



HAWAII CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office
March 30, 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; Francine Wai, Executive Director of DCAB, and Peter Fritz were also in attendance.

Chair Linda Hamilton Krieger called the meeting to order.

Approval of Minutes

The minutes of the February 23, 2015, meeting were approved. (m/s/p Fukunaga/ Liongson; 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 ten additional cases had been referred to mediation and one case had been successfully mediated since the last report on February 23, 2015.

Summary & Details (7/1/14 through 3/30/15)

Referrals:	28
Dispositions:	20
Settlements:	11
Non-agreements:	9
Settlement Rate:	55 %
Employment cases settled:	11
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	9
State-only settlements:	2

Primary Bases for Complaints Settled in Mediation

Sex (3 pregnancy & 1 SH)	7 (3 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 %)
Kauai Economic Opportunity, Inc.	2/3 (settlement rate 66.7%)
West Hawaii Mediation Center	1/2 (settlement rate 50 %)

Legislation -2015 Session

ED Hoshijo reported that there was nothing new to report on the status of the FB 2015-2017 budget request.

The Commissioners reviewed Legislative Summary 4, with staff recommendations prepared by CC Wang.

The Commissioners decided on HCRC positions on resolutions not previously reviewed and discussed as follows:

**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
SCR 27/SR 8 ref. to HEA, JDL**

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

**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**

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
SCR91/SR44 ref. to PSM**

Discussion: Commissioner Raymund Liongson provided historical perspective, noting that rights given to other foreign nationals who served in the US military were not given to these Filipino veterans.

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

**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 HLT, CPC; hrg. before HLT on 3/27, passed unamended

Discussion: ED Hoshijo urged that the HCRC 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. Francine Wai, Executive Director of DCAB, noted that this was an issue for realtors, because people want to avoid paying pet deposit fees, which are allowed, but realtors are not allowed to require a surcharge for an assistance animal.

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

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

Discussion: Commissioner Baxa noted that the focus of “National *Freedom Day*” seemed broader than the anti-slavery focus of Juneteenth. Commissioner Liongson wondered if there were too many holidays, for all kinds of things. Chair Krieger shared the history of Juneteenth, which was celebrated because of the time it took for news of the Emancipation Proclamation to have effect in Texas, a delay of 2 ½ years. Commissioner Fukunaga said he could see the point of the resolution in that context of the encompassing history.

HCRC position: Support, with suggested amendment to recognize Juneteenth as “Emancipation Day.” (m/s/p Fukunaga/Liongson; all).

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

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

CC Wang also reviewed the status of bills the Commissioners previously reviewed and discussed as follows:

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.

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~~
SB 1113 SD1

**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.

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.

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 IID1

**Closed 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

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.

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

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.

BILLS THAT DIED

[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

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 HLH, 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

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: Stongly oppose, because of sex discrimination.

BILLS THAT DIED EARLIER (from Legislative Summary No. 3)

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

Announcements

There were no announcements.

Closed Executive Session

The Commissioners voted to go into closed executive session for attorney-client consultation with Chief Counsel. (m/s/p Iwamoto/Liongson; 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 April 29, 2015, at 1:30 p.m., subject to polling of and confirmation by the Commissioners.

Adjournment