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February 17, 2015

The Honorable Mark M. Nakashima, Chair  
The Honorable Jarrett Keohokalole, Vice Chair  
Members of the House Committee on Labor & Public Employment

HOUSE Bill No. 683

RELATING TO THE HAWAII CIVIL RIGHTS COMMISSION.

Tuesday, February 17, 2015  
10:00 a.m. Rm 309, State Capitol

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

Chair Nakashima, Vice Chair Keohokalole, 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.



# HAWAI'I CIVIL RIGHTS COMMISSION

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February 17, 2015  
Rm. 309, 10:00 a.m.

To: The Honorable Mark Nakashima, Chair  
Members of the House Committee on Labor & Public Employment

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.**

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.**

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

First of all, while I was still employed and party's by my former employer were being conducted (approx. 5 yrs. ago), clients of my former employer were brought to my neighbor's home, a lawyer listed under the HCRC listing came to my neighborhood to say "I have nothing against her but,..." and started discussing a question I had put to her while at work. (It was in regards to legal differences between titles.) Shortly after this, comments of a fellow co-worker saying that I had "sexually harassed him" and how he had reported the incident to the HCRC, etc. were also partied about next to my home. (Supposedly the sexual harassment was because I secretly fantasized about being with him or dreamt of him. And this type of partying occurring, approx. a yr. after hearing a male shout out the fellow employees name and saying it was him, and "if you want to f\*\*k, let's f\*\*k", in my neighborhood. )

Years later, as harassment increased at work, I contacted the HCRC ([DLIR.HCRC.INFOR@hawaii.gov](mailto:DLIR.HCRC.INFOR@hawaii.gov)) and requested to have whatever forms necessary to file my claim mailed to me, as at the time I didn't have a printer. I received the forms within a few days and mailed the documents back & should have been received by the HCRC no later than July 13, 2013. After not hearing or being contacted by anyone, I called the EEOC, (approx. mid August 2013) thinking I had filed with them, but learning it was under the HCRC and needed to contact them directly, though I was told the HCRC had received my claim, but that no one had started working on it as of yet.

I waited another month, and didn't email or contact the HCRC until September. At which point I was told they were understaffed and that someone would contact me when my claim was reviewed. So, I waited. I was finally contacted just prior to Thanksgiving, and spoke with a man, Wayne Akana, who said that because he had no land line by his computer needed to contact me using his cell phone. After what felt like a half an hour of discussing my claim and the harassment I had gone through, he mentioned that we had been discussing my claim for over 2 hours, and his cell phone needed to be recharged, so he would need to call me back. During the conversation he asked if anyone had ever mentioned how they were "gay" or if there were any disclosures by other co-workers. Something about the conversation made me call the HCRC to verify that the male I had spoken with was indeed from their office, which was confirmed. Shortly thereafter, I was contacted by the male again, and he said that this time he was on a land line, so not near a computer, as such it would be approx. a week before I received the document, which I was to sign and return as soon as possible, to process my claim. (This was as he would need to type up the document, turn it into another clerk who would need to retype the document, and mail it to me.) Now by this time, I was concerned as my claim was based on the ability of the HCRC to pull the security tapes that I felt would be crucial to my claim as there would be proof of not only mental harassment but physical harassment. But after discussing this with Mr. Akana, was told that the request for security footage would not be obtained until the second investigation was completed, with an estimated time frame of 2 years. Now, security footage was crucial to my claim, and 2 years was too long to wait, so I called the department on Dec. 5, 2013, spoke with Mr. Akana's immediate supervisor a Stephen Chang, He told me not to worry about the sexual orientation portion that Mr. Akana had checked off, as it was just "perceived" (comments that I was "gay" at work), and that he would request the security footage, but was only able to obtain a week's worth, not the entire 5 months I had requested as it would be too much.

I was then contacted by Robin Rodolph, who advised me (something I had heard numerous times from the HCRC by this time) that odds were that my claim would be dismissed so to look for a lawyer. Which I had already explained to the HCRC that the lawyers I had spoken with to date were telling me that it was "legal for an employer/employee to rifle through my bag" without my knowledge, that my "shirt wasn't lifted high enough", and that they "preferred penetration", etc. and that they were my last chance for justice to be served. At which point I learned that my request for security footage to be obtained was not made, and that there had been orders issued to not obtain the security footage until the completion of the second investigation, again with an ETA of 2 years.

So, I started emailing the department, with questions as to their process, telling them that two days after submitting my "book" of what occurred that my neighbor was yelling "don't insult us" upon arriving home, and how small the dollar amount I was requesting was. (Because of all the issues and commentary that I had to put up with the past 7 yrs. I listed an outrageous amount for my claim, and mentioned "fair".) Which a day later became, "what do you think you are...." and the company's name, for the reason behind the dollar amount, I listed in my claim. (This after another party, where mention of my "book" and my neighbor wanting to read it.) After a mock investigation where one of the harassers, a client of my former employer, came to mention her name, address, etc. at which she then mentioned "any more bright ideas", "my daughter's involved that's why I did it", I emailed the head of the HCRC in regards to my frustration with the process, what I now heard coming from my neighborhood after midnight, etc. What I received in response was that the HCRC was understaffed and flooded with claims. That it was not an unreasonable time frame, and that the only exceptions were for people who were dying, etc. If not, I needed to wait my turn. Even requests to just preserve the security footage, even if it wasn't viewed until 2 years later were dismissed, with they would not request the footage until the second investigation, with 2 yrs. not being unreasonable for the time frame. (I still have the letters and emails regarding this)

When I submitted a request to the EEOC to perform an SWR, I received a letter within a week, stating that the HCRC had conducted their investigation according to procedure. Even though I pointed out errors in my testimony, the actions/comments of the "investigators" (including the final commentary after a "mock investigation" of "we're dismissing the claim. I typed up the letter, and you should receive it in a few days", which was truth, as I received the letter, from Constance Yonashiro, within two days after the comment.) After it was dismissed, for several months thereafter, comments of how they had to make me "delusional", as too many people were involved, "you asked for too much", "Million dollars take it or leave it", etc. were made. (Always from around 11pm, or when I finally laid down for sleep) Along with "who are they going to believe, me or you".

Now, to remove the rights of the victims, such as myself, by allowing "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." Is a grave disservice to the victims. Even when it's like my case/claim and dismissed, regardless of who I contact. The HCRC is there to protect our civil rights, not abuse the power they have over victims like me who see them as their last opportunity to receive that justice. And when something like my case occurs, then ever more so, the victim should be

able to appeal and continue to appeal that decision, so that their rights are intact. The victim is already a victim, don't make them a victim to the legal system in place as well.