HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

VETO

H.B. NO. 31 S.D. 1 C.D. 1

A BILL FOR AN ACT

VETO OVERRIDE

Act No. 1
Approved: [illegible]
Dated: July 15, 2009

RELATING TO EMPLOYMENT PRACTICES.

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

SECTION 1. Chapter 378, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§378- Employer inquiries into and consideration of credit history or credit report.** (a) Notwithstanding section 378-2(8):

(1) Inquiry into and consideration of a prospective employee's credit history or credit report may take place only after the prospective employee has received a conditional offer of employment, which may be withdrawn if information in the credit history or credit report is directly related to a bona fide occupational qualification;

(2) The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to employers who are expressly permitted or required to inquire into an individual's

1 credit history for employment purposes pursuant to any
2 federal or state law;
3 (3) The prohibition against an employer's refusal to hire
4 or employ, barring or terminating from employment, or
5 otherwise discriminating on the basis of credit
6 history shall not apply to managerial or supervisory
7 employees; and
8 (4) The prohibition against an employer's refusal to hire
9 or employ, barring or terminating from employment, or
10 otherwise discriminating on the basis of credit
11 history shall not apply to employers that are
12 financial institutions in which deposits are insured
13 by a federal agency having jurisdiction over the
14 financial institution.
15 (b) For the purposes of this section:
16 "Managerial employee" means an individual who formulates
17 and effectuates management policies by expressing and making
18 operative the decisions of the individual's employer.
19 "Supervisory employee" means an individual having
20 authority, in the interest of the employer, to hire, transfer,
21 suspend, lay off, recall, promote, discharge, assign, reward, or
22 discipline other employees, or responsibility to direct them, or

1 to adjust their grievances, or effectively to recommend such
2 action, if in connection with the foregoing the exercise of such
3 authority is not of a merely routine or clerical nature, but
4 requires the use of independent judgment."
5 SECTION 2. Section 378-2, Hawaii Revised Statutes, is
6 amended to read as follows:
7 "§378-2 **Discriminatory practices made unlawful; offenses**
8 **defined.** It shall be an unlawful discriminatory practice:
9 (1) Because of race, sex, sexual orientation, age,
10 religion, color, ancestry, disability, marital status,
11 or arrest and court record:
12 (A) For any employer to refuse to hire or employ or
13 to bar or discharge from employment, or otherwise
14 to discriminate against any individual in
15 compensation or in the terms, conditions, or
16 privileges of employment;
17 (B) For any employment agency to fail or refuse to
18 refer for employment, or to classify or otherwise
19 to discriminate against, any individual;
20 (C) For any employer or employment agency to print,
21 circulate, or cause to be printed or circulated
22 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 younger 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;

(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;

(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; [~~or~~]

(7) For any employer or labor organization to refuse to hire or employ[~~,~~] or to bar or discharge from employment, or withhold pay, demote, or penalize a lactating employee because an employee breastfeeds or

expresses milk at the workplace. For purposes of this paragraph, the term "breastfeeds" means the feeding of a child directly from the breast[~~.~~]; or

(8) 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 of any individual because of the individual's credit history or credit report, unless the information in the individual's credit history or credit report directly relates to a bona fide occupational qualification under section 378-3(2)."

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

SECTION 4. This Act shall take effect on July 1, 2009.