



**GOV. MSG. NO. 1266**

EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

July 1, 2021

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Thirty First State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Thirty First State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 1, 2021, the following bill was signed into law:

SB538 HD1 CD1

RELATING TO THE HAWAII CIVIL RIGHTS  
COMMISSION  
**ACT 164 (21)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

THE SENATE  
THIRTY-FIRST LEGISLATURE, 2021  
STATE OF HAWAII

**ACT 164**  
**S.B. NO.** 538  
H.D. 1  
C.D. 1

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

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



1       Therefore, the purpose of this Act is to clarify the intent  
2 of the legislature in enacting section 368-1.5, Hawaii Revised  
3 Statutes, in light of the Hawaii Supreme Court's decision in  
4 *Hawaii Tech. Acad., et al. v. L.E., et al.*, 141 Haw. 147,  
5 407 P.3d 103 (2017), which held that the legislature did not  
6 intend the Hawaii civil rights commission to have jurisdiction  
7 over disability discrimination claims under section 368-1.5,  
8 Hawaii Revised Statutes, if protections under section 504 of the  
9 Rehabilitation Act, as amended, are applicable. To address  
10 concerns regarding potential duplication of services under the  
11 Individuals with Disabilities Education Act, P.L. 101-476, as  
12 amended, the Rehabilitation Act of 1973, and their respective  
13 appeals processes, this Act excludes cases within the scope of  
14 the Individuals with Disabilities Education Act from the Hawaii  
15 civil rights commission's jurisdiction under section 368-1.5,  
16 Hawaii Revised Statutes.

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

19       "**§368-1.5 Programs and activities receiving state**  
20 **financial assistance.** (a) No otherwise qualified individual in  
21 the State shall, [~~solely~~] by reason of [~~his or her~~] the



1 individual's disability, be excluded from the participation in,  
2 be denied the benefits of, or be subjected to discrimination by  
3 state agencies, or under any program or activity receiving state  
4 financial assistance.

5 (b) As used in this section[, ~~the term "disability"~~]:

6 "Disability" means the state of having a physical or mental  
7 impairment [~~which~~] that substantially limits one or more major  
8 life activities, having a record of such an impairment, or being  
9 regarded as having such an impairment.

10 "Program or activity receiving state financial assistance"  
11 includes a program or activity that receives federal and state  
12 financial assistance.

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



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

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

18       SECTION 4. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20       SECTION 5. This Act shall take effect on July 1, 2022.

S.B. NO. 538  
H.D. 1  
C.D. 1

APPROVED this 01 day of JUL, 2021


A handwritten signature in black ink, appearing to read "David I. Byrne". The signature is fluid and cursive, with a large, sweeping "D" and a long, horizontal stroke at the end.

GOVERNOR OF THE STATE OF HAWAII

**THE SENATE OF THE STATE OF HAWAI‘I**

Date: April 27, 2021  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate  
of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2021.

  
President of the Senate

  
Clerk of the Senate

SB No. 538, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki  
Speaker  
House of Representatives



Brian L. Takeshita  
Chief Clerk  
House of Representatives