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## A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

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

1           SECTION 1. Section 378-71, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read as follows:

4           "Domestic or sexual violence victim" or "victim" means an  
5 individual who is the victim of domestic or sexual violence."

6           SECTION 2. Section 378-2, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "~~§378-2~~ **Discriminatory practices made unlawful; offenses**  
9 **defined.** [~~(a)~~] It shall be an unlawful discriminatory practice:  
10           (1) Because of race, sex including gender identity or  
11 expression, sexual orientation, age, religion, color,  
12 ancestry, disability, marital status, arrest and court  
13 record, or domestic or sexual violence victim status  
14 if the domestic or sexual violence victim [~~provides~~  
15 ~~notice to the victim's employer of such status or the~~  
16 ~~employer has actual knowledge of such status.~~]  
17 provides the employer with a copy of a temporary  
18 restraining order or a protective order issued by a



1           court that stipulates protections afforded the victim,  
2           unless the employer reasonably believes that the  
3           restrained person could endanger other employees:

4           (A) For any employer to refuse to hire or employ or  
5           to bar or discharge from employment, or otherwise  
6           to discriminate against any individual in  
7           compensation or in the terms, conditions, or  
8           privileges of employment;

9           (B) For any employment agency to fail or refuse to  
10           refer for employment, or to classify or otherwise  
11           to discriminate against, any individual;

12           (C) For any employer or employment agency to print,  
13           circulate, or cause to be printed or circulated  
14           any statement, advertisement, or publication or  
15           to use any form of application for employment or  
16           to make any inquiry in connection with  
17           prospective employment, that expresses, directly  
18           or indirectly, any limitation, specification, or  
19           discrimination;

20           (D) For any labor organization to exclude or expel  
21           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 of  
3                    assignment of income for the purpose of satisfying the  
4                    individual's child support obligations as provided for  
5                    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;
- 12          (7) For any employer or labor organization to refuse to  
13                  hire or employ, bar or discharge from employment,  
14                  withhold pay from, demote, or penalize a lactating  
15                  employee because the employee breastfeeds or expresses  
16                  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          (8) For any employer to refuse to hire or employ, bar or  
20                  discharge from employment, or otherwise to  
21                  discriminate against any individual in compensation or  
22                  in the terms, conditions, or privileges of employment



1 of any individual because of the individual's credit  
2 history or credit report, unless the information in  
3 the individual's credit history or credit report  
4 directly relates to a bona fide occupational  
5 qualification under section 378-3(2); or

- 6 (9) For any employer to discriminate against any  
7 individual employed as a domestic, in compensation or  
8 in terms, conditions, or privileges of employment  
9 because of the individual's race, sex including gender  
10 identity or expression, sexual orientation, age,  
11 religion, color, ancestry, disability, or marital  
12 status.

13 ~~[(b) For purposes of subsection (a)(1):~~

14 ~~(1) An employer may verify that an employee is a victim of~~  
15 ~~domestic or sexual violence by requesting that the~~  
16 ~~employee provide:~~

17 ~~(A) A signed written statement from a person listed~~  
18 ~~below from whom the employee or the employee's~~  
19 ~~minor child has sought assistance in relation to~~  
20 ~~the domestic or sexual violence:~~

21 ~~(i) An employee, agent, or volunteer of a victim~~  
22 ~~services organization;~~



- 1                   ~~(ii) The employee's attorney or advocate;~~
- 2                   ~~(iii) The attorney or advocate of the employee's~~
- 3                   ~~minor child;~~
- 4                   ~~(iv) A medical or other health care professional;~~
- 5                   ~~or~~
- 6                   ~~(v) A member of the clergy; or~~
- 7                   ~~(B) A police or court record supporting the~~
- 8                   ~~occurrence of the domestic or sexual violence;~~
- 9                   ~~and~~
- 10                  ~~(2) An employer may verify an employee's status as a~~
- 11                  ~~domestic or sexual violence victim not more than once~~
- 12                  ~~every six months following the date the employer:~~
- 13                  ~~(A) Was provided notice by the employee of the~~
- 14                  ~~employee's status as a domestic or sexual~~
- 15                  ~~violence victim;~~
- 16                  ~~(B) Has actual knowledge of the employee's status as~~
- 17                  ~~a domestic or sexual violence victim; or~~
- 18                  ~~(C) Received verification that the employee is a~~
- 19                  ~~domestic or sexual violence victim;~~
- 20                  ~~provided that where the employee provides verification~~
- 21                  ~~in the form of a protective order related to the~~
- 22                  ~~domestic or sexual violence with an expiration date;~~



