

Date of Hearing: July 13, 2021

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
SB 774 (Hertzberg) – As Amended March 3, 2021

As Proposed to be Amended

**SENATE VOTE:** 27-10

**SUBJECT:** LAWYER-CLIENT PRIVILEGE: DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

**KEY ISSUE:** SHOULD STATE LAW REGARDING THE LAWYER-CLIENT PRIVILEGE MAKE CLEAR THAT THE PRIVILEGE APPLIES TO THE CONFIDENTIAL COMMUNICATIONS BETWEEN A LAWYER OF THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING AND EXTENDS TO COVER THE COMMUNICATIONS OF A PERSON WHO FILES A COMPLAINT WITH THE DEPARTMENT, OR ANOTHER PERSON ON WHOSE BEHALF A COMPLAINT IS FILED, WITH THE DEPARTMENT?

**SYNOPSIS**

*This author-sponsored bill seeks to clarify existing law to ensure that confidential communications between attorneys for the Department of Fair Employment and Housing (DFEH) and individuals who file administrative complaints through the agency (or on whose behalf complaints are filed) are protected by the attorney-client privilege. According to the author, this clarification is necessary to reassure complainants that the information they provide to DFEH will remain confidential, assist DFEH in conducting its investigations, and carry out the Legislature's intent that DFEH vigorously enforce the state's civil rights laws.*

*An evidentiary privilege allows an otherwise competent witness to refuse to testify, prevent another person protected by the privilege from testifying, and object to the disclosure of privileged communications. To encourage clients to have frank and open discussions with their attorneys, California law recognizes the attorney-client privilege (referred to as the "lawyer-client" privilege in the Evidence Code) and gives the client the right to (1) refuse to disclose confidential communications made between the attorney and the client; and (2) prevent another from disclosing confidential communications made between the attorney and the client.*

*The issue addressed by this bill—whether communications between DFEH and complainants or aggrieved persons is protected from disclosure by the attorney-client privilege -- was recently addressed, at least to some extent, in Wood v. Superior Court (2020) 46 Cal.App.5th 562. At issue in that case was an email between Wood and DFEH lawyers sent during DFEH's investigation of Wood's complaint. The issue presented to the court was whether Wood (not DFEH) was compelled to produce the email, or whether the email was, as Wood alleged, protected by the attorney-client privilege. The court concluded that Wood was required to produce the email because it was not a privileged communication between Wood and her attorney; Wood did not have an attorney-client relationship with DFEH and therefore could not claim the attorney-client privilege. (Id. at 588.) The court did not analyze whether DFEH could claim the attorney-client privilege on the basis that its communications with a third party (Wood, the complainant) were intended to be confidential and disclosed only as reasonably necessary to*

*further the interests of the client (DFEH), or accomplish the purpose for which the lawyer was consulted (enforcing the state's anti-discrimination laws). (See Sections 912 (d), 952.) Wood has been used as a cudgel against DFEH. According to the author, defendants in DFEH enforcement actions routinely cite Wood for the proposition that DFEH communications with complainants and aggrieved parties are never protected by the attorney-client privilege. Therefore, statutory clarification of the issue is necessary.*

*The author proposes a number of clarifying amendments to the bill. The amendments clarify that, subject to existing law and other provisions of the bill, a complainant or aggrieved party has the authority to assert the privilege. In fact, the amendments provide that "a complainant or aggrieved party shall assert the privilege on behalf of the department, but shall not assert the privilege over the objection of the department." Further, the complainant or aggrieved party shall not waive the privilege without the written consent of the department. The author has also agreed to clarify the purpose of the bill: to among other things, further the department's enforcement of civil rights laws. The author also proposes to clarify that the bill does not limit the "effective remedies available for violations of state and federal civil rights laws." Finally, the author helpfully proposes to define the term "department" to mean the Department of Fair Employment and Housing. The amendments are incorporated into the summary of the bill and explained in the analysis.*

*The bill is supported by a number of civil rights, disability rights, and anti-poverty advocacy organizations. It has no opposition on file. Nevertheless, as explained, some parties have contacted the Committee, author, and DFEH with concerns about both the bill in print and the bill as it is proposed to be amended.*

