at 9:00am
State Capitol Conference Room 016

Testimony in Opposition to Senate Bill 427

TO: The Honorable Gilbert S. C. Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice Chair
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eleven FDIC insured depository institutions with branch offices in the State of Hawaii.

We are opposed to Senate Bill 427 as currently presented and urge you to consider the amendment proposed in the testimony by the Hawaii Financial Services Association. We agree with the points asserted in their testimony and also incorporate by reference the concerns raised in the testimony of the Collection Law Section of the Hawaii State Bar Association.

Thank you for the opportunity to submit this testimony and please let us know if we can provide further information.

A handwritten signature in black ink, appearing to read 'Edward Y. W. Pei', is centered on the page.

Edward Y. W. Pei
(808) 524-5161



Testimony to the Senate Committee on Judiciary & Labor
Wednesday, February 22, 2017

Testimony in Opposition to SB 427 – Relating to Small Claims Division of the District Court

To: The Honorable Gil Keither Agaran, Chair
The Honorable Karl Rhoads, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 61 Hawaii credit unions, representing over 800,000 credit union members across the state. We are opposed to SB 427, Relating to Small Claims Division of the District Court.

We are in agreement with the amendment suggested by the Hawaii Financial Services Association.

Thank you for the opportunity to provide comments.

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

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Honolulu, Hawaii 96812-4109

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February 22, 2017

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
and members of Senate Committee on Judiciary & Labor
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 427 (Small Claims Division of the District Court)**
Hearing Date/Time: Wednesday, February 22, 2017, 9:00 a.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA opposes this Bill as drafted.

This Bill: (a) establishes the exclusive jurisdiction of the Small Claims Division of the District Court over cases in which the amount claimed is \$1,000 or less exclusive of interest and costs, and (b) expands the Small Claims Division's jurisdiction over personal property cases to include any personal property worth \$5,000 or less.

2015 and 2016 bills:

During the 2015 and 2016 Legislative Sessions, bills similar to S.B. 427 were introduced. The bills were: S.B. 2101 (District Court Small Claims) from the 2016 Session, S.B. 214 (Small Claims Division of the District Court) from the 2015 Session, and H.B. 291 (Small Claims Division of the District Court) from the 2015 Session. None of those bills passed the Legislature.

S.B. 2101 (2016) was heard by Senate JDL on February 12, 2016. The Committee amended that bill as Senate Draft 1 to incorporate amendments proposed at that time by the HFSA.

The HFSA proposes in its testimony here on S.B. 427 various amendments similar to the ones the HFSA proposed in 2016.

Current law:

Under the current law, a plaintiff has the choice to file a complaint for \$1,000 or less either in the Small Claims Division of the District Court or in the Regular Claims Division of the District Court.

There are disadvantages with filing cases in the Small Claims Division.

Contrary to the position espoused by the State Judiciary in its 2015 and 2016 testimonies, it is not necessarily more efficient nor less costly overall for a plaintiff to file in the Small Claims Division, even when the amount in controversy is less than \$1,000.

In fact, there are significant disadvantages with filing a case in the Small Claims Division

because of the nature of the proceedings and procedures in that Division:

- If a party does not prevail in a Small Claims Division case, that losing party cannot appeal the decision. However, a losing party in a Regular Claims Division case can appeal.

- Unnecessary airfare and other travel expenses of out-of-town witnesses could be incurred in the Small Claims Division. Here's why: After a Small Claims complaint is served on the defendant, the parties must go to court on the answer date. That includes the plaintiff's attorney whose law office might be on a different island from the court, such as a neighbor island attorney whose case is on another island. If the plaintiff and defendant cannot resolve their disagreement through mediation on the answer date, then a trial could be held that same day in some of the Small Claims Courts. If the plaintiff's witness lives on another island or on the mainland, the out-of-town witness must fly in and be ready for a trial on the answer date. Airfare and other travel expenses of the witness would need to be incurred ... even if a trial turns out to be unnecessary. This is a disadvantage of filing in the Small Claims Division.

Unlike the Small Claims Division, in the Regular Claims Division, unnecessary airfare and other travel expenses of witnesses are not incurred. That is because any trial will be scheduled several weeks later. On the answer date for cases filed in the Regular Claims Division on Oahu, the courts initially schedule pretrial and status conferences rather than trials. There is no need to have out-of-town witnesses fly in on the answer date. Nor does the plaintiff's attorney need to be in court on the answer date in the Regular Claims Division.

Under this Bill, plaintiffs will unfairly lose the ability to choose whether to file complaints for \$1,000 or less in the Regular Claims Division or the Small Claims Division of the District Court:

According to the written testimonies of the State Judiciary that were submitted on February 3, 2015 (to Senate JDL) and on March 27, 2015 (to House JUD) for S.B. 214, and on February 12, 2016 (to Senate JDL) for S.B. 2101, during the 2013-2014 Fiscal Year, plaintiffs statewide chose to file over 5,500 cases of less than \$1,000 in the Regular Claims Division rather than in the Small Claims Division.

Such a large number of cases were filed in the Regular Claims Division rather than in the Small Claims Division because arguably those plaintiffs knew of the disadvantages of filing in the Small Claims Division and of the advantages of filing in the Regular Claims Division.

Yet as drafted, this Bill will unfairly remove the choice of plaintiffs to file cases of \$1,000 or less in **either** the Regular Claims Division or the Small Claims Division. This Bill will force plaintiffs to file their cases of \$1,000 or less only in the Small Claims Division. The choice of filing in either the Regular Claims Division or the Small Claims Division would only remain for plaintiffs who have cases between \$1,000 and \$5,000.

Under this Bill, plaintiffs will be denied "access to justice":

If this Bill, as drafted, becomes law, an unintended negative consequence would be that a potential class of plaintiffs, i.e. those plaintiffs who would have to fly an out-of-town witness in for the answer date, will be effectively denied "access to justice" for their claims.

