



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 13, 2014
Rm. 329, 9:30 a.m.

To: The Honorable Mele Carroll, Chair
Members of the House Committee on Human Services

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

Re: H.B. No. 2649

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s 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. Art. I, Sec. 5.

The HCRC opposes H.B. No. 2649 because it rolls back protections for victims of domestic violence (DV) and sexual violence (SV) that were enacted as Act 206 in 2011. At that time, just three years ago, the Committee on Conference on S.B. No. 229, S.D.1, H.D.2, in recommending passage of a C.D.1, were in accord with the intent and purpose of the measure, which it described as: 1) making it an unlawful discriminatory practice for an employer to engage in discriminatory actions against an employee in certain situations because of the employee’s domestic or sexual violence victim status, if the employee provides notice to the person’s employer of the status or the employer has actual knowledge of the status; 2) requiring an employer to make reasonable accommodations in the workplace for an employee who is a victim of domestic or sexual violence, unless the accommodations cause undue hardship on the work operations of the employer; 3) defining “undue hardship” for the purposes of the reasonable accommodation requirement; 4) authorizing the employer to verify that the employee is a victim of domestic or sexual violence prior to

making reasonable accommodations for the employee; 5) listing the types of verification that an employer can request of an employee to verify domestic or sexual violence victim status; and, 6) providing for a civil action for an employee for denial of a reasonable accommodation. S.B. No. 229, S.D.1,H.D.2, C.D.1, C.C.R. No. 31

The Committee on Conference made these findings:

Your Committee on Conference finds that domestic or sexual violence may have a serious and devastating impact on victims' physical and emotional health and financial security. Domestic and sexual violence takes a heavy toll on victims and their employers, including increased security and safety concerns, reduced productivity, and increased health care costs. As a result, victims of domestic and sexual violence can face the loss of their jobs at a time when employment and financial independence is critical.

S.B. No. 229, S.D.1, H.D.2, C.D.1, was passed in the Senate by a vote of 24-1 and in the House by a unanimous vote, with none voting no and two excused. The bill was signed by the Governor and enacted as Act 206 on July 11, 2011.

H.B. No. 2649 would significantly reduce the protections for DV and SV victims by amending HRS § 378-2 to require victims to verify their status by providing employers with a copy of a TRO or protective order, and allowing an employer to discriminate against (i.e., terminate) a DV or SV victim if the employer "reasonably believes" that the "restrained person could endanger other employees." H.B. No. 2649 also would amend HRS § 378-81 by deleting all of the express language regarding accommodations for a victim of DV or SV, and adding language requiring the employer only to post the protective order, inform other employees about the protective order, and call the police if the order is violated. This amendment to HRS 378-81 could be interpreted to provide for the posting, information, and call to the police in case of a violation, to the exclusion of any other reasonable accommodation, which would be an effective repeal of the existing reasonable accommodation requirement. Finally, H.B. No. 2649 would delete HRS § 378-82, which allows victims to enforce their rights through a civil action.

The HCRC opposes this bill because it would repeal the strong protections of Act 206, enacted just in 2011. Current law allows verification of DV or SV status by a victim services organization, a victim's attorney, a medical or other health professional, a clergy or by police or court record. By requiring DV and

SV victims to provide a TRO or protective order, the proposed amendment conditions coverage and protection on an employee seeking and obtaining a court order, which DV and SV experts and advocates have warned should be a deliberate decision within the control of the victim/survivor, a decision which could put the DV or SV victim at greater risk. It would also effectively eliminate Act 206 protections for SV victims who may not know the identity of a stalker or sexual assailant. The express exception allowing employers to discriminate if they “reasonably believe” a “restrained person” could harm other employees, gives license to employers to terminate victims of DV or SV for the acts and conduct of abusers and sexual predators that are beyond their control, allowing exactly the kind of discriminatory action that Act 206 was meant to protect against.

Current law also requires accommodations such as: changing contact information (phone numbers, email addresses etc.), installing locks and other security devices, screening telephone calls to the employee, restructuring job functions, and changing work location, allowing flexible work hours. However, employers are not required to make such accommodations if the accommodations cause an undue hardship on the employer’s operations. Current law also gives victims the right to bring a civil action if such accommodations are not made. Elimination of reasonable accommodation requirements and access to the courts to remedy denial of rights would diminish the effectiveness of the measure that the legislature so overwhelmingly endorsed in Act 206.

CONCLUSION

The Act 206 prohibition against employment discrimination on the basis of DV or SV victim status under HRS Chapter 378, Part I, falls under HCRC jurisdiction. The Act 206 reasonable accommodation requirements for DV and SV victims placed in HRS Chapter 378, Part VI, formerly titled “Victim Leave” and now renamed “Victims Protections”, are enforced through a direct cause of action.

In the months leading up to the January 1, 2012, effective date of Act 206, the HCRC engaged with DV and SV community advocates, employers, and unions in outreach and public education efforts around implementation of the new law. Implementation of the new law offered us a sobering but valuable opportunity to educate ourselves and others about the toll that domestic and sexual violence takes, and the

importance of employment and financial independence for victims and their families – including the importance of reasonable accommodations and not blaming the victim – and the benefits of providing safe, productive workplaces. We learned about employers’ good faith interest in and commitment to the safety of victims of domestic and sexual violence and all their employees, and their obligation to maintain safe workplaces. Copies of an HCRC flyer and FAQs developed and used in those outreach and public education efforts are attached to this testimony.

Since the implementation of Act 206, the HCRC has not received a large number of complaints – perhaps a reflection of both concerted education efforts targeting employers and the need to increase rights education efforts and outreach to victims of domestic and sexual violence and their advocates. Act 206 has been a catalyst for raising consciousness, offering hope for change through education, as well as enforcement.

The HCRC believes that the current law strikes a balance in protecting DV victims without imposing undue hardships on employers.

For these reasons, the HCRC encourages the committee to hold this bill.

HCRC Testimony on H.B. No. 2649

Attachment - HCRC Flyer on Act 206 Protections for Victims of Domestic
and Sexual Violence



HAWAI‘I CIVIL RIGHTS COMMISSION

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

EFFECTIVE JANUARY 1, 2012, NEW STATE LAW PROHIBITS EMPLOYMENT DISCRIMINATION AGAINST VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE

Act 206*, enacted in 2011, amends our state fair employment law to protect victims of domestic and sexual violence against employment discrimination.

Act 206 also amends the current victims leave law, now titled the victims protection law, to add a requirement that employers make reasonable accommodations for employees who are victims of domestic or sexual violence.

WHO IS PROTECTED BY THE NEW LAW?

The new state law protects employees and prospective employees who are victims of domestic or sexual violence, as well as those who have a minor child who is a victim of domestic or sexual violence. A victim of domestic or sexual violence means a victim of domestic abuse, sexual assault, or stalking.

