

PROPOSED

HOUSE OF REPRESENTATIVES  
TWENTY-THIRD LEGISLATURE, 2005  
STATE OF HAWAII

H.B. NO. 1233  
H.D. 1  
S.D. 1

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## A BILL FOR AN ACT

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RELATING TO CIVIL RIGHTS.

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

1 SECTION 1. The purpose of this Act is to make state civil  
2 rights laws uniform by prohibiting discriminatory practices in  
3 public accommodations on the basis of sexual orientation.

4 Presently, the employment and housing laws prohibit  
5 discrimination because of sexual orientation. Just as a person  
6 should not be denied a job or a home because of the person's  
7 sexual orientation (heterosexual, homosexual, or bisexual), a  
8 person should not be denied service at a restaurant or store  
9 because of the person's sexual orientation.

10 This Act also clarifies that discrimination in public  
11 accommodations on the basis of gender identity or expression is  
12 prohibited sex discrimination. This is consistent with the  
13 purpose and intent expressed in Act 214, Session Laws of Hawaii  
14 2005, in which the legislature amended chapter 515,  
15 discrimination in real property transactions, to clarify that  
16 sex discrimination includes gender identity or expression. The  
17 legislature is aware that a growing number of state and federal  
18 courts have held that discrimination on the basis of gender



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1 identity or expression is a form of sex discrimination. Under  
 2 existing state civil rights laws, prohibited discrimination on  
 3 the basis of sex includes discrimination based on gender  
 4 identity or expression. This is not a new protection, and this  
 5 clarification should not be interpreted to imply that such  
 6 protection did not exist prior to this Act.

7 SECTION 2. Section 489-2, Hawaii Revised Statutes, is  
 8 amended by adding a new definition to be appropriately inserted  
 9 and to read as follows:

10 "Gender identity or expression" includes a person's actual  
 11 or perceived gender, as well as a person's gender identity,  
 12 gender-related self-image, gender-related appearance, or  
 13 gender-related expression, regardless of whether that gender  
 14 identity, gender-related self-image, gender-related appearance,  
 15 or gender-related expression is different from that  
 16 traditionally associated with the person's sex at birth."

17 "Sexual orientation" means having a preference for  
 18 heterosexuality, homosexuality, or bisexuality, having a history  
 19 of any one or more of these preferences, or being identified  
 20 with any one or more of these preferences. "Sexual orientation"  
 21 shall not be construed to protect conduct otherwise proscribed  
 22 by law.

1 SECTION 3. Section 489-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§489-3 Discriminatory practices prohibition.** Unfair  
4 discriminatory practices [~~which~~] that deny, or attempt to deny,  
5 a person the full and equal enjoyment of the goods, services,  
6 facilities, privileges, advantages, and accommodations of a  
7 place of public accommodation on the basis of race, sex,  
8 including gender identity or expression, sexual orientation,  
9 color, religion, ancestry, or disability are prohibited."

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

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

**Report Title:**

Nondiscrimination; Public Accommodations

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**Description:**

Prohibits discrimination in public accommodations on the basis of sexual orientation. (SD1)

