



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS
and
SENATE COMMITTEE ON JUDICIARY

Wednesday, March 20, 2019, 10 AM, Conference Room 016
HB 362, HD 1, Relating to Information Practices

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Taniguchi, Chair Rhoads, and Committee Members:

The League of Women Voters opposes HB 362, HD 1. This bill substitutes disclosure of a \$15,000 salary range to replace disclosure of the exact salary paid to legislative officers and employees.

We do not object to disclosure of a salary range for a legislative employee or officer whose selection and compensation is not determined by a single legislator. However, this bill would also apply to “political hires” whose compensation is set by the legislator who selected them. Several decades ago, some elected officials used to adjust the salaries of their “political hires” to encourage donations of money and time for political campaigns. For that reason, the League opposes enactment of legislation which might:

- preclude the public and news media from comparing the salaries of “political hires” (which would discourage unethical and/or capricious adjustment of the salaries of “political hires”) and
- preclude the public and news media from evaluating whether “political hires” are appropriately compensated.

Thank you for the opportunity to submit testimony.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
Fax: (808) 380-3580
info@civilbeatlawcenter.org

Senate Committee on Labor, Culture and the Arts
Honorable Brian T. Taniguchi, Chair
Honorable Les Ihara, Jr., Vice Chair

Senate Committee on Judiciary
Honorable Karl Rhoads, Chair
Honorable Glenn Wakai, Vice Chair

RE: Testimony Opposing H.B. 362 H.D. 1, Relating to Information Practices
Hearing: March 20, 2019 at 10:00 a.m.

Dear Chairs and Members of the Committees:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **opposing the broad definition of “legislative employees” in H.B. 362 H.D. 1**. The House Committee on Labor expressed an openness to amending the definition, but at the hearing noted concerns that the Law Center’s initial suggestion to distinguish managerial and non-managerial employees would not serve the intent of the measure. Thus, we offer below a more refined proposal.

The original intent of the salary/salary range distinction distinguished “high level” and “managerial” employees from civil service employees with defined salary ranges. *See* Report of the Governor’s Committee on Public Records and Privacy at 109 (Dec. 1987). H.B. 362 H.D. 1 sweeps too broadly by exempting all legislative employees from the salary disclosure requirement without respecting the original intent to distinguish employees with managerial authority.

For example, the bill improperly exempts individuals who are more equivalent to Executive Branch directors and deputy directors. The public interest in monitoring the compensation of high-level staff (*e.g.*, chief clerks, sergeants-at-arms, legislative service agency directors, and others in senior positions) is much greater, and they should not be exempt. Many of these individuals are paid in excess of \$85,000, and the public deserves greater access to information about their taxpayer-funded salaries.

The current definition of “legislative employees” in H.B. 362 H.D. 1 has four categories:

1. “Legislative officers as defined by section 88-21”: This category refers to the chief clerk, assistant chief clerk, sergeant at arms, and assistant sergeant at arms.

These individuals should not be excluded from the salary disclosure requirement.

2. “Staff of the legislative branch of the State”: This category would appear to cover all legislative employees not otherwise specified in the definition (*e.g.*, clerks, officer managers, analysts, attorneys). **There are several positions within this category that should not be excluded from the salary disclosure requirement.** For example, government attorneys within the offices of the attorney general, county corporation counsels, public defender, and county prosecutors, as well as the University of Hawai`i, Office of Hawaiian Affairs, and Office of Information Practices, are subject to the salary disclosure requirement. Moreover, this category includes some of the highest paid and critical positions within the Legislature: Senate Majority Office Director and Assistant Director, Senate Chief of Staff, Senate Budget Chief, House Director of Research and Assistant Director – all of whom are paid more than \$85,000. *This category should be more limited in scope.*
3. “Legislative service agency directors as defined by section 21E-1”: This category refers to the director or administrative head of the offices of the auditor, legislative reference bureau, and ombudsman. The salaries of all those individuals are tied to the DOH director’s salary, which is public information. **These individuals should not be excluded from the salary disclosure requirement.**
4. “Officers and employees of legislative service agencies as defined by section 21E-1”: This category refers to staff within the offices of the auditor, legislative reference bureau, and ombudsman. **There are several positions within this category that should not be excluded from the salary disclosure requirement.** This category also includes government attorneys, as well as high-paid, critical positions (*e.g.*, deputy auditors, assistant LRB directors, and assistant ombudsman). *This category should be more limited in scope.*

