



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 23, 2018
Rm. 211, 10:30 a.m.

To: The Honorable Donovan Dela Cruz , Chair
Members of the Senate Committee on Ways and Means

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

Re: S.B. No. 2805

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 (on the basis of disability). 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 S.B. No. 2805.

S.B. No. 2805, authorizes the HCRC Executive Director, in cases in which a notice of cause has been issued and conciliation efforts fail, to exercise discretion to either: 1) issue a final demand, and docket the case for a contested case hearing; **OR**, 2) dismiss the complaint and issue a notice of right to sue. The bill also provides an exception for dual-filed fair housing cases, as required by U.S. Department of Housing and Urban Development (HUD) federal substantial equivalence requirements.

The current HRS § 368-13(e) mandates that when conciliation efforts in a cause case fail to secure a conciliation settlement, the Executive Director *shall* issue a final conciliation demand. § 368-14 then requires that the case be docketed for contested case hearing / trial 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, affecting the way that cases are investigated and conciliated.

The bill provides for prosecutorial discretion, allowing the Executive Director to decide which cases should be litigated. **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 current mandatory language creates problems and inefficiencies, stemming from the difference between the “reasonable cause” standard applied in investigation and the “preponderance of evidence” standard applied in litigation, administrative hearing and judicial review. Simply put, there are cases that are cause cases but not litigation cases, in which there may be reasonable cause, but it would be difficult to prevail at hearing and on appeal. The result is that the HCRC Executive Director is forced to use limited resources and enforcement attorney time 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, rather than focusing resources on strong cases that should be litigated.

S.B. No. 2805 also provides a new subsection 368-13(f) that makes an exception to the exercise of discretion by the Executive Director under the amendment to subsection 368-13(e). The new subsection (f) maintains the mandatory language from the current statute for cases that are dual-filed under both our state fair housing law, chapter 515, and the federal Fair Housing Act. These comprise approximately 10-15% of the complaints filed with the HCRC. 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 S.B. No. 2805.

SB-2805

Submitted on: 2/21/2018 2:02:49 PM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments: