



HAWAI‘I CIVIL RIGHTS COMMISSION

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MINUTES

Hawai‘i Civil Rights Commission Office
via MS TEAMS
January 24, 2022
1:00 p.m.

Present: Liann Ebesugawa, Joan Lewis, William Puette, and Jon Matsuoka, Commissioners; Robin Wurtzel, Bill Hoshijo, and Marcus Kawatachi, Staff.

Chair Liann Ebesugawa called the meeting to order.

Approval of Minutes

The Commissioners reviewed the draft minutes of the November 5, 2021, meeting, which had been circulated.

The minutes were approved as circulated.

Executive Director’s Report

Deputy Executive Director (DED) Marcus Kawatachi presented an FY 2022 HCRC Mediation Program year-to-date summary.

Summary & Details (7/1/21 through 1/21/22)

Referrals 23

Dispositions: 20

Settlements: 9

Non-agreements: 11

Settlement Rate: 45%

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements: 6

State-only settlements: 3

Employment cases settled:	6
Housing cases settled:	3

Primary Bases for Complaints Settled in Mediation

Arrest & Court Record	2
Disability	2
Retaliation	2
Sex	2
Age	1

Dispositions by Mediation Center

Mediation Center of the Pacific	4/6	(settlement rate 66.7%)
Mediation Services of Maui	1/1	(settlement rate 100%)
Private Mediators		
Ku‘ikahi Mediation Services (Hilo)	0/1	(settlement rate 0%)
West Hawaii Mediation Center	1/3	(settlement rate 33.3%)
Kauai Economic Opportunity, Inc.		
Hawai‘i Civil Rights Commission	3/9	(settlement rate 33.3%)

OVERALL 9/20 (settlement rate 45%)

DED Kawatachi presented a data and production report showing caseload data through January 21, 2022.

As of January 21, 2022, the written report showed 318 open cases, a decrease of 29 cases from the number reported as of November 4, 2021.

Of the 318 open investigation cases, 1 (0.3%) was filed in 2017, 25 (7.9%) in 2018, 69 (21.7%) in 2019, 88 (27.7%) in 2020, 133 (41.8%) in 2021, and 2 (0.6%) in 2022.

DED Kawatachi reported a breakdown of the status of the open cases by type of case and investigation stage.

	2017	2018	2019	2020	2021	2022	Total
Housing Cases	0	0	4	16	29	0	49
Response Monitoring	0	5	22	46	77	2	152
Mediation	0	0	6	12	20	0	38
Pending Assignment	0	11	31	6	2	0	50
Active Investigation	1	9	6	7	4	0	27
TOTAL	1	25	69	87	132	2	318

The report indicated no new subpoena enforcement litigation.

Case Aging (Last report – 11/4/21)

31.1 % of all cases are 2 years or older (23.9 %)

14.5 % of all cases are over 18 months, but less than 2 years old (15.3 %)

13.2 % of all cases are over 12 months, but less than 18 months old (16.4 %)

18.9 % of all cases are over 6 months but less than 12 months (21.0 %)

22.3 % of all cases are 6 months or less (23.3 %)

DED Kawatachi noted that the FY 2021 year-end caseload and data report was added, based on the FY 2021 Annual Report, which was submitted but not yet posted.

The report also covered the year-to-date data for the past five fiscal years:

Category	7/1/17 – 1/21/18	7/1/18 – 1/21/19	7/1/19 – 1/21/20	7/1/20 – 1/21/21	7/1/21 – 1/21/22
PCQ Received	317	346	340	250	269
Intake Decision	292	286	386	212	241
Complaint Filed	152	165	192	114	96
Investigation Closed	163	179	129	117	160
Notice of Cause	6	7	5	7	14
Enforcement Closure	13	11	3	3	3

DED Kawatachi noted that the number of Pre-Complaint Questionnaires (PCQs) received in the current year FY 2022 was still low, although higher than during FY 2021, and the number of complaints filed during FY 2022 was still low as well. He also noted that the number of notices of cause issued in FY 2022 was higher than in past years.

Chief Counsel’s Report

CC Wurtzel reported no change on *Morning Hill Foods, LLC dba Mana Bu’s v. The Hawaii Civil Rights Commission*, Civil No. 18-100034-01 KKH, pending in the ICA.

Chief Counsel (CC) Robin Wurtzel reported on litigation in *Van Putten v. City and County of Honolulu, and State of Hawai‘i, Hawai‘i Civil Rights Commission, and William Hoshijo, in his Official Capacity as Executive Director*; Civil No. 21-0000006. Civil action framed as agency appeal from a notice of dismissal and right to sue. The court had affirmed that the HCRC did not have jurisdiction over the City and County of Honolulu and that their administration of the Section 8 Program is not a “real estate transaction.” Van Putten filed a motion for reconsideration. The motion was denied and the time to appeal expired. Case closed.

