



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
and

Senate Committee on Commerce, Consumer Protection, and Health

Senator Rosalyn H. Baker, Chair
Senator Michelle N. Kidani, Vice Chair

Friday, February 12, 2016, 9:30 a.m.
State Capitol, Conference Room 016

By
Calvin Ching
Deputy Chief Court Administrator, First Circuit

Bill No. and Title: Senate Bill No. 2101, Relating to District Court Small Claims.

Purpose: The purpose of this Act is to give to the small claims division of the district court the exclusive jurisdiction over cases in which the amount claimed is \$1,000 or less and to allow plaintiff to request removal of a small claims case to be heard in the ordinary procedures of the district court when a counterclaim is filed. Unrepresented parties would have better access to justice in the small claims division, where filing fees and costs are lower. Also, clarifying and housekeeping changes have been made.

Judiciary's Position:

The Judiciary supports Senate Bill No. 2101, which is part of the Judiciary's 2016 legislative package. Requiring litigants whose claims are \$1,000 or less to file only in the small claims division protects them from unwittingly incurring costs and fees exceeding the amount in dispute and allows the court to better serve the public with greater efficiency and cost effectiveness.

Current statutes allow District Court plaintiffs to file their claims in either the small claims division or regular claims division. However, especially when the amount in controversy is \$1,000 or less, the small claims division offers several benefits over the regular claims division:

- **Significantly reduced filing fees.** The filing fee in small claims is only \$35, compared to the regular claims filing fee of \$155.
- **More flexible service rules.** Service in small claims cases can be made by certified mail. In regular claims cases, personal service, requiring the services of a process server at additional costs, is the norm.
- **Attorneys are optional.** Small claims procedures are more accessible to self-represented parties, and include an option for mediation at the onset to encourage parties to work directly with one another to reach an agreeable resolution.
- **Faster case resolution.** Small claims trials are typically scheduled and completed in shorter time frames.
- The reduced filing fee and service fee **diminishes the financial burden on already indebted defendants** against whom a judgment is awarded.

In Fiscal Year (FY) 2013-2014, the District Court of the First Circuit had a total “Regular Claims – Assumpsit: Money Owed” caseload of 19,562. Of those, 17.6% were cases in which the claim was for \$1,000 or less. This means that over 3,000 of the cases filed in regular claims could have been better served, for the reasons above, in small claims court. The following chart shows the numbers for all Circuits.

Circuit	Total Caseload	< = \$1,000	Total cases < \$1,000
First	19,562	17.6%	3,443
Second	4,804	22.5%	1,081
Third	4,414	16.0%	706
Fifth	1,913	16.4%	314

FY 2013-2014 Assumpsit – Money Owed Filings

As the right to appeal is not available in small claims cases of \$1,000 or less, this bill will also protect unwary parties from unproductively exhausting their time and money on appeals where the cost of the appeal itself most likely exceeds the amount at issue. The filing fee and other fees necessary to initiate an appeal to the Intermediate Court of Appeals currently total \$285. Although these fees may be waived in cases where they are overly burdensome, costs for transcripts only add to expenses and are generally not subject to waiver. Coupled with other incidental costs, the only victory parties involved in a case of \$1,000 or less are likely to achieve on appeal is a Pyrrhic one. Limiting such cases to small claims will keep appeals from adding insult to injury.

Lastly, this bill clarifies that plaintiffs are allowed to move a small claims case to be heard under the ordinary procedures of the District Court (Regular Claims) when a counterclaim is filed. This provides plaintiffs with the option to move the case when the amounts in controversy escalate, especially if a counterclaim is for an amount up to the \$40,000 jurisdictional limit of District Court.

Thank you for the opportunity to provide testimony on this bill.



Collection Law Section

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Vice Chair:
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Reply to:

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February 10, 2016

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Senate Judiciary & Labor Committee

RE: S.B. 2101 (Relating to District Court Small Claims)
Hearing: Friday, February 12, 2016 at 9:30 a.m.
Opposing Testimony

Dear Chair, Vice-Chair, 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 exception amendment of the CLS, if an 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 \$1000 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.
- 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 that are located on one 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 cause, if passed without our proposed amendment.