**SUMMARY:** In order to facilitate the work of the Department of Fair Employment and Housing (DFEH), this bill clarifies that the lawyer-client privilege applies to the confidential communications of the department's lawyers with complainants and other persons on whose behalf a complaint is filed. Specifically, **this bill:**

- 1) Provides that, subject to existing provisions of the Evidence Code dealing with privileges (specifically including Section 912, providing that disclosure of confidential communications to third parties does not waive a privilege under specified circumstances), the lawyer-client privilege applies to confidential communications between a lawyer of the Department of Fair Employment and Housing and a complainant who files a complaint with the department or another person aggrieved by alleged discriminatory practices on whose behalf a complaint is filed.
- 2) Provides that pursuant to existing law and subject to 3), below, a complainant or aggrieved party shall assert the privilege described in subdivision (a) on behalf of the department, but shall not assert the privilege over the objection of the department.
- 3) States that the complainant or aggrieved party shall not waive the lawyer-client privilege without the written consent of the department.
- 4) Provides that the purpose of 1), above, is to protect the confidentiality of communications between the department's lawyers and complainants or other aggrieved persons to further the department's enforcement of civil rights laws; confidentiality of such communications is reasonably necessary for the department to conduct its investigations and prosecutions under state and federal antidiscrimination laws, vigorously enforce such laws on behalf of the

department and the public interest, and remedy, deter, and prevent violation of such laws, and for the department's lawyers to represent the department.

- 5) Clarifies the following about 1), above:
  - a) It does not establish a fiduciary attorney-client relationship between a department lawyer and a complainant or aggrieved person.
  - b) It does not limit the department's own rights under this article, or its independent authority over how it receives, investigates, conciliates, mediates, or prosecutes complaints or the effective remedies available for violations of state and federal civil rights laws.
- 6) Provides that the bill is declarative of, and clarifies, existing law and applies retroactively.
- 7) Defines, for purposes of the bill, "department" to mean the Department of Fair Employment and Housing.

#### **EXISTING LAW:**

- 1) Establishes, pursuant to the California Fair Employment and Housing Act (FEHA), DFEH in the Business, Consumer Services, and Housing Agency. (Government Code Section 12901.)
- 2) Provides that no person has a privilege to refuse to be a witness; to refuse to disclose any matter or to refuse to produce any writing, object, or other thing, or prevent another person from the same, unless otherwise provided by statute. (Evidence Code Section 911. All further statutory references are to this code, unless otherwise indicated.)
- 3) Governs the admissibility of evidence in court proceedings and generally provides a privilege to refuse to testify or otherwise disclose confidential communications made in the course of certain relationships. (Sections 954, 966, 980, 994, 1014, 1033, 1034, 1035.8, 1037.5, 1038.)
- 4) Establishes the lawyer-client privilege, where a client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the client and a lawyer if the privilege is claimed by the holder of the privilege; a person who is authorized to claim the privilege by the holder of the privilege; or the person who was the lawyer except where no holder exists or the holder instructs otherwise (Section 954) and makes the client the holder of the privilege, as specified. (Section 953.)
- 5) Defines a "confidential communication between client and lawyer" to mean information transmitted between a client and their lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship. (Section 952.)
- 6) Provides that a client generally has a privilege to refuse to disclose, and to prevent others from disclosing, a confidential communication between a client and lawyer if the privilege is

claimed by certain parties, including a “person who is authorized to claim the privilege by the holder of the privilege. (Section 954 (b).)

- 7) Provides that the right of a person to claim specified privileges is waived with respect to a protected communication if the holder of the privilege has disclosed a significant part of that communication or consented to disclosure, without coercion; and provides that a disclosure does not constitute a waiver where it was reasonably necessary to accomplish the purposes for which the lawyer was consulted. (Section 912 (a), (d).)
- 8) Provides that if two or more persons are joint holders of a privilege, a waiver of a right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege. (Section 912 (b).)
- 9) Provides that if a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of a recognized privileged relation, the communication is presumed to have been made in confidence, and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential; but a communication does not lose its privileged character for the sole reason that it was communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication. (Section 917.)

