

JAN 22 2007

---

---

# A BILL FOR AN ACT

RELATING TO DISCRIMINATION COMPLAINTS.

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

1           SECTION 1. Once a discrimination complaint has been filed  
2 with the civil rights commission and after the investigation  
3 phase is complete, the executive director of the civil rights  
4 commission must make a determination as to whether there is  
5 reasonable cause to show that an unlawful discriminatory  
6 practice has occurred. If reasonable cause is found, the  
7 executive director is required to either conciliate or settle  
8 the case. Under state law, the investigation file is  
9 confidential and cannot be disclosed to anyone, including the  
10 parties to a discrimination complaint. This limitation makes  
11 settlement during the conciliation phase extremely difficult  
12 because the parties are not permitted to see the factual  
13 evidence that has been gathered during the investigation.

14           The purpose of this Act is to facilitate conciliation or  
15 settlement of discrimination complaints filed with the civil  
16 rights commission. This Act allows the executive director of  
17 the civil rights commission to disclose factual information in



1 the investigation file to the parties during the conciliation  
2 phase in order to attempt settlement of the complaint. The  
3 information will enable the parties to assess the strengths and  
4 weaknesses of the case and make realistic decisions regarding  
5 settlement. This Act also allows parties to object to the  
6 disclosure of proprietary materials or financial information  
7 provided during the conciliation process. If, however,  
8 conciliation efforts fail, it does not preclude use of such  
9 information during a contested case hearing or civil action.  
10 This Act further clarifies that a witness statement may be kept  
11 confidential if the civil rights commission agrees with a  
12 witness request for confidentiality in order to obtain the  
13 witness statement.

14 SECTION 2. Section 368-4, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16 "(a) All records of the investigation arising from a  
17 complaint filed with the commission shall be kept confidential  
18 and shall not be disclosed to anyone; provided that any factual  
19 matters provided to the commission during the intake and  
20 investigation of the complaint, including complainant and  
21 respondent statements and documents, pre-complaint  
22 questionnaires, witness statements for which the witness has not



1 requested and received an agreement of confidentiality[-] from  
2 the commission, other documents received from witnesses, and  
3 correspondence with parties and witnesses may be disclosed:

4 (1) As may be required by order of a court with  
5 jurisdiction in a case arising from a complaint filed  
6 with the commission; [~~e~~]

7 (2) As may be requested by a party in a complaint filed  
8 with the commission, if a complainant verifies in  
9 writing that the complainant has received a notice of  
10 right to sue pursuant to section 368-12 and a civil  
11 action has been filed or the right to sue has not  
12 expired, or if a respondent verifies in writing that  
13 the complainant has filed a civil action[-]; or

14 (3) As may be allowed by the executive director during  
15 conciliation, unless a party objects to disclosure of  
16 proprietary information or financial records that the  
17 party provided during the investigation. A party's  
18 right to object to disclosure during conciliation  
19 shall not prevent disclosure during a contested case  
20 hearing or civil action."



# S.B. NO. 1257

1           SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

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

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

7

INTRODUCED BY: 



**Report Title:**

Civil Rights Commission; Conciliation of Discrimination  
Complaints; Disclosure of Factual Information

**Description:**

Allows the executive director of the civil rights commission to disclose factual information in the investigation file to the parties during the conciliation phase in order to attempt settlement.