The law allows an employer to verify that an employee is a victim of domestic or sexual violence by requesting:

- A signed written statement from one of the following persons, from whom the employee or the employee’s minor child has sought assistance in relation to the domestic or sexual violence: 1) an employee, agent, or volunteer of a victim services organization; 2) the employee’s attorney or advocate; 3) the attorney or advocate for the employee’s minor child; 4) a medical or other health care professional; or 5) a member of the clergy.

OR

- A police or court record supporting the occurrence of the domestic or sexual violence.

An employer may verify that the employee is a victim of domestic or sexual violence not more than once every six months after being put on notice of the employee’s status as a victim of domestic or sexual violence. An employer can be put on notice either by having actual knowledge of the employee’s status of being a victim of domestic or sexual violence or by receiving written verification that the employee is a victim of domestic or sexual violence. However, if the employee provides verification of victim status in the form of a protective order, the employer may not request any further form of verification until the date of the expiration of the protective order, or any extension, whichever is later.

WHAT KIND OF DISCRIMINATION IS PROHIBITED?

Effective January 1, 2012, it is illegal for an employer to “refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment ...” based on domestic or sexual violence victim status. The law also prohibits discrimination by employment agencies and labor organizations.

Refusal to make a reasonable accommodation for a victim of domestic or sexual violence, including denial of leave as a reasonable accommodation, may be prohibited discrimination under Hawai‘i Revised Statutes § 378-2.

* Act 206, 2011 Session, amending Hawai‘i Revised Statutes chapter 378, part I, §378-2, and part VI.
http://www.capitol.hawaii.gov/session2011/bills/GM1310_.PDF

ARE EMPLOYERS REQUIRED TO PROVIDE LEAVE AND REASONABLE ACCOMMODATIONS FOR VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE?

Hawai'i's current victims leave law requires employers to allow an employee who is a victim or the parent of a minor child who is a victim of domestic or sexual violence to take unpaid leave to seek medical attention, obtain services from a victim services organization, obtain psychological or other counseling services, temporarily or permanently relocate, or to take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence. Large employers (who have ≥ 50 employees) are required to give up to 30 days of unpaid leave per calendar year. Small employers (who have ≤ 49 employees) are required to give up to five days of unpaid leave per calendar year.

The new law requires employers to make reasonable accommodations for the safety of victims of domestic and sexual abuse.

Examples of reasonable accommodations include:

- Changing contact information, such as telephone numbers, fax numbers, or e-mail addresses.
- Screening telephone calls.
- Restructuring job functions.
- Changing work location.
- Installing locks or other security measures.
- Allowing flexible or modified work schedules.

An employer is not required to make a reasonable accommodation if it would cause an undue hardship on its work operations. "Undue hardship" means the requested reasonable accommodation would impose significant difficulty or expense to the employer, taking into consideration the following factors:

- The nature and cost of the reasonable accommodation.
- The financial resources of the employer, the number of employees, and the number, type, and placement of the employer's workplaces.
- The type of operation of the employer, including the composition, structure, and functions of the workforce, geographic location of the employee's work location, and the relationship of the work location to the employer.

When an employee who is a victim of domestic or sexual violence requests an accommodation, an employer should engage in an interactive process with the employee to find an effective and workable reasonable accommodation.

FOR MORE INFORMATION, CONTACT:

HAWAI'I CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawai'i 96813
Telephone: (808) 586-8636
TDD: (808)586-8692
Fax (808) 586-8655

Neighbor Islands call (toll free):
Kauai: 274-3141 ext 6-8636#
Maui: 984-2400 ext. 6-8636#
Hawai'i: 974-4000 ext. 6-8636#
Lana'i & Moloka'i: 1-800-468-4644 ext. 6-8636#

Email: DLIR.HCRC.INFOR@hawaii.gov

Website: <http://www.hawaii.gov/hcrc>

HCRC Testimony on H.B. No. 2649

Attachment - HCRC FAQs on Act 206 Protections for Victims of Domestic
and Sexual Violence



HAWAII CIVIL RIGHTS COMMISSION

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

FREQUENTLY ASKED QUESTIONS (FAQ) SHEET FOR ACT 206

In 2011, the state of Hawai'i enacted Act 206 to protect the employment rights of victims of domestic and sexual violence by: (1) prohibiting employment discrimination on the basis of domestic or sexual violence victim status under H.R.S. chapter 378, part I "Discriminatory Practices"; and (2) amending H.R.S. chapter 378, part VI, formerly titled "Victims Leave" and renamed "Victims Protections", to add a sub-part requiring employers to make reasonable accommodations for employees who are victims of domestic or sexual violence. Act 206 takes effect on January 1, 2012.

Q. Which employees are covered by these laws?

A. Any employee who is a victim of domestic or sexual violence is covered by the law, regardless of how long she or he has worked for the employer or how many hours per week the employee works. An employee, whose minor child is a victim of domestic or sexual violence, is protected by Act 206, as well as job applicants.

Q. Which employers are covered by these laws?

A. Under H.R.S. chapter 378, part I, Hawaii's employment discrimination law applies to all employers who have one or more employees. This includes the State of Hawai'i, the counties, and employment agencies. The United States as an employer is *not* covered by these laws. Under H.R.S. 378, part VI, the Victims Leave law, the number of victim leave days available depends on the size of the employer, up to 5 days or 30 days of unpaid victim leave per calendar year.

Q. What is the definition of a victim of domestic or sexual violence?

A Any individual who is a victim of domestic abuse, sexual assault, or stalking is protected. This is the same definition used in the Victims Leave law.

Q. I'm being harassed at work by my abuser. What can I do?

- A.** You can ask your employer to provide you with a reasonable safety accommodation, such as:
- Allowing leave time so you can go to court, seek assistance from a victim services organization or medical treatment, move, or take other steps to deal with the abuse
 - Allowing a flexible or modified work schedule
 - Changing your work telephone number or extension, or e-mail address
 - Keeping your home or business address or phone number confidential
 - Transferring you to a different desk, shift or work site
 - Having security or the front desk help make sure your abuser cannot come inside
 - Providing other reasonable security measures at the workplace

*The reasonable safety accommodations are separate from steps you can take on your own. For more information, contact Hawaii State Coalition Against Domestic Violence, <http://www.hscadv.org/>. **If you believe that you are in immediate danger, CALL 911.***

Q. What if after I request a reasonable safety accommodation, my employer asks me to prove that I am a victim of domestic or sexual violence?

A. An employer may grant an employee a reasonable safety accommodation based on the employee's statement that he or she is a victim of domestic or sexual violence. However, an employer is allowed to request written proof of victim status. This proof, or "certification," can be any of the following:

- A document from law enforcement or the courts, such as a police report or protective order

- A letter from an attorney or advocate for you or your minor child
- A letter from a counselor, domestic violence or sexual assault victim services provider
- A letter from a health care professional
- A letter from a clergy member

Any of these forms of documentation is sufficient, and your employer cannot tell you which document to provide.

