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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 the Hawaii Supreme  
2 Court's decision in *Hawaii Tech. Acad. V. L.E.*, 141 Haw. 147,  
3 407 P.3d 103 (2017), held that the legislature did not intend  
4 the Hawaii civil rights commission to have jurisdiction over  
5 disability discrimination claims under section 368-1.5, Hawaii  
6 Revised Statutes, relating to programs and activities receiving  
7 state financial assistance, if protections under section 504 of  
8 the Rehabilitation Act, as amended (section 504), are  
9 applicable. However, it was always the legislature's intent to  
10 give the Hawaii civil rights commission jurisdiction over these  
11 claims to provide a state remedy, even when federal protections  
12 under section 504 are also available.

13           The legislature further finds that *K.M. ex rel. Bright v.*  
14 *Tustin Unified Sch. Dist.*, 78 F. Supp. 3d 1289 (C.D. Cal. 2015),  
15 determined that the Individuals with Disabilities Act, section  
16 504, and Americans with Disabilities Act, are not one and the  
17 same when it comes to the requirements to provide eligible



1 students with disabilities equal opportunity and equally  
2 effective communication under title II of the Americans with  
3 Disabilities Act. Furthermore, complying with the Individuals  
4 with Disabilities Act does not necessarily mean compliance with  
5 the Americans with Disabilities Act and section 504. Students  
6 with disabilities who are eligible under the Individuals with  
7 Disabilities Act may have a complaint on the basis of  
8 disability, as does a student not eligible under the Individuals  
9 with Disabilities Act.

10 The legislature also finds that some Individuals with  
11 Disabilities Act claims are from parents who disagree with the  
12 identification, evaluation, or placement of a child and that  
13 section 504 has its own standard of free appropriate public  
14 education. However, section 368-1.5, Hawaii Revised Statutes,  
15 applies to "[a]ny individual claiming to be aggrieved by an  
16 alleged unlawful discriminatory practice may file with the  
17 commission's executive director a complaint in writing", which  
18 is clearly not an Individuals with Disabilities Act complaint.  
19 Therefore, a claim of identification, evaluation, or placement  
20 under the Individuals with Disabilities Act is not the same as  
21 an alleged unlawful discriminatory practice. Additionally,



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1 exhaustion of federal and state administrative remedies are not  
2 required for complaints on the basis of disability, and are not  
3 timely, are rarely accessible, and are costly to students and  
4 families.

5 The purpose of this Act is to clarify that the Hawaii civil  
6 rights commission has jurisdiction over disability  
7 discrimination claims, including claims from students with  
8 disabilities, even when other federal remedies are available.

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

11 **"§368-1.5 Programs and activities receiving state**  
12 **financial assistance.** (a) No otherwise qualified individual in  
13 the State shall, [~~solely~~] by reason of [~~his or her~~] the  
14 individual's disability, be excluded from the participation in,  
15 be denied the benefits of, or be subjected to discrimination by  
16 state agencies, or under any program or activity receiving state  
17 financial assistance.

18 (b) As used in this section[, ~~the term "disability"~~]:  
19 "Disability" means the state of having a physical or mental  
20 impairment [~~which~~] that substantially limits one or more major



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1 life activities, having a record of such an impairment, or being  
2 regarded as having such an impairment.

3 ~~[(c) As used in this section, "state]~~

4 "Program or activity receiving state financial assistance"  
5 includes a program or activity that receives federal and state  
6 financial assistance.

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

15 SECTION 3. Section 368D-1, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§368D-1 State educational programs and activities;**  
18 **discrimination prohibited.** (a) No person in the State, on the  
19 basis of sex, including gender identity or expression as defined  
20 in section 489-2, or sexual orientation as defined in section  
21 489-2, and no student in the State, on the basis of disability,



1 shall be excluded from participation in, be denied the benefits  
2 of, or be subjected to discrimination under:

3 (1) Any state educational program or activity; or

4 (2) Any educational program or activity that receives  
5 state financial assistance.

6 (b) Nothing in this chapter shall be construed to prohibit  
7 the membership practices of social fraternities or sororities or  
8 voluntary youth service organizations, as set forth in title 20  
9 United States Code Section 1681(a)(6), as in effect on January  
10 1, 2019.

11 (c) Nothing in this chapter shall be construed to prohibit  
12 any educational institution receiving state funds from  
13 maintaining separate living facilities for different sexes, as  
14 set forth in title 20, United States Code Section 1686, as in  
15 effect on January 1, 2019.

16 (d) Nothing in this chapter shall be construed to prohibit  
17 an educational institution from administering or assisting in  
18 administering a scholarship, fellowship, or other form of  
19 financial assistance pursuant to a domestic or foreign will,  
20 trust, bequest, or similar instrument that requires awards be  
21 made to members of a particular sex specified therein; provided



1 that the overall effect of sex-restricted financial assistance  
2 shall not discriminate on the basis of sex, as set forth in  
3 title 34, Code of Federal Regulations section 106.37(b)(1), as  
4 in effect on January 1, 2019.

5 (e) Nothing in this chapter shall preclude a student  
6 participating in any educational program or activity who is  
7 aggrieved by a violation of this chapter from filing a civil  
8 action in a court of competent jurisdiction.

9 (f) A person, or an organization or association on behalf  
10 of a person alleging a violation of this chapter may file a  
11 complaint pursuant to this chapter.

12 (g) A student with a disability, or individual on behalf  
13 of a student with a disability, alleging a violation of section  
14 368-1.5 may file a complaint pursuant to this chapter.

15 [~~g~~] (h) As used in this section:

16 "Educational program or activity that receives state  
17 financial assistance" means any educational program or activity  
18 that receives state financial assistance, in any amount, for any  
19 purpose. The term does not exclude an educational program or  
20 activity that also receives federal funds.



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1 "State educational program or activity" means an  
2 educational program or activity of the University of Hawaii, the  
3 department of education, or public charter schools."

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

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

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INTRODUCED BY:

*Lisakitagawa*  
**BR**

JAN 26 2021



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**Report Title:**

Hawaii Civil Rights Commission; Disability; Discrimination

**Description:**

Clarifies the meaning of "program or activity receiving state financial assistance". Includes eligible student with disabilities complaints within the scope of the Hawaii civil rights commission.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