**FISCAL EFFECT:** As currently in print this bill is keyed non-fiscal.

**COMMENTS:** This author-sponsored bill seeks to clarify existing law to ensure that confidential communications between attorneys for the Department of Fair Employment and individuals who file administrative complaints through the agency (or on whose behalf complaints are filed) are protected by the attorney-client privilege. According to the author, this clarification is necessary to reassure complainants that the information they provide to DFEH will remain confidential, assist DFEH in conducting its investigations, and carry out the Legislature’s intent that DFEH vigorously enforce the state’s civil rights laws. According to the author:

[P]eople alleging discrimination through DFEH are often deterred from sharing critical case details with DFEH attorneys, as any communication between the two parties can be obtained by the alleged wrongdoer. . . . By confirming that the attorney-client privilege applies to these communications, SB 774 restores balance to litigation involving DFEH, protects victims of discrimination, and bolsters California’s commitment to ensuring civil rights for all.

***DFEH - Enforcing Californians’ Civil Rights.*** The Fair Employment and Housing Act or FEHA, set forth in Government Code Section 12920 *et seq.*, states that the following is the policy of California:

It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

...

Further, the practice of discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information in housing accommodations is declared to be against public policy.

It is the purpose of this part to provide effective remedies that will eliminate these discriminatory practices. (Government Code Section 12920.)

FEHA makes DFEH responsible for, among other things, receiving, investigating, reconciling, mediating, and prosecuting complaints alleging unlawful housing and employment discrimination and other civil rights violations. (Government Code Section 12930.) Generally, DFEH files these civil actions in the name of the department, but on behalf of the aggrieved person as the real party in interest. (See e.g., Government Code Sections 12981, 12965.) The aggrieved person may participate as a party to any civil action brought by DFEH and may be represented by their own counsel. (*Ibid.*)

This bill deals with confidential communications between DFEH attorneys and complainants or other aggrieved persons on whose behalf a complaint is filed. It clarifies that such communications are protected by the attorney-client privilege between DFEH and its attorneys. As stated by the bill, this clarification about the scope of DFEH's attorney-client privilege, including the fact that it extends to communications with third parties that are reasonably necessary for DFEH to carry out its statutory duties, is consistent with and clarifying of existing law.

***Evidentiary Privileges in General.*** An evidentiary privilege allows an otherwise competent witness to refuse to testify, prevent another person protected by the privilege from testifying, and object to the disclosure of privileged communications. Privileges are policy exclusions, unrelated to the reliability of the information involved, which are granted because, as a matter of public policy, it is considered more important to keep the information confidential than to require disclosure of the information, even though they may be relevant to the issues in a pending proceeding.

For example, to protect the attorney-client relationship, it is necessary to prevent disclosure of confidential communications made in the course of that relationship. (Law Revision Commission Comments to Section 910.) Whereas privileges of a witness under the Federal Rules of Evidence are governed by the principles of common law as interpreted by United States district courts in light of "reason and experience," the only privileges recognized in California are those statutory privileges which are expressly codified in the Evidence Code. (See Fed. Rules of Evid., Rule 501; Section 911.) Recognizing the need to protect the confidentiality of certain communications, California has codified numerous evidentiary privileges. These include the lawyer-client privilege, lawyer referral service client privilege, spousal privilege, confidential marital communications privilege, physician-patient privilege, psychotherapist-patient privilege, clergyman-penitent privilege, sexual assault counselor-victim privilege, among others.

***The Attorney-Client Privilege in Particular.*** To encourage clients to have frank and open discussions with their attorneys, California law recognizes the attorney-client privilege (referred to as the "lawyer-client" privilege in the Evidence Code) and gives the client the right to (1) refuse to disclose confidential communications made between the attorney and the client; and (2) prevent another from disclosing confidential communications made between the attorney and the

client. (*People v. Meredith* (1981) 29 Cal.3d 682, 690.) Although the act of a party invoking the attorney-client privilege results in the withholding of information from the court, as a matter of public policy, the legal system allows for the privilege because it promotes adequate client-representation, and the enforcement of personal rights. (*People v. Gionis* (1995) 9 Cal.4th 1196, 1206-07.)

A “confidential communication between client and lawyer” is defined in the Evidence Code as follows:

[I]nformation transmitted between a client and [their] lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons *other than* those who are present to further the interest of the client in the consultation or *those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted*, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship. (Section 952, emphasis added.)

