
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16 of 1998, but repealed by Act 202, Session Laws of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) The legislature declares that the activities of the
4 small business defender constitute a public purpose for which
5 public funds may be expended.

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

8 § -2 **Attorneys; staff or contract.** The small business
9 defender may employ or retain, by contract or otherwise, one or
10 more attorneys who are independent of the attorney general to
11 provide legal services as determined by the small business
12 defender. The attorneys hired or contracted shall be exempted
13 from chapters 76, 78, and 88.

14 Neither the small business defender nor the attorneys shall
15 represent the State in the performance of their duties.

16 § -3 **Annual report.** The small business defender shall
17 submit an annual report to the legislature detailing its
18 activities and expenditures no later than twenty days prior to
19 convening of the regular session."

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



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

- 8 (1) By the public utilities commission, the labor and
9 industrial relations appeals board, and the Hawaii
10 labor relations board;
- 11 (2) By any court or judicial or legislative office of the
12 State;
- 13 (3) By the legislative reference bureau;
- 14 (4) By any compilation commission that may be constituted
15 from time to time;
- 16 (5) By the real estate commission for any action involving
17 the real estate recovery fund;
- 18 (6) By the contractors license board for any action
19 involving the contractors recovery fund;
- 20 (7) By the trustees for any action involving the travel
21 agency recovery fund;
- 22 (8) By the office of Hawaiian affairs;



- 1 (9) By the department of commerce and consumer affairs for
2 the enforcement of violations of chapters 480 and 485;
- 3 (10) As grand jury counsel;
- 4 (11) By the Hawaiian home lands trust individual claims
5 review panel;
- 6 (12) By the Hawaii health systems corporation or any of its
7 facilities;
- 8 (13) By the auditor;
- 9 (14) By the office of ombudsman;
- 10 (15) By the insurance division;
- 11 (16) By the University of Hawaii;
- 12 (17) By the Kahoolawe island reserve commission;
- 13 (18) By the division of consumer advocacy;
- 14 (19) By the office of elections;
- 15 (20) By the campaign spending commission;
- 16 (21) By the Hawaii tourism authority, as provided in
17 section 201B-2.5; [~~or~~]
- 18 (22) By the small business defender, as provided in section
19 -2; or
- 20 [~~(22)~~] (23) By a department, in the event the attorney
21 general, for reasons deemed by the attorney general
22 good and sufficient, declines, to employ or retain an



1 attorney for a department; provided that the governor
2 thereupon waives the provision of this section.

3 (b) For purposes of this section, the term "department"
4 includes any department, board, commission, agency, bureau, or
5 officer of the State.

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

17 SECTION 4. There is appropriated out of the general funds
18 of the State of Hawaii the sum of \$ or so much thereof as
19 may be necessary for fiscal year 2007-2008 to establish the
20 office of the small business defender within the legislature, to
21 represent, defend, and provide legal representation to any small



1 business during proceedings involving civil citations issued by
2 a state or county agency.

3 The sum appropriated shall be expended by the legislature
4 for the purposes of this Act.

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

7 SECTION 6. This Act shall take effect on July 1, 2034;
8 provided that amendments made to section 28-8.3, Hawaii Revised
9 Statutes, by this Act shall not be repealed when that section is
10 reenacted on June 30, 2010, by Act 58, Session Laws of Hawaii
11 2004, section 14, as amended by Act 22, Session Laws of Hawaii
12 2005, section 50, and as amended by Act 306, Session Laws of
13 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 HD2)

