

ACT 91

S.B. NO. 122

A Bill for an Act Relating to Personal Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 92E-7, Hawaii Revised Statutes, is amended to read:

“[~~§~~92E-7(~~1~~)] Copies. The agency may charge the individual for any copies and for the certification of any copies; provided that such charges or fees shall not exceed the actual cost of duplication or of transcription into readable or intelligible form [~~and~~], duplication, and [~~shall not include any costs of~~] searching for the record.”

SECTION 2. Section 92E-8, Hawaii Revised Statutes, is amended to read:

“[~~§~~92E-8(~~1~~)] Right to correct personal record; initial procedure. (a) An individual has a right to have any factual error in that person’s personal record corrected and any misrepresentation or misleading entry in the record amended by the agency which is responsible for its maintenance.

(b) Within twenty business days after receipt of a written request to correct or amend a personal record[,], and evidence that the personal record contains a factual error, misrepresentation, or misleading entry, an agency shall acknowledge receipt of the request and purported evidence in writing[,], and promptly:

- (1) Make the requested correction or amendment; or
- (2) Inform the individual in writing of its refusal to correct or amend the personal record, the reason for the refusal, and the agency procedures for review of the refusal.”

SECTION 3. Section 92E-11, Hawaii Revised Statutes, is amended to read:

“[~~§~~92E-11(~~1~~)] Civil actions and remedies. (a) An individual may bring a civil action against an agency in a circuit court of the State whenever an agency fails

to comply with any provision of this chapter, and after appropriate administrative [remedy] remedies under sections 92E-6, 92E-8, and 92E-9 have been exhausted.

(b) In any action brought under this section the court may order the agency to correct or amend the complainant's personal record, to require any other agency action, or to enjoin such agency from improper actions as the court may deem necessary and appropriate to render substantial relief.

(c) In any action brought under this section in which the court determines that the agency [acted in a manner which was intentional or wilful,] knowingly or intentionally violated a provision of this chapter, the agency shall be liable to the complainant in an amount equal to the sum of:

- (1) Actual damages sustained by the complainant as a result of the failure of the agency to properly maintain the personal record, but in no case shall a complainant (individual) entitled to recovery receive less than the sum of \$100; and
- (2) The costs of the action together with reasonable attorney's fees as determined by the court.

(d) The court may assess reasonable attorney's fees and other litigation costs reasonably incurred against the agency in any case in which the complainant has substantially prevailed, and against the complainant where the charges brought against the agency were frivolous.

(e) An action may be brought in the circuit court where the complainant resides, the complainant's principal place of business is situated, or the complainant's relevant personal record is situated. No action shall be brought later than two years after the date of the cause of action, which shall be the date of the last written communication to the agency requesting compliance."

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 21, 1983.)