
A BILL FOR AN ACT

RELATING TO THE HAWAII 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 may be deemed records of non-factual matters that
12 shall be considered confidential records except as otherwise
13 provided by law.

14 The purpose of this Act is to clarify certain distinctions
15 between confidential witness statements and non-confidential
16 witness statements for which the witness has not requested
17 confidentiality or statements of the parties to a complaint
18 filed with the civil rights commission by adding a definition



1 for "confidential witness statement" in section 368-4, Hawaii
2 Revised Statutes, and to clarify the allowable uses of factual
3 matters obtained in an investigation as evidence in the
4 investigation, conciliation, and litigation of a complaint.

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

7 "§368-4 Records; confidentiality; disclosure; use;
8 reporting requirements. (a) All records of the investigation
9 arising from a complaint filed with the commission shall be kept
10 confidential and shall not be disclosed to anyone; provided that
11 any factual matters provided to the commission during the intake
12 and investigation of the complaint, including complainant and
13 respondent statements and documents, pre-complaint
14 questionnaires, witness statements for which the witness has not
15 requested confidentiality or for whom the commission has not
16 approved confidentiality pursuant to subsection (c), other
17 documents received from witnesses, and correspondence with
18 parties and witnesses may be [~~disclosed~~]:

19 (1) [~~As~~] Disclosed as may be required by order of a court
20 or hearing examiner with jurisdiction in a case
21 arising from a complaint filed with the commission;
22 [~~or~~]



1 (2) ~~[As]~~ Disclosed as may be requested by a party in a
2 complaint filed with the commission, if a complainant
3 verifies in writing that the complainant has received
4 a notice of right to sue pursuant to section 368-12
5 and a civil action has been filed or the right to sue
6 has not expired, or if a respondent verifies in
7 writing that the complainant has filed a civil
8 action[-]; or

9 (3) Used by the commission as evidence in the
10 investigation, conciliation, and litigation of
11 complaints filed with the commission, or as ordered by
12 a court or hearings examiner with jurisdiction in a
13 case arising from a complaint filed with the
14 commission.

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

- 18 (1) Settlement discussions;
- 19 (2) Financial records;
- 20 (3) Commission attorney communications and work products;
- 21 (4) Confidential witness statements; and



1 (5) Commission investigatory procedures, including but not
2 limited to:

3 (A) Training and educational discussions between
4 staff;

5 (B) The case analysis manual;

6 (C) Procedures and standards used in case analysis;

7 (D) Investigatory directives;

8 (E) Investigative plans, strategies, or goals;

9 (F) Case reviews; and

10 (G) Investigator notes, impressions, recommendations,
11 and reports;

12 shall be considered confidential records except as otherwise
13 provided by law.

14 (c) The commission, in making a determination to approve
15 or deny a request that a witness' identity or statement be kept
16 confidential, shall consider:

17 (1) The relevance, materiality, and importance of the
18 witness' statement;

19 (2) The likelihood that the witness' statement could not
20 be obtained without approval of a request that the
21 witness' identity or statement be kept confidential;

22 and



1 (3) A reasonable fear by the witness that the witness or
2 another person would suffer serious harm or
3 retaliation if the witness' identity or statement were
4 not kept confidential, including but not limited to,
5 death, injury, or serious economic harm, such as
6 termination of employment.

7 [~~(e)~~] (d) The disclosure of records that are not related
8 to the investigation arising from a complaint filed with the
9 commission shall be subject to chapter 92F.

10 [~~(d)~~] (e) The commission shall maintain complete records
11 of all complaints filed with the commission and shall compile
12 annual statistical data on the number of complaints filed and
13 the status or disposition of those complaints by types of
14 complaints.

15 [~~(e)~~] (f) The commission shall provide to the governor and
16 the legislature a report of that statistical data on an annual
17 basis, not less than thirty days prior to the convening of the
18 legislative session.

19 (g) As used in this section, a "confidential witness
20 statement" means a statement from a person who is not a
21 complainant or respondent to a complaint filed with the
22 commission and who requests that the person's identity or



1 statement be kept confidential, which is approved by the
2 commission pursuant to subsection (c)."

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 on July 1, 2010.

6



Report Title:

Hawaii Civil Rights Commission

Description:

Defines "confidential witness statement" and clarifies the allowable uses of factual matters obtained by the Hawaii civil rights commission during an investigation. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

