

MINUTES

Hawai`i Civil Rights Commission Office
January 24, 2014*
3:15 p.m.

Present: Linda Krieger, Kim Coco Iwamoto, Wally Fukunaga, and Artemio Baxa, Commissioners; Livia Wang, Bill Hoshijo, and Marcus Kawatachi, Staff.

Raymund Liongson, Commissioner, excused.

Chair Linda Krieger called the continued meeting back to order.

Legislation -2014 Session

The Commissioners reviewed Legislative Summary 2, with staff recommendations prepared by CC Wang. The Commissioners continued their discussion of bills and staff recommendations, taking action on bills not addressed on January 13, 2014., as follows:

EMPLOYMENT

***HB 2137 Employment discrimination based on use of sick leave**
Amends HRS Chapter 378 Part I (under HCRC jurisdiction) to prohibit discrimination based on use of accrued sick leave

Staff recommendation: Support intent but move out of HCRC jurisdiction; in prior bills was not placed under HCRC jurisdiction

Discussion: ED Hoshijo offered a brief explanation, that the bill addressed the issue of workers being disciplined under absenteeism policies for legitimate use of earned sick leave. In past legislative sessions, the HCRC position has been that prohibiting adverse employment action for legitimate use of accrued sick leave was different in kind from discriminatory bases that are prohibited under the fair employment law enforced by the HCRC. Both Commissioner Iwamoto and Chair Krieger noted that sick leave related to physical condition and could overlap with disability coverage. A member of the public, Peter Fritz, was recognized by the Chair and commented that from an employer perspective absenteeism policies address abuse of sick leave. Chair Krieger asked who enforces the federal FMLA, and whether there was a state counterpart to that federal agency. CC Wang said the FMLA is enforced by the USDOL Wage and Hour Division, whose state counterpart is the DLIR Wage Standards Division. Chair Krieger

* Meeting continued from January 13, 2014.

suggested that the HCRC position should be to recommend that enforcement should be assigned to the same agency that enforces the state FMLA.

HCRC position: Support intent, but recommend that enforcement be assigned to the agency that enforces the state FMLA. (m/s/p Fukunaga/Iwamoto; 3-0 in favor, Fukunaga was out of the room at the time of the vote).

***HB 1975 Criminal history record checks for certain county employees**

Amends HRS § 846-2.7 to allow criminal history record checks for county employees to have access to secured areas relating to traffic management and confidential information; and for employees who use firearms for non-law enforcement purposes; exempts all 3 new categories from arrest and court record protections under HRS § 378-2.5

Status: Ref. to LAB, JUD; hrg. before LAB on 1/24/14

Staff recommendation: No opposition with agreed amendments. Staff met with City and County of Honolulu personnel staff and reached agreement that only provision regarding employees who use firearms for non-law enforcement purposes would be exempt from HRS § 378-2.5.

Discussion: CC Wang offered background information on the context of discussion with the C&C of Honolulu and agreement to amendments.

HCRC position: No opposition, with agreed amendments. (m/s/p Iwamoto/Krieger; all).

HB 2649 HD1 Domestic Violence Victims

Amends HRS § 378-2 to require DV victims to provide employers with a copy of a TRO or protective order to verify DV status; allows employer to discriminate if employer reasonably believes that abuser could endanger other employees; amends § 378-81 to limit accommodations for a DV victim by just posting the protective order, letting other personnel know about the protective order and calling the police. Deletes all other accommodations; removes employer liability for failure to provide reasonable accommodations.

Staff recommendation: Oppose. This bill restricts DV victims to those who only have court orders; allows employers to discriminate if they believe other employees may be endangered and takes away reasonable accommodations for DV victims.

Discussion: Chair Krieger said that the bill would roll back the DV victim protections enacted in 2011. Commissioner Iwamoto expressed concern that under the DV and SV reasonable accommodation requirements, employers could be held hostage by employees making unreasonable demands. Commissioner Baxa said he did not believe that only victims who seek

TROs should be protected. ED Hoshijo and CC Wang gave a brief overview of the reasonable accommodation provisions of the Victim Protection law, and CC Wang explained that a requested accommodation can be denied if it would impose an undue burden on an employer or a direct threat to safety. Chair Krieger said that the HCRC should reaffirm its position in support of the protections enacted in 2011. Commissioner Baxa said he would oppose taking away the protection that had been given.

HCRC position: Oppose. (m/s/p Iwamoto/Fukunaga; all).

