

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO THE MINIMUM WAGE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the real problems of  
2 disability arises not from the medical conditions themselves but  
3 rather from the low expectations, misinformation, and  
4 socially-constructed systemic barriers associated with the  
5 conditions. Individuals with disabilities are subject to low  
6 expectations particularly in employment and the system preparing  
7 them for employment, such as education and rehabilitation  
8 programs.

9           Section 14(c) of the Fair Labor Standards Act (FLSA) denies  
10 people the guarantee of a minimum wage for potentially any job  
11 and at any point in their career, based on their disability  
12 status. As reported by the Arizona Advisory Committee on the  
13 U.S. Commission on Civil Rights in its 2020 submittal  
14 "Subminimum Wages for Persons with Disabilities Under Section  
15 14(c) of the Fair Labor Standards Act," in a world after the  
16 Americans with Disabilities Act (ADA) was enacted, Section 14(c)  
17 can be considered a federal law that discriminates against



1 people with disabilities. Section 14(c) is different from its  
2 counterpart sections 14(a) and 14(b) in that the bases for  
3 allowing payment of below minimum wage in those sections are the  
4 job being performed or the particular stage in the individual's  
5 career, which can be temporary, whereas an individual's  
6 disability status can be lifelong. The original intent of  
7 Section 14(c) was to serve as a platform to train and prepare  
8 individuals with disabilities to gain open-market competitive  
9 jobs. However, the Committee reported that Section 14(c) cannot  
10 be justified as a policy to increase open-market employment  
11 opportunities for people with disabilities. It has been shown  
12 that Section 14(c) simply provided a subsidy for sheltered  
13 workshops that do not support movement of their workers to  
14 competitive employment. Section 14(c) no longer fulfills its  
15 original intent and runs contrary to the ADA, which was enacted  
16 subsequently. It is a dated law that only serves to perpetuate  
17 misinformation, stigma, and stereotypes of individuals with  
18 disabilities.

19 The purpose of this Act is to repeal existing law that  
20 exempts persons with disabilities from minimum wage requirements



1 as a cost neutral initiative with great positive impact on the  
2 lives of individuals with disabilities.

3 SECTION 2. Section 103D-1001, Hawaii Revised Statutes, is  
4 amended by amending the definition of "qualified community  
5 rehabilitation program" to read as follows:

6 "Qualified community rehabilitation program" means a  
7 nonprofit community rehabilitation program for persons with  
8 disabilities that:

- 9 (1) Is organized and incorporated under the laws of the  
10 United States or this State, and located in this  
11 State;
- 12 (2) Is operated in the interest of and [+]employs[+]   
13 persons with disabilities;
- 14 (3) Does not inure any part of its net income to any  
15 shareholder or other individual;
- 16 (4) Complies with all applicable occupational health and  
17 safety standards required by the federal, state, and  
18 county governments; and
- 19 (5) ~~[Holds a current certificate from the United States~~  
20 ~~Department of Labor pursuant to the Fair Labor~~  
21 ~~Standards Act, Title 29 United States Code section~~



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1           ~~214(c), and is certified by the state department of~~  
 2           ~~labor and industrial relations under section 387-9 and~~  
 3           ~~applicable administrative rules relating to the~~  
 4           ~~employment of persons with disabilities.]~~ Maintains a  
 5           disabled to non-disabled employee ratio equal to or  
 6           ~~[in excess of]~~ more than three-to-one at all times.  
 7           To insure integrated employment of individuals with  
 8           disabilities, this three to one ratio is to include  
 9           all levels of employment, management, and  
 10          sub-contracting."

11          SECTION 3. Section 387-9, Hawaii Revised Statutes, is  
 12          amended by amending its title and subsection (a) to read as  
 13          follows:

14          "**§387-9 Special minimum wages for learners; apprentices;**  
 15          **full-time students; paroled wards of Hawaii youth correctional**  
 16          **facility[~~,-handicapped workers~~].** (a) Notwithstanding the  
 17          provisions of section 387-2, the director [~~may~~], by rule, may  
 18          provide for the employment[~~-~~

19          ~~(1) of~~ of learners, of apprentices, of part-time  
 20          employees who are full-time students attending public  
 21          or private schools other than colleges, universities,



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1           business schools, or technical schools, and of wards  
 2           paroled from the Hawaii youth correctional facility,  
 3           under special certificates issued by the director, at  
 4           [~~such~~] wages lower than the applicable minimum wage  
 5           and subject to [~~such~~] limitations as to time, number,  
 6           proportion, and length of service as the director  
 7           shall prescribe [~~;~~ and

8           ~~(2) Of individuals whose earning capacity is impaired by~~  
 9           ~~old age or physical or mental deficiency or injury,~~  
 10          ~~under special certificates issued by the director, at~~  
 11          ~~such wages lower than the applicable minimum wage and~~  
 12          ~~for such period as shall be fixed in the~~  
 13          ~~certificates]."~~

14          SECTION 4. This Act does not affect rights and duties that  
 15          matured, penalties that were incurred, and proceedings that were  
 16          begun before its effective date.

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

19          SECTION 6. This Act shall take effect on January 1, 2022.

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INTRODUCED BY: 



# S.B. NO. 793

**Report Title:**

Employment; Individuals with Disabilities; Minimum Wage; Deaf and Blind Task Force

**Description:**

Repeals the exemption of persons with disabilities from minimum wage requirements. Takes effect on 1/1/2022.

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