2022 Legislation

The Commissioners reviewed 2022 Legislative Summary 1A, with staff recommendations, and decided on HCRC positions as follows:

EMPLOYMENT

RELATING TO EQUAL EMPLOYMENT OPPORTUNITY.

HB1677 https://www.capitol.hawaii.gov/session2022/bills/HB1677_.pdf

SB2560 https://www.capitol.hawaii.gov/session2022/bills/SB2560_.pdf

Requires state departments and agencies to establish hiring and promotion goals for position-qualified transgender and non-binary persons and develop transgender employment policies addressing specified areas by 1/1/2023. Requires annual reports to the Legislature.

Status: SB 2560 Ref to: LCA/GVO, JDC

Discussion: Staff recommended support intent and offer comment and concerns. ED Hoshijo pointed out that the intent was good, but that some of the bill draft was problematic, raising complex issues, and that there was concern over endorsing otherwise unlawful inquiry into gender identity. Chair Ebesugawa said the preamble was compelling, and that the HCRC should strongly support the intent as articulated in the preamble.

Position: Strongly support intent as laid out in preamble and offer comments.

RELATING TO EMPLOYMENT AGREEMENTS

SB 2611 https://www.capitol.hawaii.gov/session2022/bills/SB2611_.pdf

Expressly prohibits noncompete agreements with certain exceptions

Status: Committee referrals pending.

Discussion: Commission discussion deferred until 1/28/22, to allow staff to research past HCRC positions on similar bills, if any.

OTHER CIVIL RIGHTS

RELATING TO CIVIL RIGHTS

HB1775 https://www.capitol.hawaii.gov/session2022/bills/HB1775_.pdf

SB2636 https://www.capitol.hawaii.gov/session2022/bills/SB2636_.pdf

Specifies additional forms of discrimination and other prohibited conduct under Chapter 368D, HRS. Requires covered entities to adopt written policies and undertake other specified enforcement actions no later than 1/1/2023. Requires annual reports to Legislature.

Status: Committee referrals pending.

Discussion: Staff recommended support.

Position: Support.

HOUSING

RELATING TO FAIR HOUSING REASONABLE ACCOMMODATIONS SB2002 https://www.capitol.hawaii.gov/session2022/bills/SB2002_.pdf

Codifies the administrative rule definition of "assistance animal". Clarifies the type of verification an individual may provide to substantiate a reasonable accommodation request for a specific assistance animal. Specifies that possession of a vest or other distinguishing animal garment, tag, or registration document commonly purchased online and purporting to identify an animal as a service animal or assistance animal does not constitute valid verification of a disability-related need for an assistance animal.

Status: referred to HMS, JDC

Discussion: Staff recommended support, based on HCRC position on SB 280 (2021), with suggestion of “uniform” legislation. The current rule has the full force and effect of law, so this bill is not necessary. The section stating that vests and tags purchased online are not valid verification is helpful and definitive.

The Commissioners expressed concern that the bill would open the door to overly intrusive requests. Chair Ebesugawa suggested amendment to incorporate a standard for what a verification would need to say. Commissioner Puette suggested the use of a form, like used in application for disability parking permit. Chair Ebesugawa noted that verification language in rule is not the same as in the bill, and expressed concern that the bill could be a disservice to persons with disabilities. DED Marcus Kawatachi added that the current rule is better than the bill language.

ED Hoshijo said that there was no “uniform” legislation, and that a big part of the ongoing debate was due to the lack of a federal registry and standard, citing back to that observation being offered over the years by the late DCAB Executive Director Francine Wai.

The Commissioners considered whether to support intent, but note that the bill is not needed, because the rule has the full force and effect of law.

ED Hoshijo suggested that the decision on the HCRC position be deferred, so that staff could prepare a comparison of the bill to the current rule, and a draft testimony for discussion purposes. Commission discussion deferred until 1/28/22.

RELATING TO HOUSING

SB2222 https://www.capitol.hawaii.gov/session2022/bills/SB2222_.pdf

Part I prohibits negative advertising relating to source of income for available rental units and provides potential tenants with remedies against a landlord for a violation of the prohibition. Part II requires the Hawaii public housing authority to adopt rules without regard to chapter 91, Hawaii Revised Statutes, to establish specified incentives for landlords who participate in the tenant-based assistance housing choice voucher program under section 8 of the United States Housing Act of 1937. Part III requires that the Hawaii public housing authority adopt rules to establish a maximum of fifteen days after receipt of an owner's or landlord's inspection request as a reasonable time within which to inspect a dwelling unit for lease under the section 8 housing choice voucher program.

