
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 since employers may have express or
14 unconscious biases against hiring or retaining individuals with
15 a record, even if those records are extremely old, for
16 relatively minor crimes, or unrelated to specific employment
17 opportunities. Recognizing this, the legislature was at the



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

10 Unfortunately, Hawaii's current "ban the box" law,
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 pose little to no risk
15 to an employer or the public. For example, employers may use
16 conviction information they acquire in a ten-year background
17 check explicitly allowed under the law to ostensibly justify
18 discrimination against individuals 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 individuals who have not
7 been convicted of a crime or have had their records expunged may
8 continue to face employment challenges as a result of the ten-
9 year "lookback" period.

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

15 The purpose of this Act is to limit the convictions that
16 may be used in employment decisions, from all convictions in the
17 most recent ten years, to felony convictions that occurred in
18 the most recent seven years and misdemeanor convictions that
19 occurred in the most recent five years. This Act is not
20 intended to amend or affect existing exceptions that explicitly
21 allow the use of criminal history-related records for certain



1 occupations, such as department of education employees, and
2 specific circumstances, such as sex offender registration.

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

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



S.B. NO. 2193
H.D. 2

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 seven years and misdemeanor convictions that occurred in the most recent five years. (HD2)

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

SB2193 HD2 HMS 2020-2161

