

JAN 28 2009

S.B. NO. 1183

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

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



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

7 The purpose of this Act is to conform state law protections  
8 against disability discrimination in employment to recently  
9 amended federal law.

10 SECTION 2. Section 378-1, Hawaii Revised Statutes, is  
11 amended by adding three new definitions to be appropriately  
12 inserted and to read as follows:

13 "Low-vision devices" means devices that magnify, enhance,  
14 or otherwise augment a visual image.

15 "Major life activities" includes but is not limited to  
16 caring for oneself, performing manual tasks, seeing, hearing,  
17 eating, sleeping, walking, standing, lifting, bending, speaking,  
18 breathing, learning, reading, concentrating, thinking,  
19 communicating, and working. A major life activity also includes  
20 the operation of a major bodily function, including but not  
21 limited to functions of the immune system; normal cell growth;



1 and digestive, bowel, bladder, neurological, brain, respiratory,  
2 circulatory, endocrine, and reproductive functions.

3 "Ordinary eyeglasses or contact lenses" means lenses that  
4 are intended to fully correct visual acuity or eliminate  
5 refractive error."

6 SECTION 3. Section 378-1, Hawaii Revised Statutes, is  
7 amended by amending the definitions of "being regarded as having  
8 such an impairment" and "disability" to read as follows:

9 "Being regarded as having such an impairment" means an  
10 individual who has an actual or perceived physical or mental  
11 impairment, whether or not the impairment limits or is perceived  
12 to limit a major life activity, as defined in this section. The  
13 term includes but is not limited to employer consideration of an  
14 individual's genetic information, including genetic information  
15 of any family member of an individual, or the individual's  
16 refusal to submit to a genetic test as a condition of initial or  
17 continued employment. The term shall not apply to impairments  
18 that are transitory and minor. A transitory impairment is an  
19 impairment with an actual or expected duration of six months or  
20 less.

21 "Disability" means the state of having a physical or mental  
22 impairment which substantially limits one or more major life



1 activities, having a record of such an impairment, or being  
2 regarded as having such an impairment [-], as defined in this  
3 section. The definition of disability in this chapter shall be  
4 construed in accordance with the following:

5 (1) The definition of disability in this chapter shall be  
6 construed in favor of broad coverage of individuals  
7 under Act , Session Laws of Hawaii 2009, to the  
8 maximum extent permitted by the terms of Act ,  
9 Session Laws of Hawaii 2009;

10 (2) The term "substantially limits" shall be interpreted  
11 consistently with the findings and purposes of the ADA  
12 Amendments Act of 2008, P.L. 110-325;

13 (3) An impairment that substantially limits one major life  
14 activity need not limit other major life activities in  
15 order to be considered a disability;

16 (4) An impairment that is episodic or in remission is a  
17 disability if it would substantially limit a major  
18 life activity when active; and

19 (5) The determination of whether an impairment  
20 substantially limits a major life activity shall be  
21 made without regard to the ameliorative effects of  
22 mitigating measures, such as medication; medical



1 supplies; equipment; appliances; low-vision devices  
2 (which do not include ordinary eyeglasses or contact  
3 lenses); prosthetics, including limbs and devices;  
4 hearing aids and cochlear implants or other  
5 implantable hearing devices; mobility devices; oxygen  
6 therapy equipment and supplies; use of assistive  
7 technology; reasonable accommodations or auxiliary  
8 aids or services; or learned behavioral or adaptive  
9 neurological modifications.

10 The ameliorative effects of the mitigating measures of  
11 ordinary eyeglasses or contact lenses shall be  
12 considered in determining whether an impairment  
13 substantially limits a major life activity."

14 SECTION 4. The civil rights commission shall adopt rules  
15 pursuant to chapter 91, as necessary, to effectuate the purposes  
16 of this Act.

17 SECTION 5. In printing this Act, the revisor of statutes  
18 shall insert in section 378-1, Hawaii Revised Statutes, as  
19 amended in section 3, the corresponding act number of this Act.

20 SECTION 6. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



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1 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: *[Signature]*

*Carol Fullen*  
*[Signature]*  
*Amil Y. Lopez*  
*[Signature]*



**Report Title:**

Employment; Discriminatory Practices; Disability

**Description:**

Amends the definition of disability. Amends and adds certain definitions to broaden protections against employment disability discrimination in the State.

