



GOV. MSG. NO. 813

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 14, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB31 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB31 SD1 CD1

A BILL FOR AN ACT
RELATING TO EMPLOYMENT PRACTICES.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 14, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 31

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 31, entitled "A Bill for an Act Relating to Employment Practices."

The purpose of this bill is to establish an employer's use of an individual's credit history as an unlawful discriminatory employment practice, subject to certain exceptions.

This bill is objectionable because it places another restriction on employers that could impact their ability to protect the safety and financial security of their workplaces. If enacted, this bill would restrict an employer's ability to verify statements made in a job interview or on a resume which can be indicative of that individual's honesty and trustworthiness. It would also restrict an employer's ability to periodically check on the current credit history of their workforce.

Congress recognized the sensitive nature of information contained in credit histories and, as a result, passed the Fair Credit Reporting Act which governs an employer's use of such information. It is unclear why the Legislature felt the need to pass additional legislation when federal law already places restrictions on employers and provides appropriate

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HOUSE BILL NO. 31
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protections for employees.

It is not appropriate to place restrictions on employers who are working hard to create environments that are safe for themselves, their employees, and the public. Police departments have noted that credit reports help them conduct thorough background screenings to ensure they have a comprehensive portrait of an individual's readiness for employment in a position of public trust. In addition, insurance agencies, retailers, hotels, non-profit organizations, churches, and many others have noted that their ability to conduct credit checks on employees is vital to protecting their day-to-day operations. For example, hotel workers have access to many things of value including a hotel guest's jewelry, clothing, credit card numbers, and cash. Hotels go to great lengths to ensure their employees meet the highest standards and can be trusted with a customer's personal effects.

It makes sense for private, public, and non-profit employers to use credit histories to ensure their employees are worthy of being placed in a position that impacts the satisfaction and trust of their clients and the financial well-being of their operations.

For the foregoing reasons, I am returning House Bill No. 31 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

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

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

4 "§378- Employer inquiries into and consideration of
5 credit history or credit report. (a) Notwithstanding section
6 378-2(8):

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

14 (2) The prohibition against an employer's refusal to hire
15 or employ, barring or terminating from employment, or
16 otherwise discriminating on the basis of credit
17 history shall not apply to employers who are expressly
18 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



1 to use any form of application for employment or
2 to make any inquiry in connection with
3 prospective employment, which expresses, directly
4 or indirectly, any limitation, specification, or
5 discrimination;

6 (D) For any labor organization to exclude or expel
7 from its membership any individual or to
8 discriminate in any way against any of its
9 members, employer, or employees; or

10 (E) For any employer or labor organization to refuse
11 to enter into an apprenticeship agreement as
12 defined in section 372-2; provided that no
13 apprentice shall be younger than sixteen years of
14 age;

15 (2) For any employer, labor organization, or employment
16 agency to discharge, expel, or otherwise discriminate
17 against any individual because the individual has
18 opposed any practice forbidden by this part or has
19 filed a complaint, testified, or assisted in any
20 proceeding respecting the discriminatory practices
21 prohibited under this part;



- 1 (3) For any person whether an employer, employee, or not,
2 to aid, abet, incite, compel, or coerce the doing of
3 any of the discriminatory practices forbidden by this
4 part, or to attempt to do so;
- 5 (4) For any employer to violate the provisions of section
6 121-43 relating to nonforfeiture for absence by
7 members of the national guard;
- 8 (5) For any employer to refuse to hire or employ or to bar
9 or discharge from employment, any individual because
10 of assignment of income for the purpose of satisfying
11 the individual's child support obligations as provided
12 for under section 571-52;
- 13 (6) For any employer, labor organization, or employment
14 agency to exclude or otherwise deny equal jobs or
15 benefits to a qualified individual because of the
16 known disability of an individual with whom the
17 qualified individual is known to have a relationship
18 or association; [~~or~~]
- 19 (7) For any employer or labor organization to refuse to
20 hire or employ[~~r~~] or to bar or discharge from
21 employment, or withhold pay, demote, or penalize a
22 lactating employee because an employee breastfeeds or



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

4 (8) For any employer to refuse to hire or employ or to bar
5 or discharge from employment, or otherwise to
6 discriminate against any individual in compensation or
7 in the terms, conditions, or privileges of employment
8 of any individual because of the individual's credit
9 history or credit report, unless the information in
10 the individual's credit history or credit report
11 directly relates to a bona fide occupational
12 qualification under section 378-3(2)."

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

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