Q. What if the accommodation request would impose an undue hardship on the employer?

A. An undue hardship is something that would cause significant difficulty or expense for the employer. In determining significant difficulty or expense, many factors are considered including the employer's size and resources, the type of operation, and the number, type and locations of the employer's facilities. These factors will be balanced against the nature and cost of the accommodation requested by the employee.

If the request would impose an undue hardship on the employer, the accommodation need not be provided. In this case, the employer should work with the employee to determine if there are other less burdensome accommodations that would support the employee's continued employment in a safe environment.

Q. How does the employer know if the accommodation requested is the safest option for its employee who is a victim of domestic or sexual violence?

A. Because the employee knows the circumstances of his or her situation, he or she is usually best able to determine both what threats to safety exist as well as what steps can be taken to increase safety. Thus, when an employee makes a request for a reasonable safety accommodation, the employer should rely on the employee's judgment. The employer should engage in an interactive process with the employee to develop a safety plan that best serves their needs.

Q. My employer is threatening to fire me because I am a victim of domestic or sexual violence. What can I do?

A. The law says that your employer cannot fire you, pay you differently, or treat you negatively because you are a victim of domestic or sexual violence. It is also unlawful to fire you or otherwise discriminate against you because you are being harassed at work by your abuser. If you believe your employer is violating the law (or about to violate the law), you can seek assistance from a victim services advocate or make an inquiry with HCRC.

Q. As an employer, how can I be sure that all my employees will be safe?

A. We all want safe, productive workplaces. This law is an opportunity to review your workplace violence prevention policy and ensure you have a policy that protects all employees, including those experiencing domestic or sexual violence.

Q. What remedies are available to an employee who is a victim of domestic or sexual violence if an employer discriminates against him/her based upon victim status?

A. Employees who believe their employer has violated the law may file a complaint with the Hawai'i Civil Rights Commission within 180 days of the adverse act (e.g., termination, refusal to hire, denial of reasonable safety accommodation). In certain instances, an employee may choose to file a private lawsuit in State Court for violations under H.R.S. chapter 378, part VI, the Victims Leave law. Please consult a lawyer.

Q. How much leave am I entitled to take under the new law? Does the new law affect my rights under the Victims Leave law?

A. The new law does not reduce the amount of leave an employee who is a victim of domestic or sexual violence can take under the existing Victims Leave law to address matters related to the domestic or sexual violence. The Victims Leave law provides, within a calendar year, up to 30 days of unpaid victim leave if the employer has 50 or more employees, or 5 days of unpaid victim leave in workplaces with fewer than 50 employees. Additional leave time may also be viewed as a reasonable accommodation to which employees who are victims of domestic or sexual violence may be entitled under H.R.S. chapter 378, part I.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

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JUDY KERN
MARILYN B. LEE
CARMILLE LIM
AMY MONK
LISA ELLEN SMITH

Executive Director
CATHY BETTS, JD

Email:
Catherine.a.betts@hawaii.gov

Visit us at:
humanservices.hawaii.gov
/hscsw/

235 S. Beretania #407
Honolulu, HI 96813
Phone: 808-586-5758
FAX: 808-586-5756

February 13, 2014

To: Representative Mele Carroll, Chair
Representative Bertrand Kobayashi, Vice Chair
Members of the House Committee on Human Services

From: Cathy Betts, Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Strong Opposition of HB 2649, Relating to Employment Services

LATE

On behalf of the Hawaii State Commission on the Status of Women, I would like to thank the Committee for this opportunity to testify. The Commission strongly opposes HB 2649, which would drastically eliminate existing workplace protections for domestic violence and sexual assault victims. In 2011, the state of Hawaii enacted Act 206 to protect the employment rights of victims of domestic violence and sexual violence by prohibiting discrimination on the basis of their status as a victim, and requiring employers to make reasonable accommodations for employees who are victims.

HB 2649 amends Act 206 in several ways. First, it requires that victims provide a copy of a temporary restraining order (TRO) or protective order to their employer, and requires that the employer POST the TRO/protective order in the place of employment. The Commission takes issue with this requirement for several reasons. Many victims never apply for a TRO, and for those that do apply, many are not granted for various reasons. This does not negate their status as a victim, it simply reveals the institutional burdens for victims to come forward, potentially pay for an attorney, file the necessary paperwork, and prevail.

Second, this requirement changes the ways a victim can prove his/her status in Act 206, including, a document from law enforcement, such as a police report, a letter from an attorney or advocate, a letter from a counselor or victim services provider, a letter from a healthcare professional or a letter from a clergy member. Any of these documents should suffice for an employer to believe that his or her employee is a victim. This places an additional burden on a victim to successfully prevail in court on a TRO, and then to publicly post a private document at their place of employment, which presents safety, privacy and confidentiality issues.

Additionally, HB 2649 allows employers to discriminate against employees who are victims if the employer "reasonably believes that the restrained person could endanger other employees." This language is problematic and allows the employer to individually decide when and how he or she discriminates against a victim. This discrimination adds violence to the journey of recovery.

Finally, HB 2649 would eliminate the portion of Act 206 that requires employers to make reasonable accommodations for employees who are victims. Reasonable accommodations include: changing work stations for safety reasons, screening calls, allowing the employee to work flexible hours, and installing locks or other security devices. Employers should have workplace violence prevention policies already in place for the safety of all employees. The onus for a safe workplace should not be placed on the employees' shoulders.

For these reasons, the Commission strongly opposes HB 2649 as bad policy for survivors of violence. We respectfully request that you hold this bill. Thank you for this opportunity to testify.



Date: February 12, 2014

To: Representative Mele Carroll, Chair
Representative Bertrand Kobayashi, Vice-Chair
HOUSE COMMITTEE ON HUMAN SERVICES

From: Stacey Moniz, Executive Director

Re: **IN STRONG OPPOSITION TO HB 2649
RELATING TO EMPLOYMENT PRACTICES**

Aloha Chair Carroll, Vice Chair Kobayashi and the House Committee on Human Services:

I strongly OPPOSE the proposed HB 2649 which would eliminate protections created by Act 206 that mandated reasonable accommodation for victims of domestic and sexual violence.

The proposed changes are unrealistic and unfair and will leave victims of domestic and sexual violence exposed to losing their jobs because of their victimization. In addition, the provision that this protection be afforded only to victims who obtain restraining orders is wrong. The vast majority of victims do NOT obtain restraining orders so this again places an unwarranted and often unsafe burden on victims of domestic and sexual violence.

On behalf of all staff, board members, volunteers, and program participants of Women Helping Women, I strongly urge you to dismiss HB2649, and keep in place employment protections for victims of domestic and sexual violence.

Thank you so much for your time and consideration of my testimony. I can be reached at 446-7343 or via email at director@whwmaui.net if you have questions or need further information.