This Bill will prejudice this class of plaintiffs which would be limited to either filing their cases in the Small Claims Division (with the disadvantages of doing so, including not being able to file appeals and having to unnecessarily pay for the airfare of out-of-town witnesses to be at the answer date) or not filing at all.

Incorporating other testimony opposing this Bill as drafted:

The HFSA incorporates by reference the concerns raised in the testimony of the Collection Law Section of the Hawaii State Bar Association which opposes this Bill.

Conclusion:

For the reasons stated above, the HFSA opposes this Bill, as drafted, and urges that it be “deferred” (i.e. not pass).

Proposed amendments to this Bill:

If, however, your Committee nevertheless decides to pass this Bill, the HFSA joins with the Collection Law Section of the Hawaii State Bar to ask that this Bill be amended so that if a plaintiff is represented by an attorney, that plaintiff would continue to have the **choice** to file cases **either** in the Small Claims Division or in the Regular Claims Division.

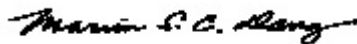
The Small Claims Division is a forum designed to handle disputes when the plaintiff is not represented by an attorney. It’s like the “people’s court” where each party is *pro se*, i.e. not represented by attorneys. A *pro se* plaintiff, who isn’t adept at handling their case under the Rules of Civil Procedure or the Rules of Evidence in the Regular Claims Division, might choose to file suit in the Small Claims Division where there are no Rules of Civil Procedure and where Rules of Evidence generally don’t apply.

However, if a plaintiff is represented by an attorney, those concerns no longer exist. Cases involving plaintiffs who have attorneys might be more appropriate for the Regular Claims Division rather than the Small Claims Division.

The HFSA’s proposed Senate Draft 1, which contains the HFSA’s amendments, is attached as Exhibit “1”.

Additionally, if your Committee decides to pass this Bill, the HFSA asks that a **“defective” effective date** be included in this Bill to encourage further discussion.

Thank you for considering our testimony.



MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

EXHIBIT "1"

Senate Bill 427 (Small Claims Division of the District Court)

Proposed Senate Draft 1 amendments by Hawaii Financial Services Association

The proposed amendments are **bolded, underlined, and highlighted in yellow color** below:

SECTION 2. Section 633-27, Hawaii Revised Statutes, is amended to read as follows:

“§633-27 District courts; powers. (a) All district courts, except as otherwise provided, shall exercise jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction, shall be known and referred to as the small claims division of the district court; provided that the jurisdiction of the court when sitting as a small claims division of the district court shall be confined to:

(1) Cases for the recovery of money only where the amount claimed [~~does not exceed \$5,000 exclusive of interest and costs, except as provided by section 633-30;~~] is \$1,000 or less exclusive of interest and costs;

(2) Cases for the recovery of money where the amount claimed is more than \$1,000 but does not exceed \$5,000 exclusive of interest and costs, except as provided by section 633-30;

~~[(2)]~~ (3) Cases involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship; and

~~[(3)]~~ (4) Cases for the return of [~~leased or rented~~] personal property worth [~~less than~~] \$5,000 [~~where the amount claimed owed for that lease or rental is less than \$5,000 exclusive of interest and costs.~~] or less.

(b) This chapter shall not abridge or affect the jurisdiction of the district courts under: ~~[paragraphs (1) and (3)]~~

(1) Subsection (a) (1) to determine cases under the ordinary procedures of the court, it being optional with the plaintiff who is represented by an attorney licensed in this State to elect the procedure of the small claims division of the district court or the ordinary procedures; and

(2) Subsection (a) (2) and (4) to determine cases under the ordinary procedures of the court, it being optional with the plaintiff in the cases to elect the procedure of the small claims division of the district court or the ordinary procedures, as provided by rule of court.

(c) No case filed in the small claims division [~~after December 31, 1991,~~] shall be

removed from the small claims division to be heard under the ordinary procedures of the district court unless the removal is agreed to by the plaintiff.

(d) In cases arising under ~~[paragraph (2);]~~ subsection (a) (1) or (3), the jurisdiction of the small claims division of the district court shall be exclusive; provided that:

(1) The district court, having jurisdiction over a civil action under subsection (a)(1) where the plaintiff is represented by an attorney licensed in this State, shall have concurrent jurisdiction with the small claims division of the district court; and

(2) [the] The district court, having jurisdiction over a civil action involving ~~[summary possession;]~~ a residential landlord-tenant relationship, shall have concurrent jurisdiction with the small claims division of the district court over any security deposit dispute ~~[between landlord and tenant in a residential landlord-tenant relationship].~~

~~[This subsection]~~ **Subsections (a) to (c) and this subsection** shall not abrogate or supersede sections 604-5, 633-30, and 633-31.

~~[(b)]~~ (e) Actions shall be commenced in the small claims division of the district court of the judicial circuit in which the defendant or a majority of the defendants reside or the claim for relief arose, unless service cannot be made on all of the defendants in that circuit, in which case action may be commenced in any circuit in which all of the defendants can be served; provided that actions arising under ~~[paragraph (2) of]~~ subsection ~~[(a) of this section]~~ (a) (3) shall be commenced in the circuit wherein the rental premises are situated.

~~[(c)]~~ (f) The small claims division of the district court may grant monetary relief and equitable relief except that:

- (1) Monetary relief shall not include punitive damages; and
- (2) Except as specifically provided in section 633-8, equitable relief shall be granted only as between parties to a landlord-tenant disagreement pursuant to chapter 521, and shall be limited to orders to repair, replace, refund, reform, and rescind.

~~[(d)]~~ (g) Class actions are prohibited in the small claims division of the district court.”