

JAN 17 2020

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



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

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

20 "**§368-1.5 Programs and activities receiving state**
21 **financial assistance.** (a) No otherwise qualified individual in



1 the State shall, [~~solely~~] by reason of his or her disability, be
2 excluded from the participation in, be denied the benefits of,
3 or be subjected to discrimination by state agencies, or under
4 any program or activity receiving state financial assistance.

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

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

19 (d) As used in this section, the term "program or activity
20 receiving state financial assistance" includes a program or
21 activity that receives federal and state financial assistance."



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.

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S.B. NO. 2244

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

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INTRODUCED BY:

Kal Rhoad

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S.B. NO. 2244

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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