The lawyer-client privilege provides that a client has the privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the client and a lawyer. (Section 954.) The privilege can be asserted by the client who is the holder of the privilege; a person who is authorized to claim the privilege by the holder of the privilege; or the person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if the lawyer is otherwise instructed by the holder of the privilege or person who is authorized to act on the holder’s behalf. (See Sections 952 – 954.)

***Wood v. Superior Court.*** The issue addressed by this bill—whether communications between DFEH and complainants or aggrieved persons is protected from disclosure by the attorney-client privilege—was recently addressed, at least to some extent, in *Wood v. Superior Court* (2020) 46 Cal.App.5th 562. In that case, Wood filed a complaint with DFEH because Crunch, a fitness club, refused to allow her to use the club’s locker facilities that corresponded with her gender identity. At issue in that case was an email between Wood and DFEH lawyers sent during DFEH’s investigation of Wood’s complaint. The issue presented to the court was whether Wood (not DFEH) was compelled to produce the email, or whether the email was, as Wood alleged, protected by the attorney-client privilege. The court concluded that Wood was required to produce the email because it was not a privileged communication between Wood and her attorney; Wood did not have an attorney-client relationship with DFEH and therefore could not claim the attorney-client privilege. (*Id.* at 588.) “Wood had no attorney-client relationship with DFEH lawyers. They represented DFEH, not Wood, and her discussion of legal matters with them is insufficient to create an attorney-client relationship under the circumstances here. Wood has not shown the trial court erred by ordering her to produce the e-mail in question.” (*Ibid.*) The court did not analyze whether DFEH could claim the attorney-client privilege on the basis that its communications with a third party (Wood, the complainant) were intended to be confidential and disclosed only as reasonably necessary to further the interests of the client (DFEH), or accomplish the purpose for which the lawyer was consulted (enforcing the state’s anti-discrimination laws). (See Sections 912 (d), 952.)

Wood cited analogous federal law, where courts have found the privilege applies for communications between EEOC lawyers and complainants, even though no attorney-client

relationship exists. (See e.g., *United States EEOC v. Pioneer Hotel, Inc.* (D.Nev. Oct. 6, 2014, No. 2:11-cv-01588-LRH-GWF) 2014 U.S. Dist. LEXIS 142735, at 15-16 [citing various federal court decisions finding confidential communications between EEOC attorneys and complainants protected despite lack of an attorney-client relationship].) However, the court ruled that such cases were not applicable to a dispute about the meaning of the attorney-client privilege under *state law*.

The author and supporters of this bill believe that the holding in *Wood* was incorrect and confusing. It was incorrect because communications between DFEH lawyers and complainants are covered by the lawyer-client privilege, but not because of the relationship between Wood and DFEH. Instead, the communications are covered by the attorney-client privilege because of the relationship that exists between DFEH and its own lawyers. While the communications at issue in *Wood* were between DFEH lawyers and the complainant (admittedly not DFEH's client), California law extends the lawyer-client privilege to communications with third parties when those communications are intended to be confidential and disclosure of attorney-client communication is reasonably necessary to further the interests of the client, or accomplish the purpose for which the lawyer was consulted. (Sections 912 (d), 952.) The communication by DFEH with Wood would seem to fit all of these criteria. Furthermore, courts have found that "parties aligned on the same side in an investigation or litigation may, in some circumstances, share privileged documents without waiving the attorney-client privilege." (*McKesson HBOC, Inc. v. Superior Court* (2004) 115 Cal.App.4th 1229, 1238.) This is especially true in the case where DFEH brings an enforcement action. Not only is DFEH aligned in interests with the complainant or aggrieved party, but DFEH brings its actions "in the name of [DFEH] on behalf of the person claiming to be aggrieved." (Government Code Section 12965.)

***Negative Consequences of Wood – Why This Bill is Necessary.*** Despite the seemingly clear statutory and decisional law about the scope of the attorney-client privilege, extending it to cover certain confidential communications with third parties, the *Wood* case has been used as a cudgel against DFEH. According to the author, defendants in DFEH enforcement actions routinely cite *Wood* for the proposition that DFEH communications with complainants and aggrieved parties are never protected by the attorney-client privilege.