Peace be the journey.



1935 Main Street
Suite 202
Wailuku, HI 96793

Phone: (808) 242-6600
Fax: (808) 249-8147

www.whwmaui.net



To: Chair Mele Carroll
Vice Chair Bertrand Kobayashi
Members of the Committee

Fr: Nanci Kreidman, M.A.
Chief Executive Officer

RE: H.B. 2649 Opposition

Aloha. We submit this testimony in opposition to H.B. 2649. There was a great deal of relief and appreciation for the legislature's passage of a bill in 2011 which became Act 206.

As a community we can and we must provide the support and protections we know are necessary for victims of domestic violence. Domestic violence cannot simply be relegated to a private matter, or a secret that leaves a victim to suffer alone and without reasonable support to escape, make difficult decisions, or heal from the trauma.

The journey to escape is a long road, with many obstacles on the path. Having a workplace that is supportive can make the difference between a safe escape and potentially lethal jeopardy. There is research that demonstrates victims will return to their abusers if they are not able to secure economic stability. Losing one's job is the fastest way to instability and danger for a victim.

Victims face different kinds of challenges, and have access to different kinds of resources (supportive family or church, no childcare, no options for a place to live). There is not one formula that we should be expecting or prescribing for all victims. A temporary restraining order may be a good next step, or a person may need more time. In a workplace environment that may not be supportive, or supervisory staff who are ill-equipped or uninformed about domestic violence, it is not reasonable to set the expectation that every victim will obtain and produce a restraining order.

Domestic violence is a community problem that begs all of us to get involved. The problem is way bigger than domestic violence programs; there is a role that many sectors of the community can play. The business sector can be an ally in building a strong community by supporting those in their employ who are working to create a safe and stable family. This can be done without economic consequences to the company and without risking the safety of all their employees. The Domestic Violence Action Center

designed a program for DV Action Ready to understand domestic their workplace culture



Hawaii's companies, help companies violence, strengthen to support their

employees and build the skills of their management to address the problem effectively. We stand ready to help.

Act 206 is unique, enlightened and progressive. Let us maintain the protections for victims and expect the inspired cooperation of Hawaii's companies.

We urge you to hold H.B. 2649. Mahalo.

Testimony in Support of H.B. 2649, Relating to Employment Practices
House Committee on Human Services

February 13, 2014
9:30 a.m., Conference Room 329

Chair Carroll, Vice-Chair Kobayashi, and Members of the Committee:

Good Morning. I am Jasmine Kaahanui, a concerned citizen. I am in support of House Bill 2649.

The purpose of this bill defines “domestic or sexual violence victim” or “victim” to mean an individual who is the victim of domestic or sexual violence. Prohibits employer from discriminating based on domestic or sexual violence if the victim provides employer with a copy of the TRO or protective order, unless the employer reasonably believes that the restrained person could endanger other employees. Removes employers’ liability for not making reasonable accommodations for an employee who is a victim of domestic or sexual violence.

Ensuring that victims of domestic or sexual violence are treated fairly in the workforce is crucial to equality in society. It is important that these victims have the same opportunities as everyone else. About a year ago, my aunt applied for a job in a small community. She did not receive a call for an interview so she followed up in person. The employer basically stated that they were looking for employees who had a good reputation. She later found out that the employer was aware of her history and didn’t want the business to be affiliated with people who would tarnish their reputation.

In closing, I would like to reiterate my complete support of HB 2659 and the necessity of this bill being passed into law. Thank you for the opportunity to testify.

Jasmine Kaahanui
jkaahanu@hawaii.edu

kobayashi1-Joni

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 11, 2014 5:57 PM
To: HUS testimony
Cc: joyamarshall0416@gmail.com
Subject: *Submitted testimony for HB2649 on Feb 13, 2014 09:30AM*

HB2649

Submitted on: 2/11/2014

Testimony for HUS on Feb 13, 2014 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Marshall	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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kobayashi1-Joni

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 11, 2014 6:49 PM
To: HUSstestimony
Cc: mkyching@gmail.com
Subject: *Submitted testimony for HB2649 on Feb 13, 2014 09:30AM*

HB2649

Submitted on: 2/11/2014

Testimony for HUS on Feb 13, 2014 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Ching	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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To: Representative Mele Carroll, Chair
Representative Bertrand Kobayashi, Vice-Chair
HOUSE COMMITTEE ON HUMAN SERVICES

Re: **IN STRONG OPPOSITION TO HB 2649
RELATING TO EMPLOYMENT PRACTICES**

Aloha Chair Carroll, Vice Chair Kobayashi and the House Committee on Human Services:

I strongly OPPOSE the proposed HB 2649 which would eliminate protections created by Act 206, which mandates reasonable accommodation for victims of domestic and sexual violence.

The proposed changes are not only unrealistic and unfair, but also leave victims of domestic and sexual violence exposed to losing their jobs because of their victimization. In addition, the provision that this protection be afforded **only** to victims who obtain restraining orders is wrong. The vast majority of victims do NOT obtain restraining orders so again, this bill would place an unwarranted and often unsafe burden on victims of domestic and sexual violence.

I urge you to support victims of domestic and sexual violence by opposing HB 2649. Thank you for the opportunity to share my testimony.

Beverly Zigmond, D.N., CSAC
Women Helping Women Lana`i Advocate
PO Box 631067
Lana`i City, Hawaii 96763
808.565.6700

Wednesday, February 12, 2014

Jennifer's Testimony opposing HB 2649

Hearing to be held on: Thursday, February 13, 2014 at 9:30am

Conference Room 329 of the State Capitol, 415 South Beretania Street

To the Committee on Human Services regarding HB 2649:

As a victim of sexual violence, I do not support HB 2649 to remove employers' liability for not making reasonable accommodations for an employee who is a victim of domestic or sexual violence. As a dedicated working citizen contributing to Hawaii's economy in a full time position, I was blindsided by what happened to me, and could never have expected the toll it would take on my personal life and ability to perform in a normal work environment. For almost an entire year, my work and personal life was affected – between court dates and expected and rescheduled court dates to testify against my abuser, intensive counseling with a sex abuse treatment center, days of severe depression and anxiety from my abuse, and a 5 week leave of absence that was desperately needed, I do not know that I would still have a job today had it not been for the Hawaii Victims Leave Act, which protected not only my job, but also my ability to heal so that I could once again become a productive employee for my company.

There were multiple victims involved in my case; one in particular did not understand how the law protected her, and her company did not follow the law. As a result, she was fired from her job, causing more depression and anxiety for her, and ultimately removing her ability to function in any workplace. She now lives back on the mainland with her parents and has attempted suicide several times since the court hearing.