The Law Center respectfully requests that the Committees amend H.B. 362 H.D. 1 as follows:

As used in this paragraph, “legislative employees” means staff of the legislative branch of the State and employees of legislative service agencies as defined by section 21E-1; provided that “legislative employees” shall not include individuals employed as an attorney or who receive a salary greater than \$85,000.

Thank you again for the opportunity to testify.



March 20, 2019

Sen. Brian Taniguchi
Sen. Karl Rhoads
Senate Committees on Labor, Culture and the Arts, and Judiciary
State Capitol
Honolulu, HI, 96813

Re: House Bill 362, HD 1

Chairmen Taniguchi and Rhoads and Committee Members:

We oppose this measure.

Although the bill proposes to show pay of legislative employees in \$15,000 increments, it would still block the public from seeing high-ranking supervisory pay so it can evaluate whether it is getting its money's worth.

This bill doesn't go far enough in separating disclosure of salaries of managerial and appointed employees from all legislative employees and would block public view of salaries of supervisory officials that should be available to the public.

This bill is troublesome, and we ask that you retain disclosure of specific pay of legislative service agency directors and supervisory personnel.

Thank you,

Stirling Morita
President, Hawaii Chapter of the Society of Professional Journalists



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirtieth Legislature, State of Hawaii
The Senate
Committee on Labor, Culture and the Arts
Committee on Judiciary

Testimony by
Hawaii Government Employees Association

March 20, 2019

H.B. 362, H.D. 1 – RELATING TO INFORMATION PRACTICES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO conceptually supports the intent of H.B. 362, H.D. 1 which amends a section of the Uniform Information Practices Act by allowing the disclosure of a legislative employee's salary range rather than the exact compensation, with a proposed amendment.

Under the current Uniform Information Practices Act, each agency must allow public access to employee information, including an employee's name, bargaining unit, job title, business address and telephone number, education and training background, and previous work experience, in addition to an agency's present and former officers. While we understand and agree with the need for government accountability and transparency, and acknowledge that tax payers want to know how and where their money is being spent, publishing any employee's exact dollar amount salary does not adequately capture the State's expenses. Every employee is entitled to a measure of privacy, and should be afforded basic dignity and respect in the performance of their job. Being a government employee does not necessitate one to be subject to the degradation, embarrassment and anxiety that a dollar-specific disclosure may cause.

Therefore, while we support the intent of H.B. 362, H.D. 1 to amend statute specific to legislative officers, we respectfully request an amendment to equally extend the same provisions for other government employees, specifically those who are exempt from civil service.

Thank you for the opportunity to testify in support of H.B. 362, H.D. 1 with a proposed amendment.

Respectfully submitted,

Randy Perreira
Executive Director

BRIAN L. TAKESHITA
Chief Clerk

RUPERT JUAREZ
Assistant Chief Clerk



Phone: (808) 586-6400

Fax: (808) 586-6401

HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL, ROOM 027
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813

House Bill No. 362, H.D. 1
Wednesday, March 20, 2019
10:00 a.m., Conference Room 016

TO: Chairs Brian T. Taniguchi and Karl Rhoads
Vice-Chairs Les Ihara, Jr. and Glenn Wakai
Members of the Senate Committee on Labor, Culture, and the Arts and
the Senate Committee on Judiciary

FROM: Brian L. Takeshita
Chief Clerk, Hawaii State House of Representatives

As the Chief Clerk of the Hawaii State House of Representatives, I **SUPPORT** House Bill No. 362, H.D. 1.

