



HAWAII CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office
April 29, 2015*
1:30 p.m.

Present: Linda Hamilton Krieger, Raymund Liongson, Kim Coco Iwamoto, Wally Fukunaga, and Artemio Baxa, Commissioners; Livia Wang, Bill Hoshijo, and Marcus Kawatachi, Staff; Leonard Hoshijo, Deputy Director of Labor and Industrial Relations, was also in attendance.

Chair Linda Hamilton Krieger called the meeting to order.

Approval of Minutes

The minutes of the March 30, 2015, meeting were approved. (m/s/p Liongson/Baxa; all in favor).

Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi's reported on FY 2015 HCRC Mediation Program Year-to-Date progress, noting that six additional cases had been referred to mediation and one case had been successfully mediated since the last report on March 30, 2015.

Summary & Details (7/1/14 through 4/29/15)

Referrals:	34
Dispositions:	22
Settlements:	12
Non-agreements:	10
Settlement Rate:	54.5 %
Employment cases settled:	12
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	10
State-only settlements:	2

Primary Bases for Complaints Settled in Mediation

Sex	8 (4 pregnancy and 4 sexual harassment)
Race	2
Ancestry/National Origin	1
Disability	1

Dispositions by Mediation Center

Mediation Center of the Pacific	6/12 (settlement rate 50 %)
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* as approved with corrections May 27, 2015.

Kauai Economic Opportunity, Inc.	2/3	(settlement rate 66.7%)
West Hawaii Mediation Center	2/3	(settlement rate 66.7 %)
Private Mediators	2/2	(settlement rate 100 %)
Ku'ikahi Mediation Services (Hilo)	0/1	(settlement rate 0 %)
Mediation Services of Maui	0/0	(settlement rate 0%)
OVERALL	12/22	(settlement rate 54.5%)

DED Kawatachi presented a data and production report showing caseload data through April 29, 2015.

As of April 29, 2015, the report showed 396 open cases, an increase of 3 cases from the number reported as of March 30, 2015. Of those, 3 (0.8%) were filed in 2009, 5 (1.3%) filed in 2010, 20 (5.0%) filed in 2011, 44 (11.1%) in 2012, 71 (17.9%) in 2013, 147 (37.1%) in 2014, and 106 (26.8%) in 2015.

The report also showed a breakdown of the status of the open cases by investigation stage.

	2009	2010	2011	2012	2013	2014	2015	Total
Housing Cases	0	0	1	5	1	9	10	26
Intake Stage	0	0	2	0	23	85	77	187
Mediation	0	0	0	1	5	22	12	40
Pending Assignment	0	0	0	23	12	7	1	43
Active Investigation	3	5	17	15	30	24	6	106
TOTAL	3	5	20	44	71	147	106	396

It was reported that: 20.2% of all investigation cases were 2 years old or older (from date of filing); 10.4% were over 18 months but less than 2 years old; 14.1 % were over 12 months but less than 18 months old; 18.7% were over 6 months but less than 12 months old, and 36.6% were 6 months old or less.

DED Kawatachi reported that no administrative subpoenas were issued.

Chair Kreiger asked what happens when parties call to ask about the status of their case. Executive Director Bill Hoshijo said that whether it is the assigned investigator, a supervisor, or the DED, enforcement staff try to respond to inquiries in a timely manner. DED Kawatachi added that the ED has sent letters to attorneys explaining the length of time it takes to investigate cases, including the loss of enforcement capacity.

DED Kawatachi reported that 10 notices of cause had been issued to date during FY 2015, and that he expected additional notices of cause to be issued during the last quarter of the fiscal year.

Chief Counsel's Report

Chief Counsel (CC) Livia Wang reported on the status of two cases on appeal to the state circuit court.

In the *Bate* appeal, she reported on the hearing on the HCRC and Complainant/Appellee motion to strike. The circuit court judge agreed that the Respondents/Appellants were entitled to a jury trial only on claims that for which legal relief was granted but not for those claims in which only equitable relief was granted, in this case for the harassment claims but not for the termination claim. From the bench, the judge stated that there should be a jury trial on only those claims in which legal damages were awarded, followed by a bench trial on the remaining claims, and that if there were common issues of fact that the jury findings would be the factual findings in the bench trial on those factual issues. The judge then denied the motion to strike, without prejudice.

In the *Elento* appeal, CC Wang reported that an oral argument was scheduled for June 5, 2015.