We are not victims of our own faults or doings, but of our abusers; to allow employers or any part of society to penalize or not be held responsible for penalizing the results that often come from domestic and sexual violence is counter-productive to our community and helping victims to heal from the damage imposed by our abusers. I passionately ask, for myself and for other unfortunate victims of these awful crimes, that you repeal HB 2649 and leave the Hawaii Victims Leave Act in tact as it should be.

Sincerely,

Jennifer Snowden

A SURVIVOR of sexual violence and still a productive employee of a highly respected business within the Hawaii community because of the Hawaii Victims Leave Act

kobayashi1-Joni

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 12, 2014 9:31 AM
To: HUS testimony
Cc: lnr@hawaii.edu
Subject: *Submitted testimony for HB2649 on Feb 13, 2014 09:30AM*

HB2649

Submitted on: 2/12/2014

Testimony for HUS on Feb 13, 2014 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Laura Reichardt	Individual	Oppose	No

Comments:

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kobayashi1-Joni

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 12, 2014 10:48 AM
To: HUS testimony
Cc: monique@whwmaui.net
Subject: Submitted testimony for HB2649 on Feb 13, 2014 09:30AM

HB2649

Submitted on: 2/12/2014

Testimony for HUS on Feb 13, 2014 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Monique R. Yamashita	Individual	Oppose	No

Comments: Date: February 12, 2014 To: Representative Mele Carroll, Chair Representative Bertrand Kobayashi, Vice-Chair HOUSE COMMITTEE ON HUMAN SERVICES From: Monique Yamashita, Deputy Director Re: IN STRONG OPPOSITION TO HB 2649 RELATING TO EMPLOYMENT PRACTICES Aloha Chair Carroll, Vice Chair Kobayashi and the House Committee on Human Services: I strongly OPPOSE the proposed HB 2649 which would eliminate protections created by Act 206 that mandated reasonable accommodation for victims of domestic and sexual violence. The proposed changes are unrealistic and unfair and will leave victims of domestic and sexual violence exposed to losing their jobs because of their victimization. In addition, the provision that this protection be afforded only to victims who obtain restraining orders is wrong. The vast majority of victims do NOT obtain restraining orders so this again places an unwarranted and often unsafe burden on victims of domestic and sexual violence. As the director for our domestic violence Emergency Shelter, I can tell you first hand that it is extremely important for victims of domestic violence to be given reasonable accommodations in order to keep their jobs. If they do not have these accommodations and end up losing their job then they will very likely end up homeless and in further danger. Please do not pass HB 2649. It would be a extreme detriment to the employers and especially the victims of domestic violence in Hawaii. On behalf of all staff, board members, volunteers, and program participants of Women Helping Women, I strongly urge you to dismiss HB2649, and keep in place employment protections for victims of domestic and sexual violence. Thank you so much for your time and consideration of my testimony. I can be reached at 579- 9696 or via email at monique@whwmaui.net if you have questions or need further information. Sincerely, Monique R. Yamashita Deputy Director Women Helping Women Maui

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February 12, 2014

TESTIMONY IN OPPOSITION TO HB2649

Dear Chair Carroll, Vice Chair Kobayashi, and House Human Services Committee Members,

I, Ruth McKay, Code number 4039561, want to register my opposition to HB 2649. We had a good law on the books that would protect good, loyal female employees who had to work to support their families. When one such employee secured a Restraining Order to protect herself she was fired by her employer. This loyalty should be a two way street and when she needed support from her employer she was shunned. This bill removes the protection that she deserves and takes us back to the dark ages. Please support these women and their children so they can earn a living while they are in a stressful situation.

Mahalo,

Ruth F. McKay
50 Puu Anoano St. # 3907
Lahaina, HI 96761

kobayashi1-Joni

From: P. Denise La Costa <PDENISE.LACOSTA@pruhawaii.com>
Sent: Wednesday, February 12, 2014 12:10 PM
To: repkobayashi@capitol.hawaii.gov; HUS testimony; Rep. Mele Carroll; Stacey Moniz; baker2 - Haley
Subject: OPPOSITION TO HB 2649
Importance: High

Aloha,

I AM WRITING THIS TESTIMONY TO OPPOSE HB 2649

If you have never been involved in any form of Domestic violence, or not known anyone who has felt the debilitating effects of it, you are one of the lucky few. If you have suffered from it or known anyone who has felt the debilitating effects of it, you know the terror that every day, every hour and every minute brings wondering, "What will I do to set it off today? What will happen next? How bad will it be? Oh, God, will this be the day that I am murdered? "

EACH AND EVERY PROTECTION that the state can provide to victims and families and the current protections that are in place need to remain in place and even strengthened. Therefore, HB 2649 should be summarily dismissed, torn up and never addressed again. The devastating effects of this bill will create a reversal of some of the important aspects created under SB 206.

Every 15 seconds there is an incidence of Domestic Violence occurs in America. Please help those of us that have been victims, to feel a little safer and know that YOU and your counterparts are concerned and want to protect those who are victims. We need all the help we can get help prevent more pain and suffering, fear and injury, and all-too-often death.

Mahalo Nui Loa for taking the time to read my note and understand my plea.

With Kindest Regards and Aloha,



P. Denise La Costa

Lynn A.S. Araki-Regan
Stephen E. Pike

Christopher R. Dang
Garrick L.H. Goo
Of Counsel

ARAKI-REGAN
& associates, llc
a limited liability law company

1823 Wells Street Suite 2A / Wailuku / Hawai'i / 96793
tel: (808) 244-6042 fax: (808) 249-2872

February 12, 2014

Representative Mele Carroll
Chair, Human Services Committee

RE: **HB2649**
Hearing Date: February 13, 2014
Hearing Time: 9:30 a.m.

POSITION: SUPPORT

Dear Committee Chair, Vice-Chair & Members:

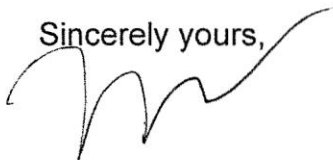
I am writing to ask for your support for HB 2649.

While I do not condone domestic violence in any way, I, as a small business owner, am concerned about this bill passing the burden and expense of addressing a large social problem onto businesses. This bill also does not account for the fact that we have to protect all of our workers, not just victims of domestic violence. Further, many employers, particularly small businesses, may not be able to make these accommodations. But the burden is now on them, NOT the individual causing the abuse.

Instead of passing the burden to our Hawai'i residents who struggle everyday to keep their businesses afloat, please focus on enacting stiffer penalties on the wrongdoers who create the this social problem that affects our entire community.

If you have any questions, please do not hesitate to contact me at 808-244-6042.