Hawaii Revised Statutes Chapter 92F-12(a)(14) requires disclosure of the names and compensation (among other information) of most state and county employees. However, while civil service employees and certain others may only have a salary range disclosed, other employees, including those of the Legislature, must have their exact salaries disclosed. This inconsistency must be addressed for several reasons.

First, this discrepancy puts legislative employees at a disadvantage relative to their civil service counterparts by requiring the release of more detailed information about one group over another. Where all are public servants, it is unreasonable to discriminate amongst the groups.

Second, the requirement to automatically disclose the exact salaries of specific individuals serves no reasonable purpose that couldn't be achieved by disclosing a salary range instead. Additionally, salary is in certain cases considered personally identifiable information, and disclosable only when a requesting entity has a legitimate reason for doing so. Employees in the private sector have a reasonable expectation that their salary is not given out upon just any request, and there is no reason public sector employees such as those employed by the Legislature should not have the same expectation.

Third, a local news organization has made a regular feature of obtaining the names and salaries of state and county employees and publishing this information on

their website for all to access. Without even needing to submit a request to the House or Senate, anyone from marketers to creditors to curious neighbors may access the exact salary of our legislative employees for whatever purposes they desire. Additionally, the easy availability of salary information can cause great disruption within an office when employees look up each other's pay levels, driving ill feelings among coworkers and causing difficulties for management.

Finally, Hawaii Revised Statutes §378-2.4 (enacted last year as Act 108) prohibits employer inquiries regarding the salary history of an applicant for employment. Making the salaries of legislative employees public information, and further allowing outside entities to make that information freely available increases the likelihood of a potential employer obtaining an employee's salary history. Furthermore, legislative intent behind this statute was to facilitate closing the gender pay gap, as the ability of employers to consider a job applicant's salary history is a contributing factor to gender pay disparity. Easy availability of salary information undermines that effort.

I acknowledge the public expects transparency from their government, and disclosure of a reasonable amount of information regarding government employees is necessary. However, the disclosure of the names and exact salaries of legislative employees is unreasonable, unnecessary, and in conflict with another section of HRS, which is why I support H.B. No. 362, H.D. 1. This measure will both address the aforementioned problems and provide a sensible level of disclosure.

Thank you very much for the opportunity to provide this testimony.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committees on Labor, Culture, and the Arts and on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 20, 2019, 10:00 a.m.
State Capitol, Conference Room 016

Re: Testimony on H.B. No. 362, H.D. 1
Relating to Information Practices

Thank you for the opportunity to submit testimony on this bill, which would amend the Uniform Information Practices Act (“UIPA”) to provide that for legislative employees, only their salary range would be disclosable, as is the case for union or civil service employees, and not the exact salary, as for exempt employees. The Office of Information Practices (“OIP”) takes **no position** on the question of whether the category of employees for whom only salary range is disclosable should be expanded. **OIP is concerned, however, that making such a change only for legislative employees would lead to differential treatment of salary information for legislative employees versus government employees in general. Therefore, OIP suggests an amendment to the bill that would bring the law back to its original intent.**

The substance and the legislative history of the UIPA’s salary disclosure provision suggest that the Legislature adopted the recommendations of the Governor’s Committee on Public Records and Privacy regarding how best to balance employee privacy with the public interest in government employee salaries, as discussed at length in OIP Opinion Letter Number 93-10. The Governor’s

Committee intended the focus for exact salary disclosure to be on “the salaries of appointed or high level positions.” Vol. I Report of the Governor's Committee on Public Records and Privacy (1987), 106, 109, *quoted in* OIP Op. Ltr. No. 93-10 at 4. More specifically, the intent was that “providing the actual salaries of all ‘exempt and/or excluded employees’ would mean that the salaries of all appointed positions and all managerial positions would be public,” with only salary ranges disclosed for other employees. Id.

OIP recognizes that in the decades since that report was written, the number of exempt and excluded employees has grown to include many employees who are not managerial or high level, or are not appointed (except in the sense of being appointed by the head of the office or agency), and thus are not the type of employee the Governor’s Committee and the Legislature originally envisioned as appropriate for disclosure of exact salaries. For this reason, **OIP is not conceptually opposed to amending the UIPA’s mandatory disclosure provision to bring the category of government employees for whom exact salary must be disclosed more into line with the Legislature’s original intent. However, this issue is not limited to legislative staff and legislative agencies. OIP is concerned that this bill as written would increase the differential treatment of government employee salary information under the UIPA, by providing that all legislative staff (including even directors of legislative agencies whose salaries are set by statute) would have only salary ranges disclosed, while clerical and other lower level exempt employees in the executive branch and elsewhere would continue to have exact salaries disclosed.**

If this Committee is inclined to return to the original intent of the UIPA to provide only salary ranges for positions that are not both managerial and appointed by the Governor or Legislature or their equivalents, then **OIP**

recommends that it make such an amendment applicable not just to employees in the legislative branch but instead provide for disclosure of salary range for most government employees, with exact salaries being disclosed only for employees whose exact salary is set by law and those managerial employees directly appointed by the Governor or Mayor, by the Legislature or County Council as a whole, or by their equivalents. A managerial employee hired by an individual legislator or by a department head would not qualify for exact salary disclosure under this proposed amendment. Consequently, OIP suggests the following amendment in section 1 to paragraph (14) (pages 3-4):

(14) The name, [~~compensation (but only the salary range for employees covered by or included in chapter 76, and sections 302A-602 to 302A-639, and 302A-701, or bargaining unit (8))~~] salary range within \$15,000 (provided that the exact salary shall be disclosed for employees whose exact salary is set by statute or ordinance or for managerial employees appointed by the Governor, the Legislature, the Mayor or the County Council of a political subdivision of the State, the Chief Justice, the Board of Trustees of the Office of Hawaiian Affairs, or the University of Hawaii Board of Regents), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency; provided that this paragraph shall not [~~require~~]:

(A) Require the creation of a roster of employees; and [~~provided further that this paragraph shall not apply~~]

(B) Apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency.

Senate Committees on Labor, Culture, and the Arts and on Judiciary
March 20, 2019
Page 4 of 4

Thank you for considering OIP's testimony and proposed amendment that would bring this provision of the UIPA back to its original intent.

HB-710-HD-1

Submitted on: 3/16/2019 3:47:43 AM

Testimony for LCA on 3/20/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Testifying for Rainbow Family 808	Support	No

Comments:

We strongly support HB710. Please pass this bill.

Mike Golojuch, Sr., Board Member, Rainbow Family 808

HB-710-HD-1

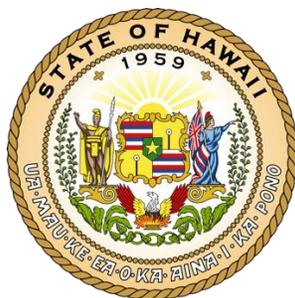
Submitted on: 3/16/2019 6:15:01 PM

Testimony for LCA on 3/20/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lea Minton	Individual	Support	No

Comments:

I support this bill as it will protect employees from discrimination.



Testimony on behalf of the
Hawai'i State Commission on the Status of Women
Khara Jabola-Carolus, Executive Director

Prepared for the S. Committees on JDC/LCA

In Support of HB710 HD1
Wednesday, March 20, 2019, at 10:00 a.m. in Room 016

Dear Chairs, Vice Chairs, and Honorable Members,

On behalf of the Hawai'i State Commission on the Status of Women, I write in support of HB710 HD1, which would add reproductive health decisions and utilization of family leave to the list of categories that are protected against discriminatory employment practices.

While discrimination based on pregnancy, childbirth, and related medical conditions such as breastfeeding is prohibited, women can still be fired for personal reproductive health and caregiving choices they make—choices entangled with sex and gender. It is essential that we protect women's right to the full spectrum of reproductive care. The law should also expand workplace protections to the growing number of workers with caregiving responsibilities. No one should have to choose between their job and the wellbeing of their body and family. Accordingly, the Commission respectfully requests that the Committee pass HB710 HD1.

