

**Testimony to the House Committee on Judiciary  
Tuesday, February 7, 2012 at 2:00 p.m.  
Conference Room 325, State Capitol**

**RE: HOUSE BILL 1680 HD1 RELATING TO EMPLOYMENT SECURITY**

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") opposes HB 1680 HD1 relating to Employment Security.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure includes two provisions to the unlawful discriminatory practice category to H.R.S. Section 378-2, by:

- Adding that it shall be an unlawful discriminatory practice, "for any employer or employment agency to refuse to hire or employ any individual solely because the individual was unemployed at the time the advertisement for the job vacancy was published."
- Prohibiting any employer or employment agency to publish or cause to be published any advertisement for a job vacancy that includes language that essentially states that the unemployed need not apply.

This measure creates a protected class that would allow individuals to sue for discrimination in hiring and if an unemployed person does not get offered a job. While an employer may be able to prevail by showing a legitimate business reason for not hiring the unemployed person, the employer would have to challenge the legal battle to do so and face substantial legal liability. The fear of a lawsuit would drive a business to pursue existing networks to fill positions.

Thus, this law will discourage hiring and hurt the workers it purports to help. It will make it harder for unemployed workers to find jobs.

Additionally, this part of the bill hinders an employer's ability to ask questions about gaps in employment or employment status during the screening and interviewing process. Employers should be able to legitimately ask why an applicant was not working during a period of time.

As for the job advertisement provision, little evidence exists that employers discriminate against the unemployed by listing that the "unemployed need not apply," therefore, we believe this provision is unnecessary. In fact, pursuing a restrictive hiring policy could be counter-productive as it may exclude a talented pool and applicants that are more flexible about wages and benefits, so it would not make business sense not to consider unemployed persons as well.

If this measure becomes law, it will have unintended consequences and impose costs on business, such as legal obligations, potential liabilities, uncertainty, and unequivocally an increase in the cost of doing business. These higher costs will discourage job creation.

For these reasons, we respectfully urge the committee to hold this measure. Thank you for this opportunity to express our views.