

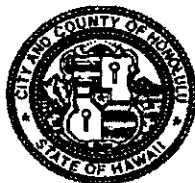
SB2202

Measure Title: RELATING TO EMPLOYMENT PRACTICES.
Report Title: Employment Discrimination; Unemployed Status of Job Applicant
Description: Prohibits any employer or employment agency from publishing a job advertisement that states or suggests that an applicant for the job must be currently employed.
Companion: HB1680
Package: None
Current Referral: CPN, JDL
Introducer(s): HEE

<u>Sort by Date</u>		Status Text
1/20/2012	S	Introduced.
1/20/2012	S	Passed First Reading.
1/23/2012	S	Referred to CPN, JDL.
1/31/2012	S	The committee(s) on CPN has scheduled a public hearing on 02-10-12 9:00AM in conference room 229.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
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PETER B. CARLISLE
MAYOR



NOEL T. ONO
DIRECTOR
ROBIN CHUN-CARMICHAEL
ASSISTANT DIRECTOR

February 10, 2012

The Honorable Rosalyn H. Baker, Chair
and Members of the Committee on
Commerce and Consumer Protection
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Baker and Members:

Subject: Senate Bill 2202
Relating To Employment Practices

Senate Bill 2202 seeks to prohibit an employer or employment agency from publishing, in print or on the Internet, any advertisement for a job vacancy which includes any provision stating or suggesting the qualifications for a job include current employment. The City and County of Honolulu offers the following comments with respect to the measure.

The City is concerned that Senate Bill 2202 could be construed to preclude promotional examinations which are regularly being conducted by the State and counties. These examinations can be either intradepartmental or interdepartmental in scope. In either case, the examination is limited to regular civil service employees of the particular jurisdiction and/or department. The City provides notice of these promotional opportunities on the Department of Human Resources' public website, which may arguably place these examinations within the scope of the proposed prohibition. However, as noted above, promotional examinations are never intended for the general public.

The City respectfully requests that the Senate Bill 2202 be amended to clarify that an employers' internal efforts to fill a vacancy would not be an unlawful discriminatory practice. We also recommend that language be added to clarify the term "publish". For example, "publish" could be defined in Hawaii Revised Statutes Section 378-1 as "to bring or announce to the general public."

Thank you for the opportunity to testify.

Yours truly,

A handwritten signature in black ink that reads "Noel T. Ono".

Noel T. Ono
Director



HAWAI'I CIVIL RIGHTS COMMISSION

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

February 10, 2012
9:00 a.m.
Conference Room 229

To: The Honorable Rosalyn Baker, Chair
and Members of the Senate Committee on Commerce and Consumer
Protection

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.

S.B. No. 2202 would amend 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.

The HCRC recognizes that S.B. No. 2202 addresses 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, at this time, the HCRC opposes S.B. No. 2202 for the following reasons:

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 is 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 recognizes 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 will 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 urges the Committee on Commerce and Consumer Affairs to hold S.B. No. 2202. Thank you for your consideration.



**Testimony to the Senate Committee on Commerce and Consumer Protection
Friday, February 10, 2012 at 9:00 a.m.
Conference Room 325, State Capitol**

RE: SENATE BILL 2202 RELATING TO EMPLOYMENT PRACTICES

Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") would like to offer comments on SB 2202.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure prohibits any employer or employment agency from publishing a job advertisement that states or suggests that an applicant for the job must be currently employed.

Minimal evidence exists that employers discriminate against the unemployed by listing that the "unemployed need not apply," therefore, we believe this provision is unnecessary. In fact, pursuing a restrictive hiring policy could be counter-productive as it may exclude a talented pool and applicants that are more flexible about wages and benefits, so it would not make business sense not to consider unemployed persons as well. Furthermore, this mandate may discourage employers from hiring or posting vacancies.

Overall, while well-intended, this proposal would unduly impact the private sector's hiring process and lead to unintended consequences. For these reasons, we respectfully urge the committee to hold this measure. Thank you for this opportunity to express our views.



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The Twenty-Sixth Legislature, State of Hawaii
The Senate
Committee on Commerce and Consumer Protection

Testimony by
Hawaii Government Employees Association
February 10, 2012

S.B. 2202 – RELATING TO
EMPLOYMENT PRACTICES

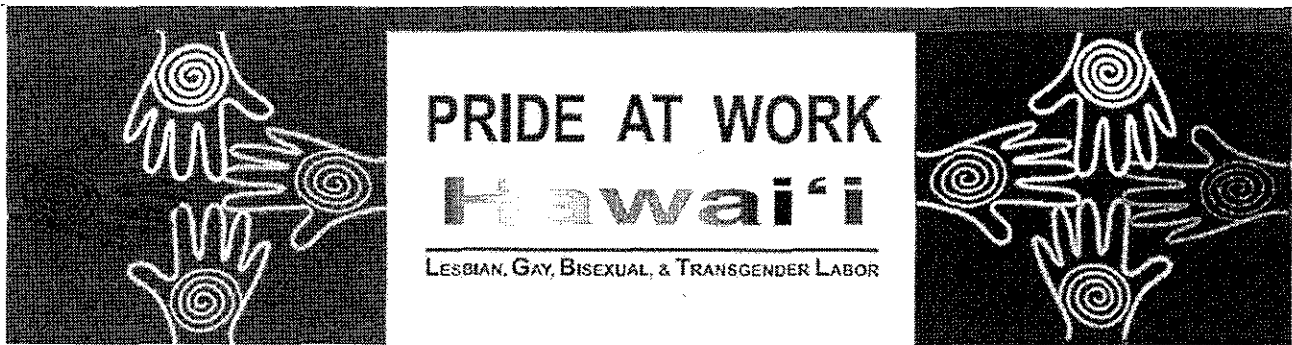
The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 2202, which prohibits any employer or employment agency from publishing a job advertisement that states or suggests that an applicant for the job must be currently employed.

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 urge you to pass this measure.

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

Respectfully submitted,

Leiomalama E. Desha
Deputy Executive Director



February 9, 2012

Senate Committee on Commerce and Consumer Protection
Chair, Sen. Rosalyn Baker
Vice Chair, Sen. Brian Taniguchi

Testimony in support of SB 2202

Pride At Work Hawai'i, an affiliate of the Hawai'i State AFL-CIO which works to mobilize lesbian, gay, bisexual, and transgender (LGBT) workers and their supporters for full equality and to build mutual support between the labor movement and the LGBT community, strongly supports SB 2202, which would help prohibit discrimination against the unemployed in hiring.

With local unemployment rates at over 6%, lack of employment is a stubborn reality in Hawai'i, particularly in the Lesbian, Gay, Bisexual, and Transgender (LGBT) community. For example, a 2011 study by the National Center for Transgender Equality and the National Gay and Lesbian Task Force found that across the US, transgender people are unemployed at twice the rate of the general population, with transgender people of color unemployed at up to four times the national rate.

The unemployed desperately want to reenter the workforce, yet there are incredible hurdles for them in securing employment. One of those hurdles is the perfectly legal practice of employers advertising job openings that state that unemployed applicants need not apply. It is our responsibility to end this discriminatory practice against the unemployed as they try to create better lives for themselves and to contribute to the workforce of the community.

Most of us have struggled during this long-term recession: public sector workers giving back wages and benefits while private sector workers deal with layoffs and stagnant wages. The reality is that times are different and being unemployed and long-term unemployed is rather common. SB 2202 is an opportunity for those in power to directly address a persistent problem for the unemployed, discouragement from even applying for work.

Many of the unemployed face rejection and discouragement so often that they are no longer looking for employment. We need to do what we can to support efforts to get back out there and rebuild our economy. This proposed legislation is a step towards self-sufficiency and integration back into the workforce for thousands of island residents. Again, Pride at Work Hawai'i strongly supports the passage of this important legislation.

The Twenty-Sixth Legislature
Regular Session of 2012

THE SENATE

Committee on Commerce and Consumer Protection

Senator Rosalyn H. Baker, Chair

Senator Brian T. Taniguchi, Vice Chair

State Capitol, Conference Room 229

Friday, February 10, 2012; 9:00 a.m.

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

The ILWU Local 142 supports S.B. 2202, which prohibits any employer or employment agency from publishing a job advertisement that states or suggests that an applicant for the job must be currently employed.

S.B. 2202 prohibits only advertising that explicitly or implicitly states that those who are unemployed or without a current job will not be considered for hire. We believe the bill does not go far enough. Indeed, the law should specifically prohibit the practice of excluding from consideration for hire anyone who is not employed at the time of application.