Mahalo,

Khara Jabola-Carolus

HB-710-HD-1

Submitted on: 3/17/2019 5:02:25 PM

Testimony for LCA on 3/20/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Testifying for LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Senators,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of HB 710 HD 1.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.
Chair
LGBT Caucus of the Democratic Party of Hawaii

HB-710-HD-1

Submitted on: 3/17/2019 5:21:12 PM

Testimony for LCA on 3/20/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Pride Work HI	Testifying for Pride at Work Hawaii	Support	No

Comments:

Aloha Senators,

The Pride at Work Hawaii, an affiliate of Hawaii State AFL-CIO, supports the passage of HB 710 HD 1.

Mahalo for your consideration and for the opportunity to testify in support of HB 710 HD 1.

Mahalo,

Pride at Work - Hawaii

To: Hawaii State Senate Committees on Labor, Culture and the Arts and Judiciary
Hearing Date/Time: Wed., Mar. 20, 2019, 10:00 a.m.
Place: Hawaii State Capitol, Rm. 016
Re: Testimony of Planned Parenthood Votes Northwest and Hawaii in strong support of H.B. 710, H.D.1

Dear Chairs Taniguchi and Rhoads and Members of the Committees,

Planned Parenthood Votes Northwest and Hawaii (“PPVNH”) writes in strong support of H.B. 710, HD1, which would protect employees in Hawaii from workplace discrimination based on their personal reproductive health care decisions and/or utilization of family leave.

H.B. 710 fills a gap in existing Hawaii law, which bans pregnancy discrimination in the workplace, but fails to protect those who choose not to become pregnant or who are trying to become pregnant. Failing to protect women from discrimination on these bases can be dangerous to women’s and children’s health when women delay or fail to obtain health care because they fear for their job. It also subjects women to financial burdens and long-term negative economic, educational and employment consequences not faced by men.

H.B. 710 will protect employees from discrimination at a time when the actions of our federal government and states across the country are increasingly seeking to allow employers to discriminate against their employees and deny them services based on moral or religious beliefs. While individuals are entitled to their beliefs, employers shouldn’t have a license to discriminate against workers for their personal health care decisions or use of time to take care of their families. No one should ever have to worry that their personal decisions about birth control, pregnancy, abortion, in vitro fertilization or other reproductive health or family needs could subject them to workplace retaliation or punishment.

Please protect the health and economic security of workers and ensure that they are not forced to choose between their jobs and their reproductive freedom and families.

Thank you for this opportunity to testify in support of this important measure.

Sincerely,
Laurie Field
Hawaii State Director



HAWAI‘I CIVIL RIGHTS COMMISSION

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

March 20, 2019
Rm. 016, 10:00 a.m.

To: The Honorable Brian T. Taniguchi, Chair
The Honorable Karl Rhoads, Chair
Members of the Senate Committees on Labor, Culture and the Arts, and Judiciary

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

Re: H.B. No. 710, H.D. 1

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.

H.B. No. 710, H.D. 1, would amend H.R.S. § 378-2 to add reproductive health decisions as a protected basis upon which employment discrimination is prohibited, and adds a definition of “Reproductive health decision” to § 378-1, as “the use or attempted use of any legal drug, device, or medical service intended to prevent or terminate a pregnancy, or the use or attempted use of any assisted reproductive technology.” The bill would also amend § 378-2 to prohibit discrimination based on utilization of family leave.

The HCRC supports H.B. No. 710, H.D. 1, with the amendment suggested below. Adverse employment actions should not be based on an employee’s or prospective employee’s reproductive health decisions, and this bill would prohibit that kind of discrimination.

Many claims of discrimination based on reproductive health decisions are already covered as discrimination based on sex (*e.g.*, the decision to terminate or not to terminate a pregnancy), and if enacted, H.B. No. 710, H.D. 1, would clarify this coverage.

The HCRC notes that the exercise of rights under state family leave law is already protected

under HRS § 398-8. HCRC suggests that “utilization of family leave” be deleted from Section 2 of the bill in H.R.S. 378-2 (a) 1 and (9). This would avoid confusion regarding enforcement of complaints.

