

STAND. COM. REP. NO. 832

Honolulu, Hawaii

MAR 03 2023

RE: S.B. No. 40
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 40 entitled:

"A BILL FOR AN ACT RELATING TO DISCRIMINATION,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish provisions relating to civil remedies for discriminatory reporting to a law enforcement officer; and
- (2) Provide that a person who summons or reports to a law enforcement officer, without reason to suspect a crime, offense, or imminent danger has occurred or is occurring, because of that person's belief or perception involving a member of a protected class shall be civilly liable.

Your Committee received testimony in opposition to this measure from one individual. Your Committee received comments on this measure from the Hawai'i Civil Rights Commission.

Your Committee finds that the vigilance of individual citizens can keep communities safe through the reporting of witnessed criminal conduct to law enforcement. However, in certain circumstances, individuals have misused the ability to



summon law enforcement officers to discriminate against persons of protected classes without reason to suspect a crime is being committed. This measure will allow civil remedies, including injunctions and compensation, for people who have been contacted by police based on discriminatory reporting by those with intent to cause harm based on a person's protected class.

Your Committee has amended this measure by:

- (1) Adding language that specifies that a person shall be civilly liable if the person knowingly contacts a law enforcement officer to come to a location to contact a person on the basis of the person's actual or perceived race, color, ancestry, ethnicity, national origin, place of birth, sex, age, religion, disability, sexual orientation, or gender identity with the specific intent to infringe upon the person's rights under the Hawaii State Constitution or United State Constitution; discriminate against the person; cause the person to feel harassed, humiliated, or embarrassed; cause the person to be expelled from a place that the person is lawfully located; damage the person's reputation or standing within the community; or damage the person's financial, economic, consumer, or business prospects or interest;
- (2) Deleting language that would have made civilly liable a person who summons or reports to a law enforcement officer, without reason to suspect a crime, offense, or imminent danger has occurred or is occurring, because of that person's belief or perception involving a member of a protected class;
- (3) Clarifying that any person injured by discriminatory reporting may sue for punitive damages;
- (4) Adding language that specifies that if the judgment is for the plaintiff, the plaintiff shall be awarded damages of not less than \$1,000 plus attorneys' fees and costs;
- (5) Deleting language that would have specified that a person lacks reason to suspect a violation of the Hawaii



Penal Code, any other criminal conduct, or an imminent danger to a person or property has occurred or is occurring if a reasonable person would not suspect such a violation, criminal conduct, or imminent danger has occurred or is occurring;

- (6) Adding language that requires the Department of the Attorney General, in consultation with the Hawai'i Civil Rights Commission, to provide guidance to the public on the enactment of this measure;
- (7) Adding language that requires the Department of Law Enforcement to provide guidance to the public on this measure starting January 1, 2024; and
- (8) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Your Committee notes that other jurisdictions, including Grand Rapids, New Jersey, New York, Oregon, San Francisco, and Washington have laws that allow damages for discriminatory reporting. Your Committee also notes that there is an existing criminal false reporting statute in Hawai'i. Therefore, your Committee requests that future committees consider the possibility of requiring that a violation of the criminal law be deemed prima facie evidence that the civil discriminatory reporting statute was violated.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 40, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 40, S.D. 1, and be placed on the calendar for Third Reading.

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



KARL RHOADS, Chair



