

JAN 24 2007

---

---

## A BILL FOR AN ACT

RELATING TO DECLARATORY RELIEF.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to give the  
2 executive director of the Hawaii civil rights commission the  
3 power to petition the commissioners for a declaratory ruling on  
4 any significant legal issue that may arise during the  
5 investigation of a discrimination complaint. It is designed to  
6 address the Hawaii Supreme Court decision in *RGIS Inventory*  
7 *Specialist v. Hawaii Civil Rights Commission*, 104 Hawai'i 158  
8 (2004), which held that the executive director did not have  
9 standing to petition for declaratory relief by virtue of being  
10 the executive director.

11           Under chapter 368, Hawaii Revised Statutes, the civil  
12 rights commission has investigatory and adjudicatory powers.  
13 The executive director is responsible for investigating  
14 discrimination complaints; and the five commissioners are  
15 responsible for adjudicating contested cases and declaratory  
16 relief petitions. Because of the separation of powers, the  
17 commissioners are not involved in any investigations so that  
18 they can objectively decide petitions for declaratory relief



1 filed by the executive director on legal issues arising during  
2 an investigation. Allowing the executive director to petition  
3 for declaratory relief can help speed up the investigation of  
4 discrimination complaints.

5 SECTION 2. Section 368-3, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§368-3 Powers and functions of commission.** The  
8 commission shall have the following powers and functions:

- 9 (1) To receive, investigate, and conciliate complaints  
10 alleging any unlawful discriminatory practice under  
11 part I of chapter 489, chapter 515, and part I of  
12 chapter 378, and complaints filed under this chapter,  
13 and conduct proceedings on complaints alleging  
14 unlawful practices where conciliatory efforts are  
15 inappropriate or unsuccessful;
- 16 (2) To hold hearings and make inquiries, as it deems  
17 necessary, to carry out properly its functions and  
18 powers, and for the purpose of these hearings and  
19 inquiries, to administer oaths and affirmations,  
20 conduct depositions, compel the attendance of parties  
21 and witnesses and the production of documents by the  
22 issuance of subpoenas, examine parties and witnesses



1 under oath, require answers to interrogatories, and  
2 delegate these powers to any member of the commission  
3 or any person appointed by the commission for the  
4 performance of its functions;

5 (3) To commence civil action in circuit court to seek  
6 appropriate relief, including the enforcement of any  
7 commission order, conciliation agreement, or  
8 predetermination settlement;

9 (4) To issue the right to sue to a complainant;

10 (5) To order appropriate legal and equitable relief or  
11 affirmative action when a violation is found;

12 (6) To issue publications and results of investigations  
13 and research that, in its judgment, will tend to  
14 promote goodwill and minimize or eliminate  
15 discrimination in employment, housing, and public  
16 accommodations;

17 (7) To submit annually to the governor and the legislature  
18 a written report of its activities and recommendations  
19 for administrative or statutory changes required to  
20 further the purposes of this chapter;

21 (8) To appoint an executive director, deputy executive  
22 director, attorneys, and hearings examiners who shall




1 be exempt from chapter 76, and investigators and other  
 2 necessary support personnel who shall be subject to  
 3 chapter 76. Section 28-8.3 notwithstanding, an  
 4 attorney employed by the commission as a full-time  
 5 staff member may represent the commission in  
 6 litigation, draft legal documents for the commission,  
 7 provide other necessary legal services to the  
 8 commission, and shall not be deemed to be a deputy  
 9 attorney general; [~~and~~]

- 10 (9) To adopt rules under chapter 91[~~-~~]; and  
 11 (10) To decide petitions for declaratory relief filed by  
 12 the executive director involving legal issues arising  
 13 from the investigation of complaints involving  
 14 discrimination."

15 SECTION 3. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.

18  
 INTRODUCED BY: 



**Report Title:**

Civil Rights Commission; Petitions; Declaratory Relief;  
Executive Director

**Description:**

Authorizes the civil rights commission to decide petitions for declaratory relief filed by executive director involving legal issues arising from the investigation of complaints involving discrimination.

