

JAN 17 2020

A BILL FOR AN ACT

RELATING TO EMPLOYMENT DISCRIMINATION.

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

1 SECTION 1. The legislature finds that meaningful
2 opportunities for gainful and legitimate employment are
3 necessary for people with criminal records to achieve economic
4 stability for themselves and their families. The legislature
5 also finds that legitimate employment is significantly
6 correlated with lower recidivism rates for individuals with past
7 convictions, and ensuring more meaningful employment
8 opportunities for people with criminal records may therefore be
9 key to reducing crime and improving public safety in the long-
10 term.

11 Unfortunately, a job applicant's criminal record, including
12 their conviction history, can itself serve as a barrier to
13 employment opportunities, as employers may have express or
14 unconscious biases against hiring or retaining those with a
15 record, even where those records are extremely old, for
16 relatively minor crimes, or unrelated to specific employment
17 opportunities. Recognizing this, the Hawaii legislature was at



1 the forefront of a national movement to pass "ban the box"
2 legislation, which was intended to address the employment
3 hurdles that people with criminal records face. Hawaii's
4 current "ban the box" law generally prohibits the use of arrest
5 and court records as a basis for employment discrimination,
6 subject to exceptions for certain occupations, and for the use
7 of conviction records up to ten years old, if those records have
8 a "rational relationship" to the duties and responsibilities of
9 the position in question.

10 Unfortunately, Hawaii's current "ban the box" law, and
11 specifically its ten-year conviction record "lookback"
12 exception, may continue to facilitate employment discrimination
13 against individuals who have a criminal history, but who have
14 long since paid their debt to society, and who pose little to no
15 risk to an employer or the public. For example, employers may
16 use conviction information they acquire in a ten-year background
17 check explicitly allowed under the law to ostensibly justify
18 discrimination against those with a conviction record,
19 regardless of the age of their conviction or relevance to the
20 job at hand. Even employers and human resource professionals
21 with good intentions may be affected by unconscious biases and



1 make adverse decisions against wholly qualified employees and
2 prospective employees who have a ten-year-old record.
3 Compounding this problem, background checks are often
4 inaccurate, and can still show arrest and expunged records in
5 conflict with what is currently allowed to be used under the
6 existing statute; accordingly, even those who have not been
7 convicted of a crime or who have had their records expunged may
8 continue to face employment challenges as a result of the
9 currently allowed ten-year "lookback" period.

10 The legislature finds that the currently allowed ten-year
11 lookback period for conviction records should be shortened to
12 reduce unnecessary employment discrimination against those with
13 old and relatively minor conviction records, in furtherance of
14 their economic self-sufficiency, and to reduce crime and
15 recidivism rates.

16 The purpose of this Act is to limit the convictions that
17 may be used in employment decisions from all convictions in the
18 most recent ten years to felony convictions that occurred in the
19 most recent five years and misdemeanor convictions that occurred
20 in the most recent three years. This Act is not intended to
21 amend or affect existing exceptions that explicitly allow the



1 use of criminal history-related records for certain occupations
2 (such as department of education employees) and specific
3 circumstances (such as sex offender registration).

4 SECTION 2. Section 378-2.5, Hawaii Revised Statutes, is
5 amended by amending subsections (c) and (d) to read as follows:

6 "(c) For purposes of this section, "conviction" means an
7 adjudication by a court of competent jurisdiction that the
8 defendant committed a crime, not including final judgments
9 required to be confidential pursuant to section 571-84; provided
10 that the employer may consider the employee's conviction record
11 falling within a period that shall not exceed the most recent
12 [~~ten years~~,] five years for felony convictions and three years
13 for misdemeanor convictions, excluding periods of incarceration.
14 If the employee or prospective employee claims that the period
15 of incarceration was less than what is shown on the employee's
16 or prospective employee's conviction record, an employer shall
17 provide the employee or prospective employee with an opportunity
18 to present documentary evidence of a date of release to
19 establish a period of incarceration that is shorter than the
20 sentence imposed for the employee's or prospective employee's
21 conviction.



1 (d) Notwithstanding subsections (b) and (c), the
2 requirement that inquiry into and consideration of a prospective
3 employee's conviction record may take place only after the
4 individual has received a conditional job offer, and the
5 limitation to the most recent [~~ten-year period,~~] five-year
6 period for felony convictions and three-year period for
7 misdemeanor convictions, excluding the period of incarceration,
8 shall not apply to employers who are expressly permitted to
9 inquire into an individual's criminal history for employment
10 purposes pursuant to any federal or state law other than
11 subsection (a), including:

- 12 (1) The State or any of its branches, political
13 subdivisions, or agencies pursuant to sections 78-2.7
14 and 831-3.1;
- 15 (2) The department of education pursuant to section
16 302A-601.5;
- 17 (3) The department of health with respect to employees,
18 providers, or subcontractors in positions that place
19 them in direct contact with clients when providing
20 non-witnessed direct mental health services pursuant
21 to section 321-171.5;



- 1 (4) The judiciary pursuant to section 571-34;
- 2 (5) The counties pursuant to section 846-2.7(b)(5), (33),
- 3 (34), (35), (36), and (38);
- 4 (6) Armed security services pursuant to section 261-17(b);
- 5 (7) Providers of a developmental disabilities domiciliary
- 6 home pursuant to section 321-15.2;
- 7 (8) Private schools pursuant to sections 302C-1 and
- 8 378-3(8);
- 9 (9) Financial institutions in which deposits are insured
- 10 by a federal agency having jurisdiction over the
- 11 financial institution pursuant to section 378-3(9);
- 12 (10) Detective agencies and security guard agencies
- 13 pursuant to sections 463-6(b) and 463-8(b);
- 14 (11) Employers in the business of insurance pursuant to
- 15 section 431:2-201.3;
- 16 (12) Employers of individuals or supervisors of individuals
- 17 responsible for screening passengers or property under
- 18 title 49 United States Code section 44901 or
- 19 individuals with unescorted access to an aircraft of
- 20 an air carrier or foreign carrier or in a secured area



1 of an airport in the United States pursuant to title
2 49 United States Code section 44936(a);

3 (13) The department of human services pursuant to sections
4 346-97 and 352-5.5;

5 (14) The public library system pursuant to section
6 302A-601.5;

7 (15) The department of public safety pursuant to section
8 353C-5;

9 (16) The board of directors of a cooperative housing
10 corporation or the manager of a cooperative housing
11 project pursuant to section 421I-12;

12 (17) The board of directors of an association under chapter
13 514B, or the managing agent or resident manager of a
14 condominium pursuant to section 514B-133; and

15 (18) The department of health pursuant to section
16 321-15.2."

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



1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: *M. J. ...*
By Request



S.B. NO. 2193

Report Title:

Office of Hawaiian Affairs Package; Employment Discrimination;
Criminal History

Description:

Limits the convictions that may be used in employment decisions from all convictions in the most recent ten years to felony convictions that occurred in the most recent five years and misdemeanor convictions that occurred in the most recent three years.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

