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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 programs and  
4 activities, 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 The legislature finds that to avoid potential duplication  
14 of services under the Individuals with Disabilities Education  
15 Act, P.L. 101-476, as amended (IDEA), and its appeals process,  
16 educational services provided by public and charter schools that  
17 are covered by this federal law shall be excluded from the  
18 Hawaii civil rights commission's jurisdiction under this Act.

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



1           "§368-1.5 Programs and activities receiving state  
 2 financial assistance. (a) No otherwise qualified individual in  
 3 the State shall, [~~solely~~] by reason of his or her disability, be  
 4 excluded from the participation in, be denied the benefits of,  
 5 or be subjected to discrimination by state agencies, or under  
 6 any program or activity receiving state financial assistance.

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

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



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

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

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



1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

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



**Report Title:**

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

**Description:**

Includes programs and activities 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 claims cognizable under the Individuals with Disabilities Education Act from the Hawaii civil rights commission's jurisdiction. (SD2)

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

