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## A BILL FOR AN ACT

RELATING TO RELIGIOUS FREEDOM.

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

1           SECTION 1. The legislature finds that protecting religious  
2 freedom from government intrusion is a state interest of the  
3 highest order, especially in the aftermath of the Supreme Court  
4 of the United States' decision in *Obergefell v. Hodges*, 576 U.  
5 S. \_\_\_, 135 S. Ct. 2071, 191 L. Ed. 2d 953 (2015). In the  
6 *Obergefell v. Hodges* opinion, the Supreme Court held same-sex  
7 couples have a right to marry, but also noted that "Many who  
8 deem same-sex marriage to be wrong reach that conclusion based  
9 on decent and honorable religious or philosophical premises, and  
10 neither they nor their beliefs are disparaged here."

11           In the wake of the *Obergefell v. Hodges* decision, leading  
12 legal scholars concur that conflicts between same-sex marriage  
13 and religious liberty are inevitable and, therefore, should be  
14 addressed through legislation. The legislature further finds  
15 that the State is obligated to take measures that advance this  
16 interest by remedying, deterring, and preventing government  
17 interference with religious exercise in a way that complements



1 the protections mandated by the constitutions of the State of  
2 Hawaii and the United States.

3 In particular, the State has an obligation to refrain from  
4 discriminating against those who maintain a belief that marriage  
5 is the union of one man and one woman based on religious and  
6 moral convictions. Individual and corporate views regarding  
7 marriage being the union of one man and one woman are often tied  
8 to sincerely held religious beliefs and moral convictions. Laws  
9 that protect the free exercise of religious beliefs and moral  
10 convictions about marriage will encourage private citizens and  
11 institutions to demonstrate tolerance for those beliefs and  
12 convictions and therefore contribute to a more respectful,  
13 diverse, and peaceful society.

14 Moreover, Hawaii and the United States already have a  
15 history of accommodating religious exercise and establishing  
16 conscience protections based on religious and moral convictions.  
17 Most recently, when the legislature legalized same-sex marriage  
18 in the Second Special Session of 2013, special care was taken to  
19 include language that: (1) exempted clergy and officers of  
20 religious organizations authorized to solemnize marriages from  
21 having to solemnize any marriage in violation of their religious  
22 beliefs or faith; (2) exempted certain religious organizations



1 and nonprofit organizations from having to provide goods or  
2 services in connection with solemnization of any marriage in  
3 violation of its religious beliefs or faith; and (3) granted  
4 these persons and organizations immunity from any civil or  
5 administrative liability for such failure or refusal.

6 The purpose of this Act, which shall be known as the  
7 "Government Nondiscrimination Act", is to protect the free  
8 exercise of religious beliefs and moral convictions by  
9 prohibiting the State from taking any discriminatory action  
10 against a person based on the person's sincerely held religious  
11 belief or moral conviction, including the belief that marriage  
12 is the union of one man and one woman.

13 SECTION 2. The Hawaii Revised Statutes is amended by  
14 adding a new chapter to be appropriately designated and to read  
15 as follows:

16 **"CHAPTER**

17 **GOVERNMENT NONDISCRIMINATION ACT**

18 **§ -1 Definitions.** For the purposes of this chapter:

19 "Person" includes any individual or any corporation,  
20 company, sole proprietorship, partnership, society, club,  
21 organization, or association, except that such term shall not  
22 include medical providers, hospitals, clinics, hospices, nursing



1 homes, or residential custodial facilities with respect to  
2 visitation, recognition of a designated representative for  
3 health care decision making, or refusal to provide life-saving  
4 and emergency medical treatment necessary to cure an illness or  
5 injury.

6 "The State" means:

- 7 (1) Any department, commission, board, agency, or agent of  
8 the State;
- 9 (2) Any political subdivision of the State and any  
10 department, commission, board, agency, or agent of  
11 such political subdivision; and
- 12 (3) Any individual or entity acting under color of state  
13 law.

14 "State benefit program" means any program administered or  
15 funded by the State, or by any agent on behalf of the State,  
16 providing cash, vouchers, payments, grants, contracts, loans, or  
17 in-kind assistance.

18 **§ -2 Protection of the Free Exercise of Religious**  
19 **Beliefs and Moral Convictions.** (a) In General. Notwithstanding  
20 any statute, regulation, or order to the contrary, the State  
21 shall not take any discriminatory action against a person,  
22 wholly or partially on the basis that such person believes,



1 speaks, or acts in accordance with a sincerely held religious  
2 belief or moral conviction that:

3 (1) Marriage is or should be recognized as the union of  
4 one man and one woman;

5 (2) Sexual relations are properly reserved to such a  
6 marriage; or

7 (3) Male (man) and female (woman) refer to distinct and  
8 immutable biological sexes that are determinable by  
9 anatomy and genetics by the time of birth.

