
A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS BILL OF RIGHTS.

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

1 SECTION 1. The legislature finds that small businesses are
2 an essential element in strengthening and diversifying Hawaii's
3 economy and creating jobs for our citizens. To help ensure that
4 they can achieve this goal, a "small business bill of rights"
5 would afford small businesses equal and fair treatment, as well
6 as reduce the numerous roadblocks to business success, which
7 will inevitably lead to more investment and job growth in
8 Hawaii.

9 The legislature also finds that in the past decade, states
10 adopting a less burdensome method of issuing permits and
11 enforcing laws have obtained more cooperation and have increased
12 regulatory compliance by working in partnership with businesses.
13 Because the regulatory system is often driven by a "fine-and-
14 punishment" approach, state agencies and private businesses
15 often are unnecessarily antagonistic. The small business
16 regulatory review board was established by the legislature in
17 1998 to address these concerns. It works closely with state and
18 county agencies that adopt rules to help reduce the regulatory



1 burden. A "bill of rights" is an essential part of their review
2 process.

3 To ensure that state administrative rules remain relevant
4 to evolving business practices and conditions, a "sunset"
5 process for review of state administrative rules should be put
6 into effect. Every administrative rule maintained by any state
7 agency should be reviewed, updated, and, if appropriate,
8 eliminated by that agency. The small business regulatory review
9 board should assist in that process by reviewing on a periodic
10 basis existing rules to ensure that more innovative approaches
11 to business regulation are fully considered.

12 "Small business", meaning any legal entity that is
13 independently owned and operated and employs not more than one
14 hundred full-time employees, is the backbone of Hawaii's
15 economy, and is central to Hawaii's way of life. More than
16 ninety-five per cent of all Hawaii establishments are small
17 businesses, and they provide jobs for sixty per cent of all
18 Hawaii employees. Accordingly, future growth in Hawaii's
19 workforce will come primarily from new, homegrown businesses and
20 from existing small businesses that hire new workers.

21 Hawaii citizens should be able to enjoy a business culture
22 that encourages and supports small business. Hawaii currently



1 has the natural, technical, and human resources to assure that
2 every person who wants to work can achieve meaningful
3 employment, and that every company can have access to what it
4 needs to not only survive, but to thrive.

5 The purpose of this Act is to set forth specific "rights"
6 that small businesses should have and to allow them to achieve
7 success for themselves and their employees for the good of all
8 the residents of Hawaii.

9 SECTION 2. The rights of small businesses in the State of
10 Hawaii include but are not limited to:

11 (1) The right to expect state agencies to provide a
12 prompt, accurate, and courteous response to a request
13 for information and to work together to assure ready
14 access to the information needed to assist businesses
15 in their relationships with state government;

16 (2) The right to a clear, stable, and predictable
17 regulatory and record-keeping environment with easily
18 accessible information and administrative rules in as
19 clear and concise language as is practicable,
20 including posting of all proposed administrative rule
21 changes on the internet website of the office of the
22 lieutenant governor;



- 1 (3) The right to timely notice of an agency's rulemaking
2 proceedings when requested. The notice should be
3 mailed to all persons who have made a written request
4 for such a notice;
- 5 (4) The right to be treated equally and fairly, with
6 reasonable access to state services;
- 7 (5) The right to a one-stop permitting process that
8 includes a centralized internet website-based
9 application system. This site should have quick and
10 responsible timeframes to process state and county
11 permits, licenses, registrations, and approvals, when
12 appropriate, to simplify and reduce the filing of
13 forms affecting business;
- 14 (6) The right to a timely response to an application for a
15 permit, license, registration, or approval necessary
16 to operate the small business, within the established
17 maximum period of time for that agency in accordance
18 with section 91-13.5, Hawaii Revised Statutes;
- 19 (7) The right to automatic renewal of essential permits,
20 licenses, registrations, or approvals, absent a
21 specific reason for nonrenewal. All issuing agencies
22 shall take action to grant or deny any renewal



1 application for a business or development-related
2 permit, license, registration, or approval within the
3 established maximum period of time for that agency.
4 If an agency intends to deny the business or
5 development-related permit, license, registration, or
6 approval, the agency should give notice to the holder
7 of the permit, license, registration, or approval,
8 thirty days before the expiration with the reasons for
9 denial. The reasons for denial should be clearly
10 stated and under conditions set forth in law;

