

JAN 28 2009

A BILL FOR AN ACT

RELATING TO THE CIVIL RIGHTS COMMISSION.

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

1 SECTION 1. The legislature finds that section 368-4(a),
2 Hawaii Revised Statutes, provides that all records of a civil
3 rights commission investigation shall be kept confidential, but
4 that certain factual matters may be disclosed under limited
5 circumstances. Among the factual records that can be disclosed
6 pursuant to section 368-4(a), Hawaii Revised Statutes, are
7 "witness statements for which the witness has not requested
8 confidentiality."

9 The legislature further finds that section 368-4(b)(4),
10 Hawaii Revised Statutes, provides that confidential witness
11 statements are records of non-factual matters that shall be
12 considered confidential records except as otherwise provided by
13 law.

14 The purpose of this Act is to clarify certain distinctions
15 between confidential witness statements and statements of the
16 parties to a complaint filed with the civil rights commission,



1 by adding a definition for "confidential witness" in section
2 368-4, Hawaii Revised Statutes.

3 SECTION 2. Section 368-4, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§368-4 Records; confidentiality; disclosure; reporting**

6 **requirements.** (a) All records of the investigation arising
7 from a complaint filed with the commission shall be kept
8 confidential and shall not be disclosed to anyone; provided that
9 any factual matters provided to the commission during the intake
10 and investigation of the complaint, including complainant and
11 respondent statements and documents, pre-complaint
12 questionnaires, witness statements for which the witness has not
13 requested confidentiality, other documents received from
14 witnesses, and correspondence with parties and witnesses may be
15 disclosed:

16 (1) As may be required by order of a court with
17 jurisdiction in a case arising from a complaint filed
18 with the commission; or

19 (2) As may be requested by a party in a complaint filed
20 with the commission, if a complainant verifies in
21 writing that the complainant has received a notice of
22 right to sue pursuant to section 368-12 and a civil



1 action has been filed or the right to sue has not
2 expired, or if a respondent verifies in writing that
3 the complainant has filed a civil action.

4 (b) All records of non-factual matters relating to the
5 investigation and arising from a complaint filed with the
6 commission, including:

- 7 (1) Settlement discussions;
- 8 (2) Financial records;
- 9 (3) Commission attorney communications and work products;
- 10 (4) Confidential witness statements; and
- 11 (5) Commission investigatory procedures, including but not
12 limited to:

- 13 (A) Training and educational discussions between
14 staff;
- 15 (B) The case analysis manual;
- 16 (C) Procedures and standards used in case analysis;
- 17 (D) Investigatory directives;
- 18 (E) Investigative plans, strategies, or goals;
- 19 (F) Case reviews; and
- 20 (G) Investigator notes, impressions, recommendations,
21 and reports;



1 shall be considered confidential records except as otherwise
2 provided by law.

3 (c) As used in this section, "confidential witness" means
4 a person who is not a complainant or respondent to a complaint
5 filed with the civil rights commission and who requests that the
6 person's identity or statement be kept confidential, subject to
7 a determination by the executive director. The executive
8 director's determination of whether to grant a witness request
9 for confidentiality shall not be subject to judicial review. A
10 complainant or respondent may not request confidentiality for
11 records of a statement given in the course of an investigation,
12 except as otherwise provided by law.

13 ~~(e)~~ (d) The disclosure of records that are not related
14 to the investigation arising from a complaint filed with the
15 commission shall be subject to chapter 92F.

16 ~~(d)~~ (e) The commission shall maintain complete records
17 of all complaints filed with the commission and shall compile
18 annual statistical data on the number of complaints filed and
19 the status or disposition of those complaints by types of
20 complaints.

21 ~~(e)~~ (f) The commission shall provide to the governor and
22 the legislature a report of ~~that~~ the statistical data in



1 subsection (e) on an annual basis, not less than thirty days
2 prior to the convening of the legislative session."

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

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

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INTRODUCED BY: *[Signature]*

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Report Title:

Confidential Witness; Civil Rights Commission Investigations

Description:

Adds a definition for confidential witness to section 368-4, HRS, to distinguish confidential witness statements and statements of the parties to a complaint filed with the civil rights commission.

