



STATE OF HAWAII  
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February 27, 2015

The Honorable Karl Rhoads, Chair,  
The Honorable Joy A. San Buenaventura, Vice Chair, and  
Members of the House Committee on Judiciary

**House Bill No. 683**

**RELATING TO THE HAWAII CIVIL RIGHTS COMMISSION.**

Friday, February 27, 2015  
3:00 p.m. Rm 325, State Capitol

Testimony of Elaine N. Young, Acting Director,  
Department of Labor and Industrial Relations (DLIR)

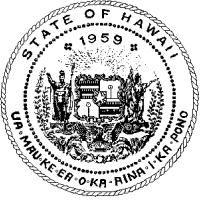
Chair Rhoads, Vice Chair San Buenaventura, and members of the Committee—the DLIR **strongly supports** the measure, which provides discretion for the Executive Director of the Hawaii Civil Rights Commission (HCRC) to either issue a final demand or dismiss the complaint and issue a notice of right to sue.

The HCRC has not obtained restoration of staffing resources lost during the Great Recession when positions were abolished and a Reduction-in-Force (RIF) occurred.

The mandatory wording in the statute, with the use of the word "shall" in mandating each next step of the process has several consequences negatively affecting the efficiency and effectiveness of HCRC civil rights law enforcement. The HCRC Executive Director is forced to expend limited enforcement attorney time and resources on conciliation of cases that meet the threshold reasonable cause standard, but are not suitable for litigation, some of which may not be provable by a preponderance of evidence standard at hearing or trial.

In addition, the HCRC cannot efficiently and effectively marshal its civil rights law enforcement resources, including limited enforcement attorney time and resources, to set enforcement priorities and dedicate sufficient resources to prosecute priority cases.

The proposed amendment will allow for setting of enforcement priorities and more efficient use of limited enforcement resources in investigation, conciliation, and litigation. Similar discretion is provided to and exercised by the U.S. Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.



**LATE**

# CIVIL RIGHTS COMMISSION

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February 27, 2015  
Rm. 325, 3:00 p.m.

To: The Honorable Karl Rhoads, Chair  
Members of the House Committee on Judiciary

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

Re: H.B. No. 683

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 supports H.B. No. 683, with a request for an amendment described below.**

H.B. No. 683 provides for the HCRC Executive Director to exercise discretion in cases after a determination has been made that there is reasonable cause to believe that discrimination has occurred and conciliation efforts have failed, to litigate the case or dismiss the complaint and issue a notice of right to sue. The current law, HRS §§ 368-13(e) and 368-14(a), requires the Executive Director to issue a final conciliation demand and docket these cases for litigation. The discretion provided by the bill will allow better use of limited HCRC enforcement resources in prosecuting and litigating cases.

The current statute imposes mandatory steps in the HCRC process: when the Executive Director makes a reasonable cause determination, the Executive Director *shall* attempt to resolve the complaint through conciliation of the complaint; if conciliation fails and the complaint is not resolved through a conciliation agreement, the Executive Director *shall* issue a final conciliation demand; if, fifteen days after

the final conciliation demand, the case is not resolved, the case *shall* be docketed for a contested case hearing before a hearings examiner.

The mandatory language in the statute, with the use of the word "shall" in mandating each next step of the process has several consequences negatively affecting the efficiency and effectiveness of HCRC civil rights law enforcement:

The HCRC Executive Director is forced expend limited enforcement attorney time and resources on conciliation of cases that meet the threshold reasonable cause standard, but are not suitable for litigation, some of which may not be provable by a preponderance of evidence standard at hearing or trial.

In addition, the current mandatory process makes it difficult for the HCRC to efficiently and effectively marshal its civil rights law enforcement resources, including limited enforcement attorney time and resources, to set enforcement priorities, and dedicate sufficient resources to prosecute priority cases.