- 11 (8) The right to a timely hearing in the event a state
12 regulatory agency takes an adverse action against a
13 business. Officials conducting such hearings should
14 be impartial. Small businesses should be provided a
15 full and complete hearing to present their explanation
16 of any alleged violation, deficiency, or wrongdoing.
17 In any hearing, there should be a presumption that the
18 small business did not commit an alleged violation or
19 wrongdoing until the agency proves otherwise by a
20 preponderance of the evidence. The small business
21 should have the right to present evidence, both oral
22 and written. This evidence must be fully considered

1 by the agency. In the event of an unfavorable
2 decision, the business should have the right to a
3 judicial review pursuant to section 91-14, Hawaii
4 Revised Statutes;

5 (9) The right to be notified, in writing, at least thirty
6 days prior to any adverse action by any state agency
7 because of a violation of civil law, except where the
8 violation has health, safety, or environmental impact,
9 or may result in economic loss, unless that notice
10 would allow possible destruction of evidence,
11 continued unlawful practice, or flight;

12 (10) The right to privacy regarding confidential and
13 proprietary business information when competing for
14 state procurement contracts. No state agency shall
15 mandate the disclosure of confidential or proprietary
16 business information as a condition of obtaining any
17 contract or payment under any contract when a contract
18 is to be awarded on a firm fixed price or cost plus
19 fixed price basis;

20 (11) The right to all of the protections afforded in the
21 Taxpayer Bill of Rights, P.L. 104-168;



- 1 (12) The right to request information relating to
2 administrative actions of state agencies from the
3 office of the ombudsman, in accordance with chapter
4 96, Hawaii Revised Statutes, except where prohibited
5 by law;
- 6 (13) The right to request information and an opinion from
7 the office of information practices, in accordance
8 with chapters 92 and 92F, Hawaii Revised Statutes, in
9 regard to access to information from public meetings
10 or the release of government documents;
- 11 (14) The right to provide information to the division of
12 consumer advocacy in accordance with chapter 269,
13 Hawaii Revised Statutes, in regard to issues under the
14 purview of the public utilities commission;
- 15 (15) The right to request information from the office of
16 consumer protection, in accordance with chapter 487,
17 Hawaii Revised Statutes, in regard to business and
18 consumer issues;
- 19 (16) The right to access the small business advocate in the
20 department of business, economic development, and
21 tourism regarding any dispute with a state agency to
22 make sure government resources are coordinated on



1 behalf of small business and the rights of businesses
2 are being upheld; and

3 (17) The right to administrative rule review pursuant to
4 the Small Business Regulatory Flexibility Act by
5 filing a petition with the small business regulatory
6 review board in accordance with section 201M-6, Hawaii
7 Revised Statutes.

8 SECTION 3. Any person who is injured by reason of any
9 violation of any right under this Act may lodge a complaint with
10 the ombudsman, who shall promptly investigate the complaint and
11 render findings, opinions, and a recommendation.

12 SECTION 4. Section 96-8, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§96-8 Appropriate subjects for investigation.** An
15 appropriate subject for investigation is an administrative act
16 of an agency which might be:

- 17 (1) Contrary to law;
- 18 (2) Unreasonable, unfair, oppressive, or unnecessarily
19 discriminatory, even though in accordance with law;
- 20 (3) Based on a mistake of fact;
- 21 (4) Based on improper or irrelevant grounds;
- 22 (5) Unaccompanied by an adequate statement of reasons;



- 1 (6) Performed in an inefficient manner; [~~or~~]
- 2 (7) Otherwise erroneous[~~-~~]; or
- 3 (8) A violation of the small business bill of rights.

4 The ombudsman may investigate to find an appropriate
 5 remedy."

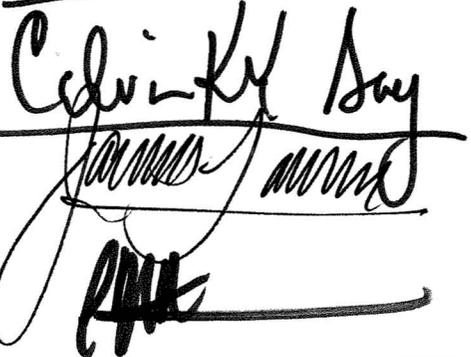
6 SECTION 5. Statutory material to be repealed is bracketed
 7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect on July 1, 2008.

9

INTRODUCED BY:



Kirk Caldwell

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Report Title:

Small Business

Description:

Establishes the small business bill of rights. Requires the ombudsman to investigate complaints of violations of the small business bill of rights.

