



HAWAI`I CIVIL RIGHTS COMMISSION

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February 6, 2009
Rm. 016, 8:30 a.m.

To: The Honorable Brian Taniguchi, Chair
Members of the Semnate Committee on Judiciary and Government Operations

From: Coral Wong Pietsch, Chair, and Commissioners of the Hawai`i Civil Rights
Commission

Re: S.B. No. 1184

The Hawai`i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai`i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

The HCRC supports S.B. No. 1184, which amends Hawai`i Revised Statutes §368-4 to clarify the statutory confidentiality provisions which apply to the disclosure and allowable use of factual records obtained in the course of HCRC investigation of discrimination complaints. Specifically, the bill amends §368-4 to make it clear that "confidential witness" refers to a non-party witness who requests confidentiality, and that factual information obtained in HCRC

investigations may be used as evidence in the investigation, conciliation, and litigation of complaints of discrimination.

Under the current §368-4, a number of respondents to complaints have requested that their statements be confidential, asserting that the request precludes both disclosure and use of their statements as evidence in any future proceeding.¹ In a number of instances, respondents have conditioned cooperation and appearance for investigation interviews on agreement with an assertion of confidential witness status. The HCRC has refused to accept such a demand, which would limit use of evidence obtained in the course of the law enforcement investigation for prosecution of the complaint. As a result, the HCRC has and continues to expend resources litigating these issues in actions for subpoena enforcement. A clarification of the statute should resolve this issue and allow us investigate and prosecute discrimination complaints on their merits.

The HCRC suggests revision of the bill to better clarify: that “confidential witness” refers to non-party witnesses who request confidentiality; and that factual matters obtained in the course of an investigation may be used as evidence in the course of investigation, conciliation, and litigation of complaints filed with the HCRC. The suggested revisions are attached as a draft marked “HCRC PROPOSED DRAFT.”

The HCRC supports S.B. No. 1184, and urges your favorable consideration of an H.D.1 incorporating the suggested revisions..

¹ Note: Under the current §368-4, all HCRC investigation records are confidential and are not disclosed except under 368-4(a)(1) and (2). This bill does not disturb those basic confidentiality provisions.