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# A BILL FOR AN ACT

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, unequal 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 of the  
12 Hawaii Revised Statutes, does not prohibit refusals to hire,  
13 refusals to refer, or discharges that are unrelated to  
14 discriminatory practices in section 378-2, unequal pay in  
15 378-2.3, criminal conviction records in 378-2.5, and credit  
16 history in 378-2.7, Hawaii Revised Statutes.



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

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

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

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

13 (3) Prohibit or prevent an employer, employment agency, or  
14 labor organization from refusing to hire~~[7]~~ or  
15 refer~~[7]~~ or [~~discharge~~] discharging any individual for  
16 reasons [~~relating to the ability of the individual to~~  
17 ~~perform the work in question;~~] unrelated to section  
18 378-2, 378-2.3, 378-2.5, or 378-2.7;

19 (4) Affect the operation of the terms or conditions of any  
20 bona fide retirement, pension, employee benefit, or  
21 insurance plan that is not intended to evade the



1           purpose of this chapter; provided that this exception  
2           shall not be construed to permit any employee plan to  
3           set a maximum age requirement for hiring or a  
4           mandatory retirement age;

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

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

17          (7) Require the employer to execute unreasonable  
18          structural changes or expensive equipment alterations  
19          to accommodate the employment of a person with a  
20          disability;



# H.B. NO. 809

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



# H.B. NO. 809

1           (11) Require the employer to accommodate the needs of a  
 2           nondisabled person associated with or related to a  
 3           person with a disability in any way not required by  
 4           title I of the Americans with Disabilities Act."

5           SECTION 3. This Act does not affect rights and duties that  
 6           matured, penalties that were incurred, and proceedings that were  
 7           begun before its effective date.

8           SECTION 4. Statutory material to be repealed is bracketed  
 9           and stricken. New statutory material is underscored.

10          SECTION 5. This Act shall take effect on January 1, 2018.

11

INTRODUCED BY:

*[Handwritten signatures: Tang, H. Kashner, D. H. H., and another signature]*

JAN 23 2017



# H.B. NO. 809

**Report Title:**

Employment Practices; Discriminatory Practices

**Description:**

Clarifies the grounds under which an employer may take employment action without committing a discriminatory practice. Takes effect on 1/1/2018.

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

