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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.

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 also 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 the  
18 basis for:

- 19 (1) Exclusion from participation in;  
20 (2) Denial of the benefits of; or  
21 (3) Discrimination under,



1 any covered educational program or activity.

2 (c) The intersection or combination of any characteristics  
3 listed in section 368-1(a) shall not be a basis for:

4 (1) Exclusion from participation in;

5 (2) Denial of the benefits of; or

6 (3) Discrimination under,

7 any covered educational program or activity.

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

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

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

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

19 "**§378-2 Discriminatory practices made unlawful; offenses**  
20 **defined.** (a) It shall be an unlawful discriminatory practice:



1 (1) Because of race, sex including gender identity or  
2 expression, sexual orientation, age, religion, color,  
3 ancestry, disability, marital status, arrest and court  
4 record, reproductive health decision, or domestic or  
5 sexual violence victim status if the domestic or  
6 sexual violence victim provides notice to the victim's  
7 employer of such status or the employer has actual  
8 knowledge of such status:

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

14 (B) For any employment agency to fail or refuse to  
15 refer for employment, or to classify or otherwise  
16 to discriminate against, any individual;

17 (C) For any employer or employment agency to print,  
18 circulate, or cause to be printed or circulated  
19 any statement, advertisement, or publication or  
20 to use any form of application for employment or  
21 to make any inquiry in connection with



1 prospective employment, that expresses, directly  
2 or indirectly, any limitation, specification, or  
3 discrimination;

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

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

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

20 (3) For any person, whether an employer, employee, or not,  
21 to aid, abet, incite, compel, or coerce the doing of



1 any of the discriminatory practices forbidden by this  
2 part, or to attempt to do so;

3 (4) For any employer to violate the provisions of section  
4 121-43 relating to nonforfeiture for absence by  
5 members of the national guard;

6 (5) For any employer to refuse to hire or employ or to bar  
7 or discharge from employment any individual because of  
8 assignment of income for the purpose of satisfying the  
9 individual's child support obligations as provided for  
10 under section 571-52;

11 (6) For any employer, labor organization, or employment  
12 agency to exclude or otherwise deny equal jobs or  
13 benefits to a qualified individual because of the  
14 known disability of an individual with whom the  
15 qualified individual is known to have a relationship  
16 or association;

17 (7) For any employer or labor organization to refuse to  
18 hire or employ, bar or discharge from employment,  
19 withhold pay from, demote, or penalize a lactating  
20 employee because the employee breastfeeds or expresses  
21 milk at the workplace. For purposes of this



- 1 paragraph, [~~the term~~] "breastfeeds" means the feeding  
2 of a child directly from the breast;
- 3 (8) For any employer to refuse to hire or employ, bar or  
4 discharge from employment, or otherwise [~~to~~]  
5 discriminate against any individual in compensation or  
6 in the terms, conditions, or privileges of employment  
7 [~~of any individual~~] because of the individual's credit  
8 history or credit report, unless the information in  
9 the individual's credit history or credit report  
10 directly relates to a bona fide occupational  
11 qualification under section 378-3(2); or
- 12 (9) For any employer to discriminate against any  
13 individual employed as a domestic[~~r~~] worker in  
14 compensation or in terms, conditions, or privileges of  
15 employment because of the individual's race, sex  
16 including gender identity or expression, sexual  
17 orientation, age, religion, color, ancestry,  
18 disability, marital status, or reproductive health  
19 decision.
- 20 (b) For purposes of subsection (a) (1):



