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# A BILL FOR AN ACT

RELATING TO SMALL BUSINESS.

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

1           SECTION 1. A strong, viable economy is integral to the  
2 overall well-being of the people of Hawaii, and small businesses  
3 have a significant impact on the state's workforce and economy.  
4 The legislature finds that small businesses contribute to our  
5 quality of life by providing essential products and services,  
6 jobs, and other employment and economic opportunities. Small  
7 businesses also fuel economic expansion for the benefit of the  
8 entire community. The legislature finds that small businesses  
9 serve a public purpose, and it is necessary that small  
10 businesses in the state be supported and assisted in their  
11 endeavors.

12           The purpose of this Act is to assist small businesses in  
13 this state by:

14           (1) Re-establishing the office of the small business  
15 defender, which was created by Act 168, Session Laws  
16 of 1998, but repealed by Act 202, Session Laws of  
17 Hawaii 2002, to represent, defend, and provide legal  
18 representation to small businesses during proceedings



1 involving civil citations issued by a state or county  
2 agency;

3 (2) Allowing the small business defender to hire  
4 attorneys; and

5 (3) Appropriating funds for the re-establishment of the  
6 office.

7 SECTION 2. The Hawaii Revised Statutes is amended by  
8 adding a new chapter to be appropriately designated and to read  
9 as follows:

10 "CHAPTER

11 SMALL BUSINESS DEFENDER

12 § -1 **Small business defender.** (a) There is  
13 established within the legislature a small business defender.  
14 The small business defender shall be appointed by the senate  
15 president and speaker of the house of representatives. The  
16 senate president and speaker of the house of representatives  
17 shall determine the salary of the small business defender. The  
18 senate president and speaker of the house of representatives may  
19 also appoint administrative support personnel who shall assist  
20 and support the small business defender.

21 (b) Unless otherwise specifically provided by law, and  
22 upon written request by a small business, the small business



1 defender may represent, defend, and provide legal representation  
2 to any small business, during any adjudicatory or contested  
3 proceeding involving any civil citation issued by a state or  
4 county agency in which the small business is a party; provided  
5 that the small business shall seek its own legal representation  
6 whenever the potential remedies against the small business may  
7 include fines or penalties that exceed \$25,000, or may result in  
8 the suspension or revocation of a license. The small business  
9 defender shall have the discretion to accept or refuse any case  
10 for good cause. The small business defender may also engage in  
11 the following activities:

- 12 (1) Advocate and negotiate, upon consultation with the  
13 small business regulatory review board, with federal,  
14 state, and county agencies and officials on any matter  
15 relating to and promoting the interests of small  
16 business;
- 17 (2) Conduct investigations to secure information useful in  
18 the lawful administration of any provision in this  
19 chapter;
- 20 (3) Refer any appropriate matter to the auditor or  
21 ombudsman for examination or investigation; and



1 (4) Do any and all things necessary to effectuate the  
2 purposes of this chapter.

3 (c) Each small business shall waive and release any and  
4 all claims, damages, causes of action, and any request for  
5 relief made against the small business defender or staff, the  
6 State or counties, their officers, employees, or agents, arising  
7 from the legal representation of the small business by the small  
8 business defender provided under this section.

9 (d) As used in this section, "small business" is defined  
10 in section 201M-1.

11 § -2 **Attorneys; staff or contract.** The small business  
12 defender may employ or retain, by contract or otherwise, one or  
13 more attorneys who are independent of the attorney general to  
14 provide legal services as determined by the small business  
15 defender. The attorneys hired or contracted shall be exempted  
16 from chapters 76, 78, and 88.

17 § -3 **Annual report.** The small business defender shall  
18 submit an annual report to the legislature detailing its  
19 activities and expenditures no later than twenty days prior to  
20 convening of the regular session."



