

***Hawai'i Civil Rights Commission Meeting 4.28.26***  
***BOARD PACKET***

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE HAWAII CIVIL RIGHTS COMMISSION TO EXAMINE THE  
APPLICABILITY OF EXISTING STATE ANTI-DISCRIMINATION LAWS TO  
ALGORITHMIC AND AUTOMATED DECISION SYSTEMS.

1 WHEREAS, Hawaii has a longstanding commitment to protecting  
2 individuals from discrimination in employment, housing, public  
3 accommodations, credit, and access to state and county services;  
4 and

5  
6 WHEREAS, the Hawai'i Civil Rights Commission is charged with  
7 enforcing the State's anti-discrimination laws and ensuring  
8 equal opportunity for all of Hawaii's residents; and

9  
10 WHEREAS, algorithmic and automated decision systems,  
11 including artificial intelligence tools, are increasingly used  
12 in employment screening, tenant selection, credit  
13 determinations, and public benefits eligibility determinations  
14 to make decisions in areas that are traditionally protected by  
15 anti-discrimination laws; and

16  
17 WHEREAS, research and national experience suggests that  
18 algorithmic and automated determination systems may replicate,  
19 amplify, or obscure patterns of discrimination, particularly  
20 when these systems are built upon biased data or opaque modeling  
21 practices or lack sufficient oversight; and

22  
23 WHEREAS, discrimination arising from algorithmic and  
24 automated decision systems may present novel jurisdictional,  
25 evidentiary, and enforcement questions under the State's  
26 existing civil rights statutes; and

27  
28 WHEREAS, ensuring that civil rights protections remain  
29 effective in the face of evolving technologies is consistent



1 with this body's responsibility to uphold fairness, equal  
2 protection, and public confidence in government; now, therefore,

3  
4 BE IT RESOLVED by the Senate of the Thirty-third  
5 Legislature of the State of Hawaii, Regular Session of 2026, the  
6 House of Representatives concurring, that the Hawai'i Civil  
7 Rights Commission is requested to examine the applicability of  
8 existing state anti-discrimination laws to algorithmic and  
9 automated decision systems; and

10  
11 BE IT FURTHER RESOLVED that the examination include, to the  
12 extent possible:

- 13  
14 (1) An assessment of whether existing state law provides  
15 sufficient authority to investigate and remedy  
16 discrimination arising from algorithmic or automated  
17 determination systems;  
18  
19 (2) Identification of potential jurisdictional or  
20 evidentiary challenges associated with algorithmic  
21 discrimination claims;  
22  
23 (3) Evaluation of whether guidance, rulemaking, or  
24 administrative clarification may assist individuals  
25 and regulated entities in understanding their rights  
26 and responsibilities;  
27  
28 (4) Consideration of the feasibility of establishing an  
29 intake or complaint pathway for alleged algorithmic or  
30 automated discrimination under existing state law; and  
31  
32 (5) Recommendations, if any, for legislative action to  
33 ensure civil rights and anti-discrimination  
34 protections remain effective; and  
35

36 BE IT FURTHER RESOLVED that the Hawai'i Civil Rights  
37 Commission is requested to submit a report of its findings and  
38 recommendations, including any proposed legislation, to the  
39 Legislature no later than twenty days prior to the convening of  
40 the Regular Session of 2027; and  
41



# S.C.R. NO. 184

1 BE IT FURTHER RESOLVED that certified copies of this  
2 Concurrent Resolution be transmitted to the Chair of the Hawai'i  
3 Civil Rights Commission and Executive Director of the Hawai'i  
4 Civil Rights Commission.

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6  
7

OFFERED BY: Karl Rhoads





# **HAWAI‘I CIVIL RIGHTS COMMISSION** **KOMIKINA PONO KIWILA O HAWAI‘I**

830 PUNCHBOWL STREET, ROOM 411, HONOLULU, HI 96813 · PHONE: (808) 586-8636 · FAX: (808) 586-8655 · TDD: (808) 586-8692

Wednesday, April 22, 2026 3:00 p.m.  
Conference Room 430 & Videoconference  
State Capitol, 415 South Beretania Street

To:

[COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS](#)

Rep. David A. Tarnas, Chair

Rep. Mahina Poepoe, Vice Chair

From: Marcus L. Kawatachi, Executive Director of the Hawai‘i Civil Rights Commission  
and HCRC Staff

**Re: SCR184 & Companion HCR192/HR182**

**HCRC Staff Comments**

**While the Commission has not yet had the opportunity to meet and take an official position on SCR184/HCR192/HR182, the Hawai‘i Civil Rights Commission (HCRC) staff provides following comments:**

SCR184 would require the HCRC to examine the applicability of existing state anti-discrimination laws to algorithmic and automated decision systems by (1) assessing existing state laws with regard to algorithmic and automated decision making; (2) identifying potential jurisdictional or evidentiary challenges; (3) evaluating whether guidance or rulemaking will assist individuals and entities in understanding obligations and rights; (4) consideration of complaint pathways under existing state law; and (5) recommendations for legislative action.