Defendants in other cases, however, have already attempted to stretch the *Woods* [sic.] decision into a broader attack on DFEH's authority to assert the lawyer-client privilege on its own behalf through Evidence Code sections 952 and 912(d). For example, in *Department of Fair Employment and Housing v. Dynapac Harvesting, Inc., et al.*, Case No. 19-cv-000901 (Monterey County), the complainant, a farm worker, alleged that the foreman for a harvesting company had repeatedly sexually assaulted and raped her and that he and the company subjecting her to other discrimination, harassment, and retaliation. In June 2019, the company began seeking discovery of the unrepresented complainant's confidential communications with DFEH's lawyers.

...

In *Department of Fair Employment and Housing v. Cathy's Creations, Inc. et al.*, Case No. BCV-18-102633 (Kern County), the complainants alleged that a baker refused to make them a cake for their wedding reception because they were a same-sex couple. In June 2019, the defendant began seeking discovery of the complainants' confidential communications with DFEH lawyers. As in *Dynapac Harvesting*, this led to extensive litigation in the superior and appellate courts over this issue, including DFEH filing another writ petition in the appellate court to seek relief from the superior court's order granting defendants' motion to compel

this and other discovery. . . DFEH anticipates the parties continuing to litigate the lawyer-client privilege issue in the superior court, however, with further appellate proceedings potentially being necessary as well.

Clarifying that the attorney-client privilege to communications of complainants with DFEH furthers the interests of not only the complainant—who would not have to fear that their confidential communications would be disclosed to the defendant—but also DFEH and the public at large. DFEH lawyers are retained to carry out the public policy of the state, namely protecting the civil rights of all Californians.

*This bill* seeks to clarify that confidential communications between attorneys for the DFEH and individuals who file administrative complaints through the agency (or on whose behalf complaints are filed) are protected by the attorney-client privilege. It does not, however, establish a new privilege, or create an attorney-client relationship between DFEH and complainants or aggrieved persons. Rather, it seeks to make clear that the existing privilege between DFEH and its lawyers over these confidential communications between these specific parties is being clearly defined, given the confusing and problematic holding in *Wood*. The bill explicitly states that it is declaratory of, and clarifies, existing law. It also, perhaps unnecessarily, states that it applies retroactively. It is inappropriate and unnecessary to abrogate *Wood*, however, because the case did not squarely address the correct issue in the case: the scope of DFEH's attorney-client privilege. Rather, the bill seeks to clarify the issue that the *Wood* court *should have* analyzed so that future courts are not led astray by its dicta.

*Author's Amendments.* This bill in print does not acknowledge that a complainant or aggrieved party may need the ability to assert DFEH's attorney-client privilege in cases where the defense seeks the communications of a complainant or aggrieved party with DFEH attorneys, which is exactly what happened in the *Wood* case. This would also help protect DFEH's own privileged communications from disclosure and discovery. Therefore, the author has agreed to clarify that, subject to existing law and other provisions of the bill, a complainant or aggrieved party has the authority to assert the privilege. In fact, the amendments provide that "a complainant or aggrieved party shall assert the privilege on behalf of the department, but shall not assert the privilege over the objection of the department." Further, the complainant or aggrieved party shall not waive the privilege without the written consent of the department.

The author has also agreed to clarify the purpose of the bill. In addition to being necessary for protection of the confidentiality of communications between the department and complainants and aggrieved persons, confidentiality is also necessary for the following purposes according to the author's amendments:

[T]o further the department's enforcement of civil rights laws. Confidentiality of such communications is reasonably necessary for the department to conduct its investigations and prosecutions under state and federal antidiscrimination laws, vigorously enforce such laws on behalf of the department and the public interest, and remedy, deter, and prevent violation of such laws, and for the department's lawyers to represent the department.

The author also proposes to clarify that the bill does not limit the "effective remedies available for violations of state and federal civil rights laws." Finally, the author helpfully proposes to define the term "department" to mean the Department of Fair Employment and Housing. As amended by the author, the bill would read as follows:



**954.1.** (a) Subject to Section 912 and except as otherwise provided in this article, the lawyer-client privilege applies to confidential communications between a lawyer of the ~~Department of Fair Employment and Housing~~ *department* and a complainant who files a complaint with the ~~Department of Fair Employment and Housing~~ *department* or another person aggrieved by alleged discriminatory practices on whose behalf a complaint is filed. The ~~Department of Fair Employment and Housing~~ *department* is the holder of the privilege.

**(b) (1)** *Pursuant to subdivision (b) of Section 954 and subject to paragraph (2), a complainant or aggrieved party shall assert the privilege described in subdivision (a) on behalf of the department, but shall not assert the privilege over the objection of the department.*

**(2)** *The privilege described in subdivision (a) shall not be waived without the written consent of the department.*

~~(b)~~ **(c) (1)** The purpose of this section is ~~only~~ to protect the confidentiality of communications between the ~~Department of Fair Employment and Housing's~~ *department's* lawyers and complainants or other aggrieved persons *to further the department's enforcement of civil rights laws. Confidentiality of such communications is reasonably necessary for the department to conduct its investigations and prosecutions under state and federal antidiscrimination laws, vigorously enforce such laws on behalf of the department and the public interest, and remedy, deter, and prevent violation of such laws, and for the department's lawyers to represent the department.* This section does not establish a fiduciary, attorney-client relationship between a ~~Department of Fair Employment and Housing~~ *department* lawyer and a complainant or aggrieved person. It does not limit the ~~Department of Fair Employment and Housing's~~ *department's* own rights under this article, ~~or~~ its independent authority over how it receives, investigates, conciliates, mediates, or prosecutes complaints, *or the effective remedies available for violations of state and federal civil rights laws.*

**(2)** This section is declarative of, and clarifies, existing law and applies retroactively.

**(d)** *For purposes of this section, "department" means the Department of Fair Employment and Housing.*

***Concerns of Some Stakeholders with the Bill in Print, as Well as the Bill as Proposed to be Amended.*** While the bill has no formal opposition on file, some stakeholders and advocates, particularly legal advocates who tend to represent complainants and aggrieved parties in both formal enforcement proceedings brought by DFEH and civil litigation apart from such proceedings, have contacted the Committee, author's office, and DFEH with concerns that the language may not adequately protect the rights of complainants and aggrieved parties.

These concerned parties contend that as currently drafted and proposed to be amended, the legislation would bar complainants from disclosing any and all communications between themselves and DFEH attorneys, including disclosures that may be necessary to address the violation of a law or regulation (including but not limited to the California Code of Professional Contact); unauthorized contacts made with represented aggrieved parties; inappropriate communications that discourage aggrieved parties from retaining their own counsel or making their own individual or class claims, causing them to fail to exhaust administrative remedies or to timely make claims.

*It is hope that should the bill pass out of the Committee, the author and stakeholders will continue discussing ways to address them, either in this bill, other legislation, or other means.*

**ARGUMENTS IN SUPPORT:** Supporters of the bill observe that protecting the confidentiality of communications between DFEH complainants and attorneys is essential to assisting the agency's efforts to litigate effectively on behalf of Californian victims to discrimination. They observe that, without the benefit of privileged communication, victims are less likely to come forward to complain about workplace conditions and, and even if they do, they and DFEH would be disadvantaged in a civil action because the defendant would be able to obtain communication between DFEH and their clients that is assumed and intended by both DFEH and their clients to be protected by the attorney-client privilege.

For example, Western Center on Law and Poverty and the California Rural Legal Assistance Foundation, writing in a joint letter about their strong support of the bill, observe that without clarification of existing law to ensure that DFEH communications with complainants is protected by the attorney-client privilege, "[t]he potential chilling effect is especially acute for the many people who endure discrimination but lack means to obtain private counsel." Further, they note the following:

Our clients will lose a critical tool for access to justice if their conversations with DFEH, an agency committed to addressing civil rights violations, are discoverable. When our clients file discrimination complaints, they rely on a protected and confidential relationship with DFEH as they frequently share traumatic and emotional experiences of discrimination and harassment as well as sensitive information about the nature of their situation.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Rural Legal Assistance Foundation  
Centro Legal De LA Raza  
Disability Rights Education and Defense Fund  
National Center for Lesbian Rights  
Public Law Center  
Western Center on Law & Poverty

**Opposition**

None on file

**Analysis Prepared by:** Alison Merrilees / JUD. / (916) 319-2334