# A BILL FOR AN ACT

рарт т

RELATING TO THE HAWAII CIVIL RIGHTS COMMISSION.

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

	TW/T T
2	SECTION 1. The legislature finds that Act 30, Special
3	Session Laws of Hawaii 2009, (Act 30) requires the Hawaii civil
4	rights commission to adopt administrative rules to conform state
5	law protections against disability discrimination to the federal
6	Americans with Disabilities Act Amendments Act of 2008, P.L.
7	110-325, (ADAAA). Through Act 30, the legislature directed the
8	Hawaii civil rights commission to complete this rulemaking
9	process no later than December 31, 2010.
10	The legislature finds that the United States Equal
11	Employment Opportunities Commission (EEOC), the agency
12	authorized to promulgate federal regulations implementing the
13	ADAAA, has not completed its rulemaking process and is unlikely
14	to do so before July 2010.
15	The purpose of part I of this Act is to extend the deadline
16	for the Hawaii civil rights commission to complete its
17	rulemaking process to allow the commission to review and conform

- 1 state law protections against disability discrimination to the
- 2 final EEOC administrative regulation guidelines.
- 3 SECTION 2. Act 30, Special Session Laws of Hawaii 2009, is
- 4 amended by amending section 3 to read as follows:
- 5 "SECTION 3. The [Hawai'i] civil rights commission
- 6 established under section 368-2, Hawaii Revised Statutes, shall
- 7 complete the rulemaking process for purposes of section 2 of
- 8 this Act no later than [December 31, 2010.] twelve months after
- 9 the United States Equal Employment Opportunities Commission
- 10 publishes final rules in the Federal Register interpreting the
- 11 Americans with Disabilities Act Amendments Act of 2008, P.L.
- **12** 110-325."
- 13 PART II
- 14 SECTION 3. Section 368-4, Hawaii Revised Statutes, is
- 15 amended to read as follows:
- 16 "\$368-4 Records; confidentiality; disclosure; reporting
- 17 requirements. (a) All records of the investigation arising
- 18 from a complaint filed with the commission shall be kept
- 19 confidential and shall not be disclosed to anyone; provided that
- 20 any factual matters provided to the commission during the intake
- 21 and investigation of the complaint, including complainant and
- 22 respondent statements and documents, pre-complaint



1	questionnaires,	witness	statements	for	which	the	witness	has	not
---	-----------------	---------	------------	-----	-------	-----	---------	-----	-----

- 2 requested confidentiality  $[\tau]$  or for whom the commission has not
- 3 approved confidentiality pursuant to subsection (c), other
- 4 documents received from witnesses, and correspondence with
- 5 parties and witnesses may be disclosed:
- 6 (1) As may be required by order of a court with
  7 jurisdiction in a case arising from a complaint filed
- 8 with the commission; or
- 9 (2) As may be requested by a party in a complaint filed
  10 with the commission, if a complainant verifies in
  11 writing that the complainant has received a notice of
  12 right to sue pursuant to section 368-12 and a civil
  13 action has been filed or the right to sue has not
  14 expired, or if a respondent verifies in writing that
  15 the complainant has filed a civil action.
- (b) All records of non-factual matters relating to the investigation and arising from a complaint filed with the commission, including:
- 19 (1) Settlement discussions;
- 20 (2) Financial records;
- 21 (3) Commission attorney communications and work products;
- 22 (4) Confidential witness statements; and

2010-2030 SB2565 CD1 SMA.doc

1	(5)	Comm	ission 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	consi	dered confidential records except as otherwise			
13	provided	by la	w.			
<b>14</b>	<u>(c)</u>	In m	aking a determination to approve or deny a request			
15	that a wi	tness	' identity or statement be kept confidential, the			
16	commissio	n sha	ll consider:			
17	(1)	The	relevance, materiality, and importance of the			
18		witn	ess' statement;			
19	(2)	The	likelihood that the witness' statement could not			
20		be o	btained without approval of a request that the			
21		witn	ess' identity or statement be kept confidential;			
22	_	and				
	•					

2010-2030 SB2565 CD1 SMA.doc

1	(3)	A reasonable and clearly definable fear by the witness				
2	<u> </u>	that the witness or any other clearly identified				
3	person would suffer serious bodily or economic harm,					
4	<u> </u>	retaliation, or termination of employment, if the				
5	Ĩ	witness' identity or statement were not kept				
6	, <u>c</u>	confidential.				
7	[ <del>-(c)</del> ]	(d) The disclosure of records that are not related				
8	to the inve	estigation arising from a complaint filed with the				
9	commission	shall be subject to chapter 92F.				
10	[ <del>-(d)</del> -]	(e) The commission shall maintain complete records				
11	of all comp	plaints filed with the commission and shall compile				
12	annual stat	cistical data on the number of complaints filed and				
13	the status	or disposition of those complaints by types of				
14	complaints.					
15	<u>(f)</u>	As used in this section, a "confidential witness				
16	statement"	means:				
17	<u>(1)</u>	A statement from a person who is not a complainant or				
18	ī	respondent to a complaint filed with the commission;				
19	<u>(2)</u> <u>V</u>	Tho requests their identity or statement be kept				
20	<u>c</u>	confidential; and				
21	<u>(3)</u> <u>1</u>	The commission approves the request for				
22	<u>c</u>	confidentiality pursuant to subsection (c).				

2010-2030 SB2565 CD1 SMA.doc

## S.B. NO. S.D. 1 H.D. 1

1	[ <del>(e)</del> ] <u>(g)</u> The commission shall provide to the governor and
2	the legislature a report of that statistical data compiled
3	pursuant to subsection (e) on an annual basis, not less than
4	thirty days prior to the convening of the legislative session."
5	PART III
6	SECTION 4. Statutory material to be repealed is bracketed
7	and stricken. New statutory material is underscored.
8	SECTION 5. This Act shall take effect upon its approval.
9	

S.B. NO. 2565 S.D. 1 H.D. 1 C.D. 1

#### Report Title:

Hawaii Civil Rights Commission; Disability Discrimination

### Description:

Extends the deadline for the Hawaii civil rights commission (HCRC) to adopt new rules regarding disability discrimination to allow for conformity with new federal rules. Requires the HCRC to take into account certain circumstances when determining whether or not to release certain confidential information. (CD1)

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