PUBLIC ACCOMMODATIONS

***HB 1762 Service dog certification program**

Requires DHS to establish and administer a service dog certification program and requires people using service dogs in public places to have certification

Status: Ref. to HUS, JUD

Staff recommendation: Oppose for same reasons as HB 1420. 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, and out of state service dogs won’t have tags.

Discussion: A member of the public, Peter Fritz, was recognized and commented that the Disability Communication Access Board position was that the bill conflicted with the Americans with Disabilities Act. Chair Krieger asked if there was any standard, and noted that charging a fee would violate the ADA. A member of the public offered a comment, suggesting that it was inappropriate to allow the public to interject in the discussion, because public comment should come after motion, second, and discussion, and before action on the motion. ED Hoshijo and Chair Krieger discussed the suggestion, agreeing that the open meetings law required that the public be provided opportunity to comment on agenda items, but that it was up to the Chair to manage the meeting.

HCRC position: Oppose, for same reasons as Hb 1420. (m/s/p Iwamoto/Baxa; all).

***HB 2398 Religious Freedom; public accommodations, marriage; sexuality health education**

Proposes state RFRA; amends HRS 489 to exempt religious organizations, individuals and small businesses (less than 5 employees or owns less than 5 housing units) from providing goods, services, etc. related to the solemnization or

celebration of any marriage; amends 489 to exclude property, building or other areas owned or leased by a religious organization and regularly used for religious purposes as public accommodations and allows individuals, sole proprietors and small businesses to refuse services, housing and lodging if it violates sincerely held religious beliefs.

***HB 2006 Public Accommodations exemption for religious organizations**

***SB 2164** Excludes facilities owned or operated by a religious organization and used for religious purposes from definition of “public accommodation”.

Staff recommendation: Oppose all three bills based on past position on marriage equity law and position on HB 1624.

Discussion: Chair Krieger noted that opposition to these bills was reaffirming the Commission’s previous position.

HCRC position: Oppose. (m/s/p Iwamoto/Fukunaga; all).

OTHER CIVIL RIGHTS ISSUES

HB 1624 State Religious Freedom Restoration Act

***HB 1822** Requires the government to show a compelling state interest/least restrictive means of furthering compelling state interest where state laws or actions substantially burden a person’s exercise of religion

***HB 2493 Religious organization immunity from claims under HRS 489 for refusing to provide goods, services, facilities or grounds relating to the solemnization or celebration of marriage**

**Status: HB 1624 ref. to JUD, FIN
HB 1822 rev. to JUD, FIN**

HCRC position on HB 1624, staff recommendation on HB 1822: Oppose. State RFRA would impose the strictest standard used to justify burdens on religious exercise imposed by neutral laws (such as non-discrimination laws) and would be used to challenge many laws against discrimination.

Staff recommendation on HB 2493: Oppose. Expands exemption in the marriage equity act from religious organizations to anyone / individuals.

Discussion: Chair Krieger noted that opposition to these bills was reaffirming the Commission’s previous position taken during special session

HCRC position: Oppose. (m/s/p Iwamoto/Baxa; all).

***HB 2399 Constitutional amendment to reserve marriage to opposite sex couples**

Staff recommendation: Oppose based on past position on HB 1004, HB 1020, SB 1292 (2013)

Discussion: Chair Krieger noted that opposition to these bills was reaffirming the Commission's previous position taken during special session

HCRC position: Oppose. (m/s/p Fukunaga/Iwamoto; all).

***HB 1673 Driver's licenses for undocumented immigrants**
Allows undocumented immigrants to obtain motor vehicle driver's licenses.

Status: Ref. to TRN, JUD

Staff recommendation: Support. 11 other states plus DC and Puerto Rico have such statutes. This enables undocumented immigrants to safely drive and had some form of photo ID; inability for undocumented immigrants to obtain drivers licenses has a negative impact based on ancestry and national origin.

Discussion: Deferred to later in the meeting.

***HB 1740 Amends appropriation for Office of Language Access resource center and multilingual website project**

Status: Ref. to HLT, FIN; hrg. before HLT on 1/24/14

Staff recommendation: Support. Last session the HCRC supported HB 266 which created the resource center and website project.

HCRC position: Support. (m/s/p Baxa/Fukunaga; all).

***HB 1748 Appropriates funds for financial assistance for interpreters for training and certification in medical interpretation and for development of medical glossaries in main languages spoken in Hawaii**

Status: Ref. to HLT, FIN; hrg before HLT on 1/24/14

Staff recommendation: Support. This is another Office of Language Access bill.

Discussion: Commissioner Baxa stated that language access innovation in the judicial system has increased public confidence, and it should be extended to all government agencies.

HCRC position: Support. (m/s/p Baxa/ Iwamoto; all).

***HB 1749 Appropriation for Office of Language Access**
Appropriates funds for 3 positions within OLA.

Status: Ref. to HLT, FIN; hrg. before HLT on 1/24/14

Staff recommendation: Support. OLA lost all but one of its staff during the 2009 RIF and has only had 2 positions restored. These additional 3 positions are needed to establish the Language Access Resource Center.

Discussion: Commissioner Iwamoto wondered whether the requested appropriation would be enough to meet the need. Commission Baxa emphasized that Hawai'i is unique, with many Limited English Proficient (LEP) persons.

HCRC position: Support. (m/s/p Iwamoto/Fukunaga; all).

***HB 1759 Voter identification**

Specifies the valid types of voter identification (government issued photo ID, copy of utility bill, bank statement, government check or paycheck, government document displaying voter's name and address) that precinct official may request a voter to provide.

Status: Ref. to JUD

Staff recommendation: ? Would oppose any ID restrictions that would chill people's participation in the voting process; not clear how this would apply to absentee voting.

Discussion: Deferred to later in the meeting.

***HB 1909 Gender Equity on Boards and Commissions**

Requires governor or appointing authority to attempt gender equity when appointing members to state boards and commissions.

Status: Ref. to JUD

Staff recommendation: Support based on Commission past position on HB 189 and SB 1259.

HCRC position: Support. (m/s/p Fukunaga/ Iwamoto; all).

***HB 1944 Civil Rights Compliance – public contracts**

***SB 2917** Requires that contractors and prospective contractors with the state or counties comply with civil rights laws, including HRS 378, 489 and 515, or would be disqualified from state contracts

Status: Ref. to CPC, JUD

Staff recommendation: Support – like Office of Federal Contract Compliance requirements for federal contractors.

Discussion: Chair Krieger asked whether the State Procurement Office has expertise to enforce compliance, noting that federal OFCCP compliance is most predictive of diversity in management. Member of the public Peter Fritz was recognized and commented that he would have due process concerns, because there was no review of the SPO process. ED Hoshijo said his understanding was that there was a review process in the SPO process..

HCRC position: Support. (m/s/p Iwamoto/Fukunaga; all).

***HB 1889 Homeless Person’s Bill of Rights**
Establishes a homeless person’s bill of rights including the right to equal opportunities in employment

Status: Ref. to HUS, FIN

Staff recommendation: Based on Commission position on HB 1205 (2013), monitor to make sure protections are not placed under HCRC jurisdiction.

Discussion: Deferred to later in the meeting.

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; hearings before JUD on 1/24/14

HCRC position: Monitor to make sure not moved to HCRC jurisdiction.

NEW RESOLUTIONS

***HCR 12 Requesting UH to affirm its commitment to Title IX and VAWA**
Requests UH to affirm commitments to Title IX and the Violence Against Women Act through notices, developing plans and hiring personnel dedicated to implementing these acts.

Staff recommendation: Support.

HCRC position: Support. (m/s/p Fukunaga/ Iwamoto; all).

DISCUSSION ITEMS DEFERRED FROM EARLIER

ED Hoshijo introduced the discussion of bills relating to discrimination against the homeless, voter identification, and driver's licenses for the undocumented, recommending broad statement of HCRC policy position and authorization to comment, without support or opposition to specific bill language. These bills may have technical issues and problems that the HCRC cannot address at this time, and the HCRC should avoid being put in the position of being perceived as being the initiator or only proponent of these specific bills.

Chair Krieger asked for and received confirmation that the staff recommendation was to submit comments only on these bills.

Protection of the rights of the homeless against discrimination

The HCRC opposes discrimination and disparate treatment against people because they are poor or homeless. Regardless of socio-economic class, all of Hawai'i's people should be accorded respect and dignity, equal opportunity, and equal protection of law. People should not be denied access to goods, services, or accommodations based on discriminatory reasons. It should be recognized and acknowledged that these proposed protections, while they may overlap with existing protected bases (e.g., disability) that are disparately impacted by discrimination against the poor, are different in kind from the other protected bases in our civil rights / non-discrimination laws (race, ancestry, sex, etc.). For this reason, this would be a significant amendment to our civil rights law, likely bringing in numerous complaints of discrimination that will substantially add to HCRC caseload, requiring additional enforcement resources, investigators and attorney.