Status: Committee referrals pending.

Discussion: Staff recommended support, noting that the bill only prohibited discriminatory advertising. Staff noted a preference for the approach set forth in SB 206, SD1, which would provide a private cause of action, and the other bills below which do more than prohibit discriminatory advertising.

Position: Support Part I, Section 2 only, the prohibition against discriminatory advertising, with no position on other sections.

RELATING TO RENTAL DISCRIMINATION

SB206 SD1 https://www.capitol.hawaii.gov/session2022/bills/SB206_SD1_.pdf
SB2314 https://www.capitol.hawaii.gov/session2022/bills/SB2314_.pdf
SB2399 https://www.capitol.hawaii.gov/session2022/bills/SB2399_.pdf
SB2468 https://www.capitol.hawaii.gov/session2022/bills/SB2468_.pdf
SB2902 https://www.capitol.hawaii.gov/session2022/bills/SB2902_.pdf

Prohibits discrimination, including in advertisements for rental property, in rental transactions based on participation in a section 8 housing choice program or any

permanent supportive housing program or requirements related to participation in these housing assistance programs. Appropriates funds.

Status: SB 206 ref to: CPC2021, JDC 1/25/2022
SB 2468 ref to: HOU/GVO, CPN/JDC

Discussion: Staff recommended support, as similar to SB 206, SD1 (2021).

HCRC supported prior versions of this bill including SB 206 which carried over. (*See* SB 2031 L 2019; HB 25 L. 2015, SB 127 L. 2017; SB 122, L 2019). The measures incorporate suggestions we have made in previous years. This bill is not under Chapter 515 or the Landlord Tenant Code, and allows for direct civil action in district court. Last year's bill allows injunctive relief, a fine of \$2,500 and attorney fees. It does require HCRC to produce materials, and publicize the prohibition against discrimination which we are willing to do. SB 2314 allows damages of \$2,500 and allows attorney fees, plus asks for appropriations. SB 2399 allows damages up to \$5,000.

Position: Support.

RELATING TO SERVICE ANIMALS.

SB2429 https://www.capitol.hawaii.gov/session2022/bills/SB2429_.pdf

Requires a tenant to disclose to a landlord their ownership of a service animal. Provides for a penalty for a tenant's failure to disclose.

Status: Committee referrals pending.

Discussion: Staff recommended strongly oppose.

A tenant with a disability is entitled to an assistance animal as a reasonable accommodation under fair housing law, whether a service animal or emotional support animal. This bill codifies an unlawful (under fair housing law) inquiry. It also appears allow denial of housing based on disability.

Position: Strongly oppose.

PUBLIC ACCOMMODATIONS

RELATING TO JURY SERVICE

SB2136 https://www.capitol.hawaii.gov/session2022/bills/SB2136_.pdf

Prohibits juror exclusion based on gender identity or expression.

Status: ref to JDC

Discussion: Staff recommended no position / no action.

Adds a protected class in the Chapter 612. The draft language does not comport with Chapters 368, 378 Part I, 489, 515 over which HCRC has jurisdiction (“sex, including gender identity or expression”). Jury selection is a matter for the courts.

Position: No Position / No Action.

RELATING TO ELECTRONIC INFORMATION TECHNOLOGY ACCESSIBILITY.

HB1419 https://www.capitol.hawaii.gov/session2022/bills/HB1419_.pdf

SB2144 https://www.capitol.hawaii.gov/session2022/bills/SB2144_.pdf

Requires the office of Enterprise Technology Services to develop, publish, and periodically update electronic information technology disability access standards to be implemented by state entities.

Status: Committee referrals pending.

Discussion: Staff recommended support, deference to DCAB and ETS.

HCRC applauds the efforts to both comply with the ADA and create standards. Note that the HCRC will have expanded jurisdiction over disability cases pursuant to HRS § 368-1.5 beginning July 1, 2022, and appreciate the resources and action to address disability access. We defer to ETS and DCAB regarding these measures.

Position: Support.

RELATING TO TECHNOLOGY ACCESS FOR INDIVIDUALS WITH DISABILITIES.

SB2381 https://www.capitol.hawaii.gov/session2022/bills/SB2381_.pdf

Requires that all electronic information technology developed, purchased, used, or provided by a state entity be made accessible to persons with disabilities. Requires the Office of Enterprise Technology Services, in consultation with the Disability and Communication Access Board and a working group comprising stakeholders, to develop and publish electronic information technology accessibility standards to be implemented by all state entities. Requires review and amendment of the standards every 3 years after the date of publication, or as needed, to reflect advances or changes in information technology.

Status: Committee referrals pending.

Discussion: Staff recommended no action / no position, deference to DCAB and ETS, and monitor.

Position: No action / no position, and monitor.

RELATING TO SERVICE ANIMALS

SB2194 https://www.capitol.hawaii.gov/session2022/bills/SB2194_.pdf

Specifies that anxiety and emotional disorders are disabilities for which service animals may be trained to assist. Permits animals that provide emotional support to qualify as service animals.

Status: Committee referrals pending.

Discussion: Staff recommended no action / no position.

This measure does not affect the statutes that the HCRC enforces, and does not directly affect HCRC enforcement jurisdiction. The added language is possibly intended to broaden the defined class of service animals to include some emotional support animals that are trained to do work or perform tasks for a person with a disability.

Position: No position. Monitor.

RELATING TO GENDER EQUITY

SB2223 https://www.capitol.hawaii.gov/session2022/bills/SB2223_.pdf

Requires that restrooms and toilet facilities of public amusement facilities constructed, renovated, retrofitted, or installed after 1/1/2023 have two female-use toilets for each male-use toilet or urinal. Requires certain state building construction that is constructed or substantially modified after 1/1/2023 to provide for the installation of a gender-neutral bathroom with at least three stalls.

Status: Committee referrals pending.

Discussion: Staff recommended support intent but express strong concern.

The bill would add a new section to HRS chapter 489. However, § 489-2 says that no place of public accommodation shall be required to reconstruct any facility or part thereof to comply with chapter 489.

Position: Offer comments, strong concern that this is placed within Chapter 489, but Chapter 489 does not allow construction/reconstruction as a remedy. The new statutory section is misplaced in Chapter 489.

RELATING TO ACCESSIBILITY.

SB2425 https://www.capitol.hawaii.gov/session2022/bills/SB2425_.pdf

SB2913 https://www.capitol.hawaii.gov/session2022/bills/SB2913_.pdf

Requires a retail establishment with an employee toilet facility to allow a customer suffering from an eligible medical condition to use that restroom during normal business hours, under certain conditions. Exempts a retail establishment and employees from civil liability in allowing an eligible customer to use an employee toilet facility. Establishes fines.

Status: Committee referrals pending.

Discussion: Staff recommended support.

Also known as “Ally’s Law,” this restroom access act would help those with an invisible disability that often prevents them from getting out of their homes. Chair Ebesugawa noted that in order to request the use of a restroom under the law, a customer would need a note from a doctor or a specially issued card from a health organization or state agency.

Position: Support.

PROCEDURAL ISSUES

RELATING TO PUBLIC NOTICES.

SB2111 https://www.capitol.hawaii.gov/session2022/bills/SB2111_.pdf

Allows government agencies to publish public notices on an official website as an alternative to a newspaper.

Status: ref to GVO, JDC

Discussion: Staff recommended no position, but monitor.

Position: No position, but monitor.

Certain notices must now be posted in the newspaper. This alternative of electronic posting will be easier and less expensive. Does not affect HCRC often.

RELATING TO STATE BOARDS AND COMMISSIONS

SB2123 https://www.capitol.hawaii.gov/session2022/bills/SB2123_.pdf

HB1849 https://www.capitol.hawaii.gov/session2022/bills/SB2477_.pdf

Requires certain information on the financial disclosure statements deemed to be public records for non-paid volunteer members of state boards and commissions to be redacted.

Status: SB 2123 ref to GVO, JDC

Discussion: Staff recommended support.

It can be difficult to find people willing to serve on voluntary boards and commission, and this bill would help by affording greater privacy; reporting would still be required, but publicly accessible information would be redacted. HCRC commissions indicated that there was no problem or chilling effect with reporting. They felt that it was not onerous to supply the information and that the information was general enough – a range –but noted that it might deter some members of the public from applying and serving.

Position: Support.

RELATING TO BOARD MEETINGS. / OPEN MEETINGS

SB2143 https://www.capitol.hawaii.gov/session2022/bills/SB2143_.pd

SB2403 https://www.capitol.hawaii.gov/session2022/bills/SB2403_.pdf

Requires each state board to make its board packets publicly available prior to the board's meeting.

Requires boards to provide interactive conference technology for all meetings under the State's open meetings law to permit remote participation and testimony. Requires boards to send board packets to those who have requested notification of meetings either by mail or electronic access

Status: SB 2143 is ref to GVO, JDC/WAM

Discussion: Staff recommended monitor, no action required.

Position: Monitor.

OTHER/ MISCELLANEOUS

RELATING TO THE HAWAII STATE LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, PLUS COMMISSION.

HB1576 https://www.capitol.hawaii.gov/session2022/bills/HB1576_.pdf

HB1678 https://www.capitol.hawaii.gov/session2022/bills/HB1678_.pdf

Establishes the Hawaii state lesbian, gay, bisexual, transgender, queer, plus commission. Permits each county mayor to appoint a county committee on the status of lesbian, gay, bisexual, transgender, queer, plus affairs. Appropriates funds. 2 bills differ only slightly.

Status: Committee referrals pending.

Discussion: Staff recommended support.

HCRC supported this bill previously, HB 2037 (2020). No discussion necessary.

Position: Support.

RELATING TO JUNETEENTH DAY

HB1449 https://www.capitol.hawaii.gov/session2022/bills/HB1449_.pdf
SB2052 https://www.capitol.hawaii.gov/session2022/bills/SB2052_.pdf

Makes Juneteenth Day a state holiday

Status: Committee referrals pending.

Discussion: Staff recommended support.

Act 53, L 2021 designated June 19 of each year as Juneteenth in Hawai'i, but did not make it a state holiday. It is an important commemoration, and also a federal holiday.

Position: Support.

RELATING TO SELECTIVE SERVICE

SB2364 https://www.capitol.hawaii.gov/session2022/bills/SB2364_.pdf

Requires compliance with the federal Military Selective Service Act for an individual to enroll in a state-supported post-secondary educational institution; qualify for state financial assistance for post-secondary education; or be eligible for employment by or service for the State or any of its political subdivisions. Provides exceptions.

Status: Committee referrals pending.

Discussion: Staff recommended strongly oppose.

The HCRC has consistently opposed this bill 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/ state employment, including elected office. See testimony from HB 377 and SB 461 (2021); SB 1343 (2019), SB 2622 and HB 2518 (2018); HB 422 and SB 419 (2017).

Position. Strongly Oppose.

RELATING TO THE MILITARY.

SB2420 https://www.capitol.hawaii.gov/session2022/bills/SB2420_.pdf

Changes the definition of qualified applicants for selective services from male to all.

Status: Committee referrals pending.

Discussion: Staff recommended strongly oppose.

The bill would require all (not just male) qualified applicants for a driver’s license or instruction permit to be registered with the Selective Service in compliance with 50 U.S.C. §3802. This raises a preemption issue, cannot be done by state law. Nonsensical.

Position. Strongly Oppose.

RELATING TO SERVICE ANIMALS.

SB2438 https://www.capitol.hawaii.gov/session2022/bills/SB2438_.pdf

Requires that a disclaimer be provided by sellers or providers of emotional support animals or certificates, identifications, tags, vests, leashes, and harnesses for emotional support animals that the animal is not a service animal. Establishes penalties.

Status: Committee referrals pending.

Discussion: Staff recommended offer comments and support § (b) of new § 347-___ only.

Note that the bill says that service animals are accorded rights and privileges by law. This is untrue. [Service] Animals do not enjoy rights and privileges and are not granted an accommodation. A person with a disability has rights, including the right to a service animal as an accommodation. The dog does not have rights under this law. The proposed statutory language is messy, will cause confusion.

The new § 347-____(b) is aimed at the numerous online businesses selling vests and certificates, and we support that section. Concerns were raised that it might affect the Humane Society, Cat

Friends, and other rescue agencies who provide an animal to someone after being told that the person is seeking an emotional support animal, when that is not their primary business.

Position: Support subsection § 347- ____ (b) only, with comments.

RELATING TO COMPACTS OF FREE ASSOCIATION.

SB2469 https://www.capitol.hawaii.gov/session2022/bills/SB2469_.pdf

Creates a task force to conduct a census of COFA residents in Hawaii

Status: Committee referrals pending.

Discussion: Staff recommended no position.

The HCRC supports COFA residents and their rights, but is unsure of the purpose of this bill. HCRC will not take a position now, but can revisit this if the bill has community support and the Commission has a better understanding of the purpose of the bill.

No Position.

RELATING TO DATA COLLECTION.

SB2872 https://www.capitol.hawaii.gov/session2022/bills/SB2872_.pdf

Requires that the sexual orientation and gender identity of persons processed for crimes be included in the systems of identification.

Status: Committee referrals pending.

Position: No position. Monitor.

RELATING TO SCHOOL CURRICULUM.

SB2979 https://www.capitol.hawaii.gov/session2022/bills/SB2979_.pdf

Requires the Department of Education to develop and implement a statewide civil rights curricula plan for all public schools to teach students about the civil rights movement.

Status: Committee referrals pending.

Discussion: Staff recommended support.

Commissioner Lewis voiced support for more discussion, but with a broader scope, not limited to the civil rights movement during the period from 1954 to 1968, the leadership of Dr. Martin Luther King, Jr., and the passage of the Civil Rights Acts of 1957, 1960, and 1964, and the Voting Rights Act of 1965. She raised questions about who would create the curriculum, who would sit at the table, and wondered whether and where the curriculum would be embedded – in middle school or high school courses? – and whether it would be mandatory.

Commissioner Matsuoka emphasized the important opportunity to rewrite the civil rights history to include other stories. He offered an example, the less-known story of opposition to the imprisonment of healthy Hawaiians at Kalaupapa. The HCRC should support the bill, but urge that the history goes beyond the story of Dr. Martin Luther King, Jr., and the Civil Rights Acts of the 1960s.

Commissioner Lewis spoke in favor of local curriculum development, with participation of local civil rights leaders, emphasizing this as a living, evolving history, and suggesting that it could be used beyond DOE.

ED Hoshijo noted that what would be done with any new civil rights curriculum was a key question, saying that he has heard that the DOE has some really good curricula sitting on the shelf, including a civil rights curriculum centered around the WWII internment of Japanese Americans.

Commissioner Puette added that DOE has not implemented labor history in the schools.

Commissioner Matsuoka said the discussion reminded him that the civil rights movement and history is not the same as on the continent, that Hawai‘i is different, and not limited to the Dr. Martin Luther King, Jr., history.

ED Hoshijo said it is important to acknowledge the 1950s and 1960s civil rights movement with a debt of gratitude – but for the civil rights movement, we would have no civil rights laws to enforce. At the same time, we need to focus on the movement as unfinished business, not something that happened long ago and far away.

Position: Support, with comments.

Additional Commission Action:

Staff Motion – requested to authorize testimony based on recent past positions.

During the early days of the 2022 session, from opening day through the date of the February 2022 Commission meeting, on bills and resolutions that are substantially similar to bills or resolutions introduced during the 2020 or 2021 sessions that the Commission reviewed and acted on, staff is authorized to identify bills or resolutions which are similar to those 2020 or 2021 session bills or resolutions, and, after consultation with the Chair, to submit testimonies

consistent with the positions taken on those bills or resolutions. Provided that any such testimony will be reported to the Commission at its February 2022 meeting, and the position will be subject to Commission review and action at that time.

Motion Approved.

Unfinished Business

CC Wurtzel reported that the HCRC report in response to SCR 66, “**Addressing racism in Hawai‘i : looking back, during the COVID-19 pandemic, and moving forward,**” had been submitted to the Legislature, but had not yet been posted.

Announcements

There were no announcements.

The meeting was scheduled to be continued on January 28, 2022, at 10:00 a.m..

Adjournment, to be continued on January 28, 2022, at 10:00 a.m.

Draft minutes circulated by William D. Hoshijo, Executive Director.

Approved by Commission, as circulated, on February 18, 2022.

MINUTES

Hawai`i Civil Rights Commission Office
via MS TEAMS
January 28, 2022
10:00 a.m.

Present: Liann Ebesugawa, Joan Lewis, William Puette, and Jon Matsuoka, Commissioners; Robin Wurtzel, Bill Hoshijo, and Marcus Kawatachi, Staff.

Chair Liann Ebesugawa called the continued meeting to order.

2022 Legislation

The Commissioners reviewed 2022 Legislative Summary 1B (which also updated status of bills and identified companion bills for bills discussed before), with staff recommendations, and decided on HCRC positions as follows:

EMPLOYMENT

RELATING TO EMPLOYMENT AGREEMENTS

SB2611 **[https://www.capitol.hawaii.gov/session2022/bills/SB2611 .pdf](https://www.capitol.hawaii.gov/session2022/bills/SB2611.pdf)**

Expressly prohibits noncompete agreements with certain exceptions.

Status: ref to LCA/EET, JDC

Discussion: Staff recommended no position.

Bill does not affect the statutes under HCRC jurisdiction.

Position: No position. Bill will be removed from list of bills HCRC is tracking.

RELATING TO EMPLOYMENT PRACTICES

HB2495 **[https://www.capitol.hawaii.gov/session2022/bills/HB2495 .pdf](https://www.capitol.hawaii.gov/session2022/bills/HB2495.pdf)**

Prohibits an employer from entering into or requiring an employee to enter into a nondisclosure agreement pertaining to sexual harassment or sexual assault at any time.

Status: Committee referrals pending.

Discussion: Staff recommended support, but no substantive discussion at this meeting.

Bill amends HRS § 378-2.2 which prohibited NDAs as a condition of employment, pursuant to Act 17 in 2020 (HB 2054 and SB 2123 L 2020). HCRC supported the bills that were the basis for Act 17.

HOUSING

RELATING TO FAIR HOUSING REASONABLE ACCOMMODATIONS

SB2002 https://www.capitol.hawaii.gov/session2022/bills/SB2002_.pdf

HB2271 https://www.capitol.hawaii.gov/session2022/bills/HB2271_.pdf

Codifies the administrative rule definition of "assistance animal". Clarifies the type of verification an individual may provide to substantiate a reasonable accommodation request for a specific assistance animal. Specifies that possession of a vest or other distinguishing animal garment, tag, or registration document commonly purchased online and purporting to identify an animal as a service animal or assistance animal does not constitute valid verification of a disability-related need for an assistance animal.

Status: referred to HMS, JDC

Discussion (continued from 1/24/22): Staff recommended support, based on HCRC position on SB 280 (2021), with suggestion of “uniform” legislation. The current rule has the full force and effect of law, so this bill is not necessary. The section stating that vests and tags purchased online are not valid verification is helpful and definitive.

The Commissioners expressed concern that the bill would open the door to overly intrusive requests. Chair Ebesugawa suggested amendment to incorporate a standard for what a verification would need to say. Commissioner Puette suggested the use of a form, like used in application for disability parking permit. Chair Ebesugawa noted that verification language in rule is not the same as in the bill, and expressed concern that the bill could be a disservice to persons with disabilities. DED Marcus Kawatachi added that the current rule is better than the bill language.

ED Hoshijo said that there was no “uniform” legislation, and that a big part of the ongoing debate was due to the lack of a federal registry and standard, citing back to that observation being offered over the years by the late DCAB Executive Director Francine Wai.

The Commissioners considered whether to support intent, but note that the bill is not needed, because the rule has the full force and effect of law.

ED Hoshijo suggested that the decision on the HCRC position be deferred, so that staff could prepare a comparison of the bill to the current rule, and a draft testimony for discussion purposes. Commission discussion deferred until 1/28/22.

The discussion of SB 2002 / HB 2271 continued on 1/28/22. ED Hoshijo provided a comparison of the bill's statutory amendment and the current rule.

Staff provided a draft testimony for discussion purposes, in support, but with concerns, specifically: supporting codification of the rule definition of "assistance animal" and clarifying the type of verification an individual may provide to substantiate a reasonable accommodation request for an assistance animal when the need is not readily apparent, but raising concerns regarding the verification provisions of the bill, where they do not track and codify the verification provisions of the administrative rule; and noting that the rule has the full force and effect of law, so statutory codification is not necessary. The draft testimony also supported the bill provision that expressly clarifies that possession of a dog vest or registration documents that are commonly purchased online and purporting to identify an animal as a service animal or assistance animal will not constitute valid verification.

The Commissioners agreed with the draft position.

Position: Support, with concerns.

PUBLIC ACCOMMODATIONS

RELATING TO PUBLIC ACCOMMODATIONS

HB1817 https://www.capitol.hawaii.gov/session2022/bills/HB1817_.pdf

Requires shopping centers having 15 or more retail tenants to have no less than 1 publicly available restroom. Effective 1/1/2022.

Status: ref to CPC

Discussion: Staff recommended offer comments.

The measure places the new mandate in HRS Chapter 489, but § 489-2 says that no place of public accommodation shall be required to reconstruct any facility or part thereof to comply with chapter 489.

Position: Offer comments.

PROCEDURAL ISSUES

CC Wurtzel reviewed a number of procedural bills, followed by a motion to authorize staff to monitor and comment on bills relating to procedural issues.

RELATING TO THE SUNSHINE LAW

HB2025 https://www.capitol.hawaii.gov/session2022/bills/HB2025_.pdf
SB3219 https://www.capitol.hawaii.gov/session2022/bills/SB3219_.pdf

Requires that the mandatory disclosure of the names of persons who are physically with a board member attending a public meeting by an online method shall apply only to the disclosure of the names of adults, and not minors, who are physically with the board member.

Status:

HB 2025 referral pending

SB 3219 ref to: JDC

Staff recommendation: Monitor.

RELATING TO CHAPTER 92, HAWAII REVISED STATUTES

HB2026 https://www.capitol.hawaii.gov/session2022/bills/HB2026_.pdf

Adds definitions for "board business" and "informal gatherings". Specifies that a board may prepare and circulate amongst members a statement on a position previously adopted for purposes of submission to the legislature when notice by the legislature is insufficient to interact in any other permitted manner. Outlines when board packets must be available to interested persons. Requires the application of the sunshine law to all adjudicatory functions concerning land use.

Status: Referral pending.

Staff recommendation: Monitor.

RELATING TO BOARDS

HB1874 https://www.capitol.hawaii.gov/session2022/bills/HB1874_.pdf

SB3200 https://www.capitol.hawaii.gov/session2022/bills/SB3200_.pdf

Allows a board to conduct up to one retreat in private per calendar year; provided that the board does not vote on any matter, make decisions, or deliberate toward a decision on any matter currently pending before the board or likely to arise before the board.

Status: HB 1874 ref to: GVR, FIN

SB 3200 ref to: JDC

Staff recommendation: Monitor.

RELATING TO THE SUNSHINE LAW

HB1897 https://www.capitol.hawaii.gov/session2022/bills/HB1897_.pdf

Requires all boards to livestream meetings and archive the recordings online. Requires a board to identify each item on its meeting agenda as an item for action or an item for discussion and allow

for oral testimony after each agenda item. Amends time frame requirements for the posting of board meeting minutes and board packets. Requires board meeting minutes and board packets to be posted online.

Status: HB 1897 ref to: GVR, JHA

Staff recommendation: Monitor.

RELATING TO PUBLIC AGENCY MEETINGS

SB3172 https://www.capitol.hawaii.gov/session2022/bills/SB3172_.pdf

Provides that any electronic audio or visual recording of a board meeting shall be maintained as public record.

Status: ref to: JDC

Staff recommendation: Monitor.

RELATING TO SUNSHINE LAW BOARDS.

HB2505 https://www.capitol.hawaii.gov/session2022/bills/HB2505_.pdf

Amends Section 1. Act 220, Session Laws of Hawaii 2021, to remove language requiring open meetings to have an in-person location for public access when hosting otherwise entirely remote meetings.

Status: ref to: not yet referred

Staff recommendation: Monitor.

Motion

Regarding procedural bills, position is MONITOR with option for staff to testify as needed on the impact of new developments.

Motion Approved.

OTHER/ MISCELLANEOUS

RELATING TO DISCRIMINATION

HB1955 https://www.capitol.hawaii.gov/session2022/bills/HB1955_.pdf

Establishes provisions relating to civil remedies for discriminatory reporting to a law enforcement officer. Provides that a person who summons or reports to a law enforcement officer, without reason to suspect a crime, offense, or imminent danger has occurred or is occurring, because of that person's belief or perception involving a member of a protected class shall be civilly liable.

Status: Referral pending.

Discussion: Staff recommended support.

HCRC supported similar bills, HB19 and SB 544 in 2021 (neither set for hearing) with comments that the bill is a recognition of racism and innate bias in our society. False reporting has historically been a threat to minority communities, and a cause of racial violence. Discussion last year included whether civil action is the correct remedy, or whether these acts should be criminalized. The Commission raised question of whether the affected minority communities are on board with this, but noted that it provides a warning to people, and that people will be held accountable.

Position: Support.

RELATING TO INSURANCE

SB2835 https://www.capitol.hawaii.gov/session2022/bills/SB2835_.pdf
HB2405 https://www.capitol.hawaii.gov/session2022/bills/HB2405_.pdf

Prohibits health insurance companies from denying coverage on the basis of gender identity if the policy covers the treatment for purposes other than gender transition. Requires insurance companies to provide applicants and insured persons with clear information about the coverage of gender transition services, including the process for appealing a claim denied on the basis of medical necessity.

Status: SB 2835 ref to: CPN, JDC
HB 2405 referral pending

Discussion: Staff recommended support.

Position: Support.

RELATING TO IN VITRO FERTILIZATION INSURANCE COVERAGE.

HB1674 https://www.capitol.hawaii.gov/session2022/bills/HB1674_.pdf
SB2669 https://www.capitol.hawaii.gov/session2022/bills/SB2669_.pdf

Removes discriminatory requirements for mandatory insurance coverage of in vitro fertilization procedures to create parity of coverage for same-sex couples, unmarried women, and male-female couples for whom male infertility is the relevant factor.

Status: HB 1674 ref to: HHH, CPC, FIN
SB 2669 ref to: CPN, JDC

Discussion: Staff recommended support.

Position: Support.

RELATING TO VITAL STATISTICS

HB2451 https://www.capitol.hawaii.gov/session2022/bills/HB2451_.pdf

Beginning 01/01/2023, adds the gender marker "X" as a third gender option on birth certificates and permits individuals to submit an application for a change in sex designation on their birth certificates that reflects this third gender option.

Status: not yet referred

Discussion: Staff recommended support.

Position: Support.

Next meeting.

The next meeting of the Commission was scheduled for February 18, 2022, at 11:00 a.m.

Adjournment

Draft minutes circulated by William D. Hoshijo, Executive Director.

Approved by Commission, as circulated, on February 18, 2022.