

ACT 275

H.B. NO. 2131

A Bill for an Act Relating to Employment Practices.

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

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

“§378-3 Exceptions. Nothing in this part shall be deemed to:

- (1) Repeal or affect any law [or], ordinance, or government rule having the force and effect of law;
- (2) Prohibit or prevent the establishment and maintenance of bona fide occupational qualifications reasonably necessary to the normal operation of a particular business or enterprise, and [which] that have a substantial relationship to the functions and responsibilities of the prospective or continued employment;
- (3) Prohibit or prevent an employer, employment agency, or [a] labor organization from refusing to hire or refer or from discharging any individual for reasons relating to the ability of the individual to perform the work in question;
- (4) Affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan, [which] that is not intended to evade the purpose of this chapter; provided that:
 - (A) This this exception shall not be construed to permit any employee plan to set a maximum age requirement for hiring or a mandatory retirement age; [and
 - (B) Any existing bona fide retirement, pension, employee benefit, or insurance plan or existing bargaining agreement shall be exempt from this paragraph for two years after April 30, 1984, or until the termination of the plan or agreement, whichever occurs first;]
- (5) Prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, [which] that is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to individuals of the same religion or denomination or from making [such] a selection [as is] calculated by the organization to promote the religious principles for which it is established or maintained;
- (6) Conflict with or affect the application of security regulations in employment established by the United States or the State;
- (7) Require the employer to execute unreasonable structural changes or expensive equipment alterations to accommodate the employment of a handicapped person;
- (8) Prohibit or prevent the department of education or private schools from considering criminal convictions in determining whether a prospective employee is suited to working in close proximity to children; [or]
- (9) Prohibit or prevent any financial institution in which deposits are insured by a federal agency having jurisdiction over the financial institution from denying employment to or discharging from employment any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, unless it has the prior written consent of the federal agency having jurisdiction over the financial institution to hire or retain the person[.]; or
- (10) Preclude any employee from bringing a civil action for sexual harassment or sexual assault and infliction of emotional distress or invasion of privacy related thereto; provided that notwithstanding section 368-12, the commission shall issue a right to sue on a complaint filed with the commission if it determines that a civil action alleging similar facts has been filed in circuit court.”

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SECTION 2. Section 386-5, Hawaii Revised Statutes, is amended to read as follows:

“§386-5 Exclusiveness of right to compensation[.]; exception. The rights and remedies herein granted to an employee or the employee’s dependents on account of a work injury suffered by the employee shall exclude all other liability of the employer to the employee, the employee’s legal representative, spouse, dependents, next of kin, or anyone else entitled to recover damages from the employer, at common law or otherwise, on account of the injury[.], except for sexual harassment or sexual assault and infliction of emotional distress or invasion of privacy related thereto, in which case a civil action may also be brought.”

SECTION 3. Section 386-8.5, Hawaii Revised Statutes, is amended to read as follows:

“§386-8.5 Limits of third party liability. (a) Section 386-8 and any other law to the contrary notwithstanding, when a work injury for which compensation is payable under this chapter has been sustained, the discussion or furnishing of, or failure to discuss or furnish, or failure to enforce any safety [or], health, or personal conduct provision to protect employees against work injuries, in any collective bargaining agreement or in negotiations thereon, shall not subject a labor organization representing the injured employee to any civil liability for the injury.

As used in this section, the terms:

- (1) “Labor organization” means any organization which exists and is constituted for the purposes, in whole or in part, of collective bargaining or dealing with employers, concerning grievances, terms, or conditions of employment, or of other mutual aid or protection and includes both private industry and public employment labor organizations.
- (2) “Safety [or health] provision” includes, but is not limited to, safety [or health] inspections and advisory services[.]; “health provision” includes, but is not limited to, health inspections and advisory services; “personal conduct provision” includes, but is not limited to, contractual language covering sexual harassment or assault and related infliction of emotional distress or invasion of privacy.

(b) No construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project shall be liable for any injury on the construction project resulting from the employer’s failure to comply with safety standards on the construction project for which compensation is recoverable under this chapter unless the responsibility for the compliance of safety practices is specifically assumed by contract or by other conduct of the construction design professional or any employee of the construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project. The limitation of liability provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 19, 1992.)