1 ~~the employer may not request any further form of~~  
2 ~~verification of the employee's status as a domestic or~~  
3 ~~sexual violence victim until the date of the~~  
4 ~~expiration or any extensions of the protective order,~~  
5 ~~whichever is later.] "~~

6 SECTION 3. Section 378-81, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 " ~~[+]§378-81[+]~~ Reasonable accommodations. ~~[+(a)]~~ An  
9 employer shall make reasonable accommodations in the workplace  
10 for an employee who is a victim of domestic or sexual violence,  
11 including:

12 ~~[(1) Changing the contact information, such as telephone~~  
13 ~~numbers, fax numbers, or electronic mail addresses, of~~  
14 ~~the employee;~~

15 ~~(2) Screening the telephone calls of the employee;~~

16 ~~(3) Restructuring the job functions of the employee;~~

17 ~~(4) Changing the work location of the employee;~~

18 ~~(5) Installing locks and other security devices; and~~

19 ~~(6) Allowing the employee to work flexible hours;~~

20 ~~provided that an employer shall not be required to make the~~  
21 ~~reasonable accommodations if they cause undue hardship on the~~  
22 ~~work operations of the employer.~~



1 ~~(b) Prior to making the reasonable accommodations under~~  
2 ~~this section, an employer may verify that an employee is a~~  
3 ~~victim of domestic or sexual violence as provided in section~~  
4 ~~378-2(b).~~

5 ~~(c) As used in this section, "undue hardship" means an~~  
6 ~~action requiring significant difficulty or expense on the~~  
7 ~~operation of an employer, when considered in light of the~~  
8 ~~following factors:~~

9 ~~(1) The nature and cost of the reasonable accommodation~~  
10 ~~needed under this section;~~

11 ~~(2) The overall financial resources of the employer; the~~  
12 ~~number of employees of the employer; and the number,~~  
13 ~~type, and placement of the work locations of an~~  
14 ~~employer; and~~

15 ~~(3) The type of operation of the employer, including the~~  
16 ~~composition, structure, and functions of the workforce~~  
17 ~~of the employer, the geographic separateness of the~~  
18 ~~victim's work location from the employer, and the~~  
19 ~~administrative or fiscal relationship of the work~~  
20 ~~location to the employer.]~~

21 (1) Upon receipt of the victim's temporary restraining  
22 order or protective order, the employer shall post a





1 copy of the temporary restraining order or protective  
2 order at the victim's workplace and make all necessary  
3 personnel aware of the protections afforded the victim  
4 by the temporary restraining order or protective  
5 order; and

6 (2) If the person to whom the order is issued against  
7 comes to the victim's workplace and thereby violates  
8 provisions of the temporary restraining order or  
9 protective order, the employer or its employees shall  
10 contact the police immediately to inform them that one  
11 or more provisions of the temporary restraining order  
12 or protective order has been violated."

13 SECTION 4. Section 378-82, Hawaii Revised Statutes, is  
14 repealed.

15 ~~["§378-82] Civil actions. Any employee denied reasonable~~  
16 ~~accommodations by an employer in violation of this subpart may~~  
17 ~~file a civil action against the employer to enforce this subpart~~  
18 ~~and recover costs, including reasonable attorney's fees,~~  
19 ~~incurred in the civil action."]~~

20 SECTION 5. This Act does not affect rights and duties that  
21 matured, penalties that were incurred, and proceedings that were  
22 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: *Jim Smith*

By Request

JAN 23 2014



# H.B. NO. 2649

**Report Title:**

Employment Practices; Domestic Violence

**Description:**

Defines "domestic or sexual violence victim" or "victim" to mean an individual who is the victim of domestic or sexual violence. Prohibits employer from discriminating based on domestic or sexual violence if the victim provides employer with a copy of the TRO or protective order, unless the employer reasonably believes that the restrained person could endanger other employees. Removes employers' liability for not making reasonable accommodations for an employee who is a victim of domestic or sexual violence.

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

