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# 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 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 by  
17 adding a definition for "confidential witness" in section 368-4,  
18 Hawaii Revised Statutes, and to clarify the allowable uses of



1 factual matters obtained in an investigation as evidence in the  
2 investigation, conciliation, and litigation of a complaint.

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; use**. (a) All records of the investigation  
7 arising 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~~] Disclosed as may be required by order of a court  
17 or hearing examiner with jurisdiction in a case  
18 arising from a complaint filed with the commission;  
19 [~~or~~]

20 (2) [~~As~~] Disclosed as may be requested by a party in a  
21 complaint filed with the commission, if a complainant  
22 verifies in writing that the complainant has received



1 a notice of right to sue pursuant to section 368-12  
2 and a civil action has been filed or the right to sue  
3 has not expired, or if a respondent verifies in  
4 writing that the complainant has filed a civil  
5 action[-]; or

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

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

- 15 (1) Settlement discussions;  
16 (2) Financial records;  
17 (3) Commission attorney communications and work products;  
18 (4) Confidential witness statements; and  
19 (5) Commission investigatory procedures, including but not  
20 limited to:  
21 (A) Training and educational discussions between  
22 staff;



- 1 (B) The case analysis manual;
- 2 (C) Procedures and standards used in case analysis;
- 3 (D) Investigatory directives;
- 4 (E) Investigative plans, strategies, or goals;
- 5 (F) Case reviews; and
- 6 (G) Investigator notes, impressions, recommendations,
- 7 and reports;

8 shall be considered confidential records except as otherwise

9 provided by law.

10 (c) The commission, in making a determination to approve

11 or deny a request that a witness' identity or statement be kept

12 confidential, shall consider:

13 (1) The relevance, materiality, and importance of the

14 witness' statement;

15 (2) The likelihood that the witness' statement could not

16 be obtained without approval of a request that the

17 person's identity or statement be kept confidential;

18 and

19 (3) A reasonable fear that the witness or another person

20 would suffer serious harm or retaliation if the

21 person's identity or statement were not kept

22 confidential, including but not limited to death,



1           injury, or serious economic harm, such as termination  
2           of employment.

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

6           ~~(d)~~ (e) The commission shall maintain complete records  
7 of all complaints filed with the commission and shall compile  
8 annual statistical data on the number of complaints filed and  
9 the status or disposition of those complaints by types of  
10 complaints.

11           ~~(e)~~ (f) The commission shall provide to the governor and  
12 the legislature a report of that statistical data on an annual  
13 basis, not less than thirty days prior to the convening of the  
14 legislative session.

15           (g) As used in this section, "confidential witness" means  
16 a person who is not a complainant or respondent to a complaint  
17 filed with the commission and who requests that the person's  
18 identity or statement be kept confidential, subject to a  
19 determination by the commission."



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

3 SECTION 4. This Act shall take effect on July 1, 2010.



**Report Title:**

Hawaii Civil Rights Commission

**Description:**

Defines "confidential witness" and clarifies the allowable uses of factual matters obtained by the Hawaii civil rights commission during an investigation. (HB2379 HD1)

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

