

SB 2369



HAWAI'I CIVIL RIGHTS COMMISSION

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

February 9, 2010
Rm. 224, 3:30 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. 2369

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. 2369, which is designed, *inter alia*, to protect victims of domestic or sexual violence or stalking from discrimination in employment. The HCRC recognizes the serious and devastating impact that domestic violence, sexual violence, and stalking have 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 has four main concerns regarding the provisions contained in Part II of S.B. No. 2369 that affect H.R.S. Chapter 378 Part I, the statutes the HCRC enforces:

1. **Need for clarification of what an employer's obligations are under the newly created protected class established in Section 6 of the bill, which amends H.R.S. §378-2.**

Under Section 6 of the bill, an employer is prohibited from discriminating against a victim of domestic or sexual violence because the victim requests a "reasonable safety procedure or job-related modification" (i.e., safety accommodation). However, the bill does not require an employer to provide a reasonable safety accommodation, does not define what a reasonable safety accommodation is, and does not allow a denial of such a request if the request would cause an undue hardship to the operation of the employer's business. Without more, it is unclear what the affirmative obligation for an employer to provide a reasonable safety accommodation entails (e.g., schedule or assignment changes, change in telephone number or work location, job restructuring, installation of a lock, etc.).

In addition, the bill does not state how a person establishes he or she is a "victim of domestic or sexual violence" in order to trigger the reasonable safety accommodation. In our initial research, we found that other jurisdictions that included reasonable safety accommodations have allowed employers to require an employee to certify that he or she is a "victim of domestic or sexual 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 or sexual violence; a police report or court record (including TRO) related to domestic or sexual violence; or other corroborating evidence related to the domestic or sexual violence. Under H.R.S. Chapter 378 Part VI, such certification may be similarly requested by employers prior to granting leave accommodations for domestic or sexual violence victims.

2. **Section 4 of the bill provides for specific remedies for violations of the proposed protections found in Section 6 of the bill, which are unnecessary.** H.R.S. §§ 378-5 and 368-17 already provide for a full panoply of remedies, so this additional remedies provision is redundant and unnecessary.

3. **Section 5 of the bill proposes to amend H.R.S. Chapter 378, Part VI (Victim Leave law), to provide remedies and a statute of limitations for an employee who brings a direct civil action pursuant to H.R.S. §378-72(j), highlighting a the creation of potentially overlapping jurisdiction with the establishment of a new protected class under H.R.S. §378-2.**

4. **If the amendments to H.R.S. Chapter 378, Part I, as proposed in Sections 4 and 6 of the bill are enacted, 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.

NATIONAL FRATERNAL CONGRESS OF AMERICA
TESTIMONY COMMENTING ON SB 2369, RELATING TO
DOMESTIC VIOLENCE

February 9, 2010

Via E Mail: hnmstestimony@capitol.hawaii.gov

Hon. Senator Suzanne Chun Oakland, Chair
Senate Committee on Human Services
Hon. Senator Dwight Y. Takamine, Chair
Senate Committee on Labor
Hawaii State Capital, Conference Room 224
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Chun Oakland, Chair Takamine and Committee Members:

Thank you for the opportunity to comment on SB 2369, relating to Domestic Violence.

Our firm represents the National Fraternal Congress of America ("NFCA"), the national trade association of fraternal societies whose 73 member organizations have chapters and are active in all 50 states. Four NFCA member organizations have chapters in the State of Hawaii: Thrivent Financial for Lutherans, Woodman of the World, Independent Order of Foresters and the Knights of Columbus. State wide they have a combined membership totaling approximately 9,000 members.

NFCA is in the process of reviewing SB 2369 with its member organizations and may submit additional testimony on this bill in the future.

Again, thank you for the opportunity to comment on this bill.

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By: 

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cc Mr. Joseph J. Annotti

AMERICAN COUNCIL OF LIFE INSURERS
TESTIMONY COMMENTING ON SB 2369, RELATING TO
DOMESTIC VIOLENCE

February 9, 2010

Via E Mail: hmstestimony@capitol.hawaii.gov

Hon. Senator Suzanne Chun Oakland, Chair
Senate Committee on Human Services
Hon. Senator Dwight Y. Takamine, Chair
Senate Committee on Labor
Hawaii State Capital, Conference Room 224
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Chun Oakland, Chair Takamine and Committee Members:

Thank you for the opportunity to comment on SB 2369, relating to Domestic Violence.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association whose three hundred (300) legal reserve life insurer and fraternal benefit society member companies operating in the United States account for over 90% of the assets and premiums of the U.S. life insurance and annuity industry. ACLI member company assets account for 93% of the life insurance premiums and 98% of the annuity considerations paid in the State of Hawaii. Two hundred thirty-six (236) ACLI member companies currently do business in the State of Hawaii.

ACLI is in the process of reviewing SB 2369 with its member companies and may submit additional testimony on this bill in the future.

Again, thank you for the opportunity to comment on this bill.

CHAR HAMILTON
CAMPBELL & YOSHIDA
Attorneys At Law, A Law Corporation

By: 

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cc Joann Waiters, Esq.

ChunOakland3 - Serena

From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Wednesday, February 03, 2010 4:07 PM
To: HMS Testimony
Subject: SB2369 to be heard Tuesday, February 9th at 3:30pm 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 9, 2010

RE: Strong Support for SB2369, Relating to Domestic Violence

Please do all you can to pass and protect this measure that is a concrete response to prayer.

When a domestic violence victim flees her abusive situation, the only stable thing in her life (if she's lucky to have it) is her job and maintaining that employment will actually determine the success of her fleeing; if she has support, flexibility and her position's protected chances are she'll be more likely to follow through on her resolve in terminating the abusive relationship but if she's not supported and has to worry about being able to keep her job, going back to her abuser will appear the better option in the face of unemployment and financial uncertainty.

I was very excited to see the anti-discrimination practices and the consequences for employers who would otherwise find a way to discharge a victim from employment. While I know some employers might feel that victims may misuse or "take advantage" of this legislation, I am confident that they will find to the contrary - survivors are so grateful for the kindness and compassion shown to them that the employers will find they ultimately have better employees. Having a job and an income is a source of hope for these women whose abusers will attempt to take everything away from them for leaving them; ensuring a victim's ability to obtain or maintain employment is a victory he cannot take from her.

The training component of this measure was also exciting to see. The only way to successfully avoid the direct consequences of domestic violence is to not become personally entangled in it to begin with and I'm sure the knowledge passed on to the workers will make it into their homes as well.

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

Respectfully,

Dara Carlin, M.A.
Domestic Violence Survivor Advocate

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