SCR184 would require the HCRC to submit a report of its findings to the legislature prior to the convening of the Regular Session of 2027.

As background, 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. HCRC has enforcement jurisdiction over Hawai'i's laws prohibiting discrimination in employment (Chapter 378, Part I, HRS), housing (Chapter 515, HRS), public accommodations (Chapter 489, HRS), and access to state and state-funded services (HRS § 368-1.5).

As technological advances increase and as technology increasingly becomes an essential part of every day life for many individuals and industries, looking critically at how artificial intelligence and algorithmic and automated decisionmaking is being used currently and will be used in the foreseeable future becomes necessary. Algorithmic or automated systems that are used to screen out applicants for housing or employment may superficially appear to take the human bias or discriminatory motive out of the decisionmaking process. However, research has shown these systems may continue or exacerbate historic discriminatory practices, as learning models use existing information (that may be based on past discriminatory practices) in its recommendations.<sup>1</sup>

A few jurisdictions and states have recently enacted or introduced laws to regulate and combat algorithmic discrimination, including Colorado, California, and New York City (regulating

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<sup>1</sup> Ghasemaghaei, Maryam, and Nima Kordzadeh, *Understanding how algorithmic injustice leads to making discriminatory decisions: An obedience to authority perspective*, Science Direct, <https://www.sciencedirect.com/science/article/pii/S037872062400003X>, last accessed on March 30, 2026.

Sombetzki, Pia, *How and Why Algorithms Discriminate*, Algorithm Watch, <https://algorithmwatch.org/en/how-and-why-algorithms-discriminate/>, last accessed on March 30, 2026.

artificial intelligence (AI) discrimination in the workplace).<sup>2</sup> With the increasing reliance upon AI in our society and the increasing integration of algorithmic decisionmaking in industries, it is extremely likely that more states and local jurisdictions will seek to regulate this industry.

SCR184 is incredibly timely in this regard. It is highly unlikely that AI and algorithmic decisionmaking will disappear from society. This concurrent resolution addresses the reality that algorithmic decisionmaking will continue to be a part of decisions made in employment, housing, and other areas in life, and requires the HCRC to take a critical look at existing law and anticipate problems before they arise.

The HCRC is the agency that is tasked to handle these types of discriminatory complaints in employment, housing, public accommodations, and access to state and state-funded activities. While all cases are fact-specific, the HCRC would currently take complaints alleging discriminatory practices by AI or algorithmic decisionmaking systems that fall under our jurisdiction. The HCRC staff believes that the report that will be generated from this concurrent resolution will provide critical insight into the sufficiency of existing state law in handling algorithmic discrimination, and whether future legislation may be necessary.

Mahalo for the opportunity to provide these comments.

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<sup>2</sup> States Passing Laws to Prevent AI Discrimination in Workplace, March 25, 2025, LexisNexis, <https://www.lexisnexis.com/community/insights/legal/capitol-journal/b/state-net/posts/states-passing-laws-to-prevent-ai-discrimination-in-workplace>, last accessed on March 30, 2026.

JAN 28 2026

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE UNITED STATES CONGRESS TO PASS LEGISLATION TO  
AMEND THE CIVIL RIGHTS ACT OF 1964 TO PROHIBIT  
DISCRIMINATION ON THE BASIS OF SEX, SEXUAL ORIENTATION, AND  
GENDER IDENTITY IN EMPLOYMENT, HOUSING, PUBLIC  
ACCOMMODATIONS, EDUCATION, FEDERALLY FUNDED PROGRAMS,  
CREDIT, AND JURY SERVICE.

1           WHEREAS, sexual and gender minorities have been  
2 criminalized, marginalized, and subject to discrimination over  
3 the course of United States history; and  
4

5           WHEREAS, prior to Western contact, Native Hawaiian society  
6 accepted same-sex relationships and gender fluidity and  
7 recognized māhū as a distinct third gender; and  
8

9           WHEREAS, Hawaii law currently provides protection to  
10 individuals on the basis of sexual orientation, gender identity,  
11 and gender expression in the context of housing, public  
12 accommodations, and employment; and  
13

14           WHEREAS, these protections were enacted over time, with the  
15 most recent law (Act 40, Session Laws of Hawaii 2022)  
16 prohibiting juror exclusion on the basis of gender identity or  
17 expression; and  
18

19           WHEREAS, many sexual and gender minorities across the  
20 United States are not protected under the laws of the states in  
21 which they reside; and  
22

23           WHEREAS, federal law still does not prohibit discrimination  
24 against sexual and gender minorities in a variety of contexts,  
25 including public accommodations and facilities, education,  
26 federally funded programs, employment, housing, credit, and jury  
27 service; and



1  
2 WHEREAS, prior versions of the federal Equality Act have  
3 been introduced since 1974, with the United States House of  
4 Representatives passing H.R. 5 in 2019 and 2021; and  
5

