

STAND. COM. REP. NO.

2390

Honolulu, Hawaii

FEB 06 2020

RE: S.B. No. 2193

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii

Sir:

Your Committee on Labor, Culture and the Arts, to which was referred S.B. No. 2193 entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT DISCRIMINATION,"

begs leave to report as follows:

The purpose and intent of this measure is to limit the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

Your Committee received testimony in support of this measure from the Hawai'i Civil Rights Commission, Office of Hawaiian Affairs, Community Alliance on Prisons, American Civil Liberties of Hawai'i, 'Ahahui o Hawai'i Advocates for Native Hawaiian Justice at the William S. Richardson School of Law, International Longshore Warehouse Union Local 142, and seven individuals. Your Committee received comments on this measure from the Department of Human Resources Development and Department of Human Resources of the City and County of Honolulu.

Your Committee finds that meaningful opportunities for gainful and legitimate employment are necessary for people with criminal records to achieve economic stability for themselves and their families. Your Committee also finds that legitimate employment is significantly correlated with lower recidivism rates for individuals with past convictions, and ensuring more



meaningful employment opportunities for people with criminal records may therefore be key to reducing crime and improving public safety in the long-term.

Your Committee further finds that unfortunately, a job applicant's criminal record, including their conviction history, can itself serve as a barrier to employment opportunities, as employers may have express or unconscious biases against hiring or retaining those with a record, even where those records are extremely old, for relatively minor crimes, or unrelated to specific employment opportunities. Recognizing this, the Hawaii legislature was at the forefront of a national movement to pass "ban the box" legislation, which was intended to address the employment hurdles that people with criminal records face. Hawaii's current "ban the box" law generally prohibits the use of arrest and court records as a basis for employment discrimination, subject to exceptions for certain occupations, and for the use of conviction records up to ten years old, if those records have a "rational relationship" to the duties and responsibilities of the position in question.

Your Committee also finds that unfortunately, Hawaii's current "ban the box" law, and specifically its ten-year conviction record "lookback" exception, may continue to facilitate employment discrimination against individuals who have a criminal history, but who have long since paid their debt to society, and who pose little to no risk to an employer or the public. For example, employers may use conviction information they acquire in a ten-year background check explicitly allowed under the law to ostensibly justify discrimination against those with a conviction record, regardless of the age of their conviction or relevance to the job at hand. Even employers and human resource professionals with good intentions may be affected by unconscious biases and make adverse decisions against wholly qualified employees and prospective employees who have a ten-year-old record. Compounding this problem, background checks are often inaccurate, and can still show arrest and expunged records in conflict with what is currently allowed to be used under the existing statute; accordingly, even those who have not been convicted of a crime or who have had their records expunged may continue to face employment challenges as a result of the currently allowed ten-year "lookback" period.




Your Committee notes that the currently allowed ten-year lookback period for conviction records should be shortened to reduce unnecessary employment discrimination against those with old and relatively minor conviction records, in furtherance of their economic self-sufficiency, and to reduce crime and recidivism rates.

This measure therefore serves to limit the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years. This measure is not intended to amend or affect existing exceptions that explicitly allow the use of criminal history-related records for certain occupations (such as department of education employees) and specific circumstances (such as sex offender registration).

As affirmed by the record of votes of the members of your Committee on Labor, Culture and the Arts that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2193 and recommends that it pass Second Reading and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Labor, Culture and
the Arts,

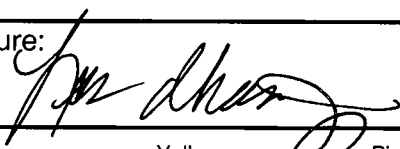


BRIAN T. TANIGUCHI, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Labor, Culture and the Arts
LCA

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 2193	LCA, JDC	1/30/2020		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input checked="" type="checkbox"/> Pass, unamended 2312 <input type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
IHARA, Jr., Les (VC)	✓			
CHANG, Stanley	✓			
GABBARD, Mike				✓
FEVELLA, Kurt	✓			
TOTAL	4	0	0	1
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

*Only one measure per Record of Votes