1 SECTION 3. Section 28-8.3, Hawaii Revised Statutes, is  
2 amended by amending subsections (a), (b), and (c) to read as  
3 follows:

4 "(a) No department of the State other than the attorney  
5 general may employ or retain any attorney, by contract or  
6 otherwise, for the purpose of representing the State or the  
7 department in any litigation, rendering legal counsel to the  
8 department, or drafting legal documents for the department;  
9 provided that the foregoing provision shall not apply to the  
10 employment or retention of attorneys:

11 (1) By the public utilities commission, the labor and  
12 industrial relations appeals board, and the Hawaii  
13 labor relations board;

14 (2) By any court or judicial or legislative office of the  
15 State;

16 (3) By the legislative reference bureau;

17 (4) By any compilation commission that may be constituted  
18 from time to time;

19 (5) By the real estate commission for any action involving  
20 the real estate recovery fund;

21 (6) By the contractors license board for any action  
22 involving the contractors recovery fund;



- 1 (7) By the trustees for any action involving the travel
- 2 agency recovery fund;
- 3 (8) By the office of Hawaiian affairs;
- 4 (9) By the department of commerce and consumer affairs for
- 5 the enforcement of violations of chapters 480 and 485;
- 6 (10) As grand jury counsel;
- 7 (11) By the Hawaiian home lands trust individual claims
- 8 review panel;
- 9 (12) By the Hawaii health systems corporation or any of its
- 10 facilities;
- 11 (13) By the auditor;
- 12 (14) By the office of ombudsman;
- 13 (15) By the insurance division;
- 14 (16) By the University of Hawaii;
- 15 (17) By the Kahoolawe island reserve commission;
- 16 (18) By the division of consumer advocacy;
- 17 (19) By the office of elections;
- 18 (20) By the campaign spending commission;
- 19 (21) By the Hawaii tourism authority, as provided in
- 20 section 201B-2.5; [~~or~~]
- 21 (22) By the small business defender, as provided in section
- 22 -2; or



1        [~~22~~] (23) By a department, in the event the attorney  
 2            general, for reasons deemed by the attorney general  
 3            good and sufficient, declines, to employ or retain an  
 4            attorney for a department; provided that the governor  
 5            thereupon waives the provision of this section.

6            (b) For purposes of this section, the term "department"  
 7 includes any department, board, commission, agency, bureau, or  
 8 officer of the State.

9            (c) Every attorney employed by any department on a full-  
 10 time basis, except an attorney employed by the public utilities  
 11 commission, the labor and industrial relations appeals board,  
 12 the Hawaii labor relations board, the office of Hawaiian  
 13 affairs, the Hawaii health systems corporation, the department  
 14 of commerce and consumer affairs in prosecution of consumer  
 15 complaints, insurance division, the division of consumer  
 16 advocacy, the University of Hawaii, the Hawaii tourism authority  
 17 as provided in section 201B-2.5, the Hawaiian home lands trust  
 18 individual claims review panel, the small business defender, or  
 19 as grand jury counsel, shall be a deputy attorney general."

20            SECTION 4. There is appropriated out of the general funds  
 21 of the State of Hawaii the sum of \$            or so much thereof as  
 22 may be necessary for fiscal year 2007-2008 to establish the



1 office of the small business defender within the legislature, to  
2 represent, defend, and provide legal representation to any small  
3 business during proceedings involving civil citations issued by  
4 a state or county agency.

5 The sum appropriated shall be expended by the legislature  
6 for the purposes of this Act.

7 SECTION 5. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect on July 1, 2034;  
10 provided that amendments made to section 28-8.3, Hawaii Revised  
11 Statutes, by this Act shall not be repealed when that section is  
12 reenacted on June 30, 2010, by Act 58, Session Laws of Hawaii  
13 2004, section 14, as amended by Act 22, Session Laws of Hawaii  
14 2005, section 50, and as amended by Act 306, Session Laws of  
15 Hawaii 2006, section 1.



**Report Title:**

Small Business Defender

**Description:**

Re-establishes the Office of the Small Business Defender within the Legislature. Allows the Small Business Defender to hire attorneys. Appropriates funds. (HB314 HD1)

