

ACT 30

S.B. NO. 1183

A Bill for an Act Relating to Discriminatory Practices.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the State of Hawaii has strong laws against discrimination in employment on the basis of disability, embodied in sections 378-1 and 378-2, Hawaii Revised Statutes, and rules adopted by the civil rights commission. In many respects, state law provides stronger protections than those provided under federal law prohibiting employment discrimination based on disability. The legislature recognizes that pursuant to *California Federal Sav. and Loan Ass'n v. Guerra*, 479 U.S. 272, 107 S.Ct. 683 (1987), federal law is a “floor” beneath which protections against discrimination should not drop, rather than a “ceiling” above which protections cannot rise under state anti-discrimination laws.

The legislature further finds that on September 25, 2008, President George W. Bush signed into law the ADA Amendments Act of 2008, P.L. 110-325 (“ADAAA”). In the ADAAA, Congress found that several United States Supreme Court decisions interpreted the definition of disability inconsistently with legislative intent. The ADAAA clarified laws relating to employment disability, broadening the definition of disability and resulting in certain federal law protections that are stronger than corresponding protections currently provided under Hawaii state law.

The purpose of this Act is to require the Hawai'i civil rights commission to adopt administrative rules to define certain terms to conform state law protections against disability discrimination in employment to recently amended federal law.

SECTION 2. The Hawai'i civil rights commission, pursuant to its authority under section 368-3(9), Hawaii Revised Statutes, shall adopt rules to define or amend, as applicable, the following terms for purposes of chapter 378, Hawaii Revised Statutes: "major life activities"; "being regarded as having such an impairment"; "disability"; and "substantially limits". The Hawai'i civil rights commission may define such other terms as necessary to effectuate the purposes of chapter 378, Hawaii Revised Statutes, consistent with section 1 of this Act.

SECTION 3. The Hawai'i civil rights commission shall complete the rulemaking process for purposes of section 2 of this Act no later than December 31, 2010.

SECTION 4. Until the completion of the rulemaking under section 3 of this Act, the Hawai'i civil rights commission shall apply, at minimum, the definitions in the American with Disabilities Act Amendments Act of 2008 (ADAAA); provided that the definition of "disability" under section 378-1, Hawaii Revised Statutes, and the implementing administrative rules related thereto shall be construed at minimum to conform to the ADAAA.

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

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)