

JAN 23 2026

A BILL FOR AN ACT

RELATING TO DISCRIMINATION.

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

1 SECTION 1. The legislature finds that Hawaii prohibits
2 discrimination based on individual characteristics in
3 employment; housing; public accommodations; and access to
4 services that receive state financial assistance, including but
5 not limited to educational programs and activities.

6 The legislature recognizes that the discrimination faced by
7 an individual is often multifaceted and is not necessarily
8 founded on a single characteristic or basis. The legislature
9 further finds that discrimination can be based on the
10 intersectionality or a combination of multiple factors. Biases
11 and negative stereotypes motivated by two or more protected
12 traits may constitute intersectional discrimination.

13 In *Lam v. University of Hawaii*, 40 F.3d 1551 (9th Cir.
14 1994), the United States Ninth Circuit Court of Appeals held
15 that when a person claims multiple bases for discrimination or
16 harassment, it may be necessary to determine whether the
17 discrimination or harassment occurred on the basis of a



1 combination of those factors, not just on any one protected
2 characteristic by itself. In 2024, California recognized that
3 unlawful discriminatory practices may include "any combination"
4 of protected characteristics or traits--not just a single one.
5 Thus, this Act is to ensure that the protections established in
6 *Lam* and adopted in legal practice are codified into existing
7 law. This Act will conform law to practice.

8 Accordingly, the purpose of this Act is to prohibit
9 discrimination based on:

10 (1) The perception that a person possesses certain
11 characteristics;

12 (2) The perception that a person is associated with a
13 person who possesses, or is perceived to possess,
14 certain characteristics; or

15 (3) The intersection or combination of two or more
16 specified characteristics in relation to a person.

17 SECTION 2. Section 368-1, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§368-1 Purpose and intent.** (a) The legislature finds
20 and declares that the practice of discrimination because of
21 race, color, religion, age, sex, including gender identity or



1 expression, sexual orientation, marital status, national origin,
2 place of birth, ancestry, or disability in employment, housing,
3 public accommodations, or access to services receiving state
4 financial assistance is against public policy. ~~[It is the~~
5 ~~purpose of this chapter to provide a mechanism that provides for~~
6 ~~a uniform procedure for the enforcement of the State's~~
7 ~~discrimination laws. It is the legislature's intent to preserve~~
8 ~~all existing rights and remedies under such laws.]~~

9 (b) The legislature further finds and declares that the
10 practice of discrimination based on a perception that a person
11 possesses any particular characteristic or characteristics
12 listed in subsection (a) or that the person is associated with a
13 person who possesses, or is perceived to possess, any particular
14 characteristic or characteristics listed in subsection (a) is
15 against public policy.

16 (c) The legislature further finds and declares that the
17 practice of discrimination because of the intersection or
18 combination of any characteristics listed in subsection (a) is
19 against public policy.

20 (d) It is the purpose of this chapter to provide a
21 mechanism that provides for a uniform procedure for the



1 enforcement of the State's discrimination laws. It is the
2 legislature's intent to preserve all existing rights and
3 remedies under such laws."

4 SECTION 3. Section 368D-1, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§368D-1 Covered educational programs and activities;**
7 **discrimination prohibited.** (a) No person in the State, on the
8 basis of sex, including gender identity or expression as defined
9 in section 489-2, or sexual orientation as defined in section
10 489-2, shall be excluded from participation in, be denied the
11 benefits of, or be subjected to discrimination under any covered
12 educational program or activity.

13 (b) A perception that a person possesses any particular
14 characteristic or characteristics listed in section 368-1(a) or
15 that the person is associated with a person who possesses, or is
16 perceived to possess, any particular characteristic or
17 characteristics listed in section 368-1(a) shall not be cause
18 for exclusion from participation in, shall not be cause to be
19 denied the benefits of, and shall not be the subject of
20 discrimination by any covered educational program or activity.



