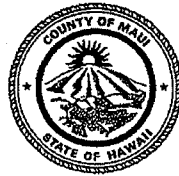


**SB 2341**

CHARMAINE TAVARES  
Mayor



BENJAMIN M. ACOB  
Prosecuting Attorney  
PETER A. HANANO  
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY  
COUNTY OF MAUI  
150 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
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February 17, 2010

HONORABLE SUZANNE CHUN OAKLAND, CHAIR  
HONORABLE LES IHARA, JR., VICE CHAIR  
COMMITTEE ON HUMAN SERVICES

HONORABLE DWIGHT Y. TAKAMINE, CHAIR  
HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR  
COMMITTEE ON LABOR

THE SENATE  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2010  
STATE OF HAWAII

TESTIMONY OF BENJAMIN M. ACOB,  
PROSECUTING ATTORNEY FOR THE COUNTY OF MAUI,  
IN SUPPORT OF S.B. NO. 2341  
RELATING TO EMPLOYMENT RELATIONS..

The Honorable Chairpersons and Committee Members:

The Department of the Prosecuting Attorney for the County of Maui is in support of S.B. 2341 Relating to Employment Relations.

As you may imagine, victims of domestic violence face many adversities including the violence itself and employment discrimination by virtue of being a victim need not be one of them. Like domestic violence offenders, victims come from all walks of life, socio-economic levels, and educational backgrounds. Their competency in their area of work is not limited by their status as victim of domestic violence as neither does race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record. Without the amendment proposed by S.B. 2341, even the domestic violence offender who has an arrest or court record has more employment rights than does a victim.

Accordingly, our Department is in support of S.B. 2341. Thank you for the opportunity to testify.



# HAWAI'I CIVIL RIGHTS COMMISSION

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

February 18, 2010  
Rm. 016, 1:45 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. 2341

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 the intent of S.B. No. 2341, which adds "victimization due to domestic violence" as a protected class under H.R.S. § 378-2, the state's employment discrimination law. The HCRC recognizes the serious and devastating impact that domestic violence has on women's physical and emotional health and financial security. Domestic abuse takes a heavy toll on both victims and their employers, including increased security and safety concerns, reduced productivity, and increased health care costs. As a result, victims of domestic abuse can face loss of their jobs at a time when employment and financial independence is critical.

However, the HCRC recently testified on S.B. No. 2369 which addressed employment-related issues faced by victims of domestic or sexual violence in at least six areas, including: emergency unemployment benefits, employment discrimination, expansion of protections for employees on leaves of absence for domestic or sexual violence, establishment of emergency leave benefits, establishment of protections for recipients of public benefits, and establishment of protections for insurance applicants or insureds, raising four specific concerns over the effect on the employment discrimination statutes that the HCRC enforces. Similarly, we have four specific concerns regarding this bill:

**1. Need for definition of who is a victim of domestic violence.**

S.B. No. 2341 adds “victimization due to domestic violence” as a protected class to the state’s employment discrimination statute. There is no definition of “victimization due to domestic violence” - i.e., who is considered a victim due to domestic violence. As a result, it is not clear whether victims of sexual violence or stalking are protected.

**2. Need for clarification as to what an employer’s obligations are under the newly created protected class.**

The bill would prohibit the discriminatory practices described in H.R.S. § 378-2, but it does not expressly require employers to provide reasonable leave, safety and/or other accommodations. If requirement of such accommodations is intended, the bill should expressly provide for an affirmative obligation, delineate the kinds of accommodations required, and provide for any defenses or exceptions, e.g. if the requested accommodation would cause an undue hardship in the operation of the employer’s business.

If the new protection includes a reasonable accommodation requirement, the bill should address how a person establishes he or she is a victim of domestic violence in order to trigger an employer obligation to provide an accommodation. Initial research indicates that other jurisdictions that have provided or required reasonable safety accommodations have allowed employers to require an employee to certify that he or she is a “victim of domestic violence,”

which can be established through: a medical certificate; a signed written statement from a victim services organization, an attorney or advocate, a member of the clergy, or medical or other professional stating that the employee has sought assistance related to the domestic violence; a police report or court record (including TRO) related to domestic violence; or other corroborating evidence related to the domestic violence. Under H.R.S. Chapter 378 Part VI (the Victims Leave law), such certification may be similarly requested by employers prior to granting leave accommodations for domestic or sexual violence victims.

