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H.B. NO. 356

A Bill for an Act Relating to Nonforfeiture of Employment Rights for Absence Required by National Guard Duty.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 121, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 121- Nonforfeiture for absence. (a) Every employee of a private employer who is a member of the national guard shall be entitled to absent himself from his employment duties while engaged in the performance of ordered national guard service and while going to and returning from such service. Such person shall:

- (1) If still qualified to perform his employment duties, be restored by such employer or the employer’s successor in interest to such position or to a position of like seniority, status, and pay; or
- (2) If not qualified to perform his employment duties, by reason of disability sustained during ordered national guard service, but qualified to perform the duties of any other position in the employ of such employer or the employer’s successor in interest, be offered employment and, if such person so requests, be employed by such employer or the employer’s successor in interest in such other position the duties of which such person is qualified to perform as will provide such person like seniority, status, and

pay, or the nearest approximation thereof consistent with the circumstances in such person's case,

unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

- (b) (1) Any person who is restored to or employed in a position in accordance with the provisions of subsection (a) shall be considered as having been on furlough or leave of absence; shall be so restored or reemployed without loss of seniority; shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was ordered to national guard service; and shall not be discharged from such employment position without cause within one year after such restoration or reemployment.
- (2) Any person who is restored to or employed in a position in accordance with the provisions of subsection (a) should be so restored or reemployed in such manner as to give such person such status in the person's employment as the person would have enjoyed if such person had continued in such employment continuously from the time such person became engaged in the performance of ordered national guard service until the time of such person's restoration to such employment, or reemployment.
- (3) Any person who holds a position described in subsection (a) shall not be denied retention in employment or any promotion or other incident or advantage of employment because of any obligation as a member of the national guard."

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

"Sec. 378-2 Discriminatory practices made unlawful; offenses defined. It shall be unlawful employment practice or unlawful discrimination:

- (1) For an employer to refuse to hire or employ or to bar or discharge from employment, any individual because of his race, sex, age, religion, color, ancestry, physical handicap, marital status, or arrest and court record which does not have a substantial relationship to the functions and responsibilities of the prospective or continued employment, provided that an employer may refuse to hire an individual for good cause relating to the ability of the individual to perform the work in question;
- (2) For an employer to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment because of race, sex, age, religion, color, ancestry, physical handicap, marital status, or arrest and court record;
- (3) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, sex, age, religion, color, ancestry, physical handicap, marital status, or arrest and court record unless based on a bona fide occupational qualification;

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- (4) For any labor organization to exclude or expel from its membership any person or to discriminate in any way against any of its members, employer, or employees because of race, sex, age, religion, color, ancestry, physical handicap, marital status, or arrest and court record;
- (5) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any person because he has opposed any practice forbidden by this part or because he has filed a complaint, testified, or assisted in any proceeding respecting the employment practices and discrimination prohibited under this part;
- (6) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the practices forbidden by this part, or to attempt to do so;
- (7) For any employer or labor organization to refuse to enter into an apprenticeship agreement, as defined in section 372-2, because of the race, sex, age, religion, color, ancestry, physical handicap, marital status, of an apprentice; provided that no apprentice shall be less than sixteen years of age;
- (8) For any employer to violate the provisions of section 121- relating to nonforfeiture for absence by members of the national guard.”

SECTION 3. This Act shall take effect upon its approval.*

(Approved April 14, 1979.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.