

STAND. COM. REP. NO.

2557

Honolulu, Hawaii

FEB 12 2020

RE: S.B. No. 2244

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 2244 entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAII CIVIL RIGHTS
COMMISSION,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Clarify the meaning of "program or activity receiving state financial assistance"; and
- (2) Exclude cases within the scope of the Individuals with Disabilities Education Act from the jurisdiction of the Hawaii Civil Rights Commission.

Your Committee received testimony in support of this measure from the Disability and Communication Access Board, Hawai'i Civil Rights Commission, Hawaii Disability Rights Center, and one individual.

Your Committee finds that when enacted, section 368-1.5, Hawaii Revised Statutes, was intended to provide a state remedy for disability discrimination in addition to the federal remedies available under section 504 of the Rehabilitation Act, thereby providing an alternative state remedy in situations where federal remedies were also available. The intent was to provide those with disabilities non-discriminatory access to state financially



assisted programs and activities, regardless of whether that program or activity also received federal financial assistance.

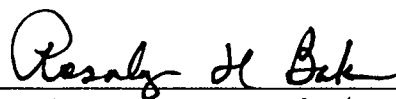
The Hawaii Civil Rights Commission has enforcement jurisdiction over Hawaii laws prohibiting discrimination in employment, housing, public accommodations, and access to state financially assisted programs and activities on the basis of disability. However, the Hawaii Supreme Court in *Hawaii Technology Academy and the Department of Education v. L.E. and Hawaii Civil Rights Commission*, 141 Hawaii 147, 407 P.3d 103 (2017), held that the Legislature did not intend the Hawaii Civil Rights Commission to have jurisdiction over disability discrimination claims under section 368-1.5, Hawaii Revised Statutes, if protections under section 504 of the Rehabilitation Act were also applicable.

This decision rendered section 368-1.5, Hawaii Revised Statutes, superfluous as nearly all state departments receive federal funds and eliminated an avenue of redress for Hawaii residents who believed they had been discriminated against on the basis of disability.

Your Committee further finds that this measure clarifies the original intent of the Legislature to give the Hawaii Civil Rights Commission jurisdiction over state funded program-related disability discrimination claims so that Hawaii residents may have a state remedy regardless of whether they may also be entitled to remedies under federal law.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2244 and recommends that it pass Second Reading and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,




ROSALYN H. BAKER, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 2244	CPH, JDC	1/29/20		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input checked="" type="checkbox"/> Pass, unamended 2312	<input type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313		
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
CHANG, Stanley (VC)	✓			
NISHIHARA, Clarence K.	✓			
RUDERMAN, Russell E.	✓			
THIELEN, Laura H.	✓			
WAKAI, Glenn				✓
FEVELLA, Kurt	✓			
TOTAL	6			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center; margin-top: 10px;">  </div>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes