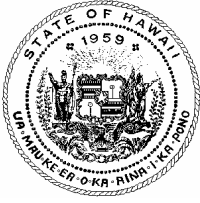


SB 2202



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 24, 2012
9:30 a.m.
Conference Room 016

To: The Honorable Clayton Hee, Chair
and Members of the Senate Committee on Judiciary and Labor

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 2202

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 original S.B. No. 2202 would have amended H.R.S. §378-2 to prohibit employers and employment agencies from publishing job advertisements stating or suggesting that applicants must be currently employed to be qualified or considered for a vacant job position. S.B. No. 2202, S.D.1 includes a legislative finding that the employment practice described is against public policy, and directs a study by the

Legislative Reference Bureau on whether the employer and employment agencies are engaging in the practice in Hawai'i.

The HCRC recognized that S.B. No. 2202 as originally drafted addressed concern over an emerging national trend, where increasing numbers of employers and employment services are running job advertisements that say applicants must be currently employed to apply. However, the HCRC opposed the original S.B. No. 2202, with explanation. (see explanation below). The approach taken in the S.D.1 recognizes the legitimate concern over the trend, making a strong statement that such practices are against public policy, while taking into account HCRC reasons for opposing the addition of a new prohibited practice under chapter 378, part I, at this time. **The HCRC does not oppose S.B. No. 2202, S.D.1.**

Reasons for HCRC opposition to original S.B. No. 2202, adding a new prohibited practice to chapter 378, part I:

There is no indication that this is a problem in Hawai'i. Absent such a showing that there is discrimination that is a social problem, there should be restraint in limiting employers' freedom to act. If there were such a demonstration, it would change the discussion.

Conceptually, the protection established in S.B. No. 2202 was different from other protections in the state fair employment law, H.R.S. chapter 378, part I, that the HCRC enforces. Unlike other protected bases, employment history is related to qualification for employment. The HCRC recognized that the new protection created by S.B. No. 2202 would only prohibit publication of job advertisements that state or suggest that only applicants with current employment will be considered, but not other discriminatory exclusion of unemployed applicants from employment. In this respect,

the proposed prohibition does not pose difficult proof issues, except that what constitutes an advertisement that “suggests” exclusion would be difficult to interpret and determine.

There are costs associated with enactment of laws that are a mish-mash of dissimilar protections, without a conceptual framework, and putting them under the jurisdiction of the HCRC. The HCRC has lost over 25% of its general funded full time permanent enforcement staff (investigators and attorneys), while the legislature continues to add protected bases to the HCRC’s enforcement jurisdiction and responsibility. It takes enforcement resources to plan and prepare to enforce new protections, especially novel ones, regardless of the number of complaints that are actually filed. Enforcement resources spent on these newly assigned responsibilities directly affect the investigation, conciliation, and prosecution of all cases involving claims of discrimination involving the race, sex, disability, etc.

For these reasons the HCRC opposed the original version of S.B. No. 2202. As discussed above, the HCRC does not oppose S.B. No. 2202, S.D.1

Thank you for your consideration.



Randy Perreira
President

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

The Twenty-Sixth Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

Telephone: (808) 597-1441
Fax: (808) 593-2149

Testimony by
Hawaii State AFL-CIO
February 24, 2012

S.B. 2202, SD1 – RELATING TO
EMPLOYMENT PRACTICES

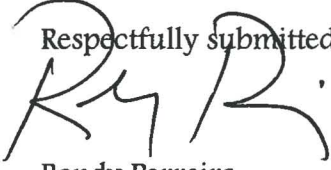
The Hawaii State AFL-CIO supports the intent of S.B. 2202, SD1 which directs the legislative reference bureau to conduct a study and gather information and data on whether employers and employment agencies are engaging in employment practices that exclude the unemployed from qualified applicant pools considered for employment in Hawaii and requires a report to the legislature, including examples of any notices or advertisements that exclude the unemployed from consideration.

Unfortunately, unemployment remains at an unhealthy level here at home and across the country. Thousands of Hawaii residents and millions of Americans who want to work cannot find jobs. In fact, according to the National Employment Law Project (NELP) competition for jobs is astonishingly intense, with nearly five unemployed jobseekers for each new job opening. To make matters worse, U.S. employers of all sizes, staffing agencies and online job posting firms are using recruitment and hiring policies that expressly deny employment to the unemployed. To deny a potentially hard worker a job because of the unemployment crisis we are currently in is truly tragic. Thousands of unemployed workers are qualified for an abundance of jobs, but unfortunately face a tough road ahead.

For example, Sony Ericson's newly relocated headquarters in Atlanta had posted a job announcement that specifically stated "No Unemployed Candidates Considered At All." Additionally, NELP reviewed online job postings over a four-week period and identified over a 150 ads that included exclusions based on current employment status. Many of the job postings were on prominent websites such as careerbuilder.com and monster.com. While it may not be occurring with every job posting and every business, the fact that it is has occurred and is occurring should be enough to ensure it does not happen again and the public feels it is wrong. According to a national survey conducted by Hart Research Associates, 90 percent of respondents described the refusal to consider unemployed job applicants as "very unfair."

No one should be denied an opportunity to work because of economic conditions they cannot control. Most do not want to be unemployed and most are desperately seeking jobs to make ends meet. While we may not have specific occurrences of this type of discrimination happening in Hawaii, it certainly is occurring across the country and therefore, we respectfully request the bill be amended to its original language. Passing S.B. 2202, SD1 as introduced will ensure everyone has an opportunity to seek employment.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President

The Twenty-Sixth Legislature
Regular Session of 2012

THE SENATE

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
State Capitol, Conference Room 016
Friday, February 24, 2012; 9:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2202, SD1
RELATING TO EMPLOYMENT PRACTICES**

The ILWU Local 142 supports S.B. 2202, SD1, which directs the Legislative Reference Bureau to conduct a study and gather information and data on whether employers and employment agencies are engaging in employment practices that exclude the unemployed from qualified applicant pools considered for employment in Hawaii.

While there may be anecdotal evidence about the unemployed being discriminated against in hiring, particularly on the Mainland, a study will demonstrate if this practice exists in Hawaii. It would seem to be counterintuitive to allow employers to exclude from consideration for hire anyone who does not have a job. In the current economic climate, many qualified job applicants are likely to be unemployed, and for some time, but if they are not given the chance at a job, they may remain unemployed and ultimately be forced to seek government assistance in order to survive.

The ILWU supports S.B. 2202, SD1. Thank you for the opportunity to testify on this matter.

Charlotte A. Carter-Yamauchi
Acting Director

Research (808) 587-0666
Revisor (808) 587-0670
Fax (808) 587-0681



LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
Honolulu, Hawaii 96813

Written Testimony

SB2202, SD1
RELATING TO EMPLOYMENT PRACTICES

Testimony by the Legislative Reference Bureau
Charlotte A. Carter-Yamauchi, Acting Director

Presented to the Senate Committee on Judiciary and Labor

Friday, February 24, 2012, 9:30 a.m.
Conference Room 016

Chair Hee and Members of the Committee:

I am Charlotte Carter-Yamauchi, Acting Director of the Legislative Reference Bureau (Bureau). The Bureau appreciates this opportunity to provide written comments on Senate Bill No. 2202, S.D. 1.

Senate Bill No. 2202, S.D. 1:

- (1) Directs the Bureau to conduct a study that includes:
 - (A) Gathering information and data on whether employers and employment agencies are engaging in employment practices that exclude the unemployed from qualified applicant pools considered for employment in Hawaii;
 - (B) A review and survey of job notices and job advertisements published in newspapers or posted on the Internet that exclude the unemployed from consideration for a job vacancy; and
 - (C) A count of any complaints involving exclusion of the unemployed from consideration for a job vacancy filed with the Hawaii Civil Rights Commission:
- (2) Requires the Bureau to submit a report to the Legislature, including examples of any notices or advertisements that exclude the unemployed from consideration; and

- (3) Requires the Hawaii Civil Rights Commission to provide assistance and information as necessary for the Bureau to conduct the study

The Bureau takes no position on the merits of the measure, but has concerns relating to how to conduct such a study and its present scope.

While the measure may implicitly limit the scope of information and data gathering to employment opportunities in Hawaii, it does not *explicitly* limit the study to a review of in-State postings for employment opportunities situated within the State, nor is a time frame indicated for the review of such postings. As drafted, the study could require the Bureau to attempt to review literally hundreds of thousands of postings nationwide - both in print form and on the Internet - that are accessible to Hawaii residents, but for which the employment opportunity is located in the State. We would ask that the measure be amended to explicitly narrow the scope to specifically identify a limited number of locally published newspapers and local job listing websites and impose a limited period of time for such review, to ensure the project is manageable and results in a timely report to the Legislature. In this regard, we note that the provisions for publication in section 1-28.5, Hawaii Revised Statutes, may provide appropriate guidelines.

Furthermore, the measure provides no guidance as to what objectively qualifies as a quantifiable exclusionary employment practice. While an explicit statement in an advertisement that "an unemployed person need not apply" or "an applicant must be currently employed to qualify for consideration for the position," would be easily identifiable, an advertisement that merely "suggests" exclusion would involve subjective interpretation, making it difficult to determine whether it qualifies as an offending advertisement that should be quantified under the study.

Having stated these concerns, the Bureau believes that if such a study is to be performed, the measure should be amended to provide a narrowing of the study's scope and further guidance on what constitutes a quantifiable exclusionary employment practice.

Thank you again for this opportunity to provide written comments.



888 Mililani Street, Suite 601
Honolulu, Hawaii 96813-2991

Telephone: 808.543.0000
Facsimile: 808.528.4059

www.hgea.org

The Twenty-Sixth Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association
February 24, 2012

S.B. 2202, S.D. 1 - RELATING TO
EMPLOYMENT PRACTICES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 2202, S.D. 1, which directs the legislative reference bureau to conduct a study and gather information and report to the legislature on whether employers and employment agencies are engaging in employment practices that exclude the unemployed from qualified applicant pools considered for employment in Hawaii.

This year marks the third straight year that the U.S. unemployment rate remains over eight percent. While the unemployment rate is lower in Hawaii, it has remained over the 6 percent mark for nearly three straight years. According to statistics from the State Department of Labor and Industrial Relations, there were 41,900 unemployed workers in Hawaii in December 2011. Barring these brothers and sisters from seeking employment is an injustice. We support the Legislature's effort to determine the extent to which employers and employment agencies are engaging in this exclusionary employment practice.

Thank you for the opportunity to testify in support of S.B. 2202, S.D. 1

Respectfully submitted,

Leiomalama E. Desha
Deputy Executive Director