- 1           (1) An employer may verify that an employee is a victim of  
2           domestic or sexual violence by requesting that the  
3           employee provide:
- 4           (A) Certified or exemplified restraining orders,  
5           orders for protection, injunctions against  
6           harassment, and documents from criminal cases;
- 7           (B) Documentation from a victim services organization  
8           or domestic or sexual violence program, agency,  
9           or facility, including a shelter or safe house  
10          for victims of domestic or sexual violence; or
- 11          (C) Documentation from a medical professional, mental  
12          health care provider, attorney, advocate, social  
13          worker, or member of the clergy from whom the  
14          employee or the employee's minor child has sought  
15          assistance in relation to the domestic or sexual  
16          violence; and
- 17          (2) An employer may verify an employee's status as a  
18          domestic or sexual violence victim [~~not~~] no more than  
19          once every six months following the date the employer:



1 (A) Was provided notice by the employee of the  
2 employee's status as a domestic or sexual  
3 violence victim;

4 (B) Has actual knowledge of the employee's status as  
5 a domestic or sexual violence victim; or

6 (C) Received verification that the employee is a  
7 domestic or sexual violence victim;

8 provided that where the employee provides verification  
9 in the form of a protective order related to the  
10 domestic or sexual violence with an expiration date,  
11 the employer [~~may~~] shall not request any further form  
12 of verification of the employee's status as a domestic  
13 or sexual violence victim until the date of the  
14 expiration or any extensions of the protective order,  
15 whichever is later.

16 (c) It shall be an unlawful discriminatory practice to  
17 engage in any of the actions set forth in subsection (a) because  
18 of:

19 (1) The perception that a person possesses any particular  
20 characteristic or characteristics listed in subsection  
21 (a);



1        (2) The perception that the person is associated with a  
2        person who possesses, or is perceived to possess, any  
3        particular characteristic or characteristics listed in  
4        subsection (a); or

5        (3) The intersection or combination of any particular  
6        characteristics listed in subsection (a)."

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

9        "**§489-3 Discriminatory practices prohibition.** Unfair  
10 discriminatory practices that deny, or attempt to deny, a person  
11 the full and equal enjoyment of the goods, services, facilities,  
12 privileges, advantages, and accommodations of a place of public  
13 accommodation on the basis of [~~race~~]:

14        (1) Race; sex, including gender identity or expression;  
15        sexual orientation; color; religion; ancestry; or  
16        disability, including the use of a service animal[~~r~~  
17        are];

18        (2) A perception that a person possesses any  
19        characteristic or characteristics listed in paragraph

20        (1);



1        (3) A perception that a person is associated with a person  
2        who possesses, or is perceived to possess, any  
3        characteristic or characteristics listed in paragraph  
4        (1); or  
5        (4) An intersection or combination of the characteristics  
6        listed in paragraph (1) in relation to a person,  
7        shall be prohibited."

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

10        "(a) It [~~is~~] shall be a discriminatory practice for an  
11        owner or any other person engaging in a real estate transaction,  
12        or for a real estate broker or salesperson, because of race;  
13        sex, including gender identity or expression; sexual  
14        orientation; color; religion; marital status; familial status;  
15        ancestry; disability; age; [~~or~~] human immunodeficiency virus  
16        infection[+]; a perception that a person possesses any  
17        characteristic or characteristics listed in this subsection; a  
18        perception that a person is associated with a person who  
19        possesses, or is perceived to possess, any characteristic or  
20        characteristics listed in this subsection; or an intersection or



1 combination of any characteristics listed in this subsection in  
2 relation to a person:

3 (1) To refuse to engage in a real estate transaction with  
4 a person;

5 (2) To discriminate against a person in the terms,  
6 conditions, or privileges of a real estate transaction  
7 or in the furnishing of facilities or services in  
8 connection with a real estate transaction;

9 (3) To refuse to receive or to fail to transmit a bona  
10 fide offer to engage in a real estate transaction from  
11 a person;

12 (4) To refuse to negotiate for a real estate transaction  
13 with a person;

14 (5) To represent to a person that real property is not  
15 available for inspection, sale, rental, or lease when  
16 in fact it is available; fail to bring a property  
17 listing to the person's attention; refuse to permit  
18 the person to inspect real property; or steer a person  
19 seeking to engage in a real estate transaction;

