

EXECUTIVE CHAMBERS

HONOLULU

July 11, 2005

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1450

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1450, entitled "A Bill for an Act Relating to Civil Rights."

The purposes of this bill are: (1) to clarify that discrimination based upon "gender identity or expression" is a form of sex discrimination and (2) to prohibit discrimination in employment on the basis of "gender identity or expression." This bill defines "gender identity or expression" in an open-ended manner to include "a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth."

This bill is objectionable because it contains no limiting terms or interpretational guidelines. The words used to define "gender identity or expression" are broad in scope and the terms "gender-related self-image, gender-related appearance, or gender-related expression" are subject to broad and subjective interpretation. The application of those terms in the employment area will likely result in controversy and unwarranted lawsuits. To avoid such controversy and litigation, the terms should be statutorily defined in a clear, precise, and limited manner with guidelines to assist employers and employees in interpreting and applying the terms in the employment context.

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While the primary focus of the legislation is in regard to individuals who may have a gender identity and expression that "is different from that traditionally associated with the person's sex at birth," the broad definition in the bill also appears to cover those who have personal expressions of the gender of their birth that may be inappropriate to business and professional environments. This bill appears to support an individual's "civil right" to express their gender identity in any manner that they wish, thereby calling into question the ability of businesses and related organizations to manage these situations by establishing and enforcing basic conduct standards.

The Civil Rights Commission currently interprets "sex" to cover the potential abuses related to the treatment of individuals who have gender identities or expression different from their sex at birth. The proposed inclusion of the broader definition of "gender identity or expression" in statute opens employment areas to unintended legal claims.

For the foregoing reasons, I am returning House Bill No. 1450 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii