

THIRTIETH LEGISLATURE, 2020  
STATE OF HAWAII

\_\_\_\_.B. NO.\_\_\_\_

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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT DISCRIMINATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. PREAMBLE

2 SECTION 2. Section 378-2.5, Hawai'i Revised Statutes, is  
3 amended by amending subsections (c) and (d) to read as follows:

4 "(c) For purposes of this section, "conviction" means an  
5 adjudication by a court of competent jurisdiction that the  
6 defendant committed a crime, not including final judgments  
7 required to be confidential pursuant to section 571-84; provided  
8 that the employer may consider the employee's conviction record  
9 falling within a period that shall not exceed the most recent  
10 [~~ten years,~~] five years for felony convictions and three years  
11 for misdemeanor convictions, excluding periods of incarceration.

12 If the employee or prospective employee claims that the period  
13 of incarceration was less than what is shown on the employee's  
14 or prospective employee's conviction record, an employer shall  
15 provide the employee or prospective employee with an opportunity  
16 to present documentary evidence of a date of release to  
17 establish a period of incarceration that is shorter than the

1 sentence imposed for the employee's or prospective employee's  
2 conviction.

3 (d) Notwithstanding subsections (b) and (c), the  
4 requirement that inquiry into and consideration of a prospective  
5 employee's conviction record may take place only after the  
6 individual has received a conditional job offer, and the  
7 limitation to the most recent [~~ten-year period,~~] five-year  
8 period for felony convictions and three-year period for  
9 misdemeanor convictions, excluding the period of incarceration,  
10 shall not apply to employers who are expressly permitted to  
11 inquire into an individual's criminal history for employment  
12 purposes pursuant to any federal or state law other than  
13 subsection (a), including:

14 (1) The State or any of its branches, political  
15 subdivisions, or agencies pursuant to sections 78-2.7  
16 and 831-3.1;

17 (2) The department of education pursuant to section  
18 302A-601.5;

19 (3) The department of health with respect to employees,  
20 providers, or subcontractors in positions that place  
21 them in direct contact with clients when providing  
22 non-witnessed direct mental health services pursuant  
23 to section 321-171.5;

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- 1           (4)    The judiciary pursuant to section 571-34;
- 2           (5)    The counties pursuant to section 846-2.7(b) (5), (33),
- 3                   (34), (35), (36), and (38);
- 4           (6)    Armed security services pursuant to section 261-17(b);
- 5           (7)    Providers of a developmental disabilities domiciliary
- 6                   home pursuant to section 321-15.2;
- 7           (8)    Private schools pursuant to sections 302C-1 and
- 8                   378-3(8);
- 9           (9)    Financial institutions in which deposits are insured
- 10                   by a federal agency having jurisdiction over the
- 11                   financial institution pursuant to section 378-3(9);
- 12          (10)   Detective agencies and security guard agencies
- 13                   pursuant to sections 463-6(b) and 463-8(b);
- 14          (11)   Employers in the business of insurance pursuant to
- 15                   section 431:2-201.3;
- 16          (12)   Employers of individuals or supervisors of
- 17                   individuals responsible for screening passengers or
- 18                   property under title 49 United States Code section
- 19                   44901 or individuals with unescorted access to an
- 20                   aircraft of an air carrier or foreign carrier or in a
- 21                   secured area of an airport in the United States
- 22                   pursuant to title 49 United States Code section
- 23                   44936(a);

1 (13) The department of human services pursuant to sections  
2 346-97 and 352-5.5;

3 (14) The public library system pursuant to section  
4 302A-601.5;

5 (15) The department of public safety pursuant to section  
6 353C-5;

7 (16) The board of directors of a cooperative housing  
8 corporation or the manager of a cooperative housing  
9 project pursuant to section 421I-12;

10 (17) The board of directors of an association under  
11 chapter 514B, or the managing agent or resident  
12 manager of a condominium pursuant to section 514B-133;  
13 and

14 (18) The department of health pursuant to section  
15 321-15.2."

16 SECTION 3. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: \_\_\_\_\_

By Request