**3. If the bill requires employers to provide reasonable leave accommodations, this may create potentially overlapping jurisdiction with the specific provisions and private action already provided under the Victims Leave law, H.R.S. Chapter 378 Part VI.**

**4. If “victimization due to domestic violence” is added as a protected basis to H.R.S. Chapter 378-2, the HCRC will require additional funding and staffing.** During the current fiscal biennium, the HCRC lost 3 of 11 permanent investigator positions and 1 of 4 enforcement attorney positions, in addition to two days per month of work productivity lost to furloughs. As such, our focus will be on timely processing and effective enforcement in the face of a growing caseload and shrinking resources. The proposed new protected basis will require additional funding and staffing, in light of the data suggesting that the affected protected class will be large, and we would also request the addition/restoration of one full time investigator position and one enforcement attorney position.

Thank you for considering these concerns.

COMMITTEE ON HUMAN SERVICES

Senator Suzanne Chun Oakland, Chair  
Senator Les Ihara, Jr., Vice Chair

COMMITTEE ON LABOR

Senator Dwight Y. Takamine, Chair  
Senator Brian T. Taniguchi, Vice Chair

Testimony in opposition to SB2341

Strongly oppose

Though this bill is well intended, I view this as meddling in a new cause celeb. Throughout this legislative session the legislature has found new ways to bring the victim of domestic abuse to the forefront on employment security, workman's compensation and now to assure their rights.

We do not seek to discriminate against anybody. So there is no need to add this special class of protection. However in a workplace where someone is threatened and the surrounding employees are threatened by that domestic abuser it is folly to assure that person the protections of this nondiscrimination if it would put the other employees, management and customers at risk.

Common sense should rule here without the need for a law that will eventually be misapplied. I foresee businesses being sued by the victim and eventually by the innocent victims of an unfortunate incident where the abuser takes it out on all those around the victim. This law makes it certain that someday this incident will occur.

All people should be protected not just the victim and to place a victim at a job that threatens all is unconscionable.

Respectfully,

Bill Comerford  
Hawaii Bar Owners Association

## ChunOakland3 - Serena

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**From:** Dara Carlin, M.A. [breaking-the-silence@hotmail.com]  
**Sent:** Monday, February 15, 2010 12:28 PM  
**To:** HMS Testimony  
**Subject:** SB2341 to be heard Thursday, February 18th at 1:45pm in Room 016

TO: Senator Suzanne Chun-Oakland, Chair  
Senator Les Ihara, Vice Chair  
Human Services Committee Members

Senator Dwight Takamine, Chair  
Senator Brian Taniguchi, Vice Chair  
Labor Committee Members

FROM: Dara Carlin, M.A.  
Domestic Violence Survivor Advocate  
881 Akiu Place  
Kailua, HI 96734

DATE: February 18, 2010

RE: Support for SB2341, Employment Relations

Please support and help to pass SB2341 that would prevent discrimination against domestic violence victims in the workforce. One of the double-bind situations DV victims face when receiving assistance in breaking away from an abusive relationship is having to tell their employers about their DV status as part of their safety plans.

Some employers will staunchly stand by and support their employees by being flexible and understanding, but more often the case is that where she was once a valued and exemplary employee prior to disclosure, she's now being written up for extensive and repetitive lateness and absences (due to court proceedings, counseling sessions, intervention efforts, relocation and/or child-related matters, etc.) that subsequently lead to poor performance reviews and her termination. Without employment, DV victims absolutely cannot survive and their lack of employment IS counted against them in divorce and child custody proceedings.

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

Respectfully,

Dara Carlin, M.A.  
Domestic Violence Survivor Advocate

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Your E-mail and More On-the-Go. Get Windows Live Hotmail Free. [Sign up now.](#)

## ChunOakland3 - Serena

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**From:** Pema Gilman [pemagilman@yahoo.com]  
**Sent:** Wednesday, February 17, 2010 2:59 PM  
**To:** HMS Testimony  
**Subject:** SB 2341 Relating to Employment Relations

I am writing in support of **SB 2341 Relating to Employment Relations**

Hearing Date: Feb 18, 2010; 1:45PM

Hearing Location: Conference Room 016

Dear Senators,

I urge you to pass this bill to amend Section 378-2, Hawaii Revised Statutes to read: It shall be an unlawful discriminatory practice: 1) Because of race, sex, etc., etc. ....  
**victimization due to domestic violence**, or arrest, etc., etc.

This amendment is necessary to protect victims, who have sought and gained legal protection against their abuser, from being fired from a job when the victim shares a copy of her Protective Order with her employer, based only on the employers (unfounded) fear that her situation MAY cause disruption in her work performance.

It has been documented by social service workers that some victims have been fired unfairly once an employer is informed that their employee is experiencing domestic violence incidents and has obtained a TRO or Protective Order for her safety and it is clear that no prior causes of misconduct, absences or poor job performance has been established or discussed with her before such knowledge of the TRO or Protective Order.

