



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
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February 5, 2009

**TESTIMONY TO THE HOUSE COMMITTEES ON HIGHER EDUCATION
AND EDUCATION**

House Bill 624 – Relating to Public Accommodations

The Disability and Communication Access Board (DCAB) is a statewide board with seventeen (17) members appointed by the Governor, thirteen (13) of whom are persons with disabilities or family members. The Board's mission is to advocate and promote full inclusion, independence, equal access, and quality of life for persons with disabilities in society. This testimony represents a position voted upon by the Legislative Committee of the Board.

DCAB opposes House Bill 624 - Relating to Public Accommodations as written, although we do not disagree with the intent. State-operated schools, libraries, community colleges, or universities are public (state) entities not public accommodations (private entities) and are covered under §368-1.5, Hawaii Revised Statutes. Since these entities are already covered in the law, this bill is unnecessary.

Thank you for the opportunity to testify on this important matter.

Respectfully submitted,

CHARLES W. FLEMING
Chairperson

FRANCINE WAI
Executive Director



UNIVERSITY OF HAWAII SYSTEM Legislative Testimony

Testimony Presented Before the
House Committee on Higher Education and the
House Committee on Education
February 5, 2009 at 2:00pm

by
Linda K. Johnsrud
Vice President for Academic Policy and Planning, University of Hawai'i

HB 624 – RELATING TO PUBLIC ACCOMMODATIONS

Chairs Chang and Takumi, Vice Chairs Nakashima and Berg, and members of the House Committee on Higher Education and Committee on Education. Thank you very much for this opportunity to testify on House Bill 624, relating to Public Accommodations and nondiscrimination.

HB 624 proposes to amend Hawaii Revised Statutes section 489-2 by defining any facility of a "state-operated school, library, community college, or university" as a place of public accommodation. The University of Hawaii appreciates the intent of HB 624 but strongly opposes the proposed change to the existing law for the following reasons:

- University programs for the general public are already covered by the nondiscrimination provisions of HRS 489.

HRS 489 defines a place of public accommodation as follows:

"Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors.

[Emphasis added.]

In this regard, the University of Hawaii sponsors sports events, theater productions, concerts, food services, and other programs, activities, and services that are made available to the general public. These programs are public accommodations. Accordingly, the customers, clients, or visitors are protected from discrimination by HRS 489.

- The primary function of the University is to educate students and to conduct research. Defining University facilities as places of public accommodation would create an undue burden and obstruct services to students.

Students of the University of Hawaii must apply, meet certain admission standards, and pay tuition to be eligible for educational services offered by the University. In this regard, classrooms and other campus facilities that are used for these purposes are usually not open to the general public. The same is true for places of employment and research (e.g., offices, laboratories).

If University facilities are deemed to be "public accommodations" open to the general public, this would create an undue burden on the University by substantially interfering with its duty to serve students. For example, it would require new administrative proceedings and staff to handle complaints from members of the general public who are asked not to enter a class in session. It would also present safety and security concerns (e.g., campus child care, personnel records, student records, laboratories) and jeopardize federal funding for research.

All students, employees, applicants for admission, and job applicants are covered by appropriate civil rights statutes, federal contractor regulations, and University equal opportunity and nondiscrimination policies. E.g., the Civil Rights Act of 1964, the Education Amendments of 1972, federal Executive Order 11246 and implementing regulations, HRS 378, etc. These laws provide accessible complaint opportunities, legal enforcement, and penalties for noncompliance.

Thank you for this opportunity to testify on HB 624 and to express our concerns. We respectfully request your committee not to pass HB 624.

LATE TESTIMONY



LINDA LINGLE
GOVERNOR

RICHARD BURNS
STATE LIBRARIAN

STATE OF HAWAII
HAWAII STATE PUBLIC LIBRARY SYSTEM
OFFICE OF THE STATE LIBRARIAN
44 MERCHANT STREET
HONOLULU, HAWAII 96813

The Hawaii State Public Library System is submitting the attached testimony for:

House Committee on Higher Education
House Committee on Education
Thursday, February 5, 2009, 2:00 p.m.
State Capitol, Room 309

HB 624 - RELATING TO PUBLIC ACCOMMODATIONS

Person testifying on behalf of State Librarian Richard Burns will be:

Keith Fujio, Administrative Services Officer
Hawaii State Public Library System

The committee has requested one original document.