With this noted, the HCRC supports H.B. No. 710, H.D. 1.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirtieth Legislature, State of Hawaii
The Senate
Committee on Labor, Culture and the Arts
Committee on Judiciary

Testimony by
Hawaii Government Employees Association

March 20, 2019

H.B. 710, H.D. 1 – EMPLOYMENT PRACTICES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 710, H.D. 1 which adds reproductive health decisions and the utilization of family leave to the list of categories that are protected against discriminatory employment practices.

No employee, regardless of public or private employment status, should face an adverse employment action based on his or her reproductive health decisions or utilization of family leave. Passage of this important measure would ensure that employees who are trying to get pregnant, choose not to become pregnant, or utilize family leave on the birth or adoption of a child or to care for a close family member with a serious health condition are expressly protected from discrimination.

Thank you for the opportunity to testify in support of H.B. 1191, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director



of Hawaii

March 19, 2019

From: Younghee Overly, Public Policy Chair, AAUW Hawaii

To: Hawaii State Senate Committee on Labor, Culture and the Arts; Senate Committee on Judiciary

Hearing Date/Time: Wednesday March 20, 2019 10:00AM

Place: Hawaii State Capitol, Room 016

Re: Testimony in SUPPORT of HB710 HD1

Dear Chair Taniguchi, Vice-Chair Ihara, Chair Rhoads, Vice-Chair Wakai, and members of committees,

The American Association of University Women (AAUW) of Hawaii strongly supports HB710 HD1 which would protect employees in Hawaii from workplace discrimination based on their personal reproductive health care decisions and/or utilization of family leave.

H.B. 710 fills a gap in existing Hawaii law, which bans pregnancy discrimination in the workplace, but fails to protect those who choose not to become pregnant or who are trying to become pregnant. Failing to protect women from discrimination on these bases can be dangerous to women's and children's health when women delay or fail to obtain health care because they fear for their job. It also subjects women to financial burdens and long-term negative economic, educational and employment consequences not faced by men.

Given federal administration is increasing seeking to allow employers to discriminate and deny employees' services based on religious belief, it is timely for Hawaii to protect employees from such discrimination with this bill.

AAUW of Hawaii is a state-wide organization made up of six branches (Hilo, Honolulu, Kauai, Kona, Maui, and Windward Oahu) and includes just over 450 active members with over 1700 supporters statewide. As advocates for gender equity, AAUW of Hawaii promotes the economic, social, and physical well-being of all persons.

Thank you for this opportunity to submit a testimony on this important matter.

Sincerely,

DAVID Y. IGE
GOVERNOR



RYKER WADA
DIRECTOR

JASON MINAMI
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

March 19, 2019

TESTIMONY TO THE
SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS
AND COMMITTEE ON JUDICIARY

For Hearing on March 20, 2019
10:00 a.m., Conference Room 016

BY

RYKER WADA
DIRECTOR

House Bill No. 710, House Draft No. 1
Relating to Employment Practices

WRITTEN TESTIMONY ONLY

TO CHAIRPERSONS TANIGUCHI AND RHOADS, VICE CHAIRS IHARA AND WAKAI,
AND MEMBERS OF THE COMMITTEES:

Thank you for the opportunity to provide **comments** on H.B. No. 710, House
Draft 1.

H.B. No. 710, House Draft 1 amends Chapter 378, Hawai'i Revised Statutes,
Section 2 by adding "reproductive health decision" and "utilization of family leave" to the
list of classes protected from unlawful discriminatory practices. Currently, State law
prohibits discrimination based on "race, sex including gender identity or expression,
sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court
record, or domestic or sexual violence victim status if the domestic or sexual violence

victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status.”

The Department of Human Resources Development notes while H.B. No. 710 proposed to insert a definition for “reproductive health decision” in Chapter 378, Hawaii Revised Statutes, Section 1, no similar definition is inserted for “utilization of family leave.”

