

ACT 202

H.B. NO. 2449

A Bill for an Act Relating to Small Business.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds a need to continue to provide relief from unduly burdensome rules for small businesses by amending the Small Business Regulatory Flexibility Act. The specific changes include:

- (1) Amending the definition of "small business" to focus regulatory relief efforts on those businesses too small to have the resources to respond to broad-based regulations;
- (2) Allowing the small business regulatory review board to make nominations to fill board vacancies;
- (3) Allowing the majority of the board to elect the chairperson;
- (4) Requiring the board to submit an annual report to the legislature;
- (5) Deleting the provision for a small business defender; and
- (6) Making the Small Business Regulatory Flexibility Act and the small business regulatory review board permanent through removal of the sunset date.

SECTION 2. Act 168, Session Laws of Hawaii 1998, is amended by amending the definition of "small business" in section -1 of the chapter established in section 2 of that Act to read as follows:

““Small business” means a for-profit enterprise consisting of fewer than [two] one hundred full-time or part-time employees.”

SECTION 3. Act 168, Session Laws of Hawaii 1998, is amended by amending section -5 of the chapter established in section 2 of that Act to read as follows:

“§ -5 **Small business regulatory review board; powers.** (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34. [~~Selection for the initial board shall come from a list of nominees submitted by the small business task force on regulatory relief. Thereafter, the nominations~~] Nominations to fill vacancies shall be made from names submitted by [~~any and all of the departmental advisory committees on small business.~~] the review board. The appointments shall reflect representation of a variety of [small] businesses in the State; provided that no more than two members shall be representatives from the same type of [small] business, and that there shall be at least two [small business] representatives from each county.

(c) All members of the board shall be either a current or former owner or officer of a [small] business and shall not be an officer or employee of the federal,

state, or county government. ~~[The governor shall appoint the initial chair person of the board, and a~~ A majority of the board shall elect ~~[subsequent chairpersons.]~~ the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation.”

SECTION 4. Section 3, Act 168, Session Laws of Hawaii 1998, is repealed.

“~~[SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to title 3 to be appropriately designated and to read as follows:~~

~~“CHAPTER —
SMALL BUSINESS DEFENDER~~

~~§ —1 Small business defender. (a) There is established within the legislature a small business defender. The small business defender shall be appointed by the senate president and speaker of the house of representatives. The senate president and speaker of the house of representatives shall determine the salary of the small business defender. The senate president and speaker of the house of representatives may also appoint administrative support personnel who shall assist and support the small business defender.~~

~~(b) Unless otherwise specifically provided by law, and upon written request by a small business, the small business defender may represent, defend, and provide legal representation to any small business, during any adjudicatory or contested proceeding involving any civil citation issued by a state or county agency in which the small business is a party; provided that the small business shall seek its own legal representation whenever the potential remedies against the small business may include fines or penalties that exceed \$25,000 or may result in the suspension or revocation of a license. The small business defender shall have the discretion to accept or refuse any case for good cause. The small business defender may also engage in the following activities:~~

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

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(4) ~~Do any and all things necessary to effectuate the purposes of this chapter:~~

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

~~§—2 Annual report. The small business defender shall submit an annual report to the legislature detailing its activities and expenditures no later than twenty days prior to convening of the regular session.”’~~

SECTION 5. Act 168, Session Laws of Hawaii 1998, is amended by amending section 5 to read as follows:

~~“SECTION 5. This Act shall take effect on July 1, 1998[, and shall be repealed as of June 30, 2002].”~~

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

SECTION 7. This Act shall take effect on June 29, 2002.

(Approved June 25, 2002.)