1 The intersection or combination of any characteristics
2 listed in section 368-1(a) shall not be cause for exclusion from
3 participation in, shall not be cause to be denied the benefits
4 of, and shall not be the subject of discrimination by any
5 covered educational program or activity.

6 ~~[(b)]~~ (c) Nothing in this chapter shall preclude a person
7 who is aggrieved by a violation of this chapter from filing a
8 civil action in a court of competent jurisdiction.

9 ~~[(e)]~~ (d) A person, or an organization or association on
10 behalf of a person alleging a violation of this chapter may file
11 a complaint pursuant to this chapter.

12 ~~[(d)]~~ (e) A covered educational program or activity shall
13 be in compliance with this chapter during the school year when
14 state funds are received or expended."

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

17 **"§378-2 Discriminatory practices made unlawful; offenses**
18 **defined.** (a) It shall be an unlawful discriminatory practice:
19 (1) Because of race, sex including gender identity or
20 expression, sexual orientation, age, religion, color,
21 ancestry, disability, marital status, arrest and court



1 record, reproductive health decision, or domestic or
2 sexual violence victim status if the domestic or
3 sexual violence victim provides notice to the victim's
4 employer of such status or the employer has actual
5 knowledge of such status:

6 (A) For any employer to refuse to hire or employ or
7 to bar or discharge from employment, or otherwise
8 to discriminate against any individual in
9 compensation or in the terms, conditions, or
10 privileges of employment;

11 (B) For any employment agency to fail or refuse to
12 refer for employment, or to classify or otherwise
13 to discriminate against, any individual;

14 (C) For any employer or employment agency to print,
15 circulate, or cause to be printed or circulated
16 any statement, advertisement, or publication or
17 to use any form of application for employment or
18 to make any inquiry in connection with
19 prospective employment, that expresses, directly
20 or indirectly, any limitation, specification, or
21 discrimination;



1 (D) For any labor organization to exclude or expel
2 from its membership any individual or to
3 discriminate in any way against any of its
4 members, employer, or employees; or

5 (E) For any employer or labor organization to refuse
6 to enter into an apprenticeship agreement as
7 defined in section 372-2; provided that no
8 apprentice shall be younger than sixteen years of
9 age;

10 (2) For any employer, labor organization, or employment
11 agency to discharge, expel, or otherwise discriminate
12 against any individual because the individual has
13 opposed any practice forbidden by this part or has
14 filed a complaint, testified, or assisted in any
15 proceeding respecting the discriminatory practices
16 prohibited under this part;

17 (3) For any person, whether an employer, employee, or not,
18 to aid, abet, incite, compel, or coerce the doing of
19 any of the discriminatory practices forbidden by this
20 part, or to attempt to do so;



- 1 (4) For any employer to violate the provisions of section
2 121-43 relating to nonforfeiture for absence by
3 members of the national guard;
- 4 (5) For any employer to refuse to hire or employ or to bar
5 or discharge from employment any individual because of
6 assignment of income for the purpose of satisfying the
7 individual's child support obligations as provided for
8 under section 571-52;
- 9 (6) For any employer, labor organization, or employment
10 agency to exclude or otherwise deny equal jobs or
11 benefits to a qualified individual because of the
12 known disability of an individual with whom the
13 qualified individual is known to have a relationship
14 or association;
- 15 (7) For any employer or labor organization to refuse to
16 hire or employ, bar or discharge from employment,
17 withhold pay from, demote, or penalize a lactating
18 employee because the employee breastfeeds or expresses
19 milk at the workplace. For purposes of this
20 paragraph, the term "breastfeeds" means the feeding of
21 a child directly from the breast;



(8) For any employer to refuse to hire or employ, bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment of any individual because of the individual's credit history or credit report, unless the information in the individual's credit history or credit report directly relates to a bona fide occupational qualification under section 378-3(2); or

(9) For any employer to discriminate against any individual employed as a domestic, in compensation or in terms, conditions, or privileges of employment because of the individual's race, sex including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, or reproductive health decision.

