



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

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 [~~(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
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



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