



# HAWAI‘I CIVIL RIGHTS COMMISSION

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

Tuesday, February 15, 2022  
Via Videoconference

To: The Honorable Clarence K. Nishihara, Chair  
The Honorable Lynn DeCoite, Vice Chair  
Members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs

The Honorable Donna Mercado Kim, Chair  
The Honorable Michelle N. Kidani, Vice Chair  
Members of the Senate Committee on Higher Education

From: Liann Ebesugawa, Chair  
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 2364

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.

Article I, section 5 of the Hawai‘i Constitution provides:

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, ***nor be denied the enjoyment of the person’s civil rights or be discriminated against in the exercise thereof because of race, religion, sex, or ancestry.***

(emphasis added).

**The HCRC strongly opposes S.B. No. 2364, because it codifies sex discrimination into state law.**

S.B. No. 2364, if enacted, will prohibit *males* who fail to register with the Selective Service System from: enrolling at, or receiving education from, any campus of the University of

Hawai'i System; receiving state educational financial assistance; and being eligible for county or state employment or service. On its face, because the federal Military Selective Service Act, 50 U.S.C. § 3802(a), only applies to males, the proposed prohibition is limited to males. It imposes a discriminatory burden on men that does not apply to women. In addition, the new prohibition would likely bar young men who are conscientious objectors based on their religious beliefs from state higher education and county or state employment or service, including service in elected office.

**The HCRC strongly opposes S.B. No. 2364**, and urges the Committee to hold the bill.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2022**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2364, RELATING TO SELECTIVE SERVICE.

**BEFORE THE:**

SENATE COMMITTEES ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND  
MILITARY AFFAIRS AND ON HIGHER EDUCATION

**DATE:** Tuesday, February 15, 2022      **TIME:** 3:00 p.m.

**LOCATION:** State Capitol, Via Videoconference

**TESTIFIER(S):** Holly T. Shikada, Attorney General, or  
Lori N. Tanigawa, Deputy Attorney General

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Chairs Nishihara and Kim and Members of the Committees:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to require compliance with the Military Selective Service Act (MSSA) for an individual to enroll in a state-supported post-secondary educational institution, qualify for state financial assistance for post-secondary education, or be eligible for employment by or service for the State or any of its political subdivisions.

Because the MSSA only requires men to register for the draft upon reaching the age of eighteen, this bill utilizes a sex-based classification. Sex-based classifications are suspect and subject to strict scrutiny. "Under strict scrutiny analysis, the law is 'presumed to be unconstitutional unless the state shows compelling state interests which justify such classifications and that the laws [involved] are narrowly drawn to avoid unnecessary abridgements of constitutional rights.'" *Coyle v. Compton*, 85 Hawai'i 197, 204, 940 P.2d 404, 411 (App. 1997) If the Committees decide to pass this bill, we recommend that the bill be amended to specifically identify the compelling state interest involved and how the bill is narrowly drawn to further it.

In addition, we note that section 6 of article X of the Hawai'i State Constitution gives the Board of Regents of the University of Hawai'i "exclusive jurisdiction over the internal structure, management, and operation of the university." Section 6 further provides: "[t]his section shall not limit the power of the legislature to enact laws of

statewide concern. The legislature shall have the exclusive jurisdiction to identify laws of statewide concern." If the Committees decide to pass this bill, we recommend an amendment that adds a statement identifying this bill as a law of statewide concern.

Thank you for the opportunity to provide these comments.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
And  
Senate Committee on Higher Education  
Tuesday, February 15, 2022, at 3:00 p.m.  
By  
Hae K. Okimoto  
Associate Vice President for Student Affairs  
University of Hawai'i System

### SB 2364 – RELATING TO SELECTIVE SERVICE

Chairs Nishihara and Kim, Vice Chairs DeCoite and Kidani, and members of the committees:

Thank you for the opportunity to testify on SB 2364 which requires compliance with the Military Selective Service Act to be eligible for: enrollment in a state-supported post-secondary institution, qualify for post-secondary state financial aid, or be eligible for employment by or service to the State or any of its political subdivisions.

The University of Hawai'i (UH) appreciates the goals of this measure but has significant concerns regarding unintended consequences of SB 2364, including the potential for decreasing access to public higher education in Hawai'i for men between the ages of 18 and 26, and federal law already requires much of what this bill seeks to accomplish.

Federal law currently requires any student applying for federal financial aid via the Free Application for Federal Student Aid (FAFSA) to register for the Selective Service, and this federal aid information is downloaded to the University's student information system. However, implementing the eligibility screening for enrollment or state financial aid requires an additional step to identify applicants who have not applied for FAFSA before admitting a male applicant, which requires additional administrative resources and is complicated because the Selective Service database uses social security numbers as identifiers. The UH does not collect social security numbers at the admissions stage or for non-FAFSA filers. After reviewing the data, applying selective service registration as an additional filter to allow or prohibit UH enrollment or as state aid eligibility may not produce more selective service registration.

