
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 purposes of this Act are to clarify certain
15 distinctions between confidential witness statements and
16 statements of the parties to a complaint filed with the civil
17 rights commission, by adding a definition for "confidential

1 witness" in section 368-4, Hawaii Revised Statutes, and to
2 clarify the allowable uses of factual matters obtained in an
3 investigation as evidence in the investigation, conciliation,
4 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, other documents received from
16 witnesses, and correspondence with parties and witnesses may be
17 [~~disclosed~~]:

18 (1) [~~As~~] Disclosed as may be required by order of a court
19 or hearings examiner with jurisdiction in a case
20 arising from a complaint filed with the commission;
21 [~~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) As used in this section, "confidential witness" means
15 a person who is not a complainant or respondent to a complaint
16 filed with the commission and who requests that the person's
17 identity or statement be kept confidential, subject to a
18 determination by the commission.

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

1 ~~(d)~~ (e) The commission shall maintain complete records
2 of all complaints filed with the commission and shall compile
3 annual statistical data on the number of complaints filed and
4 the status or disposition of those complaints by types of
5 complaints.

6 ~~(e)~~ (f) The commission shall provide to the governor and
7 the legislature a report of ~~that~~ the statistical data in
8 subsection (e) on an annual basis, not less than thirty days
9 prior to the convening of the legislative session."

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 Statutory material to be repealed is bracketed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

12 SECTION 4. This Act shall take effect on July 1, 2050.

Report Title:

Confidential Witness; Civil Rights Commission Investigations

Description:

Adds a definition for confidential witness. Allows factual matters obtained in the course of investigation, conciliation, and litigation of complaints to be used as evidence in litigation of complaints filed with the commission. Effective 7/1/2050. (SD1)