#### HOUSE OF REPRESENTATIVES TWENTY-EIGHTH LEGISLATURE, 2015 STATE OF HAWAII

H.B. NO. 684

### A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

### 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- <u>Discrimination; adverse tangible employment</u>
5	action; prohibited. (a) It shall be an unlawful discriminatory
6	practice for a supervisor or employer to take adverse tangible
7	employment action against an employee because of the employee's
8	race, sex including gender identity or expression, sexual
9	orientation, age, religion, color, ancestry, disability, marital
10	status, arrest and court record, or domestic or sexual violence
11	victim status.
12	(b) An employer shall be liable for a supervisor's actions
13	that are in violation of this section; provided that the
14	employee proves by a preponderance of the evidence that:
15	(1) The employer authorized the supervisor to act as a
16	supervisor to the employee; and



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1	(2)	The supervisor subjected the employee to an adverse
2		tangible employment action.
3	(c)	It is an affirmative defense that:
4	(1)	The employer exercised reasonable care to prevent or
5		correct the supervisor's actions that violate this
6		section, including but not limited to the adoption and
7		implementation of an anti-harassment policy; and
8	(2)	The employee:
9		(A) Unreasonably failed to take advantage of the
10		employer's preventative or corrective
11		opportunities; or
12		(B) Unreasonably failed to avoid harm.
13	The	affirmative defense afforded by this subsection shall
14	not apply	when the employee has demonstrated by a preponderance
15	of eviden	ce that the employee has suffered an adverse tangible
16	employmen	t_action.
<b>17</b>	(d)	For purposes of this section:
18	<u>"</u> Adv	verse tangible employment action "includes, but is not
<u>19</u>	limited t	to the firing, failure to promote, assigning of
20	significa	ntly different responsibilities, and significantly
21	reducing	benefits of an employee.



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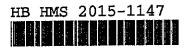
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1	"Supervisor" means a person who is employed and empowered
2	by the employer to take tangible employment actions with respect
3	to employees.
4	"Tangible employment action" includes, but is not limited
5	to the hiring, firing, promoting, assigning responsibilities,
6	and changing benefits of an employee."
7	SECTION 2. New statutory material is underscored.
8	SECTION 3. This Act does not affect rights and duties that
9	matured, penalties that were incurred, and proceedings that were
10	begun before its effective date.
11	SECTION 4. This Act shall take effect upon its approval.
12	

INTRODUCED BY:

Heleshinse

JAN 2 3 2015



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Report Title:

Employer Liability; Discriminatory Practices

#### Description:

Allows an employee who has suffered a tangible adverse employment action resulting from a supervisor's discriminatory actions to sue the employee's employer. Allows an employer to raise an affirmative defense.

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

