

JAN 20 2012

S.B. NO. 2294

A BILL FOR AN ACT

RELATING TO DISCRIMINATION.

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

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

3 "**§368-3 Powers and functions of commission.** The
4 commission shall have the following powers and functions:

5 (1) To receive, investigate, and conciliate complaints
6 alleging any unlawful discriminatory practice under
7 part I of chapter 489, chapter 515, and part I of
8 chapter 378, and complaints filed under this chapter,
9 and conduct proceedings on complaints alleging
10 unlawful practices where conciliatory efforts are
11 inappropriate or unsuccessful; provided that the
12 commission shall not investigate religious entities,
13 churches, and other places of worship;

14 (2) To hold hearings and make inquiries, as it deems
15 necessary, to carry out properly its functions and
16 powers, and for the purpose of these hearings and
17 inquiries, to administer oaths and affirmations,
18 conduct depositions, compel the attendance of parties



1 and witnesses and the production of documents by the
2 issuance of subpoenas, examine parties and witnesses
3 under oath, require answers to interrogatories, and
4 delegate these powers to any member of the commission
5 or any person appointed by the commission for the
6 performance of its functions;

7 (3) To commence civil action in circuit court to seek
8 appropriate relief, including the enforcement of any
9 commission order, conciliation agreement, or
10 predetermination settlement;

11 (4) To issue the right to sue to a complainant;

12 (5) To order appropriate legal and equitable relief or
13 affirmative action when a violation is found;

14 (6) To issue publications and results of investigations
15 and research that, in its judgment, will tend to
16 promote goodwill and minimize or eliminate
17 discrimination in employment, housing, and public
18 accommodations;

19 (7) To submit annually to the governor and the legislature
20 a written report of its activities and recommendations
21 for administrative or statutory changes required to
22 further the purposes of this chapter;



1 (8) To appoint an executive director, deputy executive
2 director, attorneys, and hearings examiners who shall
3 be exempt from chapter 76, and investigators and other
4 necessary support personnel who shall be subject to
5 chapter 76. Section 28-8.3 notwithstanding, an
6 attorney employed by the commission as a full-time
7 staff member may represent the commission in
8 litigation, draft legal documents for the commission,
9 provide other necessary legal services to the
10 commission, and shall not be deemed to be a deputy
11 attorney general; and

12 (9) To adopt rules under chapter 91."

13 SECTION 2. Section 378-1, Hawaii Revised Statutes, is
14 amended by amending the definition of "employer" to read as
15 follows:

16 ""Employer" means any person, including the State or any of
17 its political subdivisions and any agent of such person, having
18 one or more employees, but shall not include the United
19 States[-], or a religious entity, church, or other places of
20 worship."



1 SECTION 3. Section 489-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "place of public
3 accommodation" to read as follows:

4 "Place of public accommodation" means a business,
5 accommodation, refreshment, entertainment, recreation, or
6 transportation facility of any kind whose goods, services,
7 facilities, privileges, advantages, or accommodations are
8 extended, offered, sold, or otherwise made available to the
9 general public as customers, clients, or visitors. By way of
10 example, but not of limitation, place of public accommodation
11 includes facilities of the following types:

- 12 (1) A facility providing services relating to travel or
13 transportation;
- 14 (2) An inn, hotel, motel, or other establishment that
15 provides lodging to transient guests;
- 16 (3) A restaurant, cafeteria, lunchroom, lunch counter,
17 soda fountain, or other facility principally engaged
18 in selling food for consumption on the premises of a
19 retail establishment;
- 20 (4) A shopping center or any establishment that sells
21 goods or services at retail;



- 1 (5) An establishment licensed under chapter 281 doing
- 2 business under a class 4, 5, 7, 8, 9, 10, 11, or 12
- 3 license, as defined in section 281-31;
- 4 (6) A motion picture theater, other theater, auditorium,
- 5 convention center, lecture hall, concert hall, sports
- 6 arena, stadium, or other place of exhibition or
- 7 entertainment;
- 8 (7) A barber shop, beauty shop, bathhouse, swimming pool,
- 9 gymnasium, reducing or massage salon, or other
- 10 establishment conducted to serve the health,
- 11 appearance, or physical condition of persons;
- 12 (8) A park, a campsite, or trailer facility, or other
- 13 recreation facility;
- 14 (9) A comfort station; or a dispensary, clinic, hospital,
- 15 convalescent home, or other institution for the
- 16 infirm;
- 17 (10) A professional office of a health care provider, as
- 18 defined in section 323D-2, or other similar service
- 19 establishment;
- 20 (11) A mortuary or undertaking establishment; and
- 21 (12) An establishment that is physically located within the
- 22 premises of an establishment otherwise covered by this



1 definition, or within the premises of which is
2 physically located a covered establishment, and which
3 holds itself out as serving patrons of the covered
4 establishment.

5 "Place of public accommodation" shall not include
6 facilities that are religious entities, churches, or other
7 places of worship. No place of public accommodation defined in
8 this section shall be requested to reconstruct any facility or
9 part thereof to comply with this chapter."

10 SECTION 4. Section 515-4, Hawaii Revised Statutes, is
11 amended to read as follows:

- 12 **"§515-4 Exemptions.** (a) Section 515-3 does not apply:
- 13 (1) To the rental of a housing accommodation in a building
14 which contains housing accommodations for not more
15 than two families living independently of each other
16 if the owner or lessor resides in one of the housing
17 accommodations; or
 - 18 (2) To the rental of a room or up to four rooms in a
19 housing accommodation by an owner or lessor if the
20 owner or lessor resides in the housing accommodation.
- 21 (b) Nothing in section 515-3 shall be deemed to prohibit
22 refusal, because of sex, including gender identity or



1 expression, sexual orientation, or marital status, to rent or
2 lease housing accommodations:

3 (1) Owned or operated by a religious institution and used
4 for church purposes as that term is used in applying
5 exemptions for real property taxes; or

6 (2) Which are part of a religiously affiliated institution
7 of higher education housing program which is operated
8 on property that the institution owns or controls, or
9 which is operated for its students pursuant to Title
10 IX of the Higher Education Act of 1972.

11 (c) Nothing in this chapter regarding familial status or
12 age shall apply to housing for older persons as defined by Title
13 42 United States Code Section 3607(b)(2).

14 (d) Nothing in section 515-3 shall be deemed to prohibit
15 refusal to rent or lease housing accommodations due to sincere
16 religious belief."

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

19



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

2

INTRODUCED BY: Mike Gabbal SR



S.B. NO. 2294

Report Title:

Discrimination; Religious Freedom; Accommodations; Employment

Description:

Clarifies the separation between church and state in terms of civil rights commission investigations, hiring, public accommodation, and rental housing practices.

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