Discussion: Definition of homeless from HRS 346-361; proof scheme and factual issues (intent, notice/knowledge, actual vs. perceived) – how a PA would know that a person is homeless, and overlap with disability claims and issues.

HCRC Position: Revisiting and changing earlier position on HB 1621, the HCRC will offer this comment on HB 1621:

The HCRC opposes discrimination and disparate treatment against people because they are poor or homeless. Regardless of socio-economic class, all of Hawai'i's people should be accorded respect and dignity, equal opportunity, and equal protection of law. People should not be denied access to goods, services, or accommodations based on discriminatory reasons. It should be recognized and acknowledged that these proposed protections, while they may overlap with existing protected bases (e.g., disability) that are disparately impacted by discrimination against the poor, are different in kind from the other protected bases in our civil rights / non-discrimination laws (race, ancestry, sex, etc.). For this reason, this would be a significant amendment to our civil rights law, likely bringing in numerous complaints of discrimination that will substantially add to HCRC caseload, requiring additional enforcement resources, investigators and attorney.

(m/s/p Krieger/ Iwamoto; all).

HCRC Position: On HB 1829 and HB 2661, the HCRC will offer this comment:

The HCRC opposes discrimination and disparate treatment against people because they are poor or homeless. Regardless of socio-economic class, all of Hawa'i's people should be accorded respect and dignity, equal opportunity, and equal protection of law. People should not be denied access to goods, services, or accommodations based on discriminatory reasons. It should be recognized and acknowledged that these proposed protections, while they may overlap with existing protected bases (e.g., disability) that are disparately impacted by discrimination against the poor, are different in kind from the other protected bases in our civil rights / non-discrimination laws (race, ancestry, sex, etc.).

(m/s/p Krieger/ Fukunaga; all).

Voter identification

The HCRC opposes restrictive voter ID requirements that have the intent or effect of chilling the exercise of the right to vote, as used to suppress the voting rights of minorities, the elderly, and the poor. To the extent that proposed legislation is intended to address and minimize the chilling effect of voter ID requirements by providing for the acceptance of alternative forms of identification, the HCRC does not oppose (supports?) such initiatives.

Discussion: It is difficult to discern the intent of the proposed legislation.

HCRC Position: On HB 1759, the HCRC will offer this comment:

The HCRC opposes restrictive voter ID requirements that have the intent or effect of chilling the exercise of the right to vote, as used to suppress the voting rights of minorities, the elderly, and the poor. To the extent that proposed legislation is intended to address and minimize the chilling effect of voter ID requirements by providing for the acceptance of alternative forms of identification, the HCRC does not oppose (supports?) such initiatives. However, it is difficult to discern the intent of the proposed legislation.

(m/s/p Fukunaga/Iwamoto; all).

Driver's licenses for the undocumented

The HCRC opposes ancestry and race-based discrimination associated with attacks on and denial of rights to undocumented immigrants. It is good public policy that these residents be granted licenses to operate motor vehicles, making for improved road safety with undocumented immigrants being qualified through written license exams and road tests, and higher rates of insured drivers on the road. This will bring these residents out of the shadows and improve public safety.

Discussion: Policy statement gives support for intent, without endorsing particulars of bill that raise questions. Commissioner Baxa said it is important to have a driver's license and identification, but that there were questions about the use of the term "immigrant" and authorization to work. Commissioner Iwamoto questioned the fairness and value of having a restricted driver's license. Chair Krieger noted that the state could not issue a regular driver's license and comply with the federal Real ID Act. Commissioner Fukunaga suggested that the recommendation was for a broad policy statement. Chair Krieger suggested that the comment read as stated above.

HCRC Position: On HB 1673, the HCRC will offer this comment:

The HCRC opposes ancestry and race-based discrimination associated with attacks on and denial of rights to undocumented immigrants. It is good public policy that these residents be granted licenses to operate motor vehicles, making for improved road safety with undocumented immigrants being qualified through written license exams and road tests, and higher rates of insured drivers on the road. This will bring these residents out of the shadows and improve public safety.

(m/s/p Baxa/Fukunaga/; all).

Next Meeting

The next meeting was scheduled for February 21, 2014, at 3:15 p.m., subject to polling of and confirmation by the Commissioners.

Adjournment