Practically speaking, however, proving a violation will be difficult. Employers and employment agencies who understand the law can easily circumvent it. Their application forms or requests for resumes will provide them with information about current employment or unemployment, and with this, they can decide to hire or not--without violating any law.

Nevertheless, enacting a law sets public policy and informs employers and others about the State's intent. A law that prohibits discrimination of the unemployed will recognize the difficult economic times we are in, where large numbers of people remain unemployed, and will support the efforts of the unemployed to be considered for new jobs.

The ILWU supports S.B. 2202 but suggests an amendment to prohibit discrimination of the unemployed in hiring. Thank you for the opportunity to testify on this matter.

Testimony for CPN 2/10/2012 9:00:00 AM SB2257

Conference room: 229

Testifier position: Support

Testifier will be present: No

Submitted by: Maryland State Senator Kathy Klausmeier

Organization: Individual

E-mail: katherine.klausmeier@senate.state.md.us

Submitted on: 2/9/2012

Comments:

I was the sponsor of similar legislation to SB2257 in the State of Maryland. My legislation passed, but unfortunately it contained a provision that would only allow for Savings promotion raffles if the current federal prohibition against such programs in banks was lifted. This has not happened as of yet. I am a big supporter of Savings promotion raffles and I am hopeful that Maryland, along with other states like Hawaii, pass legislation to allow them at Credit Unions, and eventually banks when the federal restriction is lifted. I have attached the testimony I presented for my bill in Maryland, which was SB886 of 2010.

SB886-Financial Institutions - Authority to Conduct Savings Promotion Raffles

In the midst of the current financial downturn building savings is as important as ever. To this end, I am pleased to sponsor SB886, which would enable credit unions to offer a new and innovative way to encourage people to save through the establishment of "savings promotion raffles."

I first heard about "savings promotion raffles", also known as "prize linked savings", when I attended an NCSL workshop focused on working families where Timothy Flacke, Executive Director of the "Doorways to Dreams Fund" gave a presentation about how these promotions have been used across the world to encourage people to save money in a fun and attractive way. I have submitted an excerpt from his presentation that day as written testimony which highlights what benefits and opportunities prize linked savings can offer.

A savings promotion raffle works like this:

- A participant earns a "raffle ticket" for each \$25 saved in an eligible "add-on" Certificate of Deposit. Unlike in other promotions, a person must open the CD in order to gain entry into the promotion.
- Monthly prizes, such as mp3 players, computers and small amounts of cash, are awarded throughout the term of a single promotion, usually lasting one year. The promotion culminates with a single grand prize drawn from all those who participated through the year.
- Participants retain the right to withdraw their money at least once during the CD's one-year term.
- Even if a participant does not earn one of the prizes, they still "win" by saving money -- along with modest interest growth from 1% to 1.5%, about 0.5% below a typical account.

In Michigan, this program, titled *Save to Win*, has been wildly successful, attracting more than \$8.5 million in savings at 9 participating credit unions during the program's first year. All totaled, there were 11,666 certificates opened, and *Save to Win* culminated in the awarding of a one-hundred thousand dollar grand prize.

The *Save to Win* model encourages traditional nonsavers to save because it provides an additional incentive – the chance to win a sizable jackpot. Indeed, the highest rate of participation came from the credit union in one of the most economically depressed parts of Detroit, and over half of the participants in this new program were not regular savers.

These types of programs have long-existed in Europe and across the world. In the United Kingdom's program, over 31 billion pounds were invested in the program in 2006, with somewhere between 22 and 40 percent of all UK citizens participating.

Unfortunately, federal laws prevent us from extending this same opportunity to banks. I have committed to working with the banking industry to urge our federal representatives to reverse this prohibition so that we can encourage even more people to save.

As I mentioned before, there are other savings promotions that banks offer which have prize elements, such as one currently offered called "Roll in the Dough". I think these promotions are great and I commend the banks for doing them, but they are bound by "no purchase necessary provisions" in federal law. Anyone can just come in off the street, fill in an entry blank and no actual savings has taken place. "Prize linked savings" is different because to play, you have to save.

I thank the committee for their consideration of SB886, and I ask for a favorable committee report.

Testimony for CPN 2/10/2012 9:00:00 AM SB2202

Conference room: 229

Testifier position: Support

Testifier will be present: No

Submitted by: Al Lardizabal

Organization: Hawaii Laborers' Union

E-mail: Lardizabal@local368.org

Submitted on: 2/1/2012

Comments: