

H.B. No. 2002, H.D. 1 (PROPOSED S.D. 1)

Your Committee on Government Operations, to which was referred H.B. No. 2002, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC RECORDS"

begs leave to report as follows:

The purpose of this bill is to repeal the current law on public access to government records (Part V of Chapter 92) and the current chapter limiting access, in the interest of privacy, and providing for the correction of inaccurate entries (Chapter 92E). In their place, the bill proposes a detailed and comprehensive chapter, based on the Uniform Information Practices Code of the National Conference of Commissioners on Uniform State Laws.

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The House of Representatives has, in effect, wiped the slate clean and adopted a new law. Your Committee proposes a less drastic alternative, premised on the belief that the current law is generally quite good. The only substantial problem with the current law is Section 92E-4.

Your Committee has retained Part V of Chapter 92, with some expansion and clarification. Your Committee has also retained Chapter 92E, with the exception of Section 92E-4. The balancing of public access and privacy interests has been integrated in Part V of Chapter 92, leaving Chapter 92E to serve as a statute governing an individuals access to records pertaining to them, correction of such personal records and interagency disclosures. The title of Chapter 92E has been amended to reflect the narrower scope.

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4. A new Section 92-53 is added to provide for certain exceptions to the general rule. This section addresses the competing interests. Rather than list specific records in the statute, at the risk of being over- or under-inclusive, your Committee prefers to categorize and rely on the developing common law. The common law is ideally suited to the task of balancing competing interests in the grey areas and unanticipated cases, under the guidance of the legislative policy. To assist the judiciary in understanding the legislative intent, the following examples are provided.

(a) Personal privacy. The following are examples of information in which the individual has a significant privacy interest:

(1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information concerning an individual's presence at any facility;

(2) Information compiled and identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;

(4) Information in an agency's personnel file, or on applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position; except information relating to the status of any formal charges

against the employee and disciplinary action taken, information concerning compensation, title, job description, education and training background, previous work experience, dates of employment and similar routine matters.

(5) Information relating to an individual's nongovernmental employment history, except as necessary to demonstrate compliance with requirements for a particular government position;

(6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness;

(7) Information compiled as part of an inquiry into an individual's fitness to be granted or to retain a license, except (A) the record of any proceeding, resulting in revocation or suspension of a license and the grounds for revocation or suspension; (B) information on the employment and required insurance coverages of licensees; and (C) the record of complaints including all dispositions; and

(8) Information comprising a personal recommendation or evaluation.

(b) Confidentiality required by governmental need. The following are examples of records which need not be disclosed, to the extent that disclosure would frustrate a legitimate government function.

(1) Records or information compiled for law enforcement purposes.

(9) Information that is expressly made nondisclosable or confidential under federal or state law or protected by judicial rule.

5. A new section 92-54 was added to provide very broad rulemaking authority to agencies, allowing them to establish practices and procedures which will effectuate the purpose of this Part of Chapter 92.

6. Section 92-52 is renumbered as 92-55. The only substantive change is the addition of a provision which awards attorney's fees to prevailing plaintiffs.

Your Committee on Government Operations is in accord with the intent and purpose of H.B. 2002, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No 2002, H.D. 1, S.D. 1 and be placed on the calendar for Third Reading.

SECTION 1. The Hawaii Revised Statutes is amended by amending Part V of Chapter 92 to read as follows:

"[[PART V.]] PUBLIC RECORDS

§92-50 Purpose and construction. In a democracy, the citizens have the ultimate authority and responsibility. Government agencies exist to aid our citizens in the formulation and execution of public policy. Opening the records of agencies to public inspection enhances their proper operation by promoting informed citizen participation. Therefore, the legislature declares that it is the policy of this State to enhance government accountability by liberally granting access to government records.

This chapter shall be liberally construed to promote access to government records.

[§92-50 Definition. As used in this part, "public record" means any written or printed report, book or paper, map or plan of the State or of a county and their respective subdivisions and boards, which is the property thereof, and in or on which an entry has been made or is required to be made by law, or which any public officer or employee has received or is required to receive for filing, but shall not include records which invade the right of privacy of an individual.]

§92-51 Definitions. As used in this Part:

"Agency" means all units of State or County government and includes departments, divisions, boards, commissions and all instrumentalities of State or County government.

"Public record" means any written written or printed report, book or paper, map or plan of the State or of a county and their respective subdivisions and boards, which is the property thereof, and in or on which an entry has been made or is required to be made, or which any public officer or employee has received or is required to receive for filing, but shall not include records which, if disclosed, would violate the constitutional right of privacy of an individual.

[§92-51] §92-52 Public records; available for inspection.

(a) All public records shall be available for inspection and duplication by any person during established office hours.

[unless public inspection of such records is in violation of any other state or federal law ,provided that except where such records are open under any rule of court, the attorney general and the responsible attorneys of the various counties may determine which records in their offices may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the State or county is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of a character or reputation of any person.]

(b) Each agency shall provide reasonable access to facilities for duplication its records and may charge a reasonable amount, as established by rule, for the cost of duplication and for the time of government employees used to segregate public records from other records.

(c) An agency is not required to compile, summarize or otherwise modify its records to meet the needs of persons requesting inspection and may charge a reasonable amount, as established in its rules, for the time of government employees used to retrieve government records.

§92-53 Public records; exceptions to general rule. The right to inspect and duplicate records will be made initially by the application of the definition of public records. Nevertheless, certain records are not required to be made available for inspection and duplication even if they constitute public records. This chapter shall not require disclosure of:

(1) personal records, as defined in section 92E-1, which, if disclosed would constitute a clearly unwarranted invasion of personal privacy.

(2) records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable.

(3) records which, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function.

(4) Records which, pursuant to State or federal law including an order of any State or federal court, are protected from disclosure.

§92-54 Rules and Regulations. Each agency shall adopt rules, pursuant to chapter 91, to effectuate this chapter. The rules shall include procedures to assure that requests for inspection and copying of public records are handled promptly and rules for administrative appeal of a denial of access, which appeals shall not delay or limit resort to judicial remedies. The rules may include procedures for the collection, categorization, maintenance, segregation and dissemination of public records to facilitate compliance with the letter and the spirit of this chapter. Rules may also be adopted to protect public records from theft, loss, defacement, alteration or deterioration and to prevent excessive interference with the agency's other responsibilities.

[§92-53] §92-55 Denial of inspection; application to circuit courts. Any person aggrieved by a denial [by the officer having the custody of any public record] of the the right to inspect or to obtain copies of [extracts thereof] a public record may apply to the circuit court of the circuit wherein the public record is found for an order directing the [officer] agency to permit the inspection of or to furnish copies of [extracts of] the public records. The court shall grant the order after hearing upon a finding that the denial

was not for just and proper cause. In addition, the court shall require the agency to pay the reasonable attorney's fees and costs of a prevailing plaintiff."

SECTION 2. Chapter 92E, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"FAIR INFORMATION PRACTICE"

[(CONFIDENTIALITY OF PERSONAL RECORD)]

SECTION 3. Chapter 92E, Hawaii Revised Statutes, is amended by repealing section 92E-4:

"[[§92E-4] Limitation on public access to personal record. No agency may disclose or authorize disclosure of personal record by any means of communication to any person other than the individual to whom the record pertains unless the disclosure is:

(1) To a duly authorized agent of the individual to whom it pertains;

(2) Of information collected and maintained specifically for the purpose of creating a record available to the general public;

(3) Pursuant to a statute of this State or the Federal government that expressly authorizes the disclosure;

(4) Pursuant to a showing of compelling circumstances affecting the health or safety of any individual.]"

SECTION 4. This Act shall take effect on July 1, 1989.