20 (6) To offer, solicit, accept, use, or retain a listing of  
21 real property with the understanding that a person may



1 be discriminated against in a real estate transaction  
2 or in the furnishing of facilities or services in  
3 connection with a real estate transaction;

4 (7) To solicit or require as a condition of engaging in a  
5 real estate transaction that the buyer, renter, or  
6 lessee be tested for human immunodeficiency virus  
7 infection, the causative agent of acquired  
8 immunodeficiency syndrome;

9 (8) To refuse to permit, at the expense of a person with a  
10 disability, reasonable modifications to existing  
11 premises occupied or to be occupied by the person if  
12 modifications may be necessary to afford the person  
13 full enjoyment of the premises; provided that a real  
14 estate broker or salesperson, where it is reasonable  
15 to do so, may condition permission for a modification  
16 on the person agreeing to restore the interior of the  
17 premises to the condition that existed before the  
18 modification, reasonable wear and tear excepted;

19 (9) To refuse to make reasonable accommodations in rules,  
20 policies, practices, or services, when the  
21 accommodations may be necessary to afford a person



1 with a disability equal opportunity to use and enjoy a  
2 housing accommodation; provided that if reasonable  
3 accommodations include the use of an assistance  
4 animal, reasonable restrictions may be imposed;  
5 provided further that if the disability is not readily  
6 apparent, an owner or other person engaging in a real  
7 estate transaction may request information that  
8 verifies that the person has a disability, defined as  
9 a physical or mental impairment that substantially  
10 limits a major life activity. An owner or other  
11 person engaging in a real estate transaction shall not  
12 request medical records or access to health care  
13 providers, and shall not inquire as to the diagnosis,  
14 nature, or severity of the person's disability. If  
15 the disability-related need for an assistance animal  
16 is not readily apparent, an owner or other person  
17 engaging in a real estate transaction may request  
18 verification that the assistance animal is needed to  
19 alleviate one or more symptoms of the person's  
20 disability. Verification may be provided by a letter  
21 or other communication from the person's treating



1 health care professional, mental health professional,  
2 or social worker. Possession of a vest or other  
3 distinguishing animal garment, tag, or registration  
4 documents that are commonly purchased online and  
5 purporting to identify an animal as a service animal  
6 or assistance animal shall not constitute valid  
7 verification;

8 (10) In connection with the design and construction of  
9 covered multifamily housing accommodations for first  
10 occupancy after March 13, 1991, to fail to design and  
11 construct housing accommodations in such a manner  
12 that:

13 (A) The housing accommodations have at least one  
14 accessible entrance, unless it is impractical to  
15 do so because of the terrain or unusual  
16 characteristics of the site; and

17 (B) With respect to housing accommodations with an  
18 accessible building entrance:

19 (i) The public use and common use portions of  
20 the housing accommodations are accessible to  
21 and usable by persons with disabilities;



- 1                   (ii) Doors allow passage by persons in
- 2                   wheelchairs; and
- 3                   (iii) All premises within covered multifamily
- 4                   housing accommodations contain an accessible
- 5                   route into and through the housing
- 6                   accommodations; light switches, electrical
- 7                   outlets, thermostats, and other
- 8                   environmental controls are in accessible
- 9                   locations; reinforcements in the bathroom
- 10                  walls allow installation of grab bars; and
- 11                  kitchens and bathrooms are accessible by
- 12                  wheelchair; or
- 13                  (11) To discriminate against or deny a person access to or
- 14                  membership or participation in any multiple listing
- 15                  service, real estate broker's organization, or other
- 16                  service, organization, or facility involved either
- 17                  directly or indirectly in real estate transactions, or
- 18                  to discriminate against any person in the terms or
- 19                  conditions of access, membership, or participation."



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

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

6 SECTION 9. This Act shall take effect on July 1, 3000.



**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. Effective 7/1/3000.  
(HD2)

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

