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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1           SECTION 1. The purpose of this Act is to clarify the scope  
2 of Hawaii's anti-discrimination law by specifying that  
3 employers, employment agencies, and labor organizations may  
4 refuse to hire, refer, or discharge an individuals for reasons  
5 other than those protected under Hawaii's anti-discrimination  
6 law.

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

9           "**§378-3 Exceptions.** Nothing in this part shall be deemed  
10 to:

11           (1) Repeal or affect any law, ordinance, or government  
12 rule having the force and effect of law;

13           (2) Prohibit or prevent the establishment and maintenance  
14 of bona fide occupational qualifications reasonably  
15 necessary to the normal operation of a particular  
16 business or enterprise, and that have a substantial



- 1 relationship to the functions and responsibilities of  
2 prospective or continued employment;
- 3 (3) Prohibit or prevent an employer, employment agency, or  
4 labor organization from refusing to hire, refer, or  
5 discharge any individual for reasons [~~relating to the~~  
6 ~~ability of the individual to perform the work in~~  
7 ~~question;~~] other than those protected under sections  
8 378-2, 378-2.3, 378-2.5, and 378-2.7;
- 9 (4) Affect the operation of the terms or conditions of any  
10 bona fide retirement, pension, employee benefit, or  
11 insurance plan that is not intended to evade the  
12 purpose of this chapter; provided that this exception  
13 shall not be construed to permit any employee plan to  
14 set a maximum age requirement for hiring or a  
15 mandatory retirement age;
- 16 (5) Prohibit or prevent any religious or denominational  
17 institution or organization, or any organization  
18 operated for charitable or educational purposes, that  
19 is operated, supervised, or controlled by or in  
20 connection with a religious organization, from giving  
21 preference to individuals of the same religion or



- 1           denomination or from making a selection calculated to  
2           promote the religious principles for which the  
3           organization is established or maintained;
- 4           (6) Conflict with or affect the application of security  
5           regulations or rules in employment established by the  
6           United States or the State;
- 7           (7) Require the employer to execute unreasonable  
8           structural changes or expensive equipment alterations  
9           to accommodate the employment of a person with a  
10          disability;
- 11          (8) Prohibit or prevent the department of education or  
12          private schools from considering criminal convictions  
13          in determining whether a prospective employee is  
14          suited to working in close proximity to children;
- 15          (9) Prohibit or prevent any financial institution in which  
16          deposits are insured by a federal agency having  
17          jurisdiction over the financial institution from  
18          denying employment to or discharging from employment  
19          any person who has been convicted of any criminal  
20          offense involving dishonesty or a breach of trust,  
21          unless it has the prior written consent of the federal



- 1 agency having jurisdiction over the financial  
2 institution to hire or retain the person;
- 3 (10) Preclude any employee from bringing a civil action for  
4 sexual harassment or sexual assault and infliction of  
5 emotional distress or invasion of privacy related  
6 thereto; provided that notwithstanding section 368-12,  
7 the commission shall issue a right to sue on a  
8 complaint filed with the commission if it determines  
9 that a civil action alleging similar facts has been  
10 filed in circuit court; or
- 11 (11) Require the employer to accommodate the needs of a  
12 nondisabled person associated with or related to a  
13 person with a disability in any way not required by  
14 title I of the Americans with Disabilities Act."

15 SECTION 3. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

18 SECTION 4. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 5. This Act shall take effect on July 1, 2091.



**Report Title:**

Employment Practices; Discriminatory Practices

**Description:**

Specifies that employers, employment agencies, and labor organizations may take adverse employment action for reasons other than those currently protected under Hawaii's anti-discrimination law. (SB3036 HD1)

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