Legislation -2015 Session

ED Hoshijo reported that the FB 2015-2017 budget included \$25,000 for the HCRC to pay for a contract hearings examiner.

Commissioner Kim Coco Iwamoto asked if the HCRC request for restoration of any of the 3 permanent investigator positions lost since 2008 was included in the budget. ED Hoshijo said no, there was no restoration of lost capacity.

Commissioner Wally Fukunaga said the HCRC needed to mobilize the civil rights community. Commissioner Raymond Liongson agreed, adding that he knew of several agencies that have mobilized community support to fight for resources.

Commissioner Iwamoto said the Department of Education website had information posted on capital improvement projects, and which legislative districts those projects were located in.

Commissioner Fukunaga asked how the HCRC could get the word out, suggesting the convening of an ad hoc committee might be useful. Chair Krieger added that the work of such a committee would be subject to the open meetings law.

Commissioner Artemio Baxa suggested that the Commission needed to identify important issues.

Chair Krieger agreed, asking, "What are the important issues in employment discrimination?" She suggested that one important issue was the small number of women and minorities working in construction on public works projects.

Commissioner Liongson added that he was concerned about the growing number of women and families who are homeless. He wondered if the Commissioners can organize and rally the community on these kinds of issues. ED Hoshijo responded that the Commissioners are free to express and act on their convictions and beliefs, making it clear when they are acting as individuals and not in their official capacity.

ED Hoshijo suggested that the Commission could invite experts to a meeting to discuss issues involving women in the workplace.

Chair Krieger summarized the issue for further discussion, as underutilization of women in the building trades on public works projects, specifically including rail construction. She emphasized that this was an important economic empowerment issue, given the County's long term commitment to rail construction.

The Commissioners reviewed Legislative Summary 5, prepared by CC Wang.

CIVIL RIGHTS COMMISSION

HB 683 HCRC – ED Authority to Dismiss Complaints SB 362

Amends HRS §368-13 to authorize ED to dismiss a complaint and issue a notice to sue if cause is found and conciliation fails

**Status: HB 683 ref. to LAB, JUD; hrg. before LAB on 2/17, passed unamended
SB 362 ref. to JDL; ; hrg. before JDL on 4/6, passed 2/ amendments; conf. com. mtg.
on 4/30.
SB 362 ref. to JDL; no hearing held.**

HCRC position: Support. This is the bill originally submitted as part of the admin. package; emphasize how this will save staff time and costs.

NOTE: HUD requires housing cases exempted from this authority.

EMPLOYMENT

HB 561 HD1 Personal Social Media Account; Privacy, Employment [SB-1269]

Amends HRS Ch. 378 Part I to prohibit employers from requiring or requesting employees and applicants to grant access to personal social media account user names and passwords

**Status: HB 561 ref. to LAB, JUD; hrg. on 2/3 before LAB, passed w/ requested amendments deleting (e) but still keeping provision in HRS 378 Part I; decision making before JUD on 2/26, passed unamended; crossed on 3/6, ref. to JDL; hrg. before JDL on 3/23, decision making deferred to 3/30, passed w/ amendments putting provision in new part of HRS Chapter 378; conf. com. mtg. on 4/30.
SB 1269 ref. to JDL, no hearings held.**

HCRC position: Support intent with amendment to delete section (e) and urge placement in a new part of HRS Ch. 378 and provide direct cause of action in court with injunctive relief and attorneys' fees. In pre-employment and employment context, information related to protected bases gained from social media accounts is already prohibited by HRS § 378-2.

[HB-795] Medical Marijuana; Employment Protections
SB 1291 SD1

Amends both HRS § 329-125 and adds a new part to HRS Ch. 378 to prohibit an employer from disciplining, suspending, discharging or discriminating against an employee solely because the employee tested positive for marijuana if the employee is a qualifying patient/user of medical marijuana, the marijuana is not used in the workplace. Prohibition does not supersede any statute, rule, employment contract, collective bargaining agreement, or workplace regulation or policy prohibiting an employee from being under the influence of marijuana while working in the workplace.

Status: HB 795 ref. to HLT, JUD; hrg. before HLT on 2/7; decision making on 2/11; deferred.

SB 1291 ref. to HTH, JDL; hrg. before HTH on 2/18, passed w/amendments changing effective date only; hrg. before JDL on 2/26; passed w/ requested amendments to take provision out of HRS 378 part I and changing protections for marijuana patients and caregivers from discrimination by schools, landlords and Courts; crossed on 3/12, ref. to HLT, JUD; hrg. before HLT on 3/25, passed w/ amendments, hrg. before JUD on 4/2, decision making on 4/7, passed w/ amendments; conf. com. mtg. 4/29.

HCRC position: Support and state that section 2 of bill should be deleted – protections should only be in HRS Ch. 329 and not repeated in HRS Ch. 378.

[HB-944] Background checks on employees, applicants and operators of
SB 1113 SD1 healthcare facilities and the state Dept. of Health

Expands authority of DOH to conduct background checks to include criminal history record checks, adult abuse perpetrator and child abuse record checks, and certified nurse aid registry record checks for people seeking employment with the state or its contractors where the work involves direct client care in healthcare facilities.

Status: HB 944 ref. to HLT, JUD.

SB 1113 ref. to HTH/HSH, JDL; hrg. before HTH/HSH on 2/10, deferred to 2/11, passed w/ amendments; decision making before JDL on 2/27, passed w/ amendments; crossed on 3/10, ref. to HLT, LAB, JUD; hrg. before HLT on 3/18, passed w/ amendments; hrg. before LAB on 3/24, passed unamended; hrg. before JUD on 3/31, passed unamended; conf. com. mtg. 4/29.

HCRC position: Monitor and comment that HCRC does not oppose criminal history record checks for positions that involve work with vulnerable populations.

PUBLIC ACCOMMODATIONS

HB 1272 HD1 Open Movie Captioning and Descriptive Narration in Motion Picture Theaters

Amends HRS § 347 to require motion picture theaters that have 2 or more facilities to provide closed movie captioning and descriptive narration for at least 2 showings per

week of a motion picture.

Status: ref. to EPB, CPC/JUD; hrg. before EPB on 2/10, passed w/ amendments requiring open captioning and descriptive narration in theaters having 2 or more facilities during at least 2 showings a week, making a violation of the statute a discriminatory practice, placing enforcement under HRS Chapter 489 and directing the DLIR director to adopt rules to this effect; hrg. before CPC/JUD on 3/3, passed w. requested amendments; crossed on 3/12; ref. to CPN, JDL; hrg. before CPN on 3/17; passed w/ amendments; decision making before JDL on 3/31, passed w/ requested amendments but with sunset provision in January 2018 ; House agrees w/ SD2; transmitted to Governor on 4/21.

HCRC position: Support, with request to amend by deletion of the provision requiring the Director of Labor and Industrial Relations to adopt rules, because any rules would be adopted by the HCRC, and rulemaking would not be necessary where the statute is so specific; also, with suggestion that “motion picture theater” and “facility” be clearly defined.

**HCR 141 IID1 Requesting DLNR and Counties to Provide Reasonable
HR 84 Access for Disabled Persons to Access Beaches**

Asks DLNR and counties that maintain beach transit corridors to provide reasonable accommodation for access to shoreline for persons with disabilities at any beach that has a public restroom facility and is within an ocean recreation management area by July 1, 2016

Status: Ref. to OMH/WAL, FIN; hrg. before OMH/WAL on 3/27, passed w/ amendments changing reference from “reasonable accommodation” to “access”; decision making before FIN on 4/7, passed unamended; transmitted to Senate on 4/9; hrg. before WTL on 4/20, passed w/ amendments requesting DLNR and counties to “improve” (vs. “provide”) access and report to leg only; referral to JDL waived on 4/24; sent back to House.

Discussion: Staff recommendation was to support with amendments, based on HCRC support for H.B. No. 721, with reference to HCRC jurisdiction over state-funded beach programs and activities under HRS § 368-1.5.

HCRC position: Support with amendments, based on HCRC support for H.B. No. 721, with reference to HCRC jurisdiction over state-funded beach programs and activities under HRS § 368-1.5. (m/s/p Iwamoto/Liongson; all).

Chair Krieger strongly reiterated that denial of access to state funded beach programs and activities fall under HRS § 368-1.5.

