
A BILL FOR AN ACT

RELATING TO DISCRIMINATION.

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

1 SECTION 1. The legislature finds that every individual
2 should have an equal opportunity to participate fully in the
3 economic, cultural, and intellectual life of the State. The
4 legislature also finds that every individual should have an
5 equal opportunity to participate in all aspects of life,
6 including, but not limited to, in employment, places of
7 accommodation, resort or amusement, in educational institutions,
8 in public services, and in housing and commercial space
9 accommodations.

10 Presently, Federal law does not provide protection based on
11 political affiliation. However, other states, cities, and
12 counties do. The District of Columbia Human Rights Act prohibits
13 discrimination based on political affiliation by public and
14 private employers, housing, educational institutions, public
15 accommodations, and when applying for government services,
16 facilities, and benefits.



1 The purpose of this Act is to prohibit unfair
2 discriminatory practices.

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

5 "PART I. [OLD] DISCRIMINATORY PRACTICES

6

7 §§378-1 to 378-10 REPEALED. L 1977, c 85, §2; L 1981, c
8 94, §2.

9

10 PART I. DISCRIMINATORY PRACTICES

11

12 §378-1 Definitions. As used herein:

13 "Arrest and court record" includes any information about an
14 individual having been questioned, apprehended, taken into
15 custody or detention, held for investigation, charged with an
16 offense, served a summons, arrested with or without a warrant,
17 tried, or convicted pursuant to any law enforcement or military
18 authority.

19 "Because of sex" shall include, but is not limited to,
20 because of pregnancy, childbirth, or related medical conditions;
21 and women affected by pregnancy, childbirth, or related medical



1 conditions shall be treated the same for all employment-related
2 purposes, including receipt of benefits under fringe benefit
3 programs, as other individuals not so affected but similar in
4 their ability or inability to work.

5 "Being regarded as having such an impairment" includes but
6 is not limited to employer consideration of an individual's
7 genetic information, including genetic information of any family
8 member of an individual, or the individual's refusal to submit
9 to a genetic test as a condition of initial or continued
10 employment.

11 "Commission" means the civil rights commission.

12 "Disability" means the state of having a physical or mental
13 impairment which substantially limits one or more major life
14 activities, having a record of such an impairment, or being
15 regarded as having such an impairment.

16 "Domestic or sexual violence victim" or "victim" means an
17 individual who is the victim of domestic or sexual violence as
18 defined in section 378-71.

19 "Employer" means any person, including the State or any of
20 its political subdivisions and any agent of such person, having
21 one or more employees, but shall not include the United States.



1 "Employment" means any service performed by an individual
2 for another person under any contract of hire, express or
3 implied, oral or written, whether lawfully or unlawfully entered
4 into. Employment does not include services by an individual
5 employed as a domestic in the home of any person, except as
6 provided in section 378-2(a)(9).

7 "Employment agency" means any person engaged in the
8 business of providing employment information, procuring
9 employment for applicants, or providing employees for placement
10 with employers upon request.

11 "Family member" means, with respect to a certain
12 individual, another individual related by blood to that
13 individual.

14 "Gender identity or expression" includes a person's actual
15 or perceived gender, as well as a person's gender identity,
16 gender-related self-image, gender-related appearance, or gender-
17 related expression, regardless of whether that gender identity,
18 gender-related self-image, gender-related appearance, or gender-
19 related expression is different from that traditionally
20 associated with the person's sex at birth.



1 "Genetic information" means information about genes, gene
2 products, hereditary susceptibility to disease, or inherited
3 characteristics that may derive from the individual or family
4 member.

5 "Genetic test" means a laboratory test which is generally
6 accepted in the scientific and medical communities for the
7 determination of the presence or absence of genetic information.

8 "Labor organization" means any organization which exists
9 and is constituted for the purpose, in whole or in part, of
10 collective bargaining or of dealing with employers concerning
11 grievances, terms or conditions of employment, or of other
12 mutual aid or protection.

13 "Marital status" means the state of being married or being
14 single.

15 "Person" means one or more individuals, and includes, but
16 is not limited to, partnerships, associations, or corporations,
17 legal representatives, trustees, trustees in bankruptcy,
18 receivers, or the State or any of its political subdivisions.

19 "Reproductive health decision" means the use or attempted
20 use of any legal drug, device, or medical service intended to



1 prevent or terminate a pregnancy, or the use or attempted use of
2 any assisted reproductive technology.

3 "Sexual orientation" means having a preference for
4 heterosexuality, homosexuality, or bisexuality, having a history
5 of any one or more of these preferences, or being identified
6 with any one or more of these preferences. "Sexual orientation"
7 shall not be construed to protect conduct otherwise proscribed
8 by law.

9 "Political Affiliation" means the state of belonging to or
10 endorsing a political party."