Sincerely yours,



Lynn A.S. Araki-Regan
Attorney at Law

kobayashi1-Joni

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 12, 2014 12:39 PM
To: HUS testimony
Cc: teresa.parsons@hawaii.edu
Subject: Submitted testimony for HB2649 on Feb 13, 2014 09:30AM

HB2649

Submitted on: 2/12/2014

Testimony for HUS on Feb 13, 2014 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Oppose	No

Comments: Honorable Chair, Representative Mele Carroll, Vice Chair, Representative Bertrand Kobayashi, and esteemed Human Services Committee members, Mahalo nui loa for allowing me to testify in STRONG OPPOSITION to HB 2649 relating to employment practices. I feel this bill is flawed and should not be moved forward without significant amendment. This bill creates burdens for survivors by requiring them to provide their employer with a copy of their temporary restraining order or protective orders. This violates their ability to maintain dignity in the face of a very private issue. Even if the survivor of domestic or sexual violence can and does provide employer a copy, the employer is not required to provide accommodation for the safety of the survivor of violence if he/she "reasonably believes" the restrained person could endanger other employees. For reasons I cannot understand nor support, this bill requires POSTING of the TRO or protective order at the survivor's place of employment. There are serious privacy, safety and confidentiality issues when survivors are forced to post their TRO or protective order at his/her place of employment. This bill eliminates the remedies under Act 206 that an employee can utilize to prove he or she is a survivor. Act 206 allows for statements from the employee's advocate or attorney, a medical or health care professional, a member of the clergy, a police report, etc... HB 2649 requires all survivors provide a copy of a TRO or protective order. For a myriad of reasons, not all survivors apply for or receive TROs or protective orders, but this doesn't mean they aren't survivors and deserving of protection. Finally, HB 2649 eliminates the entire section of reasonable accommodations for survivors (i.e. allowing the employee to change his/her work location, installing locks and security devices, allowing the employee to work flexible hours, screening telephone calls), AND it removes employers' liability for not making reasonable accommodations for an employee who is a victim of domestic or sexual violence. I appreciate the opportunity to provide testimony in STRONG OPPOSITION to HB 2649 and urge you to vote against this measure which undermines the protections currently afforded to survivors of domestic and sexual violence.

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February 12, 2014

LATE

To the Committee of Human Services and the Judiciary Committee:

RE: Please accept this as my testimony in support of the revisions of Bill HB2649

As a woman and a sympathetic human being I support protection for all women who are unfortunate to be subjected to domestic and/ or sexual violence. Also as a woman who is a business owner, I question as to why the onus of various rules of compliance would be placed on any employer's shoulders concerning something this dangerous in the first place. Aren't we considered to be innocent by-standers who are decent enough to help the victim make a living and to be more confident with themselves and independent? And don't we do this knowing that we may encounter dangerous situations not only for ourselves but for any or all of the employees in the same working vicinity? This is an injustice that must be righted.

I ask, why must an employer do the job of social workers, the government and law enforcers? This just doesn't make any sense. A TRO would address any compromising situation as law enforcement would be contacted immediately. Employers are not trained for this and may be seriously hurt or killed if they are placed in the middle of these scary and dangerous situations.

I implore you, please consider these revisions and take the appropriate actions for these amendments.

Sincerely,

Cindy Clark

Kihei, HI 96753

808 875-1146

LATE



181 Lahainaluna Road, Suite A, Lahaina, Maui, Hawaii 96761 808-667-2271 www.msimaui.com

February 12, 2014

House Speaker Joseph M. Souki
House District 8
Hawaii State Capitol Room 431

Subject: HB2649

Dear Speaker Souki:

Domestic violence is not an employer issue. The state should not make businesses bear the brunt of a problem that they are not a party to, open business up to civil action, and make them provide and pay for protection, well above and beyond that afforded by court system.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick M. Nava", is written over the typed name and title.

Rick M. Nava
President



February 12, 2014

LATE

Mele Carroll
Chairman
Human Services Committee

Dear Honorable State Representative Mele Carroll:

I would like to provide the following testimony in support of HB2649 relating to domestic violence.

HB2649 seeks to amend an existing law that has shifted the responsibility of law enforcement, government, and social services to businesses who do not have the expertise to deal with this issue. Businesses should not bear the brunt of a problem they are not a party to and be exposed to civil action and bear the cost to provide and pay for victim protection which is well above and beyond that afforded by the court system.

The current law will not prevent abusers like the recent case in Molokai (Maui News March 2013) where the perpetrator was free on a \$1,000.00 bail so he was able to kill his girlfriend. I ask myself what if this act of violence happened at our company. We should not have to bear the burden of a problem we are not a party to and be exposed to civil action.

We can live with the original intent of the law of preventing discrimination and establishing reasonable work accommodations but not the inclusions of employer mandates verses employer suggestions.

I urge you and the Human Services Committee to support HB 2649. Please feel free to call me for any questions or information needed.

Thank you for your consideration.

Yours truly,

Nelson T. Okumura
President

LATE



**Testimony to the House Committee on Human Services
Thursday, February 13, 2014
Conference Room 329**

**RE: House Bill 2649 Relating to employment practices;
and domestic violence**

Chair Mele Carroll, Vice Chair Bertrand Kobayashi, and members of the committee;

Mahalo for this opportunity to testify, my name is Jim Walsh, I am the General Manager for Atlantis Adventures - Maui. I am writing this testimony on behalf of Atlantis Adventures Hawaii. Atlantis Adventures **supports SB2649 as amended.**

I urge you Pass this Bill in committee. This Bill correctly recognizes the importance of employee protections from domestic violence, and places the ultimate responsibility on law enforcement, and government for the protection of people from discrimination and domestic violence.

As a business, we want to keep our employees safe, and the amendments as stated give the business community a clear path to follow. If a TRO is issued, we follow those requirements. If there is a violation of TRO on our premises we follow the rules and call the police.

Again please pass this bill as amended

Respectfully,

James Walsh
General Manager
Atlantis Adventures Hawaii
658 Front Street, #175
Lahaina, HI. 96761
Tel (808) 667-6604
Fax (808) 661-1210
jwalsh@atlantisadventures.com



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

WRITTEN ONLY

DIRECTOR OF HEALTH

In reply, please refer to:
File:

Senate Committee on Human Services

H.B.2649, Relating to Employment Practices

**Testimony of David Sakamoto, M.D., M.B.A.
Deputy Director, Health Resources Administration**

February 13, 2014

LATE

1 **Department's Position:** The Department of Health (DOH) has strong concerns about the possible the
2 negative impacts to victims of domestic and sexual violence.

3 **Fiscal Implications:** None.

4 **Purpose and Justification:** The bill would amend existing statute prohibiting discrimination in the
5 workplace for victims of domestic or sexual violence. We are concerned that it would create undue
6 burdens for survivors by requiring them to provide their employer with a copy of their temporary
7 restraining order (TRO) or protective order (PO). The bill eliminates the methods under existing law
8 that an employee can utilize to prove that he or she is a survivor, including statements from the
9 employee's advocate or attorney, a medical or health care professional, a member of the clergy, or a
10 police report. H.B. 2649 would require that all survivors provide a copy of a TRO or PO. Not all
11 survivors apply for or receive TROs or POs. Posting of the TRO or PO at the survivor's place of
12 employment raises serious privacy, safety, and confidentiality issues. H.B. 2649 also removes the entire
13 section of reasonable accommodations for survivors such as allowing the employee to change his or her
14 work location, installing locks and security devices, allowing the employee to work flexible hours, or
15 screening telephone calls.