OTHER CIVIL RIGHTS ISSUES

HB 631 IID1 New Birth Certificate; Gender Designation

Amends HRS §338-17.7 to change gender designation on birth certificate when statement from a licensed medical or social service provider attests that current birth certificate does not align with

birth registrant's gender identity and provides cause of action if DOH refuses to issue new birth certificate

Status: ref. to HLT, JUD; hrg. before HLT on 2/13, deferred to 2/18, passed w/ amendments requiring an affidavit from medical or social service provider and changes effective date to 2050; hrg. before JUD on 2/24, passed w/ amendments to allow registrant to request disclosure of original birth certificate; crossed on 3/12, ref. to HTH, JDL; hrg. before HTH on 3/18, passed unamended; decision making before JDL on 4/6, passed w/ amendments adding requirement for court order that affidavit from licensed medical provider or licensed mental health provider is legitimately issued ; conf. com. mtg. on 4/30.

HCRC position: Strongly support. Related to HRS Ch. 378 prohibitions against discrimination based on gender identity and expression in that employers are to address and treat employees based on their gender identity and not their ID records; this bill enables employees to more easily change their IDs. Current law creates 2 classes of people who have to go through 2 different processes to change their birth certificates; bill would create one standard and one process.

Commissioner Iwamoto commented on the proposed conference draft of the bill, noting that it took out the requirement of a court order, but required an affidavit sufficient to meet US passport office requirements. She also noted that the proposed conference draft covers gender transition, but eliminated current law providing for correction of incorrect sex designation at birth.

HB 819 HD1 Bullying; Safe Schools for All Students
{SB-845}

Requires certain state entities and grantee to adopt bullying prevention policies, Establishes a task force to assist the Governor with bullying prevention policies in the state, amends HRS § 302D-34 to include gender identity or expression as a basis for protection against discrimination by a public charter school.

Status: HB 819 ref. to EDN, JUD; hrg. before EDN on 2/4, deferred to 2/11, passed w/ amendments adding county agencies and contractors who work with youth, deleting references to age in definition of youth, requiring bullying prevention programs to align with health education standards and adding an unspecified appropriation for the task force; hrg. before JUD on 3/3, passed w/ requested amendments; crossed on 3/12; ref. to EDU, JDL/WAM; hrg. before EDU on 3/16, passed w/ amendments; decision making before JDL/WAM on 4/8, passed w/ amendments deleting §5 (prohibiting charter schools from discriminating based on gender identity or expression); conf. com. mtg. on 4/30.

SB 845 ref. to EDU/HSH, JDL/WAM; hrg. before EDN/HSH on 2/4, deferred to 2/5, deferred.

HCRC position: Strongly support but suggest that part III section 6 be amended to state "sex, including gender identity or expression."

HB 1007 HD1 SD2 Relating to Motor Vehicle Driver Licensing
{SB-683-SD2}

Authorizes the issuance of limited purpose driver's licenses, provisional licenses and instruction

permits for individuals who are otherwise eligible for a license or permit but do not present proof of authorized presence in the U.S.

Status: HB 1007 ref. to TRN, JUD; hrg. before TRN on 2/11, passed unamended; decision making before JUD on 2/26, passed w/ amendments; crossed on 3/12; ref. to TRA, JDL; hrg. before TRA on 3/17, passed w/ amendments; hrg. before JDL on 3/27; passed w/ amendments changing effective date to January 2016; 4/28 House agrees w/ Senate amendments; transmitted to Governor.

SB 683 ref. to TRA, JDL; hrg. before TRA on 2/5, passed w/ amendments; hrg. before JDL on 2/27, passed w/ amendments; crossed on 3/10; ref. to TRN, JUD; no hearings held.

HCRC position: Strongly support with suggestion that this process be available at all satellite city halls where driver's licenses are issued.

[HCR-71] Urging Congress and the President to Support Passage of Legislation to
[HR-37] Expedite Family Reunification for Certain Filipino Veterans of WWII
[SCR-91]

SR 44 SD1 While certain aspects of the 1946 Rescission Act (which denied WWII Filipino veterans many rights given to other veterans from other countries that were inducted into the US military), immigration and naturalization benefits for the children of veterans was still not extended to them. Therefore, many elderly Filipino veterans living in the U.S. have still not been able to be reunited with their families.

Status: HCR71/HR 37 ref. to VMI, FIN; no hearings held
SCR91/SR44 ref. to PSM; hrg. before PSM on 4/7, passed w/ amendments; SCR 91 transmitted to House on 4/9; ref. to VMI, FIN; no hearings held. SR 44 adopted on 4/9.

HCRC position: Support.

