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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           SECTION 1. The purpose of this Act is to clarify the  
2 intent of the legislature in enacting section 368-1.5, Hawaii  
3 Revised Statutes, in light of the Hawaii supreme court's  
4 decision in *Hawaii Technology Academy and the Department of*  
5 *Education v. L.E. and Hawaii Civil Rights Commission*, 141 Hawaii  
6 147, 407 P.3d 103 (2017), which held that the legislature did  
7 not intend the Hawaii civil rights commission to have  
8 jurisdiction over disability discrimination claims under section  
9 368-1.5, Hawaii Revised Statutes, if protections under section  
10 504 of the Rehabilitation Act, P.L. 93-112, as amended, are  
11 applicable.

12           When it was enacted, section 368-1.5, Hawaii Revised  
13 Statutes, was meant to be the state counterpart to section 504  
14 of the Rehabilitation Act, to provide a state remedy for  
15 disability discrimination under section 368-1.5, Hawaii Revised  
16 Statutes, in addition to the remedies available under section  
17 504 of the Rehabilitation Act, thereby providing an alternative



1 state remedy in situations where federal remedies are also  
2 available, and to provide those with disabilities non-  
3 discriminatory access to state financially assisted activities  
4 and programs regardless of whether that program or activity also  
5 receives federal financial assistance.

6 As such, the legislature reiterates that the intent of  
7 enacting section 368-1.5, Hawaii Revised Statutes, was  
8 originally, and is now, to give the Hawaii civil rights  
9 commission jurisdiction over disability discrimination claims  
10 under section 368-1.5, Hawaii Revised Statutes, even if  
11 protections under section 504 of the Rehabilitation Act are  
12 applicable.

13 To address possible concerns regarding potential  
14 duplication of services under the Individuals with Disabilities  
15 Education Act, P.L. 101-476, as amended, and the Rehabilitation  
16 Act, and their respective appeals processes, this Act excludes  
17 from Hawaii civil rights commission's jurisdiction under section  
18 368-1.5, Hawaii Revised Statutes, public and charter schools  
19 that provide preschool, primary, or secondary education  
20 services.



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

3 "§368-1.5 Programs and activities receiving state  
4 financial assistance. (a) No otherwise qualified individual in  
5 the State shall, [~~solely~~] by reason of his or her disability, be  
6 excluded from the participation in, be denied the benefits of,  
7 or be subjected to discrimination by state agencies, or under  
8 any program or activity receiving state financial assistance.

9 (b) As used in this section, the term "disability" means  
10 the state of having a physical or mental impairment which  
11 substantially limits one or more major life activities, having a  
12 record of such an impairment, or being regarded as having such  
13 an impairment.

14 (c) As used in this section, "state financial assistance"  
15 means grants, purchase-of-service contracts, or any other  
16 arrangement by which the State provides or otherwise makes  
17 available assistance in the form of funds to an entity for the  
18 purpose of rendering services on behalf of the State. It does  
19 not include procurement contracts, state insurance or guaranty  
20 contracts, licenses, tax credits, or loan guarantees to private



1 businesses of general concern that do not render services on  
2 behalf of the State.

3 (d) As used in this section, the term "program or activity  
4 receiving state financial assistance" includes a program or  
5 activity that also receives federal financial assistance.

6 (e) As used in this section, the term "program or  
7 activity" does not include department of education and charter  
8 schools that provide preschool, primary, or secondary education  
9 services."

10 SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Paul Rhoad



# S.B. NO. 569

**Report Title:**

Civil Rights; Disability; Discrimination; State Agencies and Programs; Programs and Activities Receiving State Financial Assistance

**Description:**

Includes programs and activities other than department of education and charter schools that also receive federal financial assistance within the meaning of programs and activities receiving state financial assistance. Reiterates the legislature's intent of ensuring non-discriminatory access to State financially assisted programs, as it relates to the Hawaii civil rights commission's jurisdiction. Excludes public and charter schools from the commission's disability discrimination jurisdiction.

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