The proposed amendment to subsection 368-13(e) provides for the Executive Director to exercise discretion in cases where there has been a determination of reasonable cause to believe that an unlawful act of discrimination has occurred and conciliation efforts have failed to resolve the complaint, to either issue a final demand or dismiss the complaint and issue a notice of right to sue. This will allow for setting of enforcement priorities and more efficient use of limited enforcement resources in investigation, conciliation, and litigation. **Similar discretion is provided to and exercised by the U.S. Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.**

**Requested amendment: A proposed H.D.1 is attached that makes an exception to the exercise of discretion by the Executive Director under the amendment to subsection 368-13(e). The proposed H.D.1 adds a new subsection (f) that maintains the mandatory language from the current statute in cases that are dual-filed under both our state fair housing law, chapter 515, and the federal Fair Housing Act. Our federal partners at the U.S. Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity (FHEO) have advised us that this exception is required to maintain substantial equivalence with federal fair housing law.**

The HCRC supports passage of H.B. No. 536, with the amendment requested above.

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## A BILL FOR AN ACT

RELATING TO THE HAWAII CIVIL RIGHTS COMMISSION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. Section 368-13, Hawaii Revised Statutes, is amended to read as follows:

**"§368-13 Investigation and conciliation of complaint.** (a) After the filing of a complaint, or whenever it appears to the commission that an unlawful discriminatory practice may have been committed, the commission's executive director shall make an investigation in connection therewith. At any time after the filing of a complaint but prior to the issuance of a determination as to whether there is or is not reasonable cause to believe that part I of chapter 489, chapter 515, part I of chapter 378, or this chapter has been violated, the parties may agree to resolve the complaint through a predetermination settlement.

(b) The executive director shall issue a determination of whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred within one-hundred and eighty days from the date of filing a complaint unless the commission grants an extension of time to issue a determination.

(c) If the executive director makes a determination that there is no reasonable cause to believe that an unlawful discriminatory practice has occurred in a complaint filed, the executive director shall promptly notify the parties in writing. The notice to complainant shall indicate also that the complainant may bring a civil action as provided under section 368-12.

(d) When the executive director determines after the investigation that there is reasonable cause to believe that an unlawful discriminatory practice within the commission's jurisdiction has been committed, the executive director shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods such as conference, conciliation, and persuasion.

(e) [~~Where~~] When the executive director has determined that there is reasonable cause to believe that an unlawful discriminatory practice has occurred and has been unable to secure from the respondent a conciliation agreement acceptable to the commission within one-hundred and eighty days of the filing of the complaint unless the commission has granted an extension of time, the executive director [~~shall~~], in the executive director's discretion, may:

(1) [~~demand~~] Demand that the respondent cease the unlawful discriminatory practice[~~;~~]; or

(2) Dismiss the complaint and issue a notice to the complainant indicating that the complainant may bring a civil action as provided under 368-12.

The executive director's determination that a final conciliation demand is to be made shall be subject to reconsideration by the commission on its own initiative but shall not be subject to judicial

review. The executive director may demand appropriate affirmative action as, in the judgment of the executive director, will effectuate the purpose of this chapter, and include a requirement for reporting on the manner of compliance.

The executive director's determination that a complaint is to be dismissed and a notice of right to sue issued shall not be subject to reconsideration by the commission or judicial review."

(f) Subsection (e) to the contrary notwithstanding, on complaints alleging violations of both chapter 515 and the federal Fair Housing Act, Title VIII of Public Law 90-284 (42 U.S.C. 3601, et seq.), as amended, when the executive director has determined that there is reasonable cause to believe that an unlawful discriminatory practice has occurred and has been unable to secure from the respondent a conciliation agreement acceptable to the commission within one-hundred and eighty days of the filing of the complaint unless the commission has granted an extension of time, the executive director shall demand that the respondent cease the unlawful discriminatory practice.

The executive director's determination that a final conciliation demand is to be made shall be subject to reconsideration by the commission on its own initiative but shall not be subject to judicial review. The executive director may demand appropriate affirmative action as, in the judgment of the executive director, will effectuate the purpose of this chapter, and include a requirement for reporting on the manner of compliance.

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: \_\_\_\_\_