RESOLUTIONS THAT DIED

HCR 44 Requesting UH to Affirm its Commitment to Ending All Forms of
HR 18 Sexual Violence, Sexual Harassment, Dating Violence, Domestic Violence
SCR 27 And Stalking on UH Campuses
SR 8

Asks UH to affirm its commitment to Title IX and Violence Against Women Reauthorization Act and prevent all forms of violence against women and girls; increase resources to address and prevent sexual violence; increase campus safety; and formulate plans to address and prevent gender discrimination and gender violence

Status: HCR 44/HR 18 ref. to HED, JUD; no hearings held
SCR 27/SR 8 ref. to HEA, JDL; no hearings held

HCRC position: Support.

**HCR 124 Urging DOE to Implement an Ethnic Studies Curriculum for Students in
HR 76 Grades K-12**

Asks DOE to submit a report regarding plans to implement an ethnic studies curriculum for public school students in K-12 prior to next session.

Status: Ref. to EDN, FIN; no hearings held

HCRC position: Strongly support.

**HCR 147 Replacing term “African American” with “American of African Descent” as
HR 88 a Race Category Used in State Surveys
SCR 123
SR 72**

**Status: HCR 147/HR 88 ref. to JUD; no hearings held
SCR 123/SR 72 ref. to GVO; no hearings held**

HCRC position: Monitor.

**HCR 157 Urging Congress to Examine Fair Housing Amendments Act as it Relates to
HR 95 Emotion Support/Comfort Animals and to Take Actions Necessary to
Prevent Abuses Thereof**

Status: Ref. to HLT, CPC; hrg. before HLT on 3/27, passed unamended

HCRC position: Comment only, noting strong support for federal and state fair housing law that allows the use of assistance animals as a reasonable accommodation for persons with a disability.

SCR 59 Recognizing Juneteenth as National Freedom Day on June 19

June 19, 1865 is the date when news of the 13th Amendment of the U.S. Constitution that abolished slavery reached slaves in the remaining slave states and is the oldest and only African American holiday observance in the U.S.

Status: Ref. to HEA; no hearing held

HCRC position: Support, with suggested amendment to recognize Juneteenth as “Emancipation Day.”

**SCR 179 Requesting Governor to Convene a Bullying Prevention Task Force
SR 114**

Asks Governor to convene a task force to create a model anti-bullying policy for use by educational institutions, youth serving agencies and grantees that provide series, activities

or privileges to you on behalf of the state

Status: Ref. to EDU; no hearing held

HCRC position: Support, with reference to support for H.B. No. 819, and noting that bullying based on disability would be covered under HRS § 368-1.5, under *Elento* decision.

BILLS THAT DIED EARLIER (from earlier Legislative Summaries)

[~~HB-244~~] Employment Discrimination; Labor; Smoking
SB 1005

Amends H.R.S. § 378-2((a) to prohibit discrimination against, or terminating an employee solely for the employee's use of tobacco products outside of working hours. Exempts organizations whose primary purpose is to discourage the use of tobacco products by the general public.

Status: HB 244 ref. to LAB, JUD, no hearings held.
SB 1005 ref. to JDL, no hearings held.

HCRC position: Oppose. The Commission opposes piecemeal regulation of employee behavior outside of working hours; should not be placed under HCRC jurisdiction because of budget constraints.

HB 25 HD1 Discrimination in Rental Transactions; Source of Income

Amends HRS Chapter 521 (Residential Landlord Tenant Code) to prohibit discrimination in the rental of residential property based on lawful source of income.

Status: ref. to HSG, CPC; hrg before HSG held on 2/2, passed w/ amendments changing effective date only; hrg. before CPC/JUD on 3/2, deferred.

HCRC position: Support. Lawful public sources of income include Section 8 vouchers, social security disability insurance, unemployment compensation, food stamps, temporary assistance to needy families; lawful private sources of income can include special needs trusts, and income from legal settlements. The majority of people who receive rental assistance are people with disabilities, single female heads of households, families with children and members of certain minority groups. Therefore, there is a correlation between those that are protected under our fair housing law and those who receive rental assistance. 13 other states have source of income protection statutes.

HB 31 HD1 Condominiums; Medical Marijuana; Discrimination

Amends HRS Chapter 421J by voiding any condo assoc. provision that discriminates against a person who holds a valid medical marijuana certificate and resides in a condominium property regime of planned community association unless the documents prohibit smoking tobacco and the medical marijuana is used by means of smoking

Status: ref. to HLT, CPC, JUD; hrg. held on 1/30 before HLT; decision making on 2/4, passed w/

amendments changing effective date only; no hearing before CPC

HCRC position: Oppose. Exempts condo associations from HRS § 515-3 reasonable accommodation provisions that would allow smoking of medical marijuana for persons with disabilities.

HB 536 HD2 Government Contractors; Pay Equity
SB 728 SD1

Amends HRS Ch. 103 to require government contractors to give equal pay for men and women who do similar work and requires government contractors to report wages paid to employees by gender. Also provides for penalties for pay equity violations.

Status: HB 536 ref. to LAB, JUD, FIN; hrg. on 2/3 before LAB, passed w/ requested amendments, hrg. before JUD on 2/17, passed w/amendments; no hearing held before FIN SB 728 ref. to GVO/JDL, WAM; hrg. on 2/10 before GVO/JDL, passed w/ requested amendments, decision making before WAM on 2/27, passed w/ amendments changing effective date to 2050; crossed on 3/12, ref. to LAB, JUD, FIN; hrg. before LAB on 3/17, deferred.

HCRC position: Support with proposed amendments to delete last sentence in proposed § 103-___(a) on page 3. Similar to protections under OFCCP; keep enforcement under HRS Ch. 103.

HB 738 Misrepresentation of representing oneself as the owner or trainer of a
SB 760 SD1 service dog

Amends HRS Chapter 347 to make it a misdemeanor for any person to misrepresent themselves as the owner or trainer of a service dog.

Status: HB 738 ref. to JUD, no hearings held.

SB 760 ref. to JDL, WAM; hrg. before JDL on 2/17, passed w/ amendments clarifying that “owner” includes people authorized by dog’s owner to use the service dog and changing effective date to 2059; no hearing before WAM

HCRC position: Oppose. Encourages prohibited inquiries. Also could result in arrest of people using assistance animals who might mischaracterize their animals as service dogs.

[SB 940] Exemption for religious facilities from HRS Ch. 489
HB 1337

Amends HRS Ch. 489 to exclude religious facilities owned or operated by a religious organization and used for religious purposes from definition of “place of public accommodation”.

Status: SB 940 ref. to CPN, JDL; no hearings held
HB 1337 ref. to JUD; no hearing held

HCRC position: Strongly oppose. Many religious organizations own facilities that are offered to the general public and they should not be allowed to discriminate. Also conflicts with federal Title II law that does not have such exemptions. Terms “used for religious purposes” is vague, and would require HCRC

to determine whether facilities are being used for religious purposes. These facilities are already exempt under the marriage equity law from being used to solemnize same sex marriages; the exemption should not be expanded to include other forms/bases of discrimination.

[HB-844] Office of Language Access; Appropriation for 3 positions to assist state and SB 926 state funded agencies in implementing language access plans

**[HB-845] Office of Language Access; establishing health care interpreter
SB 904 qualification/certification system**

**[HB-846] Office of Language Access; Appropriation to further develop language access SB
266 resource center and multilingual website pilot project**

Status: HB 844 ref. to HLT, FIN; no hearings held

SB 926 ref. to HTH, WAM; hrg. before HTH on 2/4, passed unamended; no hearings before WAM

HB 845 ref. to HLT, CPC, FIN; no hearings held

SB 904 ref. to HTH, WAM; hrg. before HTH on 2/6; passed unamended; no hearings before WAM

HB 846 ref. to HLT, FIN; no hearings held

SB 266 ref. to HTH, WAM, hrg. before HTH on 2/4, passed unamended; no hearings before WAM

HCRC position: Strong support for all 3 OLA bills. Last session the HCRC supported these 3 bills.

HB 1160 State Religious Freedom Restoration Act

Amends HRS Ch. 7 to prohibit the state or any county from burdening a person's right to exercise religion unless burden is the least restrictive means of furthering a compelling government interest.

Status: ref. to JUD; no hearings held.

HCRC position: Oppose. Last session HCRC opposed a similar bill because it is the strictest standard used to justify burdens on religious exercise imposed by neutral laws (such as non-discrimination laws) and would be used to strike down many laws against discrimination.

SB 235 SD1 Admin. Procedure; Admin. Rules; Public Hearings

Requires state agencies to hold public hearings in the counties primarily impacted by the proposed adoption, amendment, or repeal of any administrative rule. If proposed rule is likely to have a significant monetary impact on residents or communities of a particular island, at least one public hearing must be conducted with 30 days' notice on that island.

