
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 the State 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 ~~[(f)]~~ (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~~] their status or the employer has
8 actual knowledge of [~~such~~] the person's 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 the 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 the 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
- 21 subsection (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
20 paragraph (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
4 paragraph (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 upon its approval.



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. (SD1)

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