(b) For purposes of subsection (a)(1):

(1) An employer may verify that an employee is a victim of domestic or sexual violence by requesting that the employee provide:



- 1 (A) Certified or exemplified restraining orders,
2 injunctions against harassment, and documents
3 from criminal cases;
- 4 (B) Documentation from a victim services organization
5 or domestic or sexual violence program, agency,
6 or facility, including a shelter or safe house
7 for victims of domestic or sexual violence; or
- 8 (C) Documentation from a medical professional, mental
9 health care provider, attorney, advocate, social
10 worker, or member of the clergy from whom the
11 employee or the employee's minor child has sought
12 assistance in relation to the domestic or sexual
13 violence; and
- 14 (2) An employer may verify an employee's status as a
15 domestic or sexual violence victim not more than once
16 every six months following the date the employer:
- 17 (A) Was provided notice by the employee of the
18 employee's status as a domestic or sexual
19 violence victim;
- 20 (B) Has actual knowledge of the employee's status as
21 a domestic or sexual violence victim; or



1 (C) Received verification that the employee is a
2 domestic or sexual violence victim;
3 provided that where the employee provides verification
4 in the form of a protective order related to the
5 domestic or sexual violence with an expiration date,
6 the employer may not request any further form of
7 verification of the employee's status as a domestic or
8 sexual violence victim until the date of the
9 expiration or any extensions of the protective order,
10 whichever is later.

11 (c) It shall be an unlawful discriminatory practice to
12 engage in any of the actions set forth in subsection (a) in
13 relation to a person because of the perception that the person
14 possesses any particular characteristic or characteristics
15 listed in paragraphs (a)(1) to (a)(9); the perception that the
16 person is associated with a person who possesses, or is
17 perceived to possess, any particular characteristic or
18 characteristics listed in paragraphs (a)(1) to (a)(9); or the
19 intersection or combination of any particular characteristics
20 listed in paragraphs (a)(1) to (a)(9)."



SECTION 5. Section 489-3, Hawaii Revised Statutes, is amended to read as follows:

"§489-3 Discriminatory practices prohibition. Unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race; sex, including gender identity or expression; sexual orientation; color; religion; ancestry; ~~or~~ disability, including the use of a service animal~~[-]~~; a perception that a person possesses any aforementioned characteristic or characteristics; a perception that a person is associated with a person who possesses, or is perceived to possess, any aforementioned characteristic or characteristics; or an intersection or combination of the aforementioned characteristics in relation to a person, are prohibited."

SECTION 6. Section 515-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson, because of race; sex,



1 including gender identity or expression; sexual orientation;
2 color; religion; marital status; familial status; ancestry;
3 disability; age; [~~or~~] human immunodeficiency virus infection[+];
4 a perception that a person possesses any aforementioned
5 characteristic or characteristics; a perception that a person is
6 associated with a person who possesses, or is perceived to
7 possess, any aforementioned characteristic or characteristics;
8 or an intersection or combination of any aforementioned
9 characteristics in relation to a person:

10 (1) To refuse to engage in a real estate transaction with
11 a person;

12 (2) To discriminate against a person in the terms,
13 conditions, or privileges of a real estate transaction
14 or in the furnishing of facilities or services in
15 connection with a real estate transaction;

16 (3) To refuse to receive or to fail to transmit a bona
17 fide offer to engage in a real estate transaction from
18 a person;

19 (4) To refuse to negotiate for a real estate transaction
20 with a person;



