



HAWAII CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office
February 2, 2015*
1:30 p.m.

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

Artemio Baxa, Commissioner, excused.

Chair Linda Krieger called the continued meeting back to order.

Legislation -2015 Session

The Commissioners reviewed Legislative Summary 2, with staff recommendations prepared by CC Wang. The Commissioners also reviewed HB 944, which was not included in Legislative Summary 2, and the staff recommendation prepared by CC Wang. The Commissioners continued their discussion of bills and staff recommendations, taking action on bills not addressed on January 26, 2015., as follows:

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.

Discussion: Staff initially recommended that the HCRC support the intent of the bill, but suggest deletion of the references to "reasonable accommodation" and HRS chapter 489, because the public accommodations law does not require reconstruction or new construction. Chair Krieger stated that, with regard to state beach access, provision of recreational facilities constitutes provision of state-funded services, so access to beaches and restrooms should be required. She recommended support, with a suggestion to amend to reference HRS § 368-1.5, because access duty is already covered under state-funded services provision.

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

* Meeting continued from January 26, 2015.

HB 795 Medical Marijuana; Employment Protections
SB 1291

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.

Discussion: Staff's initial recommendation was to offer comment only, stating that section 2 of the bill should be deleted, so the protections would be placed in HRS chapter 329 and not repeated in chapter 378, in order to avoid confusion with reasonable accommodations required for persons with disabilities. Chair Krieger suggested that the HCRC position should be to support the bill. Commissioner Wally Fukunaga expressed concern that the effects of marijuana were still not fully known, so the bill might be premature. Chair Krieger acknowledged the weighty concerns he raised, but noted that the State had legally recognized medical marijuana.

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. (m/s/p Iwamoto/Krieger; 3-0, Fukunaga abstain).

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 qualification/certification system

HB 846 Office of Language Access; Appropriation to further develop language access resource center and multilingual website pilot project

HCRC position: Strong support for all 3 OLA bills. Last session the HCRC supported these 3 bills. (m/s/p Iwamoto/Fukunaga; all).

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.

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 of general applicability (such as non-discrimination laws) and would be used to strike down laws against discrimination. (m/s/p Iwamoto/Liongson; all).

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.

Discussion: The Commissioners expressed support for the intent of the bill, protection of the privacy of employees. There was concern over the breadth of exemptions under subsection (b) of the new protection in the bill, and interest in limiting the scope of the exemption to allow for investigation of complaints of discriminatory harassment. Commissioner Iwamoto and DD expressed strong concern about over-broad access. Chair Krieger said that if certain confidential information is accessed, there are protections against disclosure under the ADA, HIPA, and GINA.

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. (m/s/p Fukunaga/Krieger; 3-1, Iwamoto opposed).

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 of 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

HCRC position: Monitor to make sure bills are not placed under HCRC jurisdiction (similar to bills introduced last session). (m/s/p Liongson/Fukunaga; all).

HB 944 Background checks on employees, applicants and operators of 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.

HCRC position: Monitor and comment that HCRC has not opposed criminal history record checks for positions that involve work with vulnerable populations, but urge caution

in granting exceptions to the arrest and court record protection, in order to avoid creating a “slippery slope.” (m/s/p Fukunaga/Liongson; all).

Next Meeting

The next meeting of the Commission was scheduled, for February 23, 2015, at 1:30 p.m., subject to polling of and confirmation by the Commissioners.

Adjournment