LINDA LINGLE
GOVERNOR



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**House Committee on Higher Education
House Committee on Education
Thursday, February 5, 2009**

HB 624 - RELATING TO PUBLIC ACCOMMODATIONS

The Hawaii State Public Library System does not have any strong opinions for or against the intent of this bill.

Since our libraries are public facilities, we already consider ourselves a "place of public accommodation" as stated in Section 489-2, since our goods, services and facilities are extended and made available to the general public as customers or visitors.

Thank you for the opportunity to submit testimony on HB 624.



HAWAI`I CIVIL RIGHTS COMMISSION

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

February 5, 2009
Rm. 309, 2:00 p.m.

To: The Honorable Jerry Chang, Chair, and Members of the House Committee on Education

The Honorable Roy Takumi, Chair, and Members of the House Committee on Higher Education

From: Commissioners of the Hawaii Civil Rights Commission

RE: H.B. No. 624

The Hawaii Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawaii's laws prohibiting discrimination in employment, housing, public accommodations, and access to State and State-funded services. The HCRC carries out the Hawaii constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sect. 5.

The HCRC supports the intent of H.B. No. 624, which is to protect students against discrimination. However, the HCRC has two concerns regarding the scope of the bill and whether it is tailored to best achieve its intended purpose: 1) The proposed expansion of HCRC enforcement jurisdiction is broad rather than narrowly focused, and will require substantial additional resources and funding for the HCRC to have the capacity to handle additional complaints. And, 2) While the proposed expansion of HCRC enforcement jurisdiction is broad, additional enforcement alone will not solve the problem and eliminate discrimination in our public schools – a comprehensive approach is required, not focused on enforcement alone.

Under present law, the HCRC does not exercise jurisdiction over complaints of

discrimination against students in publicly-funded schools.¹ Teachers and other employees are protected against discrimination under Chapter 378, Part I, Hawaii Revised Statutes, and can file complaints with the HCRC. Without express language providing for jurisdiction over publicly-funded schools, the HCRC does not have jurisdiction over discrimination against students under either Chapter 489 (public accommodations) or §368-1.5 (state and state-funded services). Please note that the HCRC does exercise jurisdiction over public libraries as places of public accommodation under Chapter 489.

The proposed expansion expressly adds state-operated schools, libraries, community colleges, and universities to the list of examples of places of public accommodations. This would give the HCRC jurisdiction over not only student complaints of discriminatory harassment, but also over complaints of discrimination in discipline, extracurricular activities and academic (and academic freedom) issues involving grading, admissions, placement, academic research, course content, or teaching methodology. It is difficult to predict the number of additional complaints this broad expansion would generate, except that it would be a substantial number. In the absence of additional funding, these additional complaints would increase the HCRC investigation caseload, adversely affecting our capacity to effectively and efficiently investigate all cases.

If the legislature chooses to expand HCRC enforcement jurisdiction to cover discrimination in public educational institutions, we recommend that the expanded jurisdiction

¹ The reasons that the HCRC does not exercise statutory jurisdiction over complaints of discrimination in the public schools include: 1) Chapter 489 does not expressly include educational institutions as a place of public accommodations, and the legislative history is silent; 2) Other states do not consider educational institutions to be places of public accommodations, or if they do, there is express language to include them; and, 3) Title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations, does not include public schools as a place of public accommodation.

be added as a new subsection under §368-1.5 or as a new section in Chapter 368, rather than by adding schools to the list of examples of places of public accommodations under §489-2.

While our first concern is that the proposed expansion of the HCRC's enforcement jurisdiction is very broad rather than narrowly focused, requiring substantial additional funding to implement, our second concern is that the approach taken is not broad and comprehensive enough to effectively address the issue of discrimination in our schools. Simply put, enforcement alone will not eliminate discrimination in our public schools, community colleges, and universities.

This is a monumentally important endeavor. All agree that our children should not be subjected to discrimination and should be provided a safe learning environment. Discrimination is a learned behavior, and today's students become tomorrow's workers, managers, and employers. Our schools are in a unique position to teach and nurture, to change the culture in schools, homes, communities, and the business world. They represent our best chance to eliminate bullying and invidious discrimination, before it becomes a learned behavior. This bill calls attention to this important problem, and we should take advantage of this opportunity to invite the best minds in our community to discuss the issues raised, to initiate and raise the level of discussion and seek comprehensive solutions to big problems.

The HCRC supports the intent of H.B. No. 624, but recommends that a comprehensive approach be taken, with the establishment of a working group to meet and discuss the problem of discrimination in our public educational institutions and make recommendations to the legislature.



LATE TESTIMONY

BY EMAIL: HEDtestimony@capitol.hawaii.gov

Committee: Committee on Higher Education and Committee on Education

Hearing Date/Time: Thursday, February 5, 2009, 2:00 p.m.

Place: Room 309

Re: *Testimony of the ACLU of Hawaii in Support of H.B. 624, Relating to Public Accommodations*

Dear Chair Chang and Members of the Committee on Higher Education and Chair Takumi and Members of the Committee on Education:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of H.B. 624, which seeks to specify state-operated schools, libraries, community colleges and universities as examples of facilities that are places of public accommodation subject to anti-discriminatory prohibitions.

Our schools and libraries are entrusted with ensuring that all students enjoy the benefits of full equality and participation in our educational system. However, the Board of Education recently voted on whether to *repeal* H.A.R. §8-41-1, the anti-discrimination law prohibiting employees from discriminating against students. Although this was stopped by one vote, the Board of Education is now considering whether it can repeal protections for students against discrimination on the basis of "ancestry," "religion," and "age." Clearly, this demonstrates that our students need and deserve clarification and additional guidance as well as stronger discrimination laws and added protections.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawaii
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LATE TESTIMONY

To: Rep. Jerry L. Chang, Chair, Higher Education Committee
Rep. Mark M. Nakashima, Vice Chair, Higher Education Committee
Rep. Roy M. Takumi, Chair, Education Committee
Rep. Lyla B. Berg, Vice Chair, Education Committee
Members, House Joint Committee on Higher Education and Education
Fr: Trisha Y. Nakamura, Esq., PO Box 61619, Honolulu, Hawai'i 96839
Date: February 4, 2009
Hrg: February 5, 2009 at 2:00 p.m.
Re: **Strong Support for HB 624, Relating to Public Accommodations**

Thank you for this opportunity to present my strong support of HB 624 which would ensure that all students at State-funded institutions including the Department of Education and the University of Hawaii are protected from discrimination on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability.

At this grave economic time, we can ill afford to forego opportunities that cost little and can do so much. The measure before you does more than prohibit discrimination. The measure helps ensure that students in our public school systems are safe from emotional harm. Students who are safe are students who have the best chance to learn and grow.

You have the opportunity to send a clear message to students and to the larger public that hate and discrimination will not be tolerated. Please pass HB 624 out of committee.

LATE TESTIMONY

February 4, 2009

TO: **Representative Jerry L. Chang, Chair**
 Representative Mark M. Nakashima, Vice Chair
 And Members of the House Committee on Education

Representative Roy M. Takumi, Chair
 Representative Lyla B. Berg, Vice Chair
 And Members of the House Committee on Education

FROM: **Allicyn Tasaka**

RE: **HB 624 Relating to Public Accommodations**
 (February 5, 2009 at 2:00 p.m. Room 309)

POSITION: **STRONG SUPPORT**

Good afternoon Chair Chang, Vice Chair Nakashima, and Members of the House Committee on Higher Education and Chair Takumi, Vice Chair Berg, and Members of the House Committee on Education. My name is Allicyn Tasaka and I am submitting testimony in strong support of HB 624 Relating to Public Accommodations.

HB 624 specifies state-operated schools, libraries, community colleges and universities as examples of facilities that are places of public accommodations subject to anti-discriminatory prohibitions.

All people have the right and privilege to receive service, free from discrimination, from any business that obtains or solicits customers from the general public. Protection from discrimination should also apply to state-operated institutions such as the University of Hawaii, community colleges and the Department of Education and enforced to keep people safe regardless of their race, sex, color, religion, national origin, disability, and sexual orientation. Let's not tolerate continued harassment and injury to Hawaii's students.

I urge your Committees to pass out this measure to protect students, especially in our public schools.

Thank you for the opportunity to submit this testimony in strong support.