



HAWAII CIVIL RIGHTS COMMISSION

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MINUTES

Hawaii Civil Rights Commission Office

February 1, 2013*

3:30 p.m.

Present: Linda Krieger, Mark G. Valencia, Raymund Liongson, Wally Fukunaga, and Kim Coco Iwamoto, Commissioners; Livia Wang, Bill Hoshijo, and Marcus Kawatachi, Staff.

Chair Linda Krieger called the continued meeting back to order.

Legislation -2013 Session

The Commissioners reviewed Legislative Summary 3, with staff recommendations prepared by CC Wang. The Commissioners continued their discussion of bills and staff recommendations, taking action on bills not initially addressed on January 18, 2013., and decided on HCRC positions on thirteen bills as follows:

HB 1196 Religious Freedom: cause of action for government acts that burden religious freedom

Adds new HRS chapter which prohibits a government agency (specifically naming HCRC) from burdening a person's free exercise of religion through any rule, order, decision, practice or other exercise of government authority. "Free exercise of religion" is an act or refusal to act motivated by a sincere religious belief and that does need to be a central part or central requirement of the person's religion. (less than required under the constitutional free exercise analysis). Creates a cause of action (in addition to defenses that already exist) and allows remedies including declaratory and injunctive relief, damages and attorney fees.

Status: ref. to JUD

Staff recommendation: Oppose. This bill goes far beyond past proposals for religious exemptions from state civil rights laws prohibiting discrimination in public accommodations for church or religious organization owned or controlled facilities. It would provide a broad defense to neutral laws of general applicability based on sincerely held religious belief, and a cause of action against any state agency that continued to pursue enforcement after such a defense is proffered. This runs counter to the U.S. Supreme Court's standard applied in free exercise

* Meeting continued from January 18, 2013.

challenges to neutral laws of general applicability. As applied to the HCRC, this would allow any employer, housing provider or owner/ operator of a public accommodation to discriminate on the basis of religious belief and to sue the HCRC for enforcing anti-discrimination laws. Invites myriad of challenges and claims. Note: historically, slavery, Jim Crow segregation, and anti-miscegenation laws were justified by religious belief and doctrine.

Discussion: Chair Krieger commented that religious freedom restoration acts get into strange territory, not limited just to the HCRC in application, making governance unmanageable. Commissioner Valencia noted that he opposed the bill for a different reason, that he was not in favor of creating a new cause of action.

HCRC position: Oppose. (m/s/p Iwamoto/Liongson; all in favor).

**HB 409
SB 532**

Breastfeeding – workplace accommodation

Requires employees with 50+ employees to provide reasonable time and clean location for breastfeeding employees to express milk in privacy. Employees with less than 50 employees have to show undue hardship to be exempt. Requires posted notice and establishes civil fine. Repeals HRS § 378-10.

Status: HB 409 ref. to LAB, JUD, FIN; SB 532 ref to JDL

Staff recommendation: Support. Makes state law consistent with FLSA provisions, takes breastfeeding protections out of HCRC jurisdiction.

Discussion: Chair Krieger suggested that a private cause of action should be provided for injunctive relief and attorneys fees, because workers cannot rely on government agency that lacks capacity. Commissioner Valencia suggested that it could be put under HIOSH jurisdiction, rather than creating a private right of action. He said opposed the private right of action, but would support the original staff recommendation.

HCRC position: Support. Makes state law consistent with FLSA provisions, takes breastfeeding protections out of HCRC jurisdiction; also recommend private right of action for injunctive relief, reasonable attorneys fees. (m/s/p Fukunaga/Iwamoto; 4-1 in favor, Valencia opposed).

**HB 676
[SB-805]**

Source of income housing discrimination

Amends HRS Chapter 515 to prohibit housing discrimination based on lawful source of income.

Status: HB 676 ref. to CPC, JUD; hrg. before CPC on 1/30/13
SB 805 ref. to CPN, JDL; hrg. before CPN on 1/30/13, deferred

HCRC position: (based on past positions) - Support, on condition of requested additional enforcement positions and funding, citing loss of capacity and impact on enforcement. 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. (m/s/p Iwamoto/Fukunaga; 3-1 in favor, Valencia opposed).

