



HAWAI`I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

April 7, 2009
Rm.325, 2:00 p.m.

To: The Honorable Jon Riki Karamatsu, Chair
Members of the House Committee on Judiciary

From: Coral Wong Pietsch, Chair
and Commissioners of the Hawai`i Civil Rights Commission

Re: S.B. No. 1183, S.D. 2, H.D.1

The Hawai`i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai`i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

The HCRC supports SB 1183, SD2 HD1 which requires the Commission to adopt administrative rules to minimally conform certain state law terms used to define "disability" to the federal Americans with Disabilities Act Amendments Act (ADAAA). The state law terms listed in Section 2 of the bill are currently in conflict with the broader protections under the ADAAA. The HCRC also supports the extension of the deadline to complete this rulemaking process to December 31, 2010. While the HCRC would like to adopt new administrative rules as soon as possible, certain key terms, such as "substantially limits" were not specifically defined in the ADAAA and the EEOC is in the process of developing regulations to revise that term. The extended deadline affords the HCRC time to review and consider the EEOC regulations before adopting its own rules, in order to insure that its new rules do not

conflict with those regulations. In the interim, pursuant to Section 4 of this bill, the HCRC is required to minimally apply the ADA AAA definitions. This will insure that employees not covered by federal law will have the same protections as those who are.

Under H.R.S. Chapter 378, persons with a disability are protected against employment discrimination. In 1994 the HCRC promulgated rules that define the term “disability”. These definitions are found in H.A.R. §§ 12-46-181 through -193. Some of these definitions provide stronger protections than those under federal law, which is allowed pursuant to California Federal Sav. and Loan Ass’n v. Guerra, 479 U.S. 272 (1987). In September 2008, Congress passed the Americans with Disabilities Act Amendments Act (ADA AAA) to correct several U.S. Supreme Court decisions and EEOC regulations that interpreted the definition of “disability” too narrowly and inconsistent with legislative intent. Congress then directed the EEOC to promulgate new regulations to conform to that act. Pursuant to the ADA AAA, certain federal law definitions such as an impairment that “substantially limits” a major life activity, as well as “being regarded as having such an impairment” are broader than current state administrative rules.

The HCRC therefore supports SB 1183, SD2, HD1 and urges this committee to pass it in its current form.



STATE OF HAWAII
STATE COUNCIL
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April 7, 2009

The Honorable Jon Riki Karamatsu, Chair
House Committee on Judiciary
Twenty-Fifth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Karamatsu and Members of the Committee:

SUBJECT: SB 1183 SD2 HD1 – RELATING TO DISCRIMINATORY PRACTICES

The position and views expressed in this testimony do not represent nor reflect the position and views of the Departments of Human Services and Labor and Industrial Relations.

The State Council on Developmental Disabilities (DD) **SUPPORTS THE INTENT OF SB 1183 SD2 HD1**. The purpose of the bill is to provide increased protections for individuals with disabilities from discrimination in employment by conforming protections provided under state law to recently amended federal law, the Americans with Disabilities Amendments Act of 2008 (P.L. 110-325). The bill requires the Civil Rights Commission to adopt administrative rules pursuant to Chapter 91 necessary to effectuate the purpose of the bill no later than December 31, 2010.

The Council supports efforts to strengthen protections against discrimination in employment on the basis of disability while fostering uniformity between state and federal law, and supports the implementation of administrative rules that provide greater protections than the federal law.

Thank you for your consideration and the opportunity to present testimony supporting the intent of SB 1183 SD2 HD1.

Sincerely,

Waynette K.Y. Cabral
Executive Administrator

Rosie Rowe
Chair