

JAN 23 2026

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## 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        [+] (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        [+] (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        [+] (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;



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

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

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

18 (1) An employer may verify that an employee is a victim of  
19 domestic or sexual violence by requesting that the  
20 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.



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

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

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

19 "(a) It is a discriminatory practice for an owner or any  
20 other person engaging in a real estate transaction, or for a  
21 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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