

JAN 24 2019

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

11           A Hawaii Supreme Court decision, *Adams v. CDM Media USA,*  
12 *Inc.*, prohibits an employer from carrying its burden of  
13 production to support that the employer legitimately refused to  
14 hire an applicant solely by alleging that the applicant did not  
15 meet a non-mandatory core job function that was stated in the  
16 posting for the open position. This ruling unreasonably narrows  
17 the basis upon which an employer can decline to hire applicants.



1 This can result in costly litigation even when a non-  
2 discriminatory reason that is not based on a protected  
3 classification supports the disqualification of an applicant.

4 The purpose of this Act is to state the legislature's  
5 intent and to clarify that Hawaii's anti-discrimination law, as  
6 set forth in part I of chapter 378, Hawaii Revised Statutes,  
7 does not prohibit refusals to hire, refusals to refer, or  
8 terminations of employment that are not based on any prohibited  
9 discriminatory practices in section 378-2, unequal pay due to  
10 sex discrimination as prohibited in section 378-2.3, criminal  
11 conviction record inquiries prohibited in section 378-2.5, and  
12 credit history inquiries prohibited in section 378-2.7, Hawaii  
13 Revised Statutes.

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

16 "§378-3 **Exceptions.** Nothing in this part shall be deemed  
17 to:

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

20 (2) Prohibit or prevent the establishment and maintenance  
21 of bona fide occupational qualifications reasonably



1 necessary to the normal operation of a particular  
2 business or enterprise, and that have a substantial  
3 relationship to the functions and responsibilities of  
4 prospective or continued employment;

5 (3) Prohibit or prevent an employer, employment agency, or  
6 labor organization from refusing to hire, from  
7 refusing to refer, or [~~discharge~~] from discharging any  
8 individual for reasons relating to the ability of the  
9 individual to perform the work in question[+] or  
10 unrelated to any practices or actions prohibited by  
11 sections 378-2, 378-2.3, 378-2.5, or 378-2.7;

12 (4) Affect the operation of the terms or conditions of any  
13 bona fide retirement, pension, employee benefit, or  
14 insurance plan that is not intended to evade the  
15 purpose of this chapter; provided that this exception  
16 shall not be construed to permit any employee plan to  
17 set a maximum age requirement for hiring or a  
18 mandatory retirement age;

19 (5) Prohibit or prevent any religious or denominational  
20 institution or organization, or any organization  
21 operated for charitable or educational purposes, that



1 is operated, supervised, or controlled by or in  
2 connection with a religious organization, from giving  
3 preference to individuals of the same religion or  
4 denomination or from making a selection calculated to  
5 promote the religious principles for which the  
6 organization is established or maintained;

7 (6) Conflict with or affect the application of security  
8 regulations or rules in employment established by the  
9 United States or the State;

10 (7) Require the employer to execute unreasonable  
11 structural changes or expensive equipment alterations  
12 to accommodate the employment of a person with a  
13 disability;

14 (8) Prohibit or prevent the department of education or  
15 private schools from considering criminal convictions  
16 in determining whether a prospective employee is  
17 suited to working in close proximity to children;

18 (9) Prohibit or prevent any financial institution in which  
19 deposits are insured by a federal agency having  
20 jurisdiction over the financial institution from  
21 denying employment to or discharging from employment



1 any person who has been convicted of any criminal  
2 offense involving dishonesty or a breach of trust,  
3 unless it has the prior written consent of the federal  
4 agency having jurisdiction over the financial  
5 institution to hire or retain the person;

6 (10) Preclude any employee from bringing a civil action for  
7 sexual harassment or sexual assault and infliction of  
8 emotional distress or invasion of privacy related  
9 thereto; provided that notwithstanding section 368-12,  
10 the commission shall issue a right to sue on a  
11 complaint filed with the commission if it determines  
12 that a civil action alleging similar facts has been  
13 filed in circuit court; or

14 (11) Require the employer to accommodate the needs of a  
15 nondisabled person associated with or related to a  
16 person with a disability in any way not required by  
17 title I of the Americans with Disabilities Act."

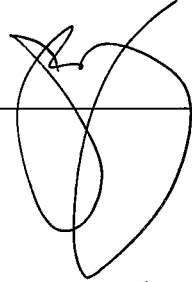
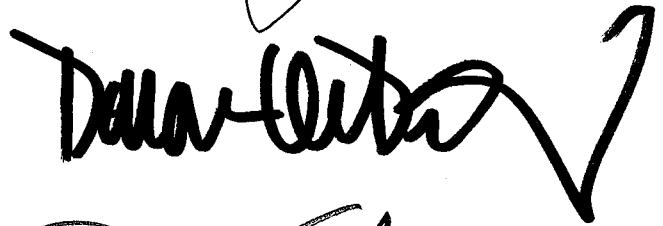
18 SECTION 3. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.



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

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INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.A large, bold handwritten signature in black ink, appearing to read "Dana-Lita" with a large checkmark-like flourish at the end.A handwritten signature in black ink, appearing to read "D. K." with a horizontal line extending to the right.A handwritten signature in black ink, appearing to read "Mike Gibson" in a cursive style.

# S.B. NO. 1528

**Report Title:**

Employment Practices; Discriminatory Practices

**Description:**

Clarifies that Hawaii's anti-discrimination law does not prohibit or prevent an employer, employment agency, or labor organization from refusing to hire or refer or from discharging an individual for reasons unrelated to unlawful discriminatory practices.

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

