
A BILL FOR AN ACT

RELATING TO CIVIL RIGHTS.

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

1 SECTION 1. Chapter 368, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:

4 "§368- Biased-based policing. (a) No law enforcement
5 agent or agency shall engage in any of the following:

6 (1) Bias-based policing;

7 (2) The detainment of an individual based on any
8 noncriminal factor or combination of noncriminal
9 factors, unless pursuant to court order; or

10 (3) The use of agency moneys, equipment, or personnel for
11 the purpose of detecting or apprehending any person
12 whose only violation of law is being a noncitizen
13 residing in the United States in violation of federal
14 immigration laws, except as otherwise required by
15 federal law.

16 (b) As used in this section, the following terms shall
17 mean as follows:



1 "Biased-based policing" means the practice of a law
2 enforcement agent or agency, relying, to any degree, on actual
3 or perceived race, ethnicity, national origin, immigration or
4 citizenship status, sexual orientation, gender identity, or
5 religion in selecting which individual to subject to routine or
6 spontaneous law enforcement activity following the initial
7 contact. This term includes the use of racial or ethnic
8 stereotypes as factors in selecting whom to stop and search, but
9 does not include reliance on trustworthy individualized
10 information, relevant to the locality and timeframe, that links
11 a person of a particular race, ethnicity, national origin,
12 sexual orientation, gender identity, or religion to an
13 identified criminal incident or scheme.

14 "Law enforcement activity" means activities performed by
15 law enforcement agents including but not limited to non-
16 custodial questioning, interviews, traffic stops, check point or
17 roadblock stops, pedestrian stops, frisks and other types of
18 body searches, consensual and nonconsensual searches of persons
19 or the property of persons, home searches, and contact with
20 potential victims of and witnesses to crimes.

21 "Law enforcement agency" means any county police
22 department, the department of public safety, and any federal,



1 state, or county public body that employs law enforcement
2 officers.

3 "Law enforcement officer" means any public servant, whether
4 employed by the United States, State, or county, vested by law
5 with a duty to maintain public order or to make arrests for
6 offenses or to enforce the criminal laws, whether that duty
7 extends to all offenses or is limited to a specific class of
8 offenses."

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

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



1 SECTION 3. Section 368-13, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§368-13 Investigation and conciliation of complaint. (a)**

4 After the filing of a complaint, or whenever it appears to the
5 commission that an unlawful discriminatory practice may have
6 been committed, the commission's executive director shall make
7 an investigation in connection therewith. At any time after the
8 filing of a complaint but prior to the issuance of a
9 determination as to whether there is or is not reasonable cause
10 to believe that part I of chapter 489, chapter 515, part I of
11 chapter 378, or this chapter has been violated, the parties may
12 agree to resolve the complaint through a predetermination
13 settlement.

14 (b) The executive director shall issue a determination of
15 whether or not there is reasonable cause to believe that an
16 unlawful discriminatory practice has occurred within [~~one-~~
17 ~~hundred~~] one hundred and eighty days from the date of filing a
18 complaint unless the commission grants an extension of time to
19 issue a determination.

20 (c) If the executive director makes a determination that
21 there is no reasonable cause to believe that an unlawful
22 discriminatory practice has occurred in a complaint filed, the



1 executive director shall promptly notify the parties in writing.
2 The notice to complainant shall indicate also that the
3 complainant may bring a civil action as provided under section
4 368-12.

5 (d) When the executive director determines after the
6 investigation that there is reasonable cause to believe that an
7 unlawful discriminatory practice within the commission's
8 jurisdiction has been committed, the executive director shall
9 immediately endeavor to eliminate any alleged unlawful
10 discriminatory practice by informal methods such as conference,
11 conciliation, and persuasion.

12 (e) Where the executive director has determined that there
13 is reasonable cause to believe that an unlawful discriminatory
14 practice has occurred and has been unable to secure from the
15 respondent a conciliation agreement acceptable to the commission
16 within [~~one hundred~~] one hundred and eighty days of the filing
17 of the complaint unless the commission has granted an extension
18 of time, the executive director shall demand that the respondent
19 cease the unlawful discriminatory practice. The executive
20 director's determination that a final conciliation demand is to
21 be made shall be subject to reconsideration by the commission on
22 its own initiative but shall not be subject to judicial review.



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1 The executive director may demand appropriate affirmative action
2 as, in the judgment of the executive director, will effectuate
3 the purpose of this chapter, and include a requirement for
4 reporting on the manner of compliance.

5 (f) For complaints relating to biased-based policing under
6 section 368- , proof that the routine or spontaneous
7 investigatory activities of law enforcement agents or agencies
8 have had a disparate impact based on race, ethnicity, national
9 origin, immigration or citizenship status, sexual orientation,
10 gender identity, or religion, shall constitute prima facie
11 evidence of a violation of this chapter."

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

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

15

INTRODUCED BY: _____



JAN 16 2013



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Report Title:

Civil Rights Commission; Biased-based Policing

Description:

Makes it a civil rights violation for law enforcement agencies and agents to practice biased-based policing.

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