Such firings can result in preventing the victim from financially supporting herself and her children (buying food, paying rent, etc.). That leads to the victim being compelled to apply for public assistance to survive until she can find other lucrative employment. This would also put her at risk for homelessness. The children, already traumatized by the domestic violence may then experience further disruption in their lives due to having to change schools, lose friends and lose the security of their familiar home.

Surely we must protect victims of domestic violence from further discrimination that hinders them from establishing and maintaining a life of security and safety.

Thank you for your consideration,

*Pema Gilman*, Program Coordinator & Advocate  
Women Helping Women - West Maui  
Email: [pemagilman@yahoo.com](mailto:pemagilman@yahoo.com) Phone: 661-7111

*The mission of Women Helping Women is to end domestic violence through advocacy, education and prevention; and to offer safety, support and empowerment to women and children, victims of domestic violence.*



To: Senator Suzanne Chun Oakland, Chair  
Senator Les Ihara, Jr., Vice Chair  
Committee on Human Services  
and  
Senator Dwight Y. Takamine, Chair  
Senator Brian T. Taniguchi, Vice Chair  
Committee on Labor

From: Sheryl A. A. Mita, BSW  
Social Work Graduate Student

Hearing Date: Thursday, February 18, 2010

RE: Support of SB 2341 Relating to Employment Relations

Chairmen Chun Oakland and Takamine and members of the Committees on Human Services and Labor,

My name is Sheryl Mita and I am social work graduate student at the University of Hawaii at Manoa. I am testifying in SUPPORT of SB 2341 Relating to Employment Relations, which would prohibit employers from discriminating against an applicant or employee for employment based only upon the applicant's or employee's status as a domestic violence victim.

People should not be refused, barred, or discharged from being hired or employed because of their age, sex, race, color, ancestry, religion, disability, marital status, sexual orientation, or arrest and court record. I concur that this would be discrimination towards any individual.

When it comes to applicants or employees, who are victims of domestic violence, finding employment helps them attain financial independence from their abuser. Advocates for female domestic violence victims have stated that women usually remain in their abusive relationships because they have no financial independence for themselves and their children. In order for domestic violence victims to become financially independent and hopefully leave their abuser, they need to get and hold on to a job.

Being a victim of domestic violence is a traumatic situation for any individual. As social workers, we ensure the safety of domestic violence victims and assist them in finding employment. Being employed and able to participate in our economy and community is essential for domestic violence victims. I urge the committees to support SB 2341. Thank you for the opportunity to testify on this measure.

Sheryl Mita, BSW  
Social Work Graduate Student



February 17, 2010

TO: STATE OF Hawaii  
Senate Sergeant-AT-ARMS

Reference: Testimony  
Relating To Employment Relations

Measure: SB 2341  
Relating to Employment Relations

Date & Time: Thursday Feb. 18<sup>TH</sup> 1:45-2:15  
STATE CAPITOL Conf. Rm. 016

I believe Section 378-2 Hawaii Revised Statutes should be amended making it unlawful to discriminate victims of domestic violence. An Employee should be able to tell their co-workers or their employer that they have a permanent or temporary restraining order without fear of losing their job.

Employees should lead by example and show that any type of violence, intimidation or threats against their employees should be protected.

Sincerely,

Carl Brown

"...service is everything."



## ChunOakland3 - Serena

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**From:** Ruth [ruthandjoe2@hawaii.rr.com]  
**Sent:** Wednesday, February 17, 2010 12:35 PM  
**To:** HMS Testimony  
**Subject:** S.B. No. 2341

Please vote favorably for this bill as it is important to women who are under the duress of Domestic Violence. They are the victims of crimes perpetrated by members of the opposite sex who have shown that they view women as less than themselves. This is a time when women who suffer from Domestic Violence need to be assisted by their fellow men not made to suffer more because they are a victim of abuse. Mahalo, Ruth F. McKay, 50 Puu Anoano St. # 3907, Lahaina, HI 96767

## ChunOakland3 - Serena

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 17, 2010 12:39 PM  
**To:** HMS Testimony  
**Cc:** jillf2184@yahoo.com  
**Subject:** Testimony for SB2341 on 2/18/2010 1:45:00 PM

Testimony for HMS/LBR 2/18/2010 1:45:00 PM SB2341

Conference room: 016  
Testifier position: support  
Testifier will be present: No  
Submitted by: Jill Friedman  
Organization: Individual  
Address: P.O. Box 1248 Kekaha, HI  
Phone:  
E-mail: [jillf2184@yahoo.com](mailto:jillf2184@yahoo.com)  
Submitted on: 2/17/2010

Comments: