

Honolulu, Hawaii

APR 08 2011

RE: H.B. No. 546
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 546 entitled:

"A BILL FOR AN ACT RELATING TO CIVIL RIGHTS,"

begs leave to report as follows:

The purpose and intent of this measure is to prohibit discrimination on the basis of gender identity or expression as a public policy matter and specifically within the context of employment.

Your Committee received testimony in support of this measure from the Hawai'i Civil Rights Commission, one member of the Board of Education, Hawaii State Teachers Association, Hawaii Government Employees Association, Hawaii State AFL-CIO, ILWU Local 142, Equality Hawai'i, American Civil Liberties Union of Hawai'i, Americans for Democratic Action Hawai'i, Planned Parenthood of Hawaii, Screen Actors Guild Hawaii Branch, Honolulu Pride, and numerous individuals. Your Committee received testimony in opposition to this measure from the Hawaii Catholic Conference, Hawaii Family Forum, and two individuals. Your Committee received comments on this measure from The Chamber of Commerce of Hawaii.

Your Committee finds that discrimination on the basis of gender identity or expression is abhorrent and, according to testimony submitted to your Committee, a true problem for transgender individuals. According to the 2009 National Transgender Discrimination Survey, transgender individuals experience unemployment and poverty at twice the rate of the



general population and ninety-seven percent of the Survey's respondents reported experiencing harassment or mistreatment while at work. This measure intends to send the message that Hawaii's laws protect against this type of discrimination, whether based on actual or perceived sexual orientation, and that this type of discrimination is illegal and unacceptable. This message is necessary because your Committee also observes that this measure does not represent a change in the law. The Hawai'i Civil Rights Commission issued a ruling in 2002, specifically Final Decision and Order Granting Petition for Declaratory Relief (June 28, 2002), which has interpreted gender identity or expression as being included within the category of "sex" that is subject to anti-discrimination laws. Accordingly, while this interpretation has not yet been codified in Hawaii, this 2002 ruling by the Hawai'i Civil Rights Commission has the force and effect of law.

Your Committee acknowledges that the Hawaii Catholic Conference and the Hawaii Family Forum submitted testimony requesting an exemption for religious institutions. Your Committee notes that there is currently an exemption for religious institutions in section 378-3(5), Hawaii Revised Statutes, which provides, "Nothing in [part I of chapter 378] shall be deemed to ... [p]rohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to individuals of the same religion or denomination or from making a selection calculated to promote the religious principles for which the organization is established or maintained". While not as broad as the exemption requested by the Hawaii Catholic Conference and the Hawaii Family Forum, this exemption should address any legitimate concerns a religious organization may have regarding the organization's authority to evaluate whether a prospective employee will "promote the religious principles for which the organization is established or maintained". Widening the scope of that exemption may invite the discriminatory practices that this measure seeks to prohibit.

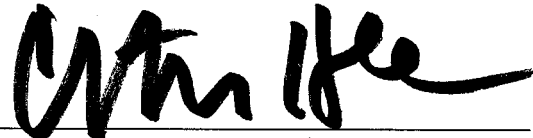
Your Committee has amended this measure by making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B.



No. 546, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 546, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,

A handwritten signature in black ink, appearing to read "Clayton Hee", written over a horizontal line.

CLAYTON HEE, Chair



The Senate
Twenty-Sixth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* <div style="font-size: 1.2em; font-family: cursive;">HB 546</div>	Committee Referral: <div style="font-size: 1.2em; font-family: cursive;">JDL</div>	Date: <div style="font-size: 1.2em; font-family: cursive;">4/4/11</div>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended 2312 </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div style="text-align: center;"> <input type="checkbox"/> Hold 2310 </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike			✓	
IHARA, Jr., Les	✓			
SLOM, Sam			✓	
TOTAL	3		2	
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature:				
Distribution: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div>Original File with Committee Report</div> <div>Yellow Clerk's Office</div> <div>Pink Drafting Agency</div> <div>Goldenrod Committee File Copy</div> </div>				

***Only one measure per Record of Votes**