



GOV. MSG. NO. 829

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 15, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB1183 SD2 HD2 CD1, without my approval, and with the statement of objections relating to the measure.

SB1183 SD2 HD2 CD1

A BILL FOR AN ACT  
RELATING TO DISCRIMINATORY PRACTICES.

Sincerely,



LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 15, 2009

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1183

Honorable Members  
Twenty-Fifth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1183, entitled "A Bill for an Act Relating to Discriminatory Practices."

The purpose of this bill is to authorize and require the Hawaii Civil Rights Commission to adopt administrative rules to define certain terms regarding disability discrimination in employment.

This bill is objectionable because it is unnecessary and could lead to lesser protections for workers in the State of Hawaii. This legislation is not required because the Hawaii Civil Rights Commission already has statutory authority to promulgate administrative rules, as clearly enumerated in section 368-3, Hawaii Revised Statutes.

States usually amend their rules after the relevant federal agency, in this case the Equal Employment Opportunity Commission has issued guidance on revisions to federal law. The federal Equal Employment Opportunity Commission has not yet issued rules pertaining to changes in the Americans with Disabilities Act, as amended in 2008, although they have recently issued a notice of proposed rulemaking. It would be premature to ask the Hawaii Civil Rights Commission to act prior to the completion of federal rulemaking. It is also improper to ask the State to complete our rules by a date certain in the absence of knowing when the federal government will finish its rulemaking process.

STATEMENT OF OBJECTIONS  
SENATE BILL NO. 1183  
Page 2

It should be noted that changes to terms such as "disability" can have wide ranging implications for the State in that a number of major benefit programs are provided for persons with disabilities. Thus, steps taken to revise definitions that impact these eligibilities should be undertaken with caution and not done in haste or under artificial deadlines.

Finally, it is important to point out that Hawaii has been proactive in statutorily defining protections in employment for those with disabilities. Some of our current definitions provide stronger protections for persons in the workforce than the definitions found in federal law.

For the foregoing reasons, I am returning Senate Bill No. 1183 without my approval.

Respectfully,



LINDA LINGLE  
Governor of Hawaii

---

## A BILL FOR AN ACT

RELATING TO DISCRIMINATORY PRACTICES.

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

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

13           The legislature further finds that on September 25, 2008,  
14 President George W. Bush signed into law the ADA Amendments Act  
15 of 2008, P.L. 110-325 ("ADAAA"). In the ADAAA, Congress found  
16 that several United States Supreme Court decisions interpreted  
17 the definition of disability inconsistently with legislative



OT3V

1 intent. The ADAAA clarified laws relating to employment  
2 disability, broadening the definition of disability and  
3 resulting in certain federal law protections that are stronger  
4 than corresponding protections currently provided under Hawaii  
5 state law.

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

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

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



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

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