Status: ref. to GVO/JDL, WAM; hrg. before GVO/JDL on 2/10, deferred to 2/17, passed w/ amendments stating that if in-person hearings are supplemented by electronic communications and the electronic communications are interrupted, the hearing may continue; no hearings before WAM

HCRC position: Support but raise concerns about added costs of having hearings on every island should be added to HCRC budget (e.g., flying at least one Commissioner and staff, etc.)

SB 784 Accessible public meeting notices

Amends HRS § 92-7 to require notices of public meetings to include contact person to request an accommodation, and requires electronic notices to be accessible unless compliance imposes an undue burden.

Status: ref. to JDL; no hearings held

HCRC position: Strongly support because it is important to give accessible notice to people with disabilities and violates federal law and HRS § 368-1.5.

~~[HB 1322]~~ **Homeless Person's Bill of Rights**
SB 1014 Houseless Bill of Rights

Both bills add new sections to HRS to provide homeless/houseless persons with the right to: move freely in public spaces; have equal opportunities for employment; receive emergency medical care; register to vote and vote; have personal information protected; have privacy in their personal property; receive equal treatment by state and county agencies; freely accept or decline shelter or services from any state or county agency. SB 1014 additionally adds rights to sleep in legally parked cars, manage personal finances, 24 access to hygiene facilities. May bring civil action for violations

Status: HB 1322 ref. to HUS, JUD; no hearings held

SB 1014 ref. to HSH, JDL/WAM; hrg. before IITH held on 1/31/15, passed unamended; decision making by JDL/WAM on 2/27, passed w/ amendments; crossed on 3/12; ref. to HUS, JUD, FIN; hrg. before HUS on 3/17, deferred.

HCRC position: Monitor to make sure bills are not placed under HCRC jurisdiction (similar to bills introduced last session).

[HB 684 HD1] Employer Liability; Adding Federal Law Faragher/Ellerth Defenses
SB 1012

Amends HRS Chapter 378 to allow affirmative defenses for supervisor discriminatory conduct if supervisor's conduct does not result in adverse tangible employment action. "Adverse tangible employment action" defined as including, but not limited to, firing, failure to promote, assigning of significantly different responsibilities, and significantly reducing benefits of an employee. "Supervisor" defined as a person who is employed and empowered by the employer to take tangible employment actions towards the employee (from U.S. Supreme Ct. decision in *Vance v. Ball State*.)

Status: HB 684 ref. to LAB, JUD; hrg. before LAB on 2/13; passed w/ amendments completely deleting affirmative defenses and requiring employers to develop anti-discrimination policies that are reviewed by DLIR; hrg. before JUD on 2/27, decision making on 3/3, deferred to 3/6, deferred.

SB 1012 ref. to JDL; hrg. before JDL on 3/3, decision making on 3/5, passed w/ amendments amending § 378-3 to exempt employer liability from supervisor harassment unless agency status is used to effect harassment; crossed on 3/10, ref. to LAB, JUD; no hearings held.

HCRC position: Strongly oppose. Our current admin. rules provide strict liability (i.e., no defenses) for supervisor harassment. These rules were recently upheld by the Hawai‘i Supreme Court in the *Lales* case, and the Commission recently rejected such changes to our admin. rules. *Lales* also held that individual supervisors could not be liable, so liability now rests entirely with employers. If this is a concern, HRS 378-1 should be amended to define “employer” as including agents and supervisory employees. Also don’t want to define “supervisory employee” so narrowly - should also include persons who direct the day to day activities of employees. The proposed amendments would also conflict with the intent of HRS § 378-3(10), which allows an employee to bypass the HCRC complaint process and directly file a civil action for sexual harassment or sexual assault in circuit court.

HB 52, HD1 Relating to Selective Service

Requires compliance with the Military Selective Service Act to be eligible for enrollment in a state-supported post-secondary institution, qualify for state financial assistance for post-secondary education, or be eligible for state or county employment. Application limited to persons between the age of eighteen and twenty-six years of age, who are US citizens or lawful permanent residents, who are not otherwise excused from compliance with the Military Selective Service Act.

Status: ref. to VMI, HED, FIN; hrg. before FIN on 2/25/15; passed unamended; crossed on 3/10; ref. to PSM/HEA, JDL; no hearings held.

