

ACT 175

H.B. NO. 3528

A Bill for an Act Relating to Employment Practices.

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

SECTION 1. Chapter 378, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§378- Employer inquiries into conviction record. (a) Subject to subsection (b), an employer may inquire about and consider an individual’s criminal conviction record concerning hiring, termination, or the terms, conditions, or privileges of employment; provided that the conviction record bears a rational relationship to the duties and responsibilities of the position.

(b) Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position.

(c) For purposes of this section, “conviction” means an adjudication by a court of competent jurisdiction that the defendant committed a crime, not including final judgments required to be confidential pursuant to section 571-84; provided that the period for which the employer may examine the employee’s conviction record shall not exceed ten years.”

SECTION 2. 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, 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 that have a substantial relationship to the functions and responsibilities of prospective or continued employment;
- (3) Prohibit or prevent an employer, employment agency, or labor organization from refusing to hire, refer, or 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 that is not intended to evade the purpose of this chapter; provided that this exception shall not be construed to permit any employee plan to set a maximum age requirement for hiring or a mandatory retirement age;
- (5) Prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational

- purposes, 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 a selection calculated to promote the religious principles for which 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 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;
 - (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;
 - (10) Preclude any employee from bringing a civil action for sexual harassment or sexual assault and infliction of emotional distress or invasion of privacy related thereto; provided that notwithstanding section 368-12, the commission shall issue a right to sue on a complaint filed with the commission if it determines that a civil action alleging similar facts has been filed in circuit court;
 - (11) Require the employer to accommodate the needs of a nondisabled person associated with or related to a person with a disability in any way not required by Title I of the Americans with Disabilities Act; [or]
 - (12) Prohibit or prevent a "health care facility," as defined in chapter 323D, from considering the record of a criminal conviction where the criminal offense is a relevant factor in determining the bona fide occupational qualifications for a position where an employee or prospective employee who has received an offer for employment is working in close proximity to patients[.]; or
 - (13) Prohibit or preclude an employer from considering a record of criminal conviction that bears a rational relationship to the duties and responsibilities of the position, pursuant to section 378- , with regard to prospective or continued employment."

SECTION 4.¹ This Act does not effect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5.¹ Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 6.¹ This Act shall take effect upon its approval.

(Approved July 15, 1998.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.