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# 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 civil rights commission shall be  
19 kept confidential and shall not be disclosed to anyone; provided  
20 that any factual matters provided to the civil rights commission  
21 during the intake and investigation of the complaint, including  
22 complainant and respondent statements and documents, pre-



1 complaint questionnaires, witness statements for which the  
2 witness has not requested confidentiality, other documents  
3 received from witnesses, and correspondence with parties and  
4 witnesses may be disclosed:

5 (1) As may be required by order of a court with  
6 jurisdiction in a case arising from a complaint filed  
7 with the civil rights commission; or

8 (2) As may be requested by a party in a complaint filed  
9 with the civil rights commission, if a complainant  
10 verifies in writing that the complainant has received  
11 a notice of right to sue pursuant to section 368-12  
12 and a civil action has been filed or the right to sue  
13 has not expired, or if a respondent verifies in  
14 writing that the complainant has filed a civil action.

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

18 (1) Settlement discussions;

19 (2) Financial records;

20 (3) [~~Commission~~] Civil rights commission attorney  
21 communications and work products;

22 (4) Confidential witness statements; and



- 1 (5) [~~Commission~~] Civil rights commission investigatory  
2 procedures, including [~~but not 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 civil rights 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 civil rights commission shall be subject to chapter 92F.

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

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



1       (3) The civil rights commission approves the request for  
2       confidentiality pursuant to subsection (c)..

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

8    PART III

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

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



**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. (SB2565 HD1)

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

