



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
919 ALA MOANA BOULEVARD, ROOM 113
HONOLULU, HAWAII 96814
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543

February 12, 2009

The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

and

The Honorable Dwight Y. Takamine, Chair
Senate Committee on Labor
Twenty-Fifth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Senators Chun Oakland and Takamine and Members of the Committees:

SUBJECT: SB 1183 – 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**. The purpose of the bill is to conform State law to the recently amended Federal Americans with Disabilities Act Amendments signed into law on September 25, 2008, in the area of employment discrimination based on disability 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.

The Council defers to DLIR for the implications of this bill on labor laws.

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

Sincerely,

Waynette K.Y. Cabral
Executive Administrator

Rosie Rowe
Chair



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

February 12, 2009

TESTIMONY TO THE SENATE COMMITTEES ON HUMAN SERVICES AND LABOR

Senate Bill 1183 – 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's supports the intent of Senate Bill 1183 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 is directly from and consistent with federal law.

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

Respectfully submitted,

CHARLES W. FLEMING
Chairperson

FRANCINE WAI
Executive Director



HAWAI`I CIVIL RIGHTS COMMISSION

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

February 12, 2009
Rm. 016, 1:30 p.m.

To: The Honorable Suzanne Chun Oakland, Chair
The Honorable Dwight Takamine, Chair
Members of the Senate Committees on Human Services
and Labor

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

Re: S.B. No. 1183

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). Accordingly, federal law is a "floor" beneath which protections against discrimination cannot drop.

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 the intent of SB 1183 to minimally conform state law definitions of the term “disability” to the ADAAA. However, the HCRC suggests and recommends that the amended definitions should be made in its administrative rules, and not within H.R.S. Chapter 378. This is because: 1) the definition of those terms are contained in the rules and not in H.R.S. Chapter 378; 2) the existing language in H.R.S. Chapter 378 conforms to Title VII and is not inconsistent with the ADAAA; 3) certain terms, such as “substantially limits” were not specifically defined in the ADAAA and the EEOC is currently developing regulations to revise that term; 4) the HCRC would be able to review and consider the EEOC regulations before amending these terms in its rules; 5) during the rule amendment process the HCRC would be able to obtain public input regarding the definition of these terms; and 6) based on public input, the HCRC would develop more protective definitions, if warranted.

The HCRC acknowledges that it would take at least six months to promulgate such rule amendments. In the interim, the legislature can still require the HCRC to minimally apply the ADAAA definitions by amending this bill to include express language stating: a) that the state law definition of “disability” found in H.R.S. Chapter 378 and in the implementing rules shall be minimally construed to conform with the ADAAA; and b) that the civil rights commission shall adopt administrative rules pursuant to chapter 91 necessary to effectuate the purposes of this act.

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

HCRC proposed amendments to SB 1183:

SECTION 2. It is the intent of the legislature that the section 378-1 definition of “disability” shall be minimally construed to conform to federal law as amended by the ADA. Where current rules differ from stronger provisions of the federal law as amended by the ADA, the rules shall be amended to minimally conform to the stronger federal law provisions.

SECTION 3. The civil rights commission shall adopt rules pursuant to chapter 91, as necessary, to effectuate the purposes of this Act.

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

TESTIMONY TO THE TWENTY-FIFTH STATE LEGISLATURE, 2009 SESSION

To: Senate Committee on Human Services
Senate Committee on Labor

From: Hawaii Disability Rights Center
Re: Senate Bill 1183
Relating to Discriminatory Practices

Hearing: Thursday , February 12, 2009, 1:30 PM
Conference Room 016, State Capitol

Members of the Committee on Human Services:
Members of the Committee on Labor:

Thank you for the opportunity to provide testimony supporting Senate Bill 1183.

Hawaii Disability Rights Center, formerly known as the Protection and Advocacy Agency of Hawaii (P&A) is the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We, along with Protection and Advocacy Agencies around the country as well as our national organization, the National Disability Rights Network, were very supportive of the efforts at the federal level to amend the ADA to address Supreme Court decisions which had interpreted the ADA in too narrow a fashion. The passage and signing of the ADA Amendment Act was a reaffirmation of the Congressional intent to provide broad protection to individuals with disabilities. Inasmuch as our state law is intended to somewhat mirror and be parallel to the federal law, it certainly makes sense to update the state statutes to conform to these recent federal amendments. This will provide more consistency between state and federal law and will also provide more protection under state law to individuals with disabilities.

Thank you for the opportunity to provide testimony in support of this bill.

Testimony for HMS/LBR 2/12/2009 1:30:00 PM SB1183

Conference room: 016

Testifier position: support

Testifier will be present: No

Submitted by: Jill Friedman

Organization: Individual

Address:

Phone:

E-mail: jillf2184@yahoo.com

Submitted on: 2/11/2009

Comments:

LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR
HENRY OLIVA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 12, 2009

MEMORANDUM

TO: The Suzanne Chun Oakland, Chair
Senate Committee on Human Services

The Honorable Dwight Y. Takamine, Chair
House Committee on Labor

FROM: Lillian B. Koller, Director

SUBJECT: **S.B. 1183 - RELATING TO DISCRIMINATORY PRACTICES**

Hearing: Thursday, February 12, 2009; 1:30 p.m.
Conference Room 016, State Capitol

PURPOSE: The purpose of S.B. 1183 is to amend the definition of disability for the Department of Labor and Industrial Relations. It amends and adds certain definitions to broaden protections against employment disability discrimination in the State.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) defers to the Department of Labor and Industrial Relations for any effect this bill would have on labor laws. DHS would have a concern if this measure was intended to affect programs under chapter 346, HRS.

Thank you for the opportunity to provide comments on this bill.