UH enrollment contingent on Selective Service registration may dampen young men's college attendance at UH campuses. This is a national concern as the college-going rate of 2020 public high school students enrolling in college is 58% female and 42% male. In Hawai'i, males currently have lower college-going rates than females; 38% of males vs. 62% of females enroll in college directly out of public high schools. SB 2364 would subject young men between 18 and 26 years of age to additional screening

before being eligible to enroll at the State's public university. The data for males in this group is already less at 23%. In addition, our data indicates that males in under-represented populations would be reduced even further to 19.3%. This is not applied to other populations, for example, women, non-US citizens, those who attend private or out-of-state institutions, and others.

UH is unique in its responsibility as the sole provider of public higher education in a state that is located at a great geographical distance from other institutions and other options for students in Hawai'i.

For these reasons, the University of Hawai'i has serious concerns with this bill and respectfully requests that SB 2364 be deferred.

**TESTIMONY IN OPPOSITION TO SB 2364**

Relating to Selective Service

**COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY  
AFFAIRS**

Senator Clarence K. Nishihara, Chair  
Senator Lynn DeCoite, Vice Chair

**COMMITTEE ON HIGHER EDUCATION**

Senator Donna Mercado Kim, Chair  
Senator Michelle N. Kidani, Vice Chair

Hearing Date: 2/15/2022      Room: Via Videoconference

Chairs, Vice-Chairs, and Members of the Committees,

I respectfully submit testimony In Opposition to SB 2364 which will create a permanent underclass of Hawai'i residents and, **unlike the Military Selective Service Act, provides no relief from sanctions** for individuals over the age of 26 who inadvertently fail to register. See, 34 C.F.R. 668.37 (d).

Those most affected by harsh sanctions related to the failure to register under the Military Selective Service Act are minorities, immigrants, and the poor.<sup>1</sup>

According to the Selective Service Administration the primary factors contributing to registration compliance are:

- (1) enacting and implementing driver's license legislation (DLL) encouraging registration with Selective Service to obtain a driver's license, driver's permit, or an identification card;
- (2) using online registration through Selective Service's website, [www.sss.gov](http://www.sss.gov), as a means to register (other than registering with Selective Service using the reminder mail-back forms, other electronic methods, paper forms available at the U.S. Postal Service, and the interactive voice response (IVR) system at Selective Service's call center);
- (3) soliciting volunteer Selective Service registrars;
- (4) partnering with U.S. Postal Service offices, the only universal source of availability of Selective Service registration forms; and
- (5) focusing on cost-

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<sup>1</sup> FY 1999 Annual Report to the Congress of the United States, from the Director of Selective Service, p.8.

effective registration awareness initiatives and outreach efforts to inform educational and community leaders and groups.<sup>2</sup>

Notably, nowhere does the Director's Annual Report indicate that legislation, such as that proposed by SB 2364, is a primary factor that will lead to registration compliance. Hawai'i already requires applicants for driver's licenses to submit to automatic registration with the Selective Service Administration. HRS §286-102.5, Military Selective Service Act; Selective Service System Registration, requires:

(a) Qualified applicants for a motor vehicle [driver's] license pursuant to section 286-107 or 286-108 or an instruction permit pursuant to section 286-110 shall be registered with the United States Selective Service System in compliance with Title 50 United States Code Appendix section 453, as amended.

(b) Every qualified applicant identified in subsection (a) shall be required to authorize the examiner of drivers to:

(1) Collect the necessary personal information required for registering the qualified applicant with the United States Selective Service System; and

(2) Electronically transmit the information to the Selective Service System pursuant to subsection (d) for purposes of registering the qualified applicant with the United States Selective Service System.

(c) The examiner of drivers shall notify all qualified applicants identified in subsection (a) that by submitting an application, the qualified applicant is consenting to registration with the United States Selective Service System, if so required by federal law

Complying with Senate Bill 2364 will require significant modification of computer systems at Hawai'i's colleges and universities as well as all State and County employers, including the Legislature. While the exact cost to implement and maintain the required technology changes is unknown, it will not be insignificant.

Thank you for the opportunity to testify on SB 2364.

Patricia McManaman

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<sup>2</sup> 2016 Annual Report to Congress, Director of Selective Service.



**SB-2364**

Submitted on: 2/4/2022 8:36:03 PM

Testimony for PSM on 2/15/2022 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Mike Golojuch, Sr.	Individual	Support	No

Comments:

I support SB2364.

Mike Golojuch, Sr., Lt Col, USAF(Ret)