

JAN 24 2018

S.B. NO. 2993

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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 to discriminatory  
4 practices, unequal pay due to sex discrimination, criminal  
5 conviction records, and credit history, respectively. These  
6 sections were enacted to prohibit employment discrimination  
7 against individuals based upon protected categories, but were  
8 not intended to prevent employers from taking employment action  
9 for reasons unrelated to the categories protected by the  
10 legislature in those sections.

11       The purpose of this Act is to clarify that Hawaii's anti-  
12 discrimination law, as set forth in part I of chapter 378,  
13 Hawaii Revised Statutes, does not prohibit refusals to hire,  
14 refusals to refer, or discharges that are unrelated to  
15 discriminatory practices in section 378-2, unequal pay due to  
16 sex discrimination in section 378-2.3, criminal conviction



1 records in section 378-2.5, and credit history in section 378-  
2 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, refusing to  
17 refer, or [discharge] from discharging any individual  
18 for reasons ~~[relating to the ability of the individual~~  
19 ~~to perform the work in question;]~~ unrelated to  
20 sections 378-2, 378-2.3, 378-2.5, or 378-2.7;



- 1           (4) Affect the operation of the terms or conditions of any  
2           bona fide retirement, pension, employee benefit, or  
3           insurance plan that is not intended to evade the  
4           purpose of this chapter; provided that this exception  
5           shall not be construed to permit any employee plan to  
6           set a maximum age requirement for hiring or a  
7           mandatory retirement age;
- 8           (5) Prohibit or prevent any religious or denominational  
9           institution or organization, or any organization  
10          operated for charitable or educational purposes, that  
11          is operated, supervised, or controlled by or in  
12          connection with a religious organization, from giving  
13          preference to individuals of the same religion or  
14          denomination or from making a selection calculated to  
15          promote the religious principles for which the  
16          organization is established or maintained;
- 17          (6) Conflict with or affect the application of security  
18          regulations or rules in employment established by the  
19          United States or the State;
- 20          (7) Require the employer to execute unreasonable  
21          structural changes or expensive equipment alterations



1 to accommodate the employment of a person with a  
2 disability;

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



1           that a civil action alleging similar facts has been  
2           filed in circuit court; or

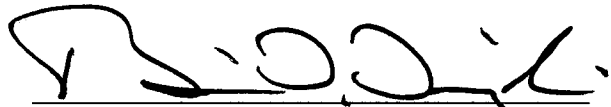

3       (11) Require the employer to accommodate the needs of a  
4           nondisabled person associated with or related to a  
5           person with a disability in any way not required by  
6           title I of the Americans with Disabilities Act."

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

10       SECTION 4. Statutory material to be repealed is bracketed  
11       and stricken. New statutory material is underscored.

12       SECTION 5. This Act shall take effect on July 1, 2018.

13  
INTRODUCED BY:

  
by request 



# S.B. NO. 2993

**Report Title:**

Employment Practices; Discriminatory Practices

**Description:**

Clarifies that Hawaii's anti-discrimination law does not prohibit or prevent an employer, employment agency, or labor organization from refusing to hire or refer or from discharging an individual for reasons unrelated to unlawful discriminatory practices.

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