HCRC position: Strongly oppose, because of sex discrimination.

HB 1305 Employment; privacy in personal social media account

Adds new section to HRS Ch. 378 Part I to prohibit employer from requiring, requesting, or suggesting that an employee or applicant disclose username and password to access employee’s or applicant’s personal social media account. Exemptions if access to social media account is relevant to an investigation of employee misconduct or employee violation of other laws.

Status: ref. to LAB, JUD; no hearings held

HCRC position: Support intent to protect employees’ privacy in personal social media accounts and amend to allow employers to investigate such accounts only for the purpose of investigating allegations of hostile work environment harassment. Urge placement in a new part of HRS Ch. 378 and provide direct cause of action in court with injunctive relief and attorneys’ fees.

SB 644 False representation of animal as an assistance animal in housing

Amends HRS § 711 to make it a misdemeanor for any person to falsely represent that an animal is an assistance animal needed as a reasonable accommodation in housing.

Status: ref. to HSH/HTH, JDL; no hearings held

HCRC position: Strongly oppose. Housing providers can just deny the accommodation if the animal is not an assistance animal needed by a person with a disability as a reasonable accommodation. May have a chilling effect on residents who want to ask for accommodations if mistaken representations are criminalized.

HB 721 Beach access for persons with disabilities
SB 762

Amends HRS Ch. 115 to require DLNR and counties to provide access to all beaches that have public restroom facilities as a “reasonable accommodation” for persons with disabilities. Access must be provided by July 1, 2016. Also states that nothing precludes the award of relief available under HRS § 489-7.5.

Status: HB 721 ref. to OMH/WAL, JUD; no hearings held
SB 762 ref. to WTL/PSM, WAM; no hearings held

HCRC position: Support but change reference to HRS 368-1.5, since beach access is a program or activity of the state and § 489-2 does not require any reconstruction or new construction.

SB 700 Exemption for non-profit corporations from HRS Ch. 489

Amends HRS Ch. 489 to exclude non-profit corporations as defined in HRS Ch. 414D (i.e., all non-profit corporations) from definition of “place of public accommodation” and exempts them from requirements of chapter.

Status: ref. to CPN, JDL; no hearings held

HCRC position: Strongly oppose. Many non-profits operate services and business that are offered to the general public and they should not be allowed to discriminate on any bases. Conflicts with federal Title II law that does not have such exemptions.

Old Business

ED Hoshijo said there was nothing new to report on *Cervelli v. Aloha Bed & Breakfast*, which remained pending before the Intermediate Court of Appeals.

On the issue of discriminatory exclusions in health plan coverage, Commissioner Iwamoto reported that a meeting was planned with the board of the State Employer-Union Health Benefits Trust Fund (EUTF) to discuss the issue.

Chair Krieger suggested, and the Commissioner agreed, that she be authorized to request letters from the US Department of Health, US Department of Justice, and the EEOC, regarding the federal requirements for non-discriminator coverage under the Affordable Care Act. **(m/s/p Fukunaga/Lionson; all in favor).**

New Business

CC Wang distributed copies of a letter from the Hawaii State Ethics Commission in response to the request from the HCRC for advice regarding possible conflicts of interest. The Ethics Commission letter was dated April 28, 2015, and was received by CC Wang on that date.

CC Wang asked the Commissioners to review the Ethics Commission letter, for discussion at the next Commission meeting.

Announcements

Commissioner Fukunaga shared information on an upcoming presentation on “Journeys to Wellness,” presented by the Sunrise Ministry Foundation and scheduled for October 31, 2015.

ED Hoshijo shared information on a presentation on “The Future of Elder Care: What We Need for a Changing America,” featuring Ai-Nen Poo, the Director of the National Domestic Workers Alliance and the Co-Director of the Caring Across Generations campaign. The presentation was scheduled for May 1, 2015, at the UH William S. Richardson School of Law.

ED Hoshijo also mentioned that the HCRC would again have a contingent in the 2015 Pride Parade, scheduled for June 6, 2015.

Closed Executive Session

The Commissioners voted to go into closed executive session for attorney-client consultation with Chief Counsel. (m/s/p Liongson/Fukumoto; all).

The Commissioners went into closed executive session.

The Commissioners came out of closed executive session.

Next Meeting

The next meeting of the Commission was scheduled, for May 27, 2015, at 1:30 p.m., subject to polling of and confirmation by the Commissioners.

Adjournment