

A Bill for an Act Relating to the Hawaii Civil Rights Commission.

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

PART I

SECTION 1. The legislature finds that Act 30, Special Session Laws of Hawaii 2009, (Act 30) requires the Hawaii civil rights commission to adopt administrative rules to conform state law protections against disability discrimination to the federal Americans with Disabilities Act Amendments Act of 2008, P.L. 110-325, (ADAAA). Through Act 30, the legislature directed the Hawaii civil rights commission to complete this rulemaking process no later than December 31, 2010.

The legislature finds that the United States Equal Employment Opportunities Commission (EEOC), the agency authorized to promulgate federal regulations implementing the ADAAA, has not completed its rulemaking process and is unlikely to do so before July 2010.

The purpose of part I of this Act is to extend the deadline for the Hawaii civil rights commission to complete its rulemaking process to allow the commission to review and conform state law protections against disability discrimination to the final EEOC administrative regulation guidelines.

SECTION 2. Act 30, Special Session Laws of Hawaii 2009, is amended by amending section 3 to read as follows:

“SECTION 3. The [Hawaii] civil rights commission established under section 368-2, Hawaii Revised Statutes, shall complete the rulemaking process for purposes of section 2 of this Act no later than [December 31, 2010.] ~~twelve months after the United States Equal Employment Opportunities Commission publishes final rules in the Federal Register interpreting the Americans with Disabilities Act Amendments Act of 2008, P.L. 110-325.~~”

PART II

SECTION 3. Section 368-4, Hawaii Revised Statutes, is amended to read as follows:

“§368-4 Records; confidentiality; disclosure; reporting requirements. (a) All records of the investigation arising from a complaint filed with the commission shall be kept confidential and shall not be disclosed to anyone; provided that any factual matters provided to the commission during the intake and investigation of the complaint, including complainant and respondent statements and documents, pre-complaint questionnaires, witness statements for which the witness has not requested confidentiality[;] or for whom the commission has not approved confidentiality pursuant to subsection (c). other documents received from witnesses, and correspondence with parties and witnesses may be disclosed:

- (1) As may be required by order of a court with jurisdiction in a case arising from a complaint filed with the commission; or
- (2) As may be requested by a party in a complaint filed with the commission, if a complainant verifies in writing that the complainant has received a notice of right to sue pursuant to section 368-12 and a civil action has been filed or the right to sue has not expired, or if

a respondent verifies in writing that 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:

- (1) Settlement discussions;
- (2) Financial records;
- (3) Commission attorney communications and work products;
- (4) Confidential witness statements; and
- (5) Commission investigatory procedures, including but not limited to:
 - (A) Training and educational discussions between 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) In making a determination to approve or deny a request that a witness' identity or statement be kept confidential, the commission 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 witness' identity or statement be kept confidential; and
- (3) A reasonable and clearly definable fear by the witness that the witness or any other clearly identified person would suffer serious bodily or economic harm, retaliation, or termination of employment, if the witness' identity or statement were not kept confidential.

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

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

(f) As used in this section, a "confidential witness statement" means:

- (1) A statement from a person who is not a complainant or respondent to a complaint filed with the commission;
- (2) Who requests their identity or statement be kept confidential; and
- (3) The commission approves the request for confidentiality pursuant to subsection (c).

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

PART III

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

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

(Approved May 25, 2010.)