

JAN 22 2010

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; use;**
6 **reporting requirements.** (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;



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

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

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

- (1) The relevance, materiality, and importance of the
witness' statement;
- (2) The likelihood that the witness' statement could not
be obtained without approval of a request that the
person's identity or statement be kept confidential;
and
- (3) A reasonable fear that the witness or another person
would suffer serious harm or retaliation if the
person's identity or statement were not kept
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."



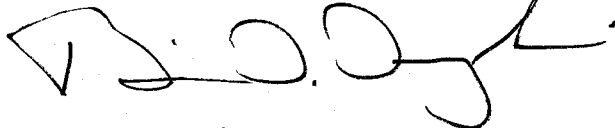
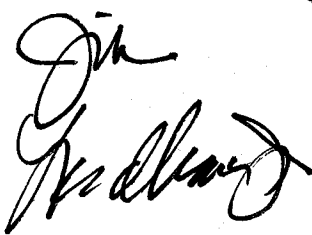
20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



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

2

INTRODUCED BY:



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.

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

