



GOV. MSG. NO. **597**

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 25, 2010

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:

This is to inform you that on May 25, 2010, the following bill was signed into law:

SB2565 SD1 HD1 CD1

A BILL FOR AN ACT
RELATING TO THE HAWAII CIVIL RIGHTS
COMMISSION.
ACT 139 (10)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor
on MAY 25 2010

ACT 139

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

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

A BILL FOR AN ACT

RELATING TO THE HAWAII CIVIL RIGHTS COMMISSION.

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

1 PART I

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[7] 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.

16 (b) All records of non-factual matters relating to the
17 investigation and arising from a complaint filed with the
18 commission, including:

- 19 (1) Settlement discussions;
- 20 (2) Financial records;
- 21 (3) Commission attorney communications and work products;
- 22 (4) Confidential witness statements; and



- 1 (5) Commission 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 considered confidential records except as otherwise
13 provided by law.

14 (c) In making a determination to approve or deny a request
15 that a witness' identity or statement be kept confidential, the
16 commission shall consider:

- 17 (1) The relevance, materiality, and importance of the
18 witness' statement;
- 19 (2) The likelihood that the witness' statement could not
20 be obtained without approval of a request that the
21 witness' identity or statement be kept confidential;
22 and



1 (3) A reasonable and clearly definable fear by the witness
 2 that the witness or any other clearly identified
 3 person would suffer serious bodily or economic harm,
 4 retaliation, or termination of employment, if the
 5 witness' identity or statement were not kept
 6 confidential.

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

10 [~~(d)~~] (e) The commission shall maintain complete records
 11 of all complaints filed with the commission and shall compile
 12 annual statistical data on the number of complaints filed and
 13 the status or disposition of those complaints by types of
 14 complaints.

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

17 (1) A statement from a person who is not a complainant or
 18 respondent to a complaint filed with the commission;

19 (2) Who requests their identity or statement be kept
 20 confidential; and

21 (3) The commission approves the request for
 22 confidentiality pursuant to subsection (c).



