

JAN 27 2016

A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 SECTION 1. The legislature finds that the employment
2 practices laws under sections 378-2, 378-2.3, 378-2.5, and 378-
3 2.7, Hawaii Revised Statutes, relate respectively to
4 discriminatory practices, unequal pay, criminal conviction
5 records, and credit history. These sections were enacted to
6 prohibit employment discrimination against individuals based
7 upon protected categories, but were not intended to prevent
8 employers from taking employment action for reasons unrelated to
9 the categories protected by the legislature in those sections.

10 The purpose of this Act is to clarify that Hawaii's anti-
11 discrimination law, as set forth in part I of chapter 378 of the
12 Hawaii Revised Statutes, does not prohibit refusals to hire,
13 refusals to refer, or discharges that are unrelated to
14 discriminatory practices in section 378-2, unequal pay in 378-
15 2.3, criminal conviction records in 378-2.5, and credit history
16 in 378-2.7, Hawaii Revised Statutes.



1 SECTION 2. Section 378-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§378-3 **Exceptions.** Nothing in this part shall be deemed
4 to:

- 5 (1) Repeal or affect any law, ordinance, or government
6 rule having the force and effect of law;
- 7 (2) Prohibit or prevent the establishment and maintenance
8 of bona fide occupational qualifications reasonably
9 necessary to the normal operation of a particular
10 business or enterprise, and that have a substantial
11 relationship to the functions and responsibilities of
12 prospective or continued employment;
- 13 (3) Prohibit or prevent an employer, employment agency, or
14 labor organization from refusing to hire~~[7]~~ or
15 refer~~[7]~~ or ~~[discharge]~~ discharging any individual for
16 reasons ~~[relating to the ability of the individual to~~
17 ~~perform the work in question,]~~ unrelated to sections
18 378-2, 378-2.3, 378-2.5, or 378-2.7;
- 19 (4) Affect the operation of the terms or conditions of any
20 bona fide retirement, pension, employee benefit, or
21 insurance plan that is not intended to evade the



1 purpose of this chapter; provided that this exception
2 shall not be construed to permit any employee plan to
3 set a maximum age requirement for hiring or a
4 mandatory retirement age;

5 (5) Prohibit or prevent any religious or denominational
6 institution or organization, or any organization
7 operated for charitable or educational purposes, that
8 is operated, supervised, or controlled by or in
9 connection with a religious organization, from giving
10 preference to individuals of the same religion or
11 denomination or from making a selection calculated to
12 promote the religious principles for which the
13 organization is established or maintained;

14 (6) Conflict with or affect the application of security
15 regulations or rules in employment established by the
16 United States or the State;

17 (7) Require the employer to execute unreasonable
18 structural changes or expensive equipment alterations
19 to accommodate the employment of a person with a
20 disability;



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- 1 (8) Prohibit or prevent the department of education or
2 private schools from considering criminal convictions
3 in determining whether a prospective employee is
4 suited to working in close proximity to children;
- 5 (9) Prohibit or prevent any financial institution in which
6 deposits are insured by a federal agency having
7 jurisdiction over the financial institution from
8 denying employment to or discharging from employment
9 any person who has been convicted of any criminal
10 offense involving dishonesty or a breach of trust,
11 unless it has the prior written consent of the federal
12 agency having jurisdiction over the financial
13 institution to hire or retain the person;
- 14 (10) Preclude any employee from bringing a civil action for
15 sexual harassment or sexual assault and infliction of
16 emotional distress or invasion of privacy related
17 thereto; provided that notwithstanding section 368-12,
18 the commission shall issue a right to sue on a
19 complaint filed with the commission if it determines
20 that a civil action alleging similar facts has been
21 filed in circuit court; or



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1 (11) Require the employer to accommodate the needs of a
2 nondisabled person associated with or related to a
3 person with a disability in any way not required by
4 title I of the Americans with Disabilities Act."

5 SECTION 3. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect on January 1, 2017.

11

INTRODUCED BY:

~~DC. Fish~~
Michelle Fedani
Jiri



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Report Title:

Employment Practices; Discriminatory Practices

Description:

Clarifies the grounds under which an employer may take employment action without committing a discriminatory practice.

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