In the Fiscal Year (FY) 2013-2014, a total of 5,544 cases filed in Regular Claims were for claims less than \$1,000. 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 shown 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 Serving the Indigent (\$35.00 per case < \$1,000) as there is no indigent surcharge for 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 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.

Respectfully,

A handwritten signature in cursive script that reads "Steven Guttman".

STEVEN GUTTMAN
Chairman,
Collection Law Section

cc: Patricia A. Mau-Shimizu

ⁱ The comments and recommendations submitted reflect the position/viewpoint of the Collection Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.

HAWAII FINANCIAL SERVICES ASSOCIATION

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

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February 12, 2016

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
and members of Senate Committee on Judiciary & Labor

Senator Rosalyn H. Baker, Chair
Senator Michelle N. Kidani, Vice Chair
and members of Senate Committee on Commerce, Consumer Protection, & Health
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 2101 (District Court Small Claims)**
Hearing Date/Time: Friday, February 12, 2016, 9:30 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.

The purposes of this Bill are to: (a) establish Small Claims Division’s exclusive jurisdiction of cases for amounts of \$1,000 or less, and (b) allow a plaintiff to request removal of small claims cases to be heard in ordinary procedures of the District Court when a counterclaim is filed.

Last session’s bills; interim discussion:

Except for one substantive difference, this Bill is similar to S.B. 214 (Small Claims Division of the District Court) and H.B. 291 (Small Claims Division of the District Court). Both bills did not pass the 2015 legislative session.

During the interim after the 2015 legislative session, some interested parties, including the HFSA, met with the State Judiciary to try to resolve their differences about those bills.

However, there was no agreement by the parties other than to the provision that is now in S.B. 2101 which allows a plaintiff to request removal of small claims cases to be heard in ordinary procedures of the District Court when a counterclaim is filed. Last year’s bills did not have that provision.

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.

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:

Contrary to the position espoused by the State Judiciary in its 2015 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 case, that losing party cannot appeal the decision. This is a disadvantage of filing in the Small Claims Division.

And, there are other disadvantages with filing cases in the Small Claims Division. After the 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 is 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 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.

Unlike the Small Claims Division, in the Regular Claims Division, unnecessary airfare and other travel expenses of witnesses are not incurred. That is because a trial will be scheduled several weeks later, if at all. For example, 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.

According to the written testimonies of the State Judiciary that were submitted on March 27, 2015 (to House JUD) and on February 3, 2015 (to Senate JDL) for S.B. 214, 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. Presumably such a large number of cases were filed in the Regular Claims Division rather than in the Small Claims Division because 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 would unfairly remove the choice of filing cases of \$1,000 or less in **either** the Regular Claims Division or the Small Claims Division. This Bill would force plaintiffs to file their cases of \$1,000 or less only in the Small Claims Division. The choice of filing in the Regular Claims Division or the Small Claims Division would only exist for plaintiffs who have cases between \$1,000 and \$5,000.

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

If this Bill becomes law, an unintended 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, would be effectively denied "access to justice" for their claims.

This Bill would 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.

Opposition to this Bill by the Collection Law Section of the Hawaii State Bar Association:

The HFSA concurs with the reasons in the testimony of the Collection Law Section of the Hawaii State Bar Association for opposing this Bill.

HFSA's opposition:

Accordingly, the HFSA opposes this Bill and urges that it be deferred (i.e. not pass).

Proposed amendments to this Bill:

If, however, your Committee nevertheless decides to require that cases of \$1,000 or less be filed only in the Small Claims Division, the HFSA and the Collection Law Section of the Hawaii State Bar ask that this Bill be amended so that if a plaintiff is represented by an attorney, that plaintiff should continue to have the **choice** to file cases **either** in the Small Claims Division or in the Regular Claims Division.

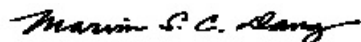
The Small Claims Division is a forum designed to handle disputes where the plaintiff is not represented by an attorney. Because a *pro se* plaintiff might not be particularly adept at presenting his or her case, that person might need the assistance that is found in the Small Claims Division.

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 amendment for a Senate Draft 1 is attached as Exhibit "1".

