

ACT 76

H.B. NO. 1233

A Bill for an Act Relating to Civil Rights.

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

SECTION 1. The purpose of this Act is to make state civil rights laws uniform by prohibiting discriminatory practices in public accommodations on the basis of sexual orientation. Presently, the employment and housing laws prohibit discrimination because of sexual orientation. Just as a person should not be denied a job or a home because of the person's sexual orientation (heterosexual, homosexual, or bisexual), a person should not be denied service at a restaurant or store because of the person's sexual orientation.

This Act also clarifies that discrimination in public accommodations on the basis of gender identity or expression is prohibited sex discrimination. This is consistent with the purpose and intent expressed in Act 214, Session Laws of Hawaii 2005, in which the legislature amended chapter 515, discrimination in real property transactions, to clarify that sex discrimination includes gender identity or expression. The legislature is aware that a growing number of state and federal courts have held that discrimination on the basis of gender identity or expression is a form of sex discrimination. Under existing state civil rights laws, prohibited discrimination on the basis of sex includes discrimination based on gender identity or expression. This is not a new protection, and this clarification should not be interpreted to imply that such protection did not exist prior to this Act.

SECTION 2. Section 489-2, Hawaii Revised Statutes, is amended by adding a new definition¹ to be appropriately inserted and to read as follows:

““Gender identity or expression” includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related

expression is different from that traditionally associated with the person's sex at birth.

“Sexual orientation” means having a preference for heterosexuality, homosexuality, or bisexuality, having a history of any one or more of these preferences, or being identified with any one or more of these preferences. “Sexual orientation” shall not be construed to protect conduct otherwise proscribed by law.”

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

“§489-3 Discriminatory practices prohibition. Unfair discriminatory practices [~~which~~] that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability are prohibited.”

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

SECTION 5. This Act shall take effect upon its approval.

(Became law on May 2, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Two definitions added.