



HAWAI'I CIVIL RIGHTS COMMISSION

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MINUTES*

Hawai'i Civil Rights Commission Office

February 1, 2019

1:30 p.m.

Present: Linda Krieger, Liann Ebesugawa, Joan Lewis, and Joakim Peter, Commissioners;
Robin Wurtzel, Bill Hoshijo, Marcus Kawatachi, Staff; Francine Wai, Guest.

Chair Linda Krieger called the meeting to order.

2019 Legislation

The Commissioners reviewed Legislative Summary 1B, with staff recommendations, and decided on HCRC positions as follows:

EMPLOYMENT

HB 6 Relating to the Uniform Employee and Student Online Privacy Act
SB 296

Adopts uniform laws regarding protection of online accounts of employees, interns, applicants students and prospective students from employers and educational institutions

Discussion: Staff recommended support, with the caveat that language should be included for an exception for employers to investigate discrimination cases.

HCRC position: Support intent and request language should be included that the new statutory language does not diminish employer authority and obligation to investigate discriminatory harassment complaints. (m/s/p Ebesugawa/Peter; all).

HB 1192 RELATING TO EQUAL PAY
SB 1375

Bill would amend equal pay statutory prohibitions against wage discrimination to prohibit unequal pay based other protected bases, in addition to sex. Clarifies allowable

* as corrected and approved on March 6, 2019.

justifications for compensation differentials and remedies for pay disparity. Requires employers to disclose wage ranges to employees and prospective employees.

Discussion: Staff recommended support intent; HCRC fully supports pay transparency. Executive Director Hoshijo pointed out that HCRC has already prohibits compensation discrimination pursuant to § 378-2. Chair Krieger noted that equal pay law is different, because it doesn't require proof of discriminatory intent.

Suggest minor changes to § 378-2.4 (d)-(h) including elimination of most of (f). HCRC jurisdiction covers employers having 1 or more employee, and some of the proposed requirements would be burdensome for small business owners.

HCRC position: Fully support pay transparency, with comments. (m/s/p Lewis/Peter; all).

HB 1536 RELATING TO EQUAL PAY
SB 1379 RELATING TO EMPLOYMENT PRACTICES

Bills would prohibit the disclosure of an employee's wages by any person other than the employee. Clarifies that the prohibition against retaliation or discrimination by an employer against an employee for disclosing or inquiring about the wages of other employees does not authorize the disclosure of an employee's wages by anyone other than the employee.

Same amendments to statute, though introductions are different.

Discussion: Staff recommended strongly oppose. In the real world, women learn of pay disparity through information provided by others. These bills undo Act 108, enacted in 2018

HCRC position: Strongly oppose. (m/s/p Lewis/Peter; all).

HB 1267 RELATING TO EMPLOYMENT
SB 1528

Bills would provide that Hawaii's anti-discrimination law does not prohibit or prevent an employer, employment agency, or labor organization from refusing to hire or refer or from discharging an individual for reasons unrelated to unlawful discriminatory practices.

Discussion: Staff recommended strongly oppose. HCRC opposed this in the past (HB 2201 in 2018; and in 2017 and 2016). This is intended to legislatively reverse the decision of the Hawai'i Supreme Court in *Adams v. CDM Media USA, Inc.*, 135 Hawai'i 1 (2015). Chair Krieger wanted HCRC testimony to emphasize impact on mixed motive cases.

HCRC position: Strongly oppose. (m/s/p Lewis/Peter; all).

SB 1524 RELATING TO THE MEDICAL USE OF CANNABIS

Prohibits an employer from discriminating against an employee based on the employee's status as a qualifying patient. Prohibits an employer from taking action against an employee based solely on the employee's status as a qualifying patient or if the results of the employee's drug test are positive for cannabis. Specifies permissible and impermissible actions by employers and employees.

Discussion: Staff recommended support, with comments noting the distinction between a "qualifying patient" and a "person with a disability," statutorily. The Commissioners discussed whether the HCRC should take a position on the bill and placement of the new statutory protection.

HCRC position: Support intent, with placement outside of HRS chapter 378, part I, separate from disability discrimination law. (m/s/p Ebesugawa/Peter; all).

HOUSING

**SB 122 Relating to Rental Discrimination
HB 1244**

Bill would prohibit housing discrimination based on participation in a housing assistance program

Discussion: Staff recommended support intent, and recommend placement in a new chapter, with a private right of action. This is based on discussions in past years with the Office of Consumer Protection.

HCRC position: Support intent, and recommend placement in a new chapter, with a private right of action. (m/s/p Peter/Lewis; all).

**SB 334 Relating to Assistance Animals
HB 1074**

Codifies the administrative rule definition of "assistance animal". Clarifies the type of verification of a reasonable accommodation request for an assistance animal that the individual may provide.

Discussion: Staff recommended oppose as written. "Personal evaluation" is required, but not defined. The addition of the undefined "personal evaluation" requirement may amend the statute so that is no longer substantially similar to the Fair Housing Act. If so, HCRC could lose federal HUD funding, and complainants would be unable to dual-file housing complaints with HCRC.

HCRC supports the codification of the definition of assistance animal currently in the administrative rules, § 12-46-301, H.A.R, and staff recommends support of that addition, but notes that statutory codification is not necessary, as rules have force and effect of law. However, the lack of clarity in the term “personal evaluation” is a serious concern.

HCRC position: Oppose as written. (m/s/p Lewis/ Ebesugawa; all).

PUBLIC ACCOMMODATIONS

SB 331 Relating to Movie Theaters - Open Movie Captioning

HB 1340

SB 1235

HB 1009 Amends HRS § 489-9 to require motion picture theaters that have 2 or more facilities to provide open movie captioning for at least 2 showings per week of a motion picture, one of which occurs on a Saturday or Sunday. Repeals the alternative use of lightweight eyewear.

Discussion: Staff recommended strong support. The HCRC supported Act 39, which created the open captioning requirements. Hawai‘i was the first state to require this for the hearing impaired community.

HCRC position: Strong Support, with a preference for the two bills submitted by the Deaf Blind Task Force (HB 1340 & SB 331) which require a weekend showing, over the bills in the Governor’s package (HB 1009; SB 1235). (m/s/p Peter/Ebesugawa; all).

HB 928 RELATING TO GENDER EQUITY.

SB 821

HB 1435 Bills would require all places of public accommodation and state building construction constructed or substantially modified after 12/31/20 to provide baby diaper-changing accommodations that are equally accessible to men and women.

Discussion: Staff recommended monitor to be sure that the bill continues to be placed in a separate part of Chapter 489, and testify if needed.

HCRC position: Monitor to be sure that the bill continues to be placed in a separate part of Chapter 489, and testify if needed.. (m/s/p Lewis/Ebesugawa; all).

HB 1076 RELATING TO PUBLIC MEETINGS.

Bill would require public meeting notices to include instructions regarding accommodations for persons with disabilities. Requires boards to post public meeting notices in an accessible format on an electronic calendar on a website maintained by the State or the appropriate county, file a copy with the office of the lieutenant governor or the appropriate county clerk's office, retain a copy of proof of filing, and post a notice in the board's office for public inspection. Requires the office of the lieutenant governor or the appropriate clerk's office to timely post paper or accessible electronic copies of all meeting notices in a central location in a public building. Repeals provision stating that failure of the board, lieutenant governor's office, or county clerk's office to post meeting notices shall not require cancellation of the meeting. Requires a meeting to be canceled when the written public notice or a copy with confirmed receipt from the office of the lieutenant governor or the appropriate county clerk's office is posted on an electronic calendar less than six days prior to the meeting. Requires an emergency meeting agenda to be filed with confirmed receipt with the office of the lieutenant governor or the appropriate county clerk's office and posted in the board's office.

Discussion: Staff recommended support of Section 2 of the bill regarding disability access. Defer to DCAB and OIP regarding the other changes in procedure. Noted that if SB 569 is enacted, HCRC would have jurisdiction over complaints regarding inaccessibility on state websites, which we lost after *Matter of L.E.*

HCRC position: Support Section 2 of the bill regarding disability access. Defer to DCAB and OIP regarding the other changes in procedure. (m/s/p Lewis/Ebesugawa; all).

OTHER

SB 332 Relating to the General Excise Tax
SB 530
HB 345
HB 523
HB 632

Bills would exempt gross receipts from the General Excise tax for prescription drugs, diabetic supplies, prosthetic devices, medical oxygen, human blood and mobility enhancement equipment sold by prescription.

Discussion: Staff recommended support. These bills are not companion bills, and are not identical, but are substantially similar. Suggest provisional support as we seek guidance from DLIR. State protocol requires that testimony involving other state agencies include a caveat on support regarding the impact on the other department, such as language stating that "The HCRC supports this measure, provided that its passage does not impact the priorities detailed in the Governor's Executive Budget."

Chair Krieger said this was an economic justice issue, but outside of HCRC expertise.

HCRC position: No action.

HB 801 RELATING TO DRIVER'S LICENSING
HB 1489

Bill would exempts citizens of countries having a valid Compact of Free Association with the United States from the requirement that a legal immigrant's driver's license expire no later than the authorized period of stay in the United States. Requires COFA citizens to provide proof of legal presence.