To the extent the intent of this legislation is to include leave taken under the Hawaii Family Leave Law, the Department of Human Resources Development notes the exercise of rights under state family leave law is already protected under HRS § 398-8. Complaints regarding discrimination or retaliation for use of Hawai'i Family Leave Law are filed with the Department of Labor and Industrial Relations, pursuant to HRS §398-21. Enforcement and administrative proceedings are handled in accordance with applicable statutes and regulatory guidelines.

Federal family leave law, under the Family and Medical Leave Act (“FMLA”), contains similar retaliation and discrimination protections for employees. See Fact Sheet #77B: Protection for Individuals under the FMLA (attached). An employee who believes his or her rights under the FMLA have been violated has the choice of (1) Filing a complaint with the U.S. Secretary of Labor; or (2) Filing a private lawsuit pursuant to section 107 of the FMLA.

By listing “utilization of family leave” as a protected class under Chapter 378, Hawaii Revised Statutes, Section 2, the proposed legislation may unintentionally cause confusion with employees regarding *when*, *where*, and *how*, to file a complaint, as well as raise jurisdictional and/or Federal preemption issues.

For example, the Hawaii Department of Labor and Industry is currently charged with receiving and administering such complaints, the proposed legislation would also confer jurisdiction to the Hawai'i Civil Rights Commission, which 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). HRS §368-3. Complaints filed with the Hawai'i Civil Rights Commission must be filed within 180 days with the Hawaii Civil Rights Commission within 180 days of: 1) the alleged discriminatory practice, or 2) the date of the most recent occurrence in a pattern of ongoing discrimination. HRS §368-11. Complaints filed with the Department of Labor and Industrial Relations must be filed within 90 days of (1) the date of the alleged unlawful act; or (2) date of discovery by the employee of the alleged unlawful act; however, in no event shall a complaint be filed after the expiration of 180 days of the alleged unlawful act. HRS §398-21.

Accordingly, the Department of Human Resources Development respectfully requests "utilization of family leave" be omitted from proposed legislature, or the measure be amended to (1) provide a definition of "family leave" and (2) clarify administrative procedures and resolve jurisdictional concerns.

Thank you for the opportunity to provide comments on this measure.



Hawai'i

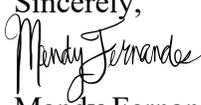
Committees: Committee on Labor, Culture and the Arts
Committee on Judiciary
Hearing Date/Time: Wednesday, March 20, 2019, 10:00 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawai'i in Support of H.B. 710, H.D. 1,
Relating to Employment Practices

Dear Chair Taniguchi, Chair Rhoads, and Committee Members:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes **in support of H.B. 710, H.D. 1**, which protects employees from employment discrimination on the basis of their reproductive health decisions and utilization of family leave.

Hawai'i has a strong history of protecting an individual's right to make reproductive health decisions in accordance with what is best for themselves and their families. Unfortunately, while existing law prohibits pregnancy discrimination in the workplace, existing protections do not extend to workers who make a reproductive health decision *not* to become pregnant or to terminate a pregnancy, or who make a reproductive health decision to try, through medical intervention, to become pregnant. These decisions are personal and should never subject an individual to adverse employment consequences. **By removing this fear of workplace discrimination, H.B. 710, H.D. 1 allows workers to avoid choosing between doing what is best for their health and keeping their jobs.**

We urge the Committees to support this measure. Thank you for the opportunity to testify.

Sincerely,

Mandy Fernandes
Policy Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i 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 Hawai'i has been serving Hawai'i for 50 years.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522.5900
F: 808.522.5909
E: office@acluHawai'i.org
www.acluHawai'i.org

LATE

HB-710-HD-1

Submitted on: 3/19/2019 10:13:31 PM

Testimony for LCA on 3/20/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Testifying for Hawaii Women's Coalition	Support	No

Comments:

Aloha Chair Taniguchi, Chair Rhoads and members,

The Coalition is in strong support of this measure that will protect women's rights with respect to reproductive healthcare decisions and their right to care for families when needed. Biology should no longer be destiny in the 21st Century.

Mahalo,

Ann S. Freed

Co-Chair, Hawaii Women's Coalition