

ACT 164

S.B. NO. 538

A Bill for an Act Relating to the Hawaii Civil Rights Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that when Act 387, Session Laws of Hawaii 1989, was enacted and codified as section 368-1.5, Hawaii Revised Statutes, it was meant to be the state counterpart to section 504 of the federal Rehabilitation Act of 1973, as amended, to provide a state remedy for disability discrimination and an alternative in situations where federal remedies are also available. Additionally, section 368-1.5, Hawaii Revised Statutes, provides those with disabilities non-discriminatory access to state financially assisted activities and programs regardless of whether that program or activity also receives federal financial assistance.

The legislature further finds that the intent of section 368-1.5, Hawaii Revised Statutes, was originally, and is now, to give the Hawaii civil rights commission jurisdiction over disability discrimination claims, even if protections under section 504 of the Rehabilitation Act, as amended, are available.

Therefore, the purpose of this Act is to clarify the intent of the legislature in enacting section 368-1.5, Hawaii Revised Statutes, in light of the Hawaii Supreme Court's decision in *Hawaii Tech. Acad., et al. v. L.E., et al.*, 141 Haw. 147, 407 P.3d 103 (2017), which 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, as amended, are applicable. To address concerns regarding potential duplication of services under the Individuals with Disabilities Education Act, P.L. 101-476, as amended, the Rehabilitation Act of 1973, and their respective appeals processes, this Act excludes cases within the scope of the Individuals with Disabilities Education Act from the Hawaii civil rights commission's jurisdiction under section 368-1.5, Hawaii Revised Statutes.

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

“§368-1.5 Programs and activities receiving state financial assistance.

(a) No otherwise qualified individual in the State shall, [solely] by reason of [his or her] the individual's disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by state agencies, or under any program or activity receiving state financial assistance.

(b) As used in this section[, the term “disability”]:

“Disability” means the state of having a physical or mental impairment ~~[which]~~ that substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment.

“Program or activity receiving state financial assistance” includes a program or activity that receives federal and state financial assistance.

~~[(e) As used in this section, “state]~~ “State financial assistance” means grants, purchase-of-service contracts, or any other arrangement by which the State provides or otherwise makes available assistance in the form of funds to an entity for the purpose of rendering services on behalf of the State. It does not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State.”

SECTION 3. Section 368-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commission shall have jurisdiction over the subject of discriminatory practices made unlawful by part I of chapter 489, chapter 515, part I of chapter 378, and this chapter~~[-]; provided that the commission shall not have jurisdiction over claims within the scope of the Individuals with Disabilities Education Act, P.L. 101-476, as amended.~~ Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may file with the commission’s executive director a complaint in writing that shall state the name and address of the person or party alleged to have committed the unlawful discriminatory practice complained of, set forth the particulars thereof, and contain other information as may be required by the commission. The attorney general, or the commission upon its own initiative,¹ may, in like manner, make and file a complaint.”

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

SECTION 5. This Act shall take effect on July 1, 2022.

(Approved July 1, 2021.)

Note

1. Comma should be underscored.