

ACT 109

H.B. NO. 499

A Bill for an Act Relating to Discrimination Due to Marital Status.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read:

**“CHAPTER
FAIR CREDIT EXTENSION ACT”**

Sec. -1 Short title. This part may be cited as the Hawaii Fair Credit Extension Act of 1975.

Sec. -2 Definitions. As used in this part:

- (1) “Applicant” means any person who initially applies to a creditor directly for a loan or credit, or who directly applies to a creditor for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit;
- (2) “Credit” means the loan of money, or the right granted by a creditor to a debtor to defer payment of debt, or to incur debts and defer payment therefor, or to purchase property or services and defer payment therefor;
- (3) “Creditor” means any bank; savings and loan association; trust company; industrial loan company or small loan company; credit union; mortgage banker, broker, or solicitor; pawn broker; mutual or fraternal benefit society; debt adjuster; the issuer of a credit card as defined in section 751-1; any person who initiates, extends, renews, or continues loans of money or credit; any person who regularly arranges for the initiation, extension, renewal, or continuation of a loan of money or credit; or any assignee of an original creditor who participates in the decision to grant, extend, renew, or to continue such loan or credit;
- (4) “Person” means a natural person, a corporation, government or governmental subdivision or agency, a trust, estate, partnership, cooperative, or association.

Sec. -3 Prohibited credit discrimination. (a) It shall be unlawful for any creditor to discriminate against any applicant on the basis of marital status with respect to any aspect of a credit transaction.

(b) An inquiry of marital status shall not constitute discrimination for the purposes of this part if such inquiry is for the purpose of ascertaining the creditor’s rights and remedies applicable to the particular extension of credit, and not to discriminate in a determination of credit worthiness.

(c) A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to, or assigning the earnings and profits, in any transaction involving real property shall not be construed to be discrimination under this part; provided that this provision shall not be construed to permit a creditor to take marital status into account in connection with the evaluation of credit worthiness of any applicant.

(d) Consideration or application of the real property laws directly or indirectly affecting credit worthiness shall not constitute discrimination for any purpose of this part.

(e) Whenever either party to a marriage contracts separately for credit or a loan, the contracting party shall be solely responsible for the debt so contracted.

(f) Whenever each party to a marriage separately and voluntarily applies

for, and obtains, separate credit accounts or loans with the same creditor, those accounts or loans shall not be aggregated, or otherwise combined, for purposes of determining permissible finance charges, or permissible loan ceilings.

Sec. -4 Civil remedies. (a) Any creditor who fails to comply with any requirement imposed under this chapter shall be liable to the aggrieved applicant in an amount equal to the sum of any actual damages sustained by such applicant.

(b) Any creditor who fails to comply with any requirement imposed under this chapter shall be liable to the aggrieved applicant for punitive damages in an amount not greater than \$10,000, as determined by the court, in addition to any actual damages provided in subsection (a); provided that in pursuing the recovery allowed under this subsection, the applicant may proceed only in an individual capacity and not as a representative of a class.

(c) Whenever a creditor fails to comply with any requirement imposed under this chapter, an aggrieved applicant may institute a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other action.

(d) In any successful action to enforce the foregoing liability or preventive action, the costs of the action, together with a reasonable attorney's fee, as determined by the court, shall be added to any damages awarded by the court under subsections (a), (b), and (c) of this section.

(e) Any action under this chapter shall be brought within one year from the last date of the occurrence of any violation, or within one year from the date on which the applicant learned, or should have learned, of the violation.

Sec. -5 Penalties. Any creditor who violates any provision of this chapter shall be fined by a sum not less than \$500 nor more than \$2,500 for each violation, which sum shall be collected in a civil action brought by the director of the office of consumer protection.

Sec. -6 Inconsistency with federal laws. No creditor shall be required to comply with any provisions of this chapter that are directly inconsistent with federal laws relating to discrimination in the advancement of credit. A provision of this chapter is not directly inconsistent with federal laws if it provides greater protection to an applicant."

SECTION 2. Section 76-44, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 76-44 Racial, sex, age, religious, color, ancestry, marital status, or political consideration barred. No person holding any position in the civil service shall be suspended, demoted, or dismissed from his position on racial, sex, age, religious, color, ancestry, marital status, or political grounds."

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

"Marital status" means the state of being married or being single."

SECTION 4. Section 378-2, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 378-2 Discriminatory practices made unlawful; offenses defined.

It shall be unlawful employment practice or unlawful discrimination:

- (1) For an employer to refuse to hire or employ or to bar or discharge from employment any individual because of his race, sex, age, religion, color, ancestry, marital status, or arrest and court record which does not have a substantial relationship to the functions and responsibilities of the prospective or continued employment, provided that an employer may refuse to hire an individual for good cause relating to the ability of the individual to perform the work in question;
- (2) For an employer to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment because of race, sex, age, religion, color, ancestry, marital status, or arrest and court record;
- (3) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, sex, age, religion, color, ancestry, marital status, or arrest and court record unless based on a bona fide occupational qualification;
- (4) For any labor organization to exclude or expel from its membership any person or to discriminate in any way against any of its members, employer, or employees because of race, sex, age, religion, color, ancestry, marital status, or arrest and court record;
- (5) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any person because he has opposed any practice forbidden by this part or because he has filed a complaint, testified, or assisted in any proceeding respecting the employment practices and discrimination prohibited under this part;
- (6) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the practices forbidden by this part, or to attempt to do so;
- (7) For any employer or labor organization to refuse to enter into an apprenticeship agreement, as defined in section 372-2, because of the race, sex, age, religion, color, marital status, or ancestry of an apprentice; provided that no apprentice shall be less than sixteen years of age.”

SECTION 5. Section 515-3, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 515-3 Discriminatory practices. It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesman, because of race, sex, color, religion, marital status, or ancestry:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

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- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his attention, or to refuse to permit him to inspect real property;
- (6) To print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto; or
- (7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith."

SECTION 6. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

SECTION 7. This Act shall take effect upon its approval.

(Approved May 17, 1975.)

*Edited accordingly.