

JAN 22 2021

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. v. L.E.*, 141 Haw. 147, 407 P.3d 103 (2017),
5 which held that the legislature did not intend the Hawaii civil
6 rights commission to have jurisdiction over disability
7 discrimination claims under section 368-1.5, Hawaii Revised
8 Statutes, if protections under section 504 of the Rehabilitation
9 Act, as amended, are applicable. To address possible concerns
10 regarding potential duplication of services under the
11 Individuals with Disabilities Education Act, P.L. 101-476, as
12 amended, and the Rehabilitation Act of 1973, and their
13 respective appeals processes, this Act excludes cases within the
14 scope of the Individuals with Disabilities Education Act from
15 the Hawaii civil rights commission's jurisdiction under section
16 368-1.5, 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 ~~[(c) 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 and
17 file a complaint."

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 Statutory material to be repealed is bracketed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

20



S.B. NO. 538

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

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INTRODUCED BY:

Kul Nhand



S.B. NO. 538

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.

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