

Honolulu, Hawaii

February 20, 2015

RE: H.B. No. 1090
H.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Sir:

Your Committee on Economic Development & Business, to which was referred H.B. No. 1090 entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT AGREEMENTS,"

begs leave to report as follows:

The purpose of this measure is to stimulate economic development in Hawaii's technology business sector by prohibiting the use of non-compete agreements or restrictive covenants that forbid post-employment competition for employees of a technology business.

The Department of Education, Radical Synergies LLC, Lunasoft LLC, TechMana LLC, O & A Consulting LLC, and several concerned individuals testified in support of this measure. The Chamber of Commerce of Hawaii, KHON2, iHeartMEDIA Hawaii, Hawaiian Telcom, and KITV testified in opposition to this measure. The Department of the Attorney General and Hawaii Technology Development Corporation provided comments.

Employment restrictive covenants such as non-compete agreements or non-solicit clauses are often contained in employment-related contracts, particularly in the technology sector. These restrictive covenants effectively prevent an individual from working at an organization with which a former employer competes or does business. Your Committee finds that these restrictive covenants impede the development of businesses within the State by limiting skilled workers' mobility within the



State, forcing many of these workers to seek employment in other jurisdictions, and requiring local businesses to solicit skilled workers from outside of the State. Eliminating these covenants for employees of the technology business sector will stimulate Hawaii's economy by preserving and providing jobs for employees in this sector and by providing opportunities for these employees to establish new companies and new job opportunities in the State.

However, your Committee understands the concerns raised about the broad application this measure may have and has amended this measure by:

- (1) Narrowing the scope of the prohibition on non-compete and non-solicit clauses relating to an employee of a technology business to employment contracts only;
- (2) Deleting language applying the prohibition on non-compete and non-solicit clauses to amendments made to agreements entered into prior to July 1, 2015; and
- (3) Specifying that a technology business is one that derives a majority of its revenue from the sale or license of products or services resulting from its own software or information technology development and does not include any entity that uses but does not produce software or information technology that can be protected by any intellectual property law.

Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Economic Development & Business that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1090, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1090, H.D. 1, and be referred to the Committee on Consumer Protection & Commerce.



Respectfully submitted on
behalf of the members of the
Committee on Economic
Development & Business,



DEREK S.K. KAWAKAMI, Chair