HB 330 **Public agency meetings – accessible notice**
SB 863

Requires public notices to provide contact person to whom requests for accommodations for individuals with disabilities may be made and requires notices that are posted electronically to conform to provisions under the Rehab Act of 1973

Status: HB 330 ref. to HUS, JUD, FIN; hrg. on 1/29/13 before HUS, passed w/ amendments
SB 863 ref to TEC, JDL

Staff recommendation and HCRC position: Support provisions regarding listing of contact person to request accommodation and reference to standards in § 508 of Rehab Act; monitor to make sure provisions stay under Chapter 92. (m/s/p Liongson/Iwamoto; all in favor).

HB 1420 **Service dogs in public accommodations; tags; leash**

Amends Chapter 347 to require counties to issue service dog tags to trained service dogs requires service dogs to wear these tags when in public accommodations.

Status: ref. to JUD

Staff recommendation: Oppose. Intent is only to allow trained service dogs in public accommodations – this conflicts with HCRC’s interpretation of Chapter 489 to allow other assistance animals to be reasonable accommodations. Also conflicts with federal ADA Title II DOJ regs which do not allow a public accommodation to require documentation that an animal is licensed, trained or certified as a service animal. In addition there are no state or federal standards for determining what a trained service animal is.

Discussion: Chair Krieger advised that the bill violates the ADA, and also implicates constitutional rights, privileges and immunities, right to travel, and full faith and credit.

HCRC position: Oppose. (m/s/p Liongson/Fukunaga; all in favor).

**HB 1226 Safe Schools – Protecting Students from Bullying, Cyberbullying and
SB 525 Harassment**

Establishes a new chapter to prohibit discrimination in Hawaii’s public and charter schools to protect students from bullying, cyberbullying and harassment. Requires the BOE and Charter School governing boards to develop policies, model educational programs for teachers, staff and students to prevent bullying, cyberbullying and harassment.

**Status: HB 1226 ref. to EDN, JUD, FIN
SB 525 ref. to EDU, WAM**

Staff recommendation: Support. In the past the HCRC has supported measures prohibiting student harassment in schools.

Discussion: Chair Krieger expressed concern over unintended consequences, suggested support for intent, concerns about drafting, room for improvement, and the need to take out “curriculum” and “uncomfortable” out, where there is lack of standards, thresholds, examples. Commissioner Valencia asked why the HCRC had to take a position to support intent. Commissioner Iwamoto said it was important because students are future employers and employees and should be taught about civil rights. Commissioner Fukunaga said he supported the intent, but would urge emphasis on the affirmative approach and “teachable moments.”

HCRC position: Support intent to teach students and teachers about respect and civil rights. Support focus on teaching, not discipline. Students will enter workforce as employees and employers, so these concepts are important for them to learn. (m/s/p Iwamoto/Fukunaga; all in favor).

HB 744 **Student bias prohibition**

Extends prohibition against student bias based on sex to in educational programs and state or county funded programs or facilities by amending the state counterpart to federal Title VI to include race, religion and sexual orientation.

Status: ref to EDN, JUD; hrg. before EDN on 1/30/13, passed unamended.

Staff recommendation: Support intent and monitor.

HCRC position: Monitor to make sure not moved to HCRC jurisdiction. (m/s/p Fukunaga/Liongson; 3-0 in favor, Fukunaga and Krieger abstained).

HB 1004 **Amending Hawaii Constitution to define marriage as between a**
HB 1020 **man and woman**
SB 1292

Amends Art. I Sec. 23 to define marriage as a relationship only between a man and a woman. Puts issue on the ballot.

Status: HB 1004 and HB 1020 ref. to JUD, FIN;
SB 1292 ref. to JDL

Staff recommendation: Oppose. This is discrimination based on sexual orientation. Constitutional rights of a targeted minority should not be diminished by majority. Minority rights should not be the subject of popular vote.

Discussion: Commissioner Valencia stated the HCRC should take no position, because the issue is outside HCRC jurisdiction and controversial in nature.