1 Thank you for the opportunity to testify.

kobayashi1-Joni

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 12, 2014 8:52 PM
To: HUS testimony
Cc: annsfreed@gmail.com
Subject: Submitted testimony for HB2649 on Feb 13, 2014 09:30AM



HB2649

Submitted on: 2/12/2014

Testimony for HUS on Feb 13, 2014 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Hawai'i Women's Coalition	Oppose	No

Comments: The Hawai'i Women's Coalition STRONGLY OPPOSES this bill that would subvert the recently won rights of domestic violence and sexual assault victims in the workplace. In 2011, the state of Hawaii enacted Act 206 to protect the employment rights of victims of domestic violence and sexual violence by prohibiting discrimination on the basis of their status as a victim, and requiring employers to make reasonable accommodations for employees who are victims. HB 2649 amends Act 206 in several ways. First, it requires that victims provide a copy of a temporary restraining order (TRO) or protective order to their employer, and requires that the employer POST the TRO/protective order in the place of employment. We are against this requirement for several reasons. First, many victims never apply for TRO, and for those that do apply, some are not granted. This does not negate their status as a victim, it simply reveals the institutional burdens for victims to come forward, potentially pay for an attorney, file the necessary paperwork, and prevail. Second, this requirement changes the ways a victim can prove their status in Act 206, including, a document from law enforcement, such as a police report, a letter from an attorney or advocate, a letter from a counselor or victim services provider, a letter from a healthcare professional or a letter from a clergy member. This places an additional burden on a victim to successfully prevail in court on a TRO, and then to publicly post a private document at their place of employment, which presents safety, privacy and confidentiality issues. Again we strongly oppose this measure and ask the you allow it to die the death it so richly deserves. Ann S. Freed Co-Chair, Hawai'i Women's Coalition Mililani, HI 96789 annsfreed@gmail.com

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LATE



Testimony to the House Committee on Human Services
State Capitol, Conference Room 329
February 13, 2014 at 9:30am

**RE: SUPPORT FOR HOUSE BILL 2649
RELATING TO EMPLOYMENT PRACTICES**

Dear Chair Carroll, Vice Chair Kobayashi, and Members of the Committee:

The Maui Chamber of Commerce requests your SUPPORT of House Bill 2649 to amend a law passed in 2011, through Act 206, that did not adequately weigh the impact on businesses.

Here is a brief summary of what occurred.

- The original intent of the introduced bill (SB229) was to prevent discrimination against victims of domestic violence, with victims of sexual violence later included.
- The bill was further amended to include what were termed "reasonable accommodations" that employers "shall" provide and a Civil Action clause was included against employers if it was deemed that an employee was denied reasonable accommodations.
- During the process, a total of 12 pieces of written testimony were submitted in 2011 in favor of the bill, comprised of 3 separate pieces of testimony each from the Hawaii Civil Rights Commission, the ACLU of Hawaii, and the Hawaii Coalition Against Domestic Violence, equating to 9 of the twelve testimonies. The other 3 written testimonies came from individuals.
- There was also 1 written testimony submitted in opposition to the bill from Poka Laenui, Executive Director of Hale Na Au Pono (Wai'anae Coast Community Mental Health Center), who shared:
 - There does not seem to be adequate evidence to show that there has been a pattern of discrimination against victims of domestic violence requiring the creation of a separate category of non-discrimination;
 - The committee report uses this bill to transfer upon employers the cost of doing business the burden of underwriting what is essentially a social-criminal and financial social issue; and
 - As written, this bill would allow easy abuse of the protection of the prohibition against discrimination, thus wrecking havoc to employers attempting to carry out legitimate management decisions.

Further, this testifier noted that the law already provided for victims of crime under "court record" and asked "Why not leave things as they are and allow those who have been adjudicated by the courts as such victims, claim that protection under the "court record" category, rather than create a new status which has no basis for verification behind it?"

- While testimony by the Hawaii Civil Rights Commission stated that "a victim is vulnerable to being rejected for or fired from a position when an employer learns that she may have been subjected to abuse" and other testifiers made similar comments, none of the testimony provided qualified that this was a substantial problem in Hawaii or noted the size of the problem.

- Testimony by the American Civil Liberties Union of Hawaii (ACLU of Hawaii) referenced a case in New York that the national ACLU took on, but none in Hawaii.
- We and many other business organizations were not aware of this bill, or we would have rung in on the bill when it was heard. Consequently, there is no testimony from businesses, despite the fact that the law impacts all employers.
- In speaking with a number of legislators about the law after it passed and we were made aware of it, many legislators said that the implications to businesses were not addressed in 2011 and they did not realize there would be any concerns when creating this law.

Our concerns with the law passed in 2011 include:

- It came about without justifying that there was a real problem with discrimination against victims of domestic or sexual violence in the workplace that needed to be solved;
- It does not recognize that domestic violence is not an employer issue and that businesses do not have the expertise to deal with these issues;
- It put the burden and expense of addressing a large social problem onto businesses;
- It does not recognize that businesses have to protect all of their workers, not just victims of domestic or sexual violence;
- It does not help prevent abuse with stiffer penalties for abusers, higher bail amounts when arrest for abuse occur, public education, etc.;
- The “reasonable accommodations” are an additional layer of workplace mandates that will create “undue hardships” for many employers, particularly small businesses, who may not be able to make the accommodations outlined in the law. The language does not say “may provide”, it says “shall provide”;
- The “undue hardship” language is vague and very subjective and adds a burden of proof onto employers. In theory, it sounds reasonable as an “out clause,” but there is no clarification as to what constitutes an “undue hardship,” which could be very different depending on the type, size, location, structure, etc. of the business and the victim’s job duties. Many businesses in Hawaii are micro businesses, with just one or two employees. How are they supposed to provide these accommodations? Further, who will assess this and what proof is required?;
- Businesses already offer various leaves, which can be used in these circumstances and a Victims Leave statute is in place to address leaves;
- It does not address the fact that many victims elect not to get protections afforded them through the TRO and protective order process;
- Without a TRO or protective order, levels of necessary protection are unclear and businesses could be jumping through all kinds of unnecessary hoops, causing undue hardship, because they were not fully aware of the entire situation;
- It does not address the fact that many victims choose to continue relationships with abusers or return to homes or places of abuse, and that the abuse can continue to cause problems in the victims life for many years;
- There is no timeline or end date for the protections afforded victims, yet even protective orders have end dates;
- It could be used as a tool by an employee whose job is in jeopardy for legitimate reasons to inappropriately hang on to their job;
- It puts businesses in the middle of a situation they are not a party too, have no direct knowledge of, and ultimately have no ability to solve;
- Domestic and sexual violence is a big issue that government and social service agencies are far better geared to address; and
- It completely leaves out any responsibility for those causing the abuse.