- 1 (5) To represent to a person that real property is not
2 available for inspection, sale, rental, or lease when
3 in fact it is available; fail to bring a property
4 listing to the person's attention; refuse to permit
5 the person to inspect real property; or steer a person
6 seeking to engage in a real estate transaction;
- 7 (6) To offer, solicit, accept, use, or retain a listing of
8 real property with the understanding that a person may
9 be discriminated against in a real estate transaction
10 or in the furnishing of facilities or services in
11 connection with a real estate transaction;
- 12 (7) To solicit or require as a condition of engaging in a
13 real estate transaction that the buyer, renter, or
14 lessee be tested for human immunodeficiency virus
15 infection, the causative agent of acquired
16 immunodeficiency syndrome;
- 17 (8) To refuse to permit, at the expense of a person with a
18 disability, reasonable modifications to existing
19 premises occupied or to be occupied by the person if
20 modifications may be necessary to afford the person
21 full enjoyment of the premises; provided that a real



1 estate broker or salesperson, where it is reasonable
2 to do so, may condition permission for a modification
3 on the person agreeing to restore the interior of the
4 premises to the condition that existed before the
5 modification, reasonable wear and tear excepted;

6 (9) To refuse to make reasonable accommodations in rules,
7 policies, practices, or services, when the
8 accommodations may be necessary to afford a person
9 with a disability equal opportunity to use and enjoy a
10 housing accommodation; provided that if reasonable
11 accommodations include the use of an assistance
12 animal, reasonable restrictions may be imposed;
13 provided further that if the disability is not readily
14 apparent, an owner or other person engaging in a real
15 estate transaction may request information that
16 verifies that the person has a disability, defined as
17 a physical or mental impairment that substantially
18 limits a major life activity. An owner or other
19 person engaging in a real estate transaction shall not
20 request medical records or access to health care
21 providers, and shall not inquire as to the diagnosis,



1 nature, or severity of the person's disability. If
2 the disability-related need for an assistance animal
3 is not readily apparent, an owner or other person
4 engaging in a real estate transaction may request
5 verification that the assistance animal is needed to
6 alleviate one or more symptoms of the person's
7 disability. Verification may be provided by a letter
8 or other communication from the person's treating
9 health care professional, mental health professional,
10 or social worker. Possession of a vest or other
11 distinguishing animal garment, tag, or registration
12 documents that are commonly purchased online and
13 purporting to identify an animal as a service animal
14 or assistance animal shall not constitute valid
15 verification;

16 (10) In connection with the design and construction of
17 covered multifamily housing accommodations for first
18 occupancy after March 13, 1991, to fail to design and
19 construct housing accommodations in such a manner
20 that:



1 (A) The housing accommodations have at least one
2 accessible entrance, unless it is impractical to
3 do so because of the terrain or unusual
4 characteristics of the site; and

5 (B) With respect to housing accommodations with an
6 accessible building entrance:

7 (i) The public use and common use portions of
8 the housing accommodations are accessible to
9 and usable by persons with disabilities;

10 (ii) Doors allow passage by persons in
11 wheelchairs; and

12 (iii) All premises within covered multifamily
13 housing accommodations contain an accessible
14 route into and through the housing
15 accommodations; light switches, electrical
16 outlets, thermostats, and other
17 environmental controls are in accessible
18 locations; reinforcements in the bathroom
19 walls allow installation of grab bars; and
20 kitchens and bathrooms are accessible by
21 wheelchair; or



1 (11) To discriminate against or deny a person access to or
2 membership or participation in any multiple listing
3 service, real estate broker's organization, or other
4 service, organization, or facility involved either
5 directly or indirectly in real estate transactions, or
6 to discriminate against any person in the terms or
7 conditions of access, membership, or participation."

8 SECTION 7. 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 8. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 9. This Act shall take effect upon its approval.

14
INTRODUCED BY: _____



S.B. NO. 2871

Report Title:

Anti-discrimination; Prohibitions; Certain Characteristics;
Intersectionality

Description:

Prohibits discrimination based on: (1) The perception that a person possesses certain characteristics; (2) The perception that a person is associated with a person who possesses, or is perceived to possess, certain characteristics; or (3) The intersection or combination of two or more specified characteristics in relation to a person.

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