

ACT 88

S.B. NO. 2630

A Bill for an Act Relating to Civil Rights.

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

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

“§378-2 Discriminatory practices made unlawful; offenses defined. It shall be an unlawful discriminatory practice:

- (1) Because of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record:
 - (A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;
 - (B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;

- (C) 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;
- (D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or
- (E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be less than sixteen years of age;
- (2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;
- (3) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;
- (4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard; [or]
- (5) For any employer to refuse to hire or employ or to bar or discharge from employment, any individual because of assignment of income for the purpose of satisfying the individual's child support obligations as provided for under section 571-52[.]; or
- (6) For any employer, labor organization, or employment agency to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association."

SECTION 2. 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, 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 that have a substantial relationship to the functions and responsibilities of prospective or continued employment;
- (3) Prohibit or prevent an employer, employment agency, or labor organization from refusing to hire, refer, or discharge 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 that is not intended to evade the purpose of this chapter; provided that this exception shall not be construed to permit any employee plan to set a maximum age requirement for hiring or a mandatory retirement age;

- (5) Prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, 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 a selection calculated to promote the religious principles for which the organization is established or maintained;
- (6) Conflict with or affect the application of security regulations or rules 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 person with a disability;
- (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;
- (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[.]; or
- (11) Require the employer to accommodate the needs of a nondisabled person associated with or related to a person with a disability in any way not required by Title I of the Americans with Disabilities Act."

SECTION 3. Section 489-5, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~489-5] **Other discriminatory practices.** (a) It is a discriminatory practice for two or more persons to conspire:

- (1) To retaliate or discriminate against a person because the person has opposed an unfair discriminatory practice;
- (2) To aid, abet, incite, or coerce a person to engage in a discriminatory practice; or
- (3) Wilfully, to obstruct, or prevent, a person from complying with this chapter.

(b) It is a discriminatory practice to deny a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodations because of the known disability of an individual with whom the person is known to have a relationship or association."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 7, 1994.)