



HAWAI'I CIVIL RIGHTS COMMISSION

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January 29, 2010
Rm. 309, 9:30 a.m.

To: The Honorable Karl Rhoads, Chair
Members of the House Committee on Labor and Public Employment

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

Re: H.B. No. 2379

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 H.B. No. 2379, 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. The bill also lays out criteria to be considered in making a determination to approve or deny a request for confidential witness status.

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, without the amendment proposed in this bill, will continue 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 supports H.B. No. 2379, and urges your favorable consideration.

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.