11 SECTION 3. Section 378-2, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 **"§378-2 Discriminatory practices made unlawful; offenses**
14 **defined.** (a) It shall be an unlawful discriminatory practice:

- 15 (1) Because of race, sex including gender identity or
16 expression, sexual orientation, age, religion, color,
17 ancestry, disability, marital status, arrest and court
18 record, reproductive health decision, [~~or~~] domestic or
19 sexual violence victim status if the domestic or
20 sexual violence victim provides notice to the victim's



1 employer of such status or the employer has actual
2 knowledge of such status, or political affiliation:

3 (A) For any employer to refuse to hire or employ or
4 to bar or discharge from employment, or otherwise
5 to discriminate against any individual in
6 compensation or in the terms, conditions, or
7 privileges of employment;

8 (B) For any employment agency to fail or refuse to
9 refer for employment, or to classify or otherwise
10 to discriminate against, any individual;

11 (C) For any employer or employment agency to print,
12 circulate, or cause to be printed or circulated
13 any statement, advertisement, or publication or
14 to use any form of application for employment or
15 to make any inquiry in connection with
16 prospective employment, that expresses, directly
17 or indirectly, any limitation, specification, or
18 discrimination;

19 (D) For any labor organization to exclude or expel
20 from its membership any individual or to



1 discriminate in any way against any of its
2 members, employer, or employees; or
3 (E) For any employer or labor organization to refuse
4 to enter into an apprenticeship agreement as
5 defined in section 372-2; provided that no
6 apprentice shall be younger than sixteen years of
7 age;

8 (2) For any employer, labor organization, or employment
9 agency to discharge, expel, or otherwise discriminate
10 against any individual because the individual has
11 opposed any practice forbidden by this part or has
12 filed a complaint, testified, or assisted in any
13 proceeding respecting the discriminatory practices
14 prohibited under this part;

15 (3) For any person, whether an employer, employee, or not,
16 to aid, abet, incite, compel, or coerce the doing of
17 any of the discriminatory practices forbidden by this
18 part, or to attempt to do so;

19 (4) For any employer to violate the provisions of section
20 121-43 relating to nonforfeiture for absence by
21 members of the national guard;



- 1 (5) For any employer to refuse to hire or employ or to bar
2 or discharge from employment any individual because of
3 assignment of income for the purpose of satisfying the
4 individual's child support obligations as provided for
5 under section 571-52;
- 6 (6) For any employer, labor organization, or employment
7 agency to exclude or otherwise deny equal jobs or
8 benefits to a qualified individual because of the
9 known disability of an individual with whom the
10 qualified individual is known to have a relationship
11 or association;
- 12 (7) For any employer or labor organization to refuse to
13 hire or employ, bar or discharge from employment,
14 withhold pay from, demote, or penalize a lactating
15 employee because the employee breastfeeds or expresses
16 milk at the workplace. For purposes of this
17 paragraph, the term "breastfeeds" means the feeding of
18 a child directly from the breast;
- 19 (8) For any employer to refuse to hire or employ, bar or
20 discharge from employment, or otherwise to
21 discriminate against any individual in compensation or



1 in the terms, conditions, or privileges of employment
2 of any individual because of the individual's credit
3 history or credit report, unless the information in
4 the individual's credit history or credit report
5 directly relates to a bona fide occupational
6 qualification under section 378-3(2); or

7 (9) For any employer to discriminate against any
8 individual employed as a domestic, in compensation or
9 in terms, conditions, or privileges of employment
10 because of the individual's race, sex including gender
11 identity or expression, sexual orientation, age,
12 religion, color, ancestry, disability, marital status,
13 [~~or~~] reproductive health decision, or political
14 affiliation. [-]

15 (b) For purposes of subsection (a)(1):

16 (1) An employer may verify that an employee is a victim of
17 domestic or sexual violence by requesting that the
18 employee provide:

19 (A) Certified or exemplified restraining orders,
20 injunctions against harassment, and documents
21 from criminal cases;



- 1 (B) Documentation from a victim services organization
2 or domestic or sexual violence program, agency,
3 or facility, including a shelter or safe house
4 for victims of domestic or sexual violence; or
5 (C) Documentation from a medical professional, mental
6 health care provider, attorney, advocate, social
7 worker, or member of the clergy from whom the
8 employee or the employee's minor child has sought
9 assistance in relation to the domestic or sexual
10 violence; and
11 (2) An employer may verify an employee's status as a
12 domestic or sexual violence victim not more than once
13 every six months following the date the employer:
14 (A) Was provided notice by the employee of the
15 employee's status as a domestic or sexual
16 violence victim;
17 (B) Has actual knowledge of the employee's status as
18 a domestic or sexual violence victim; or
19 (C) Received verification that the employee is a
20 domestic or sexual violence victim;



1 provided that where the employee provides verification
2 in the form of a protective order related to the
3 domestic or sexual violence with an expiration date,
4 the employer may not request any further form of
5 verification of the employee's status as a domestic or
6 sexual violence victim until the date of the
7 expiration or any extensions of the protective order,
8 whichever is later. "

9 SECTION 4. Section 489-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§489-3 Discriminatory practices prohibition.** Unfair
12 discriminatory practices that deny, or attempt to deny, a person
13 the full and equal enjoyment of the goods, services, facilities,
14 privileges, advantages, and accommodations of a place of public
15 accommodation on the basis of race; sex, including gender
16 identity or expression; sexual orientation; color; religion;
17 ancestry; ~~[or]~~ disability, including the use of a service
18 animal~~[r]~~; or political affiliation are prohibited. "

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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



H.B. NO. 852

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INTRODUCED BY:



JAN 25 2021



H.B. NO. 852

Report Title:

Relating to discrimination based on political affiliation

Description:

Prohibits discrimination by employers based on political affiliation. Prohibits unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation based on political affiliation.

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