

Honolulu, Hawaii

February 18, 2015

RE: H.B. No. 684
H.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred H.B. No. 684 entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT,"

begs leave to report as follows:

The purpose of this measure is to apply standards of federal law relating to discrimination and harassment in the workplace to Hawaii's workplace discrimination cases by:

- (1) Establishing employer liability for adverse tangible employment actions resulting from a supervisor's discriminatory actions; and
- (2) Providing for an affirmative defense to liability for an employer that acts with reasonable care to prevent or correct the supervisor's action and where the employee did not act sufficiently to avoid the adverse action.

The Department of the Attorney General; Chamber of Commerce Hawaii; Society for Human Resource Management; and a concerned individual testified in support of this measure. The Department of Labor and Industrial Relations; Hawaii State Commission on the Status of Women; Hawaii Civil Rights Commission; University of Hawaii Professional Assembly; Hawaii Women's Coalition; ILWU Local 142; Hawaii State Democratic Women's Caucus; National Employment Lawyers Association Hawaii Chapter; Americans for Democratic Action Hawaii; American Civil Liberties Union of Hawaii; and



several concerned individuals testified in opposition to this measure.

Your Committee finds that the federal standard regarding workplace discrimination and harassment is less protective than the existing State standard and notes the concerns raised in testimony regarding the employer's affirmative defense in this measure. Your Committee finds that employers should implement policies and procedures that prohibit and prevent unlawful discriminatory practices in the workplace. However, your Committee also finds that your Committee on Judiciary is the more appropriate body to examine incentives to employers to adopt appropriate procedures. Should your Committee on Judiciary deliberate on this measure, your Committee respectfully requests that it further examine the issue of incentives to employers, through penalties or otherwise, to implement these policies.

Accordingly, your Committee has amended this measure by:

- (1) Removing the provisions that establish employer liability for adverse tangible employment action resulting from a supervisor's discriminatory actions;
- (2) Removing the provisions that establish an employer's affirmative defense for an adverse tangible employment action;
- (3) Inserting new language requiring that employers implement workplace policies and procedures to prevent unlawful discrimination and harassment in the workplace and submit those policies to the Department of Labor and Industrial Relations for review and approval; and
- (4) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor & Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 684, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 684, H.D. 1, and be referred to the Committee on Judiciary.



Respectfully submitted on
behalf of the members of the
Committee on Labor & Public
Employment,



MARK M. NAKASHIMA, Chair



State of Hawaii
House of Representatives
The Twenty-eighth Legislature

HSCR 329

Record of Votes of the Committee on Labor & Public Employment

Bill/Resolution No.: HB 684	Committee Referral: LAB, JUD	Date: 2/13/15		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
LAB Members	Ayes	Ayes (WR)	Nays	Excused
1. NAKASHIMA, Mark M. (C)	/			
2. KEOHOKALOLE, Jarrett (VC)	/			
3. AQUINO, Henry J.C.	/			
4. HAR, Sharon E.				/
5. ICHIYAMA, Linda	/			
6. JOHANSON, Aaron Ling	/			
7. LOPRESTI, Matthew S.		/		
8. SAN BUENAVENTURA, Joy A.	/			
9. TAKAYAMA, Gregg	/			
10. TAKUMI, Roy M.				/
11. YAMASHITA, Kyle T.	/			
12. TUPOLA, Andria P.L.	/			
TOTAL (12)	9	1		2
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center; font-size: small;">committee acronym(s)</div>				
Vice Chair's or designee's signature:				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				