6 WHEREAS, the current United States House of  
7 Representatives' version of the federal Equality Act, H.R. 15,  
8 is sponsored by Representative Mark Takano of California and co-  
9 sponsored by two hundred fifteen members, including  
10 Representatives Ed Case and Jill Tokuda of Hawaii; and  
11

12 WHEREAS, the current United States Senate version of the  
13 federal Equality Act, S. 1503, is sponsored by Senators Jeff  
14 Merkeley of Oregon, Tammy Baldwin of Wisconsin, and Cory Booker  
15 of New Jersey and co-sponsored by forty-six members, including  
16 Senators Mazie Hirono and Brian Schatz of Hawaii; and  
17

18 WHEREAS, according to the Human Rights Campaign, over six  
19 hundred organizations have publicly endorsed the federal  
20 Equality Act; now, therefore,  
21

22 BE IT RESOLVED by the Senate of the Thirty-third  
23 Legislature of the State of Hawaii, Regular Session of 2026, the  
24 House of Representatives concurring, that this body hereby  
25 requests the United States Congress to pass legislation to amend  
26 the Civil Rights Act of 1964 to prohibit discrimination on the  
27 basis of sex, sexual orientation, and gender identity in  
28 employment, housing, public accommodations, education, federally  
29 funded programs, credit, and jury service; and  
30

31 BE IT FURTHER RESOLVED that this body respectfully requests  
32 that the full and complete text of this Concurrent Resolution be  
33 printed in the Congressional Record; and  
34

35 BE IT FURTHER RESOLVED that certified copies of this  
36 Concurrent Resolution be transmitted to President of the United  
37 States, Vice President of the United States, President Pro  
38 Tempore of the United States Senate, Speaker of the United  
39 States House of Representatives, Majority Leaders and Minority  
40 Leaders of the United States Senate and United States House of  
41 Representatives, and members of Hawaii's Congressional  
42 delegation.



# S.C.R. NO. 11

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OFFERED BY: Karl Rhoads





# **HAWAI‘I CIVIL RIGHTS COMMISSION** **KOMIKINA PONO KIWILA O HAWAI‘I**

830 PUNCHBOWL STREET, ROOM 411, HONOLULU, HI 96813 · PHONE: (808) 586-8636 · FAX: (808) 586-8655 · TDD: (808) 586-8692

Wednesday, April 22, 2026 3:00 p.m.  
Conference Room 430 & Videoconference  
State Capitol, 415 South Beretania Street

To:

[COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS](#)

Rep. David A. Tarnas, Chair

Rep. Mahina Poepoe, Vice Chair

From: Marcus L. Kawatachi, Executive Director of the Hawai‘i Civil Rights Commission  
and HCRC Staff

**Re: SCR11 – Federal Equality Act; Sex; Sexual Orientation and Gender Identity**  
**HCRC Staff Comments**

**While the Commission has not yet had the opportunity to meet and take an official position on SCR11, the Hawai‘i Civil Rights Commission (HCRC) staff provides following comments:**

Senate Concurrent Resolution (SCR11) requests that the United States Congress pass legislation to amend the Civil Rights Act of 1964 to prohibit discrimination on the basis of sex, sexual orientation, and gender identity in employment, housing, public accommodations, education, federally funded programs, credit, and jury service.

As background, 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. HCRC has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment (Chapter

378, Part I, HRS), housing (Chapter 515, HRS), public accommodations (Chapter 489, HRS), and access to state and state-funded services (HRS § 368-1.5).

Hawai'i has a long and proud history of providing greater protections at the state level than those rights enumerated rights at the federal level. Hawaii's nondiscrimination statutes that are enforced by the HCRC, generally have been expanded to protect as many historically marginalized groups as possible in accordance with the State's fundamental principles of fairness, equality, and justice. Sex, sexual orientation, and gender identity are protected groups through the State's nondiscrimination laws in employment, housing, and public accommodations.

Over the years, HCRC has had workshare agreements with the federal U.S. Department of Housing and Urban Development and the U.S. Equal Employment Opportunity Commission. For rights that are protected at both the state and federal level, complaints could be dual-filed with those federal agencies. However, what used to be a core tenet of nondiscrimination laws, **that federal protections were the floor beneath which rights cannot fall, rather than a ceiling above which states cannot grant broader protections**, now is uncertain.

Past agency interpretations and protections granted at the federal level have been abandoned or directly rejected by the current administration. Specifically, certain protected characteristics (such as gender identity or expression and sexual orientation, protected under Hawai'i nondiscrimination laws), and commonly used analytical theory (disparate impact) have been targeted by the federal agencies as noncompliant to federal laws. This resolution (SCR11) to amend the federal Civil Rights Act to explicitly include sex, sexual orientation, and gender

identity will ensure that these protections cannot be erased by agency interpretation or guidance.

Mahalo for the opportunity to provide these comments.