

A Bill for an Act Relating to Persons with Disabilities.

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

SECTION 1. Section 76-18, Hawaii Revised Statutes, is amended to read as follows:

"§76-18 Examinations, general character. There shall be competitive examinations for testing of the relative fitness of applicants for positions in civil service. The examinations shall be practical in their character and shall provide for ascertaining the physical and educational qualifications, experience, knowledge, and skill of applicants and their relative capacity and fitness for the proper performance of the characteristic duties of the class of positions in which they seek to be employed; except that in the case of a promotional examination, the examination shall be limited, at the request of the department head, to the characteristic duties of the class and nothing else. All examinations shall be public and, except as otherwise provided by law, free and open to all citizens of the State but with such limitations as to health, physical condition, age, sex, education, training, experience, habits, and character as the director of personnel services may deem necessary and proper for the class for which the examination is to be given. Disabled veterans or [physically handicapped persons] persons with a disability shall not be disqualified for reason of [such physical handicap or] the disability if they possess the physical capacities to perform the duties of the class. Examinations may be oral or written or partly oral and partly written, or tests of manual skill and physical strength, or evaluations of training and experience backgrounds. Except when clearly required by the nature of the service to be performed, written examinations shall not be required of applicants for unskilled labor classes. All examinations shall be under the control of the director or [such] any suitable person or persons as the director may designate to conduct them. All persons who have passed the examination shall be required to take [such] physical examinations as may be required by the director or, in case of the counties, by the civil service commission. The reports of the physical examinations shall be filed with the director.

The director [may], for purposes of expediting the examination process, may require [the] applicants to take [the] a written [examinations] examination prior to [the] filing [of their] a formal [applications.] application. Upon [the] successful completion of the written [examinations,] examination, the [applicants] applicant shall then file [their] a formal [applications.] application."

SECTION 2. Section 76-77, Hawaii Revised Statutes, is amended to read as follows:

"§76-77 Civil service and exemptions. The civil service to which this part applies comprises all positions in the public service of each county, now existing or hereafter established, and embraces all personal services performed for each county, except the following:

- (1) Positions in the office of the mayor[, but]; provided that the positions shall be included in the position classification plan;
- (2) Positions of officers elected by public vote[.]; positions of heads of departments, and positions of one first deputy or first assistant of heads of departments;

- (3) Positions of deputy county attorneys, deputy corporation counsel, deputy prosecuting attorneys, and law clerks;
- (4) Positions of members of any board, commission, or agency;
- (5) Positions filled by students; positions filled through federal² funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973; and employees engaged in special research or demonstration projects approved by the mayor, for which projects federal funds are available;
- (6) Positions of district judges, jurors, and witnesses;
- (7) Positions filled by persons employed by contract where the personnel director has certified and where [such] the certification has received the approval of the commission that the service is special or unique, is essential to the public interest, and that[,] because of the circumstances surrounding its fulfillment, personnel to perform the service cannot be [obtained] recruited through normal civil service [recruitment] procedures[. Any such]; provided that no contract [may] pursuant to this paragraph shall be for any period [not] exceeding one year;
- (8) Positions of a temporary nature needed in the public interest where the need [for the same] does not exceed ninety days; [but] provided that before any person may be employed to render [such] temporary service pursuant to this paragraph, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable; and provided further that the employment of any person [for service of a temporary nature] pursuant to this paragraph may be extended for good cause for an additional period not to exceed ninety days upon similar certification by the director[, approved by] and approval of the commission;
- (9) Positions of temporary election clerks in the office of the county clerk employed during election periods;
- (10) Positions specifically exempted from this part by any other state statutes;
- (11) Positions of one private secretary [of heads of departments, but such] for each department head; provided that the positions shall be included in the position classification plan;
- (12) Positions filled by persons employed on a fee, contract, or piece-work basis who may lawfully perform their duties concurrently with their private business or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the county and that fact is certified [to] by the director;
- (13) Positions filled by [the severely handicapped persons] persons with a severe disability who are certified by the state vocational rehabilitation office [that they are] as able to safely perform the duties of the positions;
- (14) Positions of the housing and community development office or department of each county; provided that this exemption shall not preclude each county from establishing these positions as civil service positions; and
- (15) [Positions] The following positions in the [offices] office of the prosecuting attorney [of the]; private secretary to the [prosecutor,]

prosecuting attorney, secretary to the first deputy prosecuting attorney, and administrative or executive assistants to the prosecuting attorney[, but]; provided that the positions shall be included in the position classification plan.

The director shall determine the applicability of this section to specific positions and [the director] shall determine whether or not positions excluded by paragraphs (7) and (8) shall be included in the position classification plan.

Nothing in this section shall be deemed to affect the civil service status of any incumbent[,], private secretary of [heads of departments as it existed] a department head who held that position on³ May 7, 1977."

SECTION 3. Section 378-3, Hawaii Revised Statutes, is amended to read as follows:

"§378-3 Exceptions. Nothing in this part shall be deemed to:

- (1) Repeal or affect any law [or], ordinance, or government rule having the force and effect of law;
- (2) Prohibit or prevent the establishment and maintenance of bona fide occupational qualifications reasonably necessary to the normal operation of a particular business or enterprise, and which have a substantial relationship to the functions and responsibilities of [the] prospective or continued employment;
- (3) Prohibit or prevent an employer, employment agency, or [a] labor organization from refusing to hire [or], refer, or [from discharging] discharge any individual for reasons relating to the ability of the individual to perform the work in question;
- (4) Affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan[,], which is not intended to evade the purpose of this chapter; provided that:
 - (A) This] this exception shall not be construed to permit any employee plan to set a maximum age requirement for hiring or a mandatory retirement age; [and
 - (B) Any existing bona fide retirement, pension, employee benefit, or insurance plan or existing bargaining agreement shall be exempt from this paragraph for two years after April 30, 1984, or until the termination of the plan or agreement, whichever occurs first;]
- (5) Prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, [which] that is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to individuals of the same religion or denomination or from making [such] a selection [as is] calculated [by the organization] to promote the religious principles for which [it] the organization is established or maintained;
- (6) Conflict with or affect the application of security regulations or rules in employment established by the United States or the State;
- (7) Require the employer to execute unreasonable structural changes or expensive equipment alterations to accommodate the employment of a [handicapped person;] person with a disability;
- (8) Prohibit or prevent the department of education or private schools from considering criminal convictions in determining whether a prospective employee is suited to working in close proximity to

- children; or
- (9) Prohibit or prevent any financial institution in which deposits are insured by a federal agency having jurisdiction over the financial institution from denying employment to or discharging from employment any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, unless it has the prior written consent of the federal agency having jurisdiction over the financial institution to hire or retain the person.”

SECTION 4. Section 515-3, Hawaii Revised Statutes, is amended to read as follows:

“§515-3 Discriminatory practices. 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, color, religion, marital status, parental status, ancestry, [handicapped status,] disability, or HIV (human immunodeficiency virus) infection:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to the person’s attention, or to refuse to permit the person to inspect real property;
- (6) To print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;
- (7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (8) To refuse to engage in a real estate transaction with a person due to [handicapped status] a disability because the person uses the services of a certified guide, signal, or service dog; provided that reasonable restrictions or prohibitions may be imposed regarding excessive noise or other problems caused by those animals. For the purposes of this paragraph:

“Blind” shall be as defined in section 235-1;

“Deaf” shall be as defined in section 235-1;

“Guide dog” means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person;

“Reasonable restriction” shall not include any restriction that allows any owner or person to refuse to negotiate or refuse to engage in the real estate transaction; provided that as used in this [chapter,] paragraph, the “reasonableness” of the restriction shall be examined by

giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances. Depending on the circumstances, a "reasonable restriction" may require the owner of the service, guide, or signal dog to comply with one or more of the following:

- (A) Provide proof that the animal is a service [dog], guide [dog], or signal dog;
- (B) Observe applicable laws including leash laws and pick-up laws;
- (C) Assume responsibility for damage caused by the dog; or
- (D) Have the housing unit cleaned upon vacating[,] by fumigation, deodorizing, professional carpet cleaning, or other method appropriate under the circumstances.

The foregoing list is illustrative only, and neither exhaustive nor mandatory;

"Service dog" means any dog individually trained and certified by a nationally recognized service dog organization to assist a person with a disability in performing essential activities of daily living;

"Signal dog" means any dog individually trained and certified by a nationally recognized signal dog organization to alert a deaf person to intruders or sounds; or

- (9) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection (HIV), the causative agent of acquired immunodeficiency syndrome (AIDS)."

SECTION 5. Sections 76-1, 368-1, 368-1.5, 378-1, 378-2, 489-2, 489-3, 515-2, 515-5, 515-6, and 515-7, Hawaii Revised Statutes, are amended by substituting the word "disability" wherever the words "physical handicap", "physically handicapped", "handicapped", or "handicapped status" appear, as the context requires.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 22, 1992.)

Notes

- 1. "Disability" should not be underscored.
- 2. Prior to amendment "federally" appeared here.
- 3. "On" should not be underscored.