



HAWAI`I CIVIL RIGHTS COMMISSION

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

March 20, 2009
Rm. 309, 9:30 a.m.

To: The Honorable Karl Rhoads, Chair
Members of the House Committee on Labor and Public
Employment

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

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

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.

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 (ADAAA) 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 ADAAA, 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 supports SB 1183, SD2 which requires the Commission to adopt administrative rules to minimally conform state law terms used to define “disability” to the ADA. .

However, in Section 2 of the bill, the HCRC suggests and recommends that the terms “low-vision devices” and “ordinary eyeglasses or contact lenses” be deleted from the list of terms to be defined. These terms relate to the matter of determining whether an impairment substantially limits a major life activity without regard to mitigating measures. Current state law is stronger than federal law on this issue because it does not include these exceptions.

In addition, the term “substantially limits” should be included in Section 2 of the bill because state law definitions of that term are narrower and in conflict with the broader protections under the ADA. .

Finally, the HCRC suggests and recommends that Section 3 of the bill be deleted in its entirety. 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 ADA and the EEOC is in the process of developing regulations to revise that term. The HCRC would like to review and consider the EEOC regulations before adopting its own rules, in order to insure that its new rules do not unnecessarily conflict with those regulations. At this time, it is not clear when EEOC will promulgate and finalize its new regulations, so the HCRC may not be able to complete its chapter 91 rulemaking process by December 31, 2009.

In the interim, pursuant to Section 4 of this bill, the HCRC understands that it is required to minimally apply the ADA definitions.

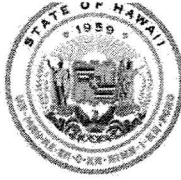
Attached please find proposed language to amend SB 1183, SD2 to this effect.

HCRC proposed amendments to SB 1183, SD2:

SECTION 2. The Hawaii civil rights commission, pursuant to its authority under section 368-3(9), Hawaii Revised Statutes, shall adopt rules to define or amend, as applicable, the following terms for purposes of chapter 378, Hawaii Revised Statutes: "major life activities"; "Being regarded as having such an impairment"; "substantially limits" and "disability". The Hawaii civil rights commission may define such other terms as necessary to effectuate the purposes of chapter 378, Hawaii Revised Statutes, consistent with section 1 of this Act.

SECTION 3. Until the completion of the rulemaking under section 2 of this Act, the Hawaii civil rights commission shall apply, at minimum, the definitions in the American with Disabilities Act Amendments Act (ADAAA); provided that the definition of "disability" under section 378-1, Hawaii Revised Statutes, and the implementing administrative rules thereto shall be construed at minimum to conform to the ADAAA.

SECTION 4. This Act shall take effect upon its approval.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
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March 20, 2009

The Honorable Karl Rhoads, Chair
House Committee on Labor and Public Employment
Twenty-Fifth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Rhoads and Members of the Committee:

SUBJECT: SB 1183 SD2 – 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 (DLIR).

The State Council on Developmental Disabilities (DD) **SUPPORTS THE INTENT OF SB 1183 SD2**. The purpose of the bill is to conform the State's laws to the Americans with Disabilities Amendments Act of 2008 (P.L. 110-325) by broadening the definition of disability and strengthening protections currently provided under State law. The bill requires the Civil Rights Commission to adopt administrative rules pursuant to Chapter 91 necessary to effectuate the purpose of the bill.

The Council supports efforts to strengthen protections against discrimination in employment on the basis of disability while fostering uniformity between State and Federal laws. The language proposed in this bill is consistent with Federal law.

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

Sincerely,

Waynette K.Y. Cabral
Executive Administrator

Rosie Rowe
Chair



DISABILITY AND COMMUNICATION ACCESS BOARD

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March 20, 2009

TESTIMONY TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Senate Bill 1183, Senate Draft 2 – Relating to Discriminatory Practices

The Disability and Communication Access Board (DCAB) is a statewide board with seventeen (17) members appointed by the Governor, thirteen (13) of whom are persons with disabilities or family members. The Board's mission is to advocate and promote full inclusion, independence, equal access, and quality of life for persons with disabilities in society. This testimony represents a position voted upon by the Legislative Committee of the Board.

DCAB supports the intent of Senate Bill 1183, Senate Draft 2 which conforms State law to the recently passed ADA Amendments Act (signed September 25, 2008 by President Bush). DCAB also supported the changes in the federal law. All language proposed in Senate Bill 1183, Senate Draft 2 is consistent with federal law. DCAB has no objection to Senate Draft 2 that includes recommendations from the Hawaii Civil Rights Commission to define certain terms in administrative rules in lieu of the statute.

Thank you for the opportunity to provide testimony on this important matter.

Respectfully submitted,

CHARLES W. FLEMING
Chairperson

FRANCINE WAI
Executive Director