Therefore, we proposed HB2649 to address the above by:

- Agreeing that employers should not discriminate against victims of domestic and sexual violence, which was the original intent and should solve the problem to the extent a problem exists;
- Including a Temporary Restraining Order and/or Protective Order in the process as it:
 - Protects the victim in a variety of situations, including providing protections at their place of work, which is what the bill seeks to do. If employers are expected to provide some sort or bubble of protection, it should be clear what they are supposed to protect against. If an employee does not get the TRO or protective order, workplace protection is greatly diminished. If the abuser were to come to the workplace, that would not be illegal and there is no urgency or reason for the police to take action unless there is a clear threat at that moment. However, abuse is often very subtle. An abuser could be staking a person, hanging around their place of employment to intimidate them, but without a TRO or protective order that says they are unable to do so, it is not illegal;
 - Extends those protections to other workers in the workplace. By having the victim obtain a TRO or protective order, there is generally a provision preventing the restrained person from coming within a determined proximity of the workplace. This affords all employees at the workplace a level of protection as the police will promptly respond to any violation of the order, whether or not the victim is present at that moment;
 - Sets the parameters for protection, helping all parties understand the issue and protections afforded the victim by the court system so others can help protect the victim, notifying police of any violation to the protection order; and
 - Takes the employer out of being in the middle, particularly if both individuals work for the same employer, by recognizing that there are two sides to every story and letting the court make a determination. The courts do not grant all TROs and if a victim provides a letter from a doctor or pastor, those individuals are not likely to question the other party. It's not their role. That is what our legal system is for.

We recognize that all victims may not want to take legal action and file for a TRO or protective order against someone they love and that victims of sexual violence are even less likely to seek this aid, but if they will not seek protection for themselves, and their co-workers, why should that burden then shift to businesses? Employees have a say as to whether they continue to go back to dangerous situations, but the employers have no say and could be burdened with hardships for many years if a victim continues to live with abuse.

In reviewing other ways employers could tackle the issue of a victim not wanting to obtain a TRO or protective order, we explored a concept to afford employers the ability to file for a protective order to protect their workplace and all employees in the event that a victim did not want to obtain one. However, in discussing how this might work, we could not see how it could work, as employers are not directly involved and cannot validate the abuse. The employer's information, absent a court ruling, is second or third hand (hearsay), with no actual knowledge, and we cannot see the courts granting a protective order on that basis.

- Amending the reasonable accommodations language to have businesses help in the notification process, alerting authorities if a TRO or protective order is violated. If a person restrained by a TRO or protective order were to violate the order by visiting or calling a victim at home, the appropriate response would be to call the police. That would be a "fair" response for businesses and we expect they would be happy to contact

the authorities should such a breach happen at the workplace. However, that should be the extent of the "mandated" expectation, but many employers are happy to voluntarily make reasonable accommodations to protect employees that do not cause hardships;

- Recognizing that the court is in the best position to assess the risk and does so in the TRO and protective order process. Should a TRO or protective order indicate a high risk situation that could put other employees in harms way, then there should be allowances to protect the other staff of an organization, not just the victim, as employers want to protect all employees; and
- Not attempting to criminalize businesses for a situation they did not create. They are not a party to the relationship. The abusers should be held accountable for their actions, not other members of society.

We completely understand that the role of the Hawaii Coalition Against Domestic Violence is to strongly advocate for the victims of domestic violence and seek to minimize challenge's victims experience as a result of the domestic violence in their lives. All reasonable people want an end to domestic and sexual violence. But, that is not the responsibility of the business sector and this bill was created with tunnel vision, with plenty of room for unintended consequences. Further, despite the best efforts by many, tragic situations occur.

Last year a Molokai woman was shot dead by her boyfriend, whom she had been in a relationship with for nine years and had four children. Four days prior to killing her, the boyfriend was arrested for abusing her and there had been a history of past violence. He was arrested and charged with abuse, but released after posting \$1,000 bail. He then sought, found, and shot his girlfriend in the chest. This unconscionable and senseless violence is horrific and heartbreaking. It indicates many challenges faced in addressing domestic violence issues. Had this random act of violence happened at her work place, imagine the impact on that business, particularly given the current law.

The bottom line is that we should not have made businesses bear the brunt of a problem they are not a party to, open businesses up to civil action, and make them provide and pay for protection, well above and beyond that afforded by the court system. Their job is to employ people, manage their operations, and deliver needed goods and services.

There are always a few bad apples among the many good ones in every group, and that includes employers. However, this law was passed without demonstrating that there was a real problem with discrimination against victims of domestic and sexual violence in this workplace and it will cause undue harm to businesses and unintended consequences. Good businesses should not have to endure a bad road. And since we agree with the language to prevent discrimination, the discrimination issue should be solved to the extent a problem exists.

Therefore, we ask for your support of HB2649 to fix the law.

Sincerely,



Pamela Tumpap
President

LATE

HCD CORP.

dba **Hawaiian Carpet One, Hawaiian Ceramic Tile**
162 Alamaha St., Kahului, Hawaii 96732 USA
Lisc. # C-11526, 808-893-2229 fax 808-893-2229, cell 808-870-4420
myleskawakami@msn.com

Testimony to the House Committee on Economic Development & Business
State Capitol, Conference Room 329
February 13, 2014 at 9:30am

RE: SUPPORT FOR HOUSE BILL 2649 RELATING TO EMPLOYMENT PRACTICES

Dear Chair Carroll, Vice Chair Kobayashi, and Members of the Committee:

I am writing in support of HB2649 to amend a law passed in 2011 that put the burden and expense of addressing a large social problem (the protection of domestic and sexual violence victims) onto businesses and did not adequately consider the impact on businesses. Further, there was no testimony that showed that there was a real problem in terms of discrimination against victims of domestic and sexual violence and that an additional protective category was required.

Unfortunately, businesses were not aware of the bill and their voices were not heard, so the law was passed. Today, many businesses still do not know the law exists and could be detrimental to their business with the accommodation requirements and Civil Action clause. HB 2649 seeks to amend the law to provide reasonable accommodations businesses can make to protect all workers, not just victims of domestic violence.

As the law exists today, with vague terms, no Temporary Restraining Order or Protective Order required, no time limits, there are many grey areas that could easily generate unintended and harmful consequences to businesses.

Further, domestic and sexual violence is not an employer issue and the law now shifts the responsibility of law enforcement, government, and social services to businesses who do not have the expertise to deal with these issues. It is wrong.

Therefore, I ask for your support of HB2649 to correct this situation as soon as possible.

Sincerely,

Myles Kawakami
President