10 (b) Discriminatory Action Defined. As used in subsection  
11 (a), a discriminatory action means any action taken by the State  
12 to:

13 (1) Alter in any way the tax treatment of, or cause any  
14 tax, penalty, or payment to be assessed against, or  
15 deny, delay, revoke, or otherwise make unavailable an  
16 exemption from taxation of any person referred to in  
17 subsection (a);

18 (2) Apply or cause to be applied, a fine, penalty, or  
19 payment assessed against such person;

20 (3) Disallow, deny, or otherwise make unavailable a  
21 deduction for state tax purposes of any charitable  
22 contribution made to or by such person;



- 1           (4) Withhold, reduce, exclude, terminate, materially alter  
2           the terms or conditions of, or otherwise make  
3           unavailable or deny any state grant, contract,  
4           subcontract, cooperative agreement, guarantee, loan,  
5           scholarship, diploma, grade, recognition, license,  
6           certification, accreditation, employment, or other  
7           similar benefit, position, or status from or to such  
8           person;
- 9           (5) Withhold, reduce, exclude, terminate, or otherwise  
10          make unavailable or deny any entitlement or benefit  
11          under a state benefit program, including admission to,  
12          equal treatment in, or eligibility for a degree from  
13          an educational program, from or to such person;
- 14          (6) Withhold, reduce, exclude, terminate or otherwise make  
15          unavailable or deny access or an entitlement to state  
16          property, facilities, educational institutions, speech  
17          fora (including traditional, limited, and nonpublic  
18          fora), or charitable fundraising campaigns from or to  
19          such person; or
- 20          (7) Investigate or initiate an investigation, claim, or  
21          administrative proceeding of such person, if that  
22          person would not otherwise be subject to such action.



1 (c) Accreditation, Licensure, Certification. The State  
2 shall consider accredited, licensed, or certified any person  
3 that would otherwise be accredited, licensed, or certified,  
4 respectively, for any purposes under state law but for a  
5 determination against such person wholly or partially on the  
6 basis that the person believes, speaks, or acts in accordance  
7 with a sincerely held religious belief or moral conviction  
8 described in subsection (a).

9 **§ -3 Judicial Relief.** (a) Cause of Action. A person  
10 may assert a violation of this Act as a claim or defense in any  
11 judicial or administrative proceeding and obtain compensatory  
12 damages, injunctive relief, declaratory relief, or any other  
13 appropriate relief. Standing to assert a claim or defense under  
14 this section shall be governed by the general rules of standing  
15 under the laws of the State.

16 (b) Administrative Remedies Not Required. Notwithstanding  
17 any other provision of law, an action under this section may be  
18 commenced, and relief may be granted, in a court of the State  
19 without regard to whether the person commencing the action has  
20 sought or exhausted available administrative remedies.

21 (c) Attorneys' Fees. In any action or proceeding to  
22 enforce a provision of this Act, a prevailing party who



1 establishes a violation of this Act shall be entitled to recover  
2 reasonable attorneys' fees and costs.

3 (d) Authority of the State to Enforce This Act. The  
4 Attorney General may bring an action for injunctive or  
5 declaratory relief against the State to enforce compliance with  
6 this Act. Nothing in this subsection shall be construed to  
7 deny, impair, or otherwise affect any right or authority of the  
8 Attorney General or the State, acting under any law other than  
9 this subsection, to institute or intervene in any proceeding.

10 **§ -4 Rules of Construction.** (a) Provision of Benefits  
11 and Services. Nothing in this Act shall be construed to prevent  
12 the State from providing, either directly or through an  
13 individual or entity not seeking protection under this Act, any  
14 benefit or service authorized under state law.

15 (b) No Preemption, Repeal, or Narrow Construction. The  
16 protection of free exercise of religious beliefs and moral  
17 convictions afforded by this Act are in addition to the  
18 protections provided under federal law, state law, and the state  
19 and federal constitutions. Nothing in this Act shall be  
20 construed to preempt or repeal any state or local law that is  
21 equally or more protective of free exercise of religious beliefs  
22 or moral convictions, and nothing in this Act shall be construed





1 to narrow the meaning or application of any state or local law  
2 protecting free exercise of religious beliefs or moral  
3 convictions.

4 (c) Severability. If any provision of this Act or any  
5 application of such provision to any particular person or  
6 circumstance is held to be invalid under law, the remainder of  
7 this Act and the application of its provisions to any other  
8 person or circumstance shall not be affected."

9 SECTION 3. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Balderson  
JAN 25 2016



# H.B. NO. 2181

**Report Title:**

Religious Freedom; Government Nondiscrimination Act.

**Description:**

Protects the free exercise of religious beliefs and moral convictions by prohibiting the State from taking any discriminatory action against a person based on the person's sincerely held religious belief or moral conviction. Provides a cause of action for a violation of the Act.

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