HCRC position: Oppose. This is discrimination based on sexual orientation. Constitutional equal protection rights of a targeted minority should not be the subject of popular vote. (m/s/p Fukunaga/Liongson; 4-0 in favor, Valencia abstained).

HB 1005 **Amends Hawaii Constitution to define marriage as between**
two people of the opposite or same sex.

Amends Art. I Sec. 23 to define marriage as a relationship between two people of the opposite or same sex. Puts issue on the ballot.

Status: ref. to JUD, FIN

Staff recommendation: Oppose. The legislature has the authority to define marriage, subject to equal protection as interpreted by the Hawai'i Supreme Court. (*i.e.*, *Baehr v. Lewin*). This amendment is unnecessary, and consistent with the position on HB 1004, the rights of a minority should not be determined by majority vote.

Discussion: Commissioner Valencia stated the HCRC should take no position, because the issue is outside HCRC jurisdiction and controversial in nature.

HCRC position: Oppose. Consistent with the position on HB 1004, the constitutional equal protection rights of a minority group should not be determined by popular vote. (m/s/p Fukunaga/Liongson; 4-0in favor, Valencia abstained).

HB 1109 **Same sex marriage equity**
SB 1369

Recognizes marriages between individuals of the same sex and extends the same rights, benefits, protections and responsibilities. Religious organizations not required to make religious facilities available for same sex marriage solemnizations or celebrations unless facilities are public accommodations under Chapter 489.

Status: HB 1109 ref. to JUD, FIN;
SB 1369 ref. to JDL

Staff recommendation: Support. Provision regarding exemptions for religious facilities is well written to not include public accommodations under Chapter 489.

Discussion: Commissioner Valencia stated the HCRC should take no position, because the issue is outside HCRC jurisdiction and controversial in nature. Chair Krieger said she was torn, saw a problem with forcing religious organizations to allow the use of a sanctuary for any purpose. Concerned about over-reaching, she wished a middle ground could be found.

HCRC position: Support. Provision regarding exemptions for religious facilities is well written to not include public accommodations under Chapter 489. (m/s/p Iwamoto/Fukunaga; 3-0in favor, Valencia and Krieger abstained).

Commissioner Iwamoto had to leave and was excused.

HB 1205 **Civil Rights; Homeless Bill of Rights**

Creates a new HRS chapter prohibiting discrimination based on housing status by state and county agencies, employers, hospitals, in voting. Protects right of privacy in records and personal property in shelters.

Status: ref. to JUD

Staff recommendation and HCRC position: Monitor to make sure protections are not placed under HCRC jurisdiction. (m/s/p Liongson/Krieger; 4-0, all in favor).

HB 1396 **Appropriation for Honouliuli Internment Camp Ed. Center**
SB 1317
SB 1318

HB 1396 and SB 1317 appropriates \$500,000 for planning, design and construction of Nisei Veterans Legacy Center and Honouliuli Internment Camp Ed. Center; SB 1318 appropriated \$5,000,000.

Status: HB 1396 ref. to VMI, HED, FIN
SB 1317 ref. to TEC/WTL, WAM
SB 1318 ref. to TEC, WAM

Staff recommendation: Support. Last session the HCRC supported the creation of the Honouliuli Internment Camp Ed. Center.

HCRC position: Support. (m/s/p Fukunaga/Liongson; 4-0, all in favor).

SB 856 **Fred Korematsu Day**

Establishes January 30 of each year as Fred Korematsu Day to honor his commitment to preserving civil liberties.

Status: ref. to JDL, TEC

Staff recommendation and HCRC position: Support. (m/s/p Fukunaga/Liongson; 4-0, all in favor).

The Commissioners also discussed one set of resolutions but took no action on them.

HCR 13 **Expressing Support of Repeal of Combat Exclusionary Rules for Women**
SCR 8
SR 7

Status: no referrals yet

Staff recommendation: Support but issue is moot

HCRC position: No action taken.

Next Meeting

The next meeting was scheduled for March 22, 2013, at 3:30 p.m., subject to polling of and confirmation by the Commissioners.

Adjournment