
A BILL FOR AN ACT

RELATING TO THE HAWAII CIVIL RIGHTS COMMISSION.

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

1 SECTION 1. The legislature finds that when Act 387,
2 Session Laws of Hawaii 1989, was enacted and codified as section
3 368-1.5, Hawaii Revised Statutes (section 368-1.5), it was meant
4 to be the state counterpart to section 504 of the Rehabilitation
5 Act of 1973 (section 504), as amended, to provide a state remedy
6 for disability discrimination and an alternative in situations
7 where federal remedies are also available. Additionally,
8 section 368-1.5, provides those with disabilities non-
9 discriminatory access to state financially assisted activities
10 and programs regardless of whether that program or activity also
11 receives federal financial assistance.

12 The legislature further finds that the intent of section
13 368-1.5, was originally, and is now, to give the Hawaii civil
14 rights commission jurisdiction over disability discrimination
15 claims, even if protections under section 504 are applicable.

16 Therefore, the purpose of this Act is to clarify the intent
17 of the legislature in enacting section 368-1.5, in light of the



1 Hawaii Supreme Court's decision in *Hawaii Technology Academy and*
2 *the Department of Education v. L.E. and Hawaii Civil Rights*
3 *Commission*, 141 Hawaii 147, 407 P.3d 103 (2017), which held that
4 the legislature did not intend the Hawaii civil rights
5 commission to have jurisdiction over disability discrimination
6 claims under section 368-1.5, if protections under section 504
7 are applicable. To address possible concerns regarding
8 potential duplication of services under the Individuals with
9 Disabilities Education Act, P.L. 101-476, as amended, and the
10 Rehabilitation Act, and their respective appeals processes, this
11 Act excludes cases within the scope of the Individuals with
12 Disabilities Education Act from the Hawaii civil rights
13 commission's jurisdiction under section 368-1.5.

14 SECTION 2. Section 368-1.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§368-1.5 Programs and activities receiving state**
17 **financial assistance.** (a) No otherwise qualified individual in
18 the State shall, [~~solely~~] by reason of his or her disability, be
19 excluded from the participation in, be denied the benefits of,
20 or be subjected to discrimination by state agencies, or under
21 any program or activity receiving state financial assistance.



1 (b) As used in this section, the term "disability" means
2 the state of having a physical or mental impairment which
3 substantially limits one or more major life activities, having a
4 record of such an impairment, or being regarded as having such
5 an impairment.

6 (c) As used in this section, "state financial assistance"
7 means grants, purchase-of-service contracts, or any other
8 arrangement by which the State provides or otherwise makes
9 available assistance in the form of funds to an entity for the
10 purpose of rendering services on behalf of the State. It does
11 not include procurement contracts, state insurance or guaranty
12 contracts, licenses, tax credits, or loan guarantees to private
13 businesses of general concern that do not render services on
14 behalf of the State.

15 (d) As used in this section, the term "program or activity
16 receiving state financial assistance" includes a program or
17 activity that receives federal and state financial assistance."

18 SECTION 3. Section 368-11, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) The commission shall have jurisdiction over the
21 subject of discriminatory practices made unlawful by part I of



1 chapter 489, chapter 515, part I of chapter 378, and this
2 chapter[-]; provided that the commission shall not have
3 jurisdiction over claims within the scope of the Individuals
4 with Disabilities Education Act, P.L. 101-476, as amended. Any
5 individual claiming to be aggrieved by an alleged unlawful
6 discriminatory practice may file with the commission's executive
7 director a complaint in writing that shall state the name and
8 address of the person or party alleged to have committed the
9 unlawful discriminatory practice complained of, set forth the
10 particulars thereof, and contain other information as may be
11 required by the commission. The attorney general, or the
12 commission upon its own initiative may, in like manner, make and
13 file a complaint."

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

16 SECTION 5. This Act shall take effect on December 31,
17 2059.



Report Title:

Deaf and Blind Task Force; Hawaii Civil Rights Commission;
Disability; Discrimination

Description:

Clarifies the meaning of "program or activity receiving state financial assistance". Excludes cases within the scope of the Individuals with Disabilities Education Act from the jurisdiction of the Hawaii civil rights commission. Effective 12/31/2059. (HD1)

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