Discussion: Staff recommended strong support. HCRC supported similar bill in 2018.

HCRC position: Strong support. (m/s/p Ebesugawa/ Lewis; all).

HB 1307 RELATING TO AN OFFICE OF ADMINISTRATIVE HEARINGS

Bill would require the Legislative Reference Bureau to conduct a study on establishing a state central hearing agency to be known as the Office of Administrative Hearings and submit a report of its findings and recommendations, including any proposed legislation, to the Legislature prior to the Regular Session of 2020.

Discussion: Staff recommended oppose the need for a study and express concern. A central panel would eliminate the HCRC's adjudication scheme, as required by statute. Further, the laws that the HCRC enforces are very complex and would be difficult for hearings officers on a central panel to grasp and correctly apply.

HCRC position: Oppose the need for a study and express concern. (m/s/p Ebesugawa/ Peter; all).

HB 823 RELATING TO FILIPINO VETERANS

Bill would require and fund the Office of Veterans' Services to establish a Filipino Veterans Legacy Exhibit at the Daniel K. Inouye International Airport.

Discussion: Staff recommended support. HCRC supported last year for HB 886 in 2018.

HCRC position: Support. (m/s/p Lewis/Peter; all).

SB 568 Relating to Drivers Licenses
HB 1245

Bill would exclude gender or sex markers from limited purpose driver's licenses and limited purpose provisional driver's licenses.

Discussion: Staff recommended support. This position supports the transgender and non-binary community. The proposed exclusion of gender or sex markers cannot extend to all licenses because of REAL ID Act requirements.

HCRC position: Support. (m/s/p Ebesugawa/Lewis; all).

SB 429 Relating to Gender Identification
HB 1165

Requires a license to include a person's full legal name, date of birth, gender category, residence address, and license or identification card number. Includes a third option of gender identification for driver's license and state identification card applicants. Effective 7/1/2020.

Discussion: Staff recommended support.

HCRC position: Support. (m/s/p Ebesugawa/Peter; all).

SB 1042 Relating to Civil Rights
HB 483

Bill would require the Legislative Reference Bureau to submit by 1/24/2019, a report studying how other jurisdictions oversee Title IX enforcement.

Discussion: LRB was required to submit a report in late December, which has not yet been issued. LRB is working on it, but had not yet completed it. When it is complete, a bill regarding enforcement of 2018's Act 110 will be proposed. Staff requests authority to submit testimony in support of extending deadline for LRB report, or if substantive bill is inserted, support assignment of jurisdiction to HCRC.

HCRC position: Support extending deadline for LRB report, or if substantive bill is inserted, support assignment of jurisdiction to HCRC. (m/s/p Ebesugawa/Peter; all).

HB 1595 RELATING TO GENDER EQUALITY

Establishes the advisory commission on gender equity in sports to evaluate the rules and procedures for gender equity enforcement mechanisms and make recommendations to the Department of Education. Requires the Superintendent of Education to submit a Title IX compliance report to the Legislature and the advisory commission.

Position: Monitor. (m/s/p Peter/Ebesugawa; all)

SB 1343 RELATING TO SELECTIVE SERVICE

Bill would require compliance with the federal 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 or service.

Discussion: Staff recommended strongly oppose. Opposition based on the grounds that it codified sex discrimination – it only applies to males and imposes a discriminatory burden on men that does not apply to women. Also, the prohibition would likely bar young men who are conscientious objectors based on their religious beliefs from state higher education and county or state employment or service, including service in elected office.

Position: Strongly oppose. (m/s/p Ebesugawa/Peter; all)

HB 1247 RELATING TO LAW ENFORCEMENT

Bill would prohibit state and county law enforcement agencies from complying with federal immigration detainers or honoring requests for non-public information unless specifically required to do so by a warrant signed by a judge or provisions of federal, state, or local law.

Discussion: Staff recommended support. This is similar to the Ho'okipa Welcoming Policy Act, which the HCRC supported in 2018.

Position: Support. (m/s/p Lewis/Peter; all)

HB 766 RELATING TO SERVICE IN NON-CRIMINAL PROCEEDINGS

Bill would authorize service of notice and process by electronic mail in non-criminal and administrative proceedings, with certain exceptions. Extends the time for response after service by mail to at least five days.

Discussion: Staff recommended support intent with appropriate comments.

Position: Support intent with appropriate comments. (m/s/p Lewis/Peter; all)

Announcements

There were no announcements.

Next Meeting

The next meeting of the Commission was scheduled for February 22, 2019, at 12:00 noon, subject to polling and confirmation by the Commissioners.

Adjournment.

