
A BILL FOR AN ACT

RELATING TO CIVIL RIGHTS.

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

1 SECTION 1. The legislature finds that the courts have
2 recognized that discrimination based upon sex or gender
3 stereotypes is a form of sex discrimination. Discrimination
4 based upon sex or gender stereotypes encompasses discrimination
5 based upon gender identity or expression. The Hawaii supreme
6 court has not ruled on the issue of gender identity or
7 expression as a form of sex discrimination.

8 The purpose of this Act is to clarify existing law with
9 regard to sex discrimination and provide that discrimination
10 based upon gender identity or expression constitutes a form of
11 sex discrimination. It is not the intent of the legislature to
12 adversely affect existing cases claiming sex discrimination
13 based upon sex or gender stereotypes.

14 SECTION 2. Section 378-1, Hawaii Revised Statutes, is
15 amended by adding a new definition to be appropriately inserted
16 and to read as follows:

17 "Gender identity or expression" includes a person's actual
18 or perceived gender, as well as a person's gender identity,



1 gender-related self-image, gender-related appearance, or gender-
2 related expression, regardless of whether that gender identity,
3 gender-related self-image, gender-related appearance, or gender-
4 related expression is different from that traditionally
5 associated with the person's sex at birth."

6 SECTION 3. Section 368-1, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§368-1 Purpose and intent.** The legislature finds and
9 declares that the practice of discrimination because of race,
10 color, religion, age, sex, including gender identity or
11 expression, sexual orientation, marital status, national origin,
12 ancestry, or disability in employment, housing, public
13 accommodations, or access to services receiving state financial
14 assistance is against public policy. It is the purpose of this
15 chapter to provide a mechanism [~~which~~] that provides for a
16 uniform procedure for the enforcement of the State's
17 discrimination laws. It is the legislature's intent to preserve
18 all existing rights and remedies under such laws."

19 SECTION 4. Section 378-2, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§378-2 Discriminatory practices made unlawful; offenses**
22 **defined.** It shall be an unlawful discriminatory practice:



- 1 (1) Because of race, sex, including gender identity or
2 expression, sexual orientation, age, religion, color,
3 ancestry, disability, marital status, or arrest and
4 court record:
- 5 (A) For any employer to refuse to hire or employ or
6 to bar or discharge from employment, or otherwise
7 to discriminate against any individual in
8 compensation or in the terms, conditions, or
9 privileges of employment;
- 10 (B) For any employment agency to fail or refuse to
11 refer for employment, or to classify or otherwise
12 to discriminate against, any individual;
- 13 (C) For any employer or employment agency to print,
14 circulate, or cause to be printed or circulated
15 any statement, advertisement, or publication or
16 to use any form of application for employment or
17 to make any inquiry in connection with
18 prospective employment, which expresses, directly
19 or indirectly, any limitation, specification, or
20 discrimination;
- 21 (D) For any labor organization to exclude or expel
22 from its membership any individual or to



- 1 discriminate in any way against any of its
2 members, employer, or employees; or
- 3 (E) For any employer or labor organization to refuse
4 to enter into an apprenticeship agreement as
5 defined in section 372-2; provided that no
6 apprentice shall be younger than sixteen years of
7 age;
- 8 (2) For any employer, labor organization, or employment
9 agency to discharge, expel, or otherwise discriminate
10 against any individual because the individual has
11 opposed any practice forbidden by this part or has
12 filed a complaint, testified, or assisted in any
13 proceeding respecting the discriminatory practices
14 prohibited under this part;
- 15 (3) For any person whether an employer, employee, or not,
16 to aid, abet, incite, compel, or coerce the doing of
17 any of the discriminatory practices forbidden by this
18 part, or to attempt to do so;
- 19 (4) For any employer to violate the provisions of section
20 121-43 relating to nonforfeiture for absence by
21 members of the national guard;



- 1 (5) For any employer to refuse to hire or employ or to bar
2 or discharge from employment, any individual because
3 of assignment of income for the purpose of satisfying
4 the individual's child support obligations as provided
5 for under section 571-52;
- 6 (6) For any employer, labor organization, or employment
7 agency to exclude or otherwise deny equal jobs or
8 benefits to a qualified individual because of the
9 known disability of an individual with whom the
10 qualified individual is known to have a relationship
11 or association; or
- 12 (7) For any employer or labor organization to refuse to
13 hire or employ, or to bar or discharge from
14 employment, or withhold pay, demote, or penalize a
15 lactating employee because an employee breastfeeds or
16 expresses milk at the workplace. For purposes of this
17 paragraph, the term "breastfeeds" means the feeding of
18 a child directly from the breast."

19 SECTION 5. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun, before its effective date.



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval.

4

INTRODUCED BY: _____



JAN 23 2008



Report Title:

Nondiscrimination; Gender Identify; Sexual Orientation; Civil Rights

Description:

Prohibits discrimination on the basis of gender identity and expression as a public policy matter and specifically with regard to employment.

