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# 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11 withdrawn if information in the credit history or  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.



**Report Title:**

Employment; Credit History Prohibited

**Description:**

Establishes employer's use of individual's credit history in hiring and termination decisions as an unlawful discriminatory practice; provided that the individual's credit information directly relates to a bona fide occupational qualification and that employers expressly permitted to inquire into credit history for employment purposes pursuant to any federal or state law, managerial and supervisory employees, and certain financial institutions are exempt. Takes effect July 1, 2009. (HB31 CD1)

