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# A BILL FOR AN ACT

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RELATING TO EMPLOYMENT.

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

1       SECTION 1. The legislature finds that the employment  
2 practices laws under sections 378-2, 378-2.3, 378-2.5, and  
3 378-2.7, Hawaii Revised Statutes, relate respectively to  
4 discriminatory practices, equal pay, criminal conviction  
5 records, and credit history. These sections were enacted to  
6 prohibit employment discrimination against individuals based  
7 upon protected categories, but were not intended to prevent  
8 employers from taking employment action for reasons unrelated to  
9 the categories protected by the legislature in those sections.

10       The purpose of this Act is to clarify that Hawaii's anti-  
11 discrimination law, as set forth in part I of chapter 378,  
12 Hawaii Revised Statutes, does not prohibit refusals to hire,  
13 refusals to refer, or discharges that are for reasons relating  
14 to the ability of the individual to perform the work in  
15 question; provided that employment policies are applied in a  
16 nondiscriminatory manner unrelated to discriminatory practices  
17 in section 378-2, equal pay in section 378-2.3, criminal



1 conviction records in section 378-2.5, and credit history in  
2 section 378-2.7, Hawaii Revised Statutes.

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

5 "§378-3 Exceptions. Nothing in this part shall be deemed  
6 to:

7 (1) Repeal or affect any law, ordinance, or government  
8 rule having the force and effect of law;

9 (2) Prohibit or prevent the establishment and maintenance  
10 of bona fide occupational qualifications reasonably  
11 necessary to the normal operation of a particular  
12 business or enterprise, and that have a substantial  
13 relationship to the functions and responsibilities of  
14 prospective or continued employment;

15 (3) Prohibit or prevent an employer, employment agency, or  
16 labor organization from refusing to hire~~[7]~~ or  
17 refer~~[7]~~ or ~~[discharge]~~ discharging any individual for  
18 reasons relating to the ability of the individual to  
19 perform the work in question; provided that an  
20 employment policy is applied in a nondiscriminatory



manner and unrelated to section 378-2, 378-2.3,  
378-2.5, or 378-2.7;

(4) Affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan that is not intended to evade the purpose of this chapter; provided that this exception shall not be construed to permit any employee plan to set a maximum age requirement for hiring or a mandatory retirement age;

(5) Prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to individuals of the same religion or denomination or from making a selection calculated to promote the religious principles for which the organization is established or maintained;

(6) Conflict with or affect the application of security regulations or rules in employment established by the United States or the State;



- 1       (7)   Require the employer to execute unreasonable  
2           structural changes or expensive equipment alterations  
3           to accommodate the employment of a person with a  
4           disability;
- 5       (8)   Prohibit or prevent the department of education or  
6           private schools from considering criminal convictions  
7           in determining whether a prospective employee is  
8           suited to working in close proximity to children;
- 9       (9)   Prohibit or prevent any financial institution in which  
10          deposits are insured by a federal agency having  
11          jurisdiction over the financial institution from  
12          denying employment to or discharging from employment  
13          any person who has been convicted of any criminal  
14          offense involving dishonesty or a breach of trust,  
15          unless it has the prior written consent of the federal  
16          agency having jurisdiction over the financial  
17          institution to hire or retain the person;
- 18      (10)   Preclude any employee from bringing a civil action for  
19           sexual harassment or sexual assault and infliction of  
20           emotional distress or invasion of privacy related  
21           thereto; provided that notwithstanding section 368-12,



1 the commission shall issue a right to sue on a  
2 complaint filed with the commission if it determines  
3 that a civil action alleging similar facts has been  
4 filed in circuit court; or

5 (11) Require the employer to accommodate the needs of a  
6 nondisabled person associated with or related to a  
7 person with a disability in any way not required by  
8 title I of the Americans with Disabilities Act."

9 SECTION 3. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 4. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on January 7, 2059.  
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**Report Title:**

Employment Practices; Discriminatory Practices

**Description:**

Clarifies that an employer may refuse to hire or refer, or discharge an individual for reasons relating to the ability of the individual to perform the work in question; provided that the employment policy is applied in a nondiscriminatory manner and unrelated to discriminatory practices, equal pay, criminal conviction records, or credit history. Effective January 7, 2059. (SD1)

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