Additionally, if this Bill passes your Committee, 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

(MSCD/hfsa)

EXHIBIT “1”

Senate Bill 2101 (District Court Small Claims)

Proposed Senate Draft 1 amendment by Hawaii Financial Services Association

The proposed amendments are **bolded** 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 is more than \$1,000 but does not exceed \$5,000 exclusive of interest and costs, except as provided by section 633-30;
- (2) Cases for the recovery of money where the amount claimed is \$1,000 or less exclusive of interest and costs;
- ~~[(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) 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 ~~[7]~~ ; and

- (2) Subsection (a)(2) 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.**

(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)(2) or (3),** the jurisdiction of the small claims division of the district court shall be exclusive; provided that:

- (1) [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];~~ **and**

- (2) The district court, having jurisdiction over a civil action under subsection (a)(2) 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.**

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

. . .”

Presentation To
Senate Committee on Judiciary and Labor
February 12, 2016 at 9:30 AM
State Capitol Conference Room 016

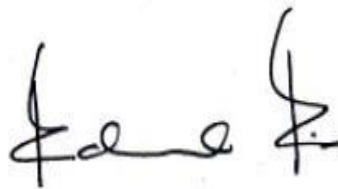
Testimony in Opposition to Senate Bill 2101

TO: The Honorable Gilbert S. C. Keith-Agaran, Chair
The Honorable Maile S. L. Shimabukuro, 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 2101 as currently presented and urge you to consider the **amendment** proposed in the testimony by the Collection Law Section of the Hawaii State Bar Association. We agree with the points asserted in their testimony and incorporate by reference the various reasons for the proposed exception to this measure.

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



Edward Y. W. Pei
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Attorneys

Christopher R. Dang
Garrick L.H. Goo
Of Counsel

February 10, 2016

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Senate Judiciary & Labor Committee

RE: S.B. 2101 (Relating to District Court Small Claims)

Hearing: Friday, February 12, 2016 at 9:30 a.m.

Opposing Testimony

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

As a neighbor island attorney who practices law statewide, I plead to you to oppose SB 2101, or, at the very least, to allow for an exception in cases where attorneys are hired. Under the proposed exception amendment of the CLS, if an 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 \$1000 or less in Regular Claims or Small Claims should rest with the filing party. My clients of mine prefer filing their cases in Regular Claims for the following reasons:

- 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. Many would opt not to file suit altogether and may consequently pass the costs for monies lost to the rest of the consumers.
- 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.
- Neither the filing party nor its 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. For filing parties or their attorney that have an office on only one island but do business statewide and consequently have to file Small Claims cases on the island in which the Defendant resides, the filing party or their attorney 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.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Lynn Araki-Regan', written over a horizontal line.

Lynn Araki-Regan



February 11, 2016

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Senate Judiciary & Labor Committee

Senator Rosalyn Baker, Chair
Senator Michelle Kidani, Vice-Chair
Senate Committee on Commerce, Consumer Protection, and Health

RE: S.B. 2101 (Relating to District Court Small Claims)
Hearing: Friday, February 12, 2016 at 9:30 a.m.
Opposing Testimony

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

I am writing to humbly ask for you to oppose SB 2101, or provide an exception in cases where attorneys are hired. Under the proposed exception amendment of the CLS, if an 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 \$1000 or less in Regular Claims or Small Claims should rest with the filing party for the following reasons:

- As trials are oftentimes held on the same day as the answer date in the Small Claims Division, many Plaintiffs, such as our firm, 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. We may choose not to file suit altogether which will result in the loss of an extensive amount of monies for our creditor clients who will inevitably pass such costs to already struggling consumers.
- 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.
- Neither the filing party nor its 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. For filing parties or their attorney that have an office on only one island but do business statewide and consequently have to file Small Claims cases on the island in which the Defendant resides, the filing party or their attorney 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.

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

Sincerely,


George S. Shimada

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 09, 2016 10:39 PM
To: JDLTestimony
Cc:
Subject: *Submitted testimony for SB2101 on Feb 12, 2016 09:30AM*

SB2101

Submitted on: 2/9/2016

Testimony for JDL/CPH on Feb 12, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Support	Yes

Comments:

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.

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