

The Judiciary, State of Hawaii

**Testimony to the
House Committee on Judiciary**
Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair

Friday, March 27, 2015, 3:00 p.m.
State Capitol, Conference Room 325

By

Calvin Ching
Deputy Chief Court Administrator
First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 214, S.D.1, Relating to the Small Claims Division of the District Court.

Purpose: To establish exclusive jurisdiction in the small claims division of the District Court over cases in which the monetary amount in controversy is \$1,000 or less. Also, expands the small claims division's jurisdiction over personal property cases to include any personal property worth \$5,000 or less. Effective 01/07/2059.

Judiciary's Position:

The Judiciary supports this bill. Requiring litigants whose claims are \$1,000 or less to file only in the small claims division allows the court to better serve the public.

Currently plaintiffs are allowed to file their claim in either the small claims division or regular claims division. However, when the amount in controversy is \$1,000 or less, it is more efficient and less costly for the plaintiff to file in the small claims division. There are several benefits to filing in the small claims division:

- The filing fee is only \$35, compared to the regular claims filing fee of \$155.

- Service can be made by certified mail. In regular claims cases personal service is the norm, requiring the services of a process server at additional costs.
- An attorney is not necessary in small claims cases and in most cases attorney fees are not awardable.
- Small claims trials are typically scheduled and completed in shorter time frames.

In the Fiscal Year (FY) 2013-2014 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 less than \$1,000. This means over 3,000 were cases that would have been better served 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

Although the right to appeal would not be available in a small claims case of \$1,000 or less, the amount at issue likely would not justify the costs associated with an appeal. The filing fee and other fees necessary to initiate an appeal to the Intermediate Court of Appeals is currently \$285 (which may be waived). Costs for transcripts add to the expense and are generally not subject to waiver.

Thank you for your consideration of Senate Bill No.214, S.D. 1.

HSBA
Hawaii State Bar Association
Collection Law Section

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March 24, 2015

Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice-Chair
House Judiciary Committee

RE: S.B. 214 (Small Claims Division of District Court)
Hearing: March 27, 2015 at 3:00 p.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:

- 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.

¹ 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.

- 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.

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

According to the Judiciary's written testimony submitted prior to your February 3rd hearing, in the Fiscal Year (FY) 2013-2014, a total of 5,544 cases filed in Regular Claims were for claims less than \$1,000. 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 the 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 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 humbly urge you to consider our proposed amendment or to oppose this bill altogether.

Thank you.

Respectfully,

/S/ William J. Plum

William J. Plum
Vice-Chair
The Collection Law Section of the
Hawaii State Bar Association

cc: Steven Guttman
Patricia A. Mau-Shimizu



HAWAII FINANCIAL SERVICES ASSOCIATION

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March 27, 2015

Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice Chair
and members of the House Committee on Judiciary
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 214, S.D. 1 (Small Claims Division of the District Court)**
Hearing Date/Time: Friday, March 27, 2015, 3:00 p.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.

The purposes of this Bill are to: (a) establish the exclusive jurisdiction of the Small Claims Division of the District Court over cases in which the amount claimed is \$1,000 or less, and (b) expand the Small Claims Division's jurisdiction over personal property cases to include any personal property worth \$5,000 or less.

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.**

Contrary to the position espoused by the State Judiciary in its testimony, 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. 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 another island from the court. If the plaintiff and defendant cannot resolve their disagreement through mediation on the answer date, then a trial is held that same day. 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.

Based on the written testimony of the State Judiciary that was submitted on this Bill on February 3, 2015, 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.

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.

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 who would be limited to either filing their cases in the Small Claims Division (despite the disadvantages of doing so, including having to unnecessarily pay for the airfare of out-of-town witnesses to be at the answer date) or not filing at all.**

There could also be **possible constitutional challenges if this Bill becomes law because of the flawed approach in this Bill.** Small claims proceedings lack many of the usual civil litigation safeguards and procedural mechanisms that exist in regular claims proceedings. Challenges on constitutional grounds to small claims proceedings have typically been upheld in other states when the plaintiff has the choice of filing either in a small claims forum or in a regular civil proceeding. This Bill **will eliminate that choice for plaintiffs** who have claims of \$1,000.00 or less since those plaintiffs would be forced to file their cases only in the Small Claims Division.

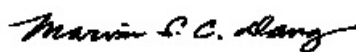
The HFSA concurs with the reasons in the testimony of the Collection Law Section of the Hawaii State Bar Association for opposing this Bill.

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

If, however, your Committee nevertheless decides to require that cases of \$1,000 or less be filed only in the Small Claims Division, we 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 House Draft 1 is attached as Exhibit “1”. If this Bill passes your Committee, the HFSA asks that a **“defective” effective date** continue to 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 214, S.D. 1 (Small Claims Division of the District Court)

Proposed House Draft 1 Amendment by Hawaii Financial Services Association

The proposed amendment is **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 [÷] ; 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 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, shall have concurrent jurisdiction with the small claims division of the district court.** This subsection shall not abrogate or supersede sections 604-5, 633-30, and 633-31.

. . .”