

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO DISCRIMINATION IN REAL PROPERTY.

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

1           SECTION 1. Chapter 515, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:  
4           "§515-    Inquiries into conviction record. (a) Subject  
5 to subsection (b), an owner or any other person engaging in a  
6 real estate transaction, or a real estate broker or salesperson,  
7 may inquire about and consider an individual's criminal  
8 conviction record concerning a real estate transaction; provided  
9 that the conviction record bears a rational relationship to the  
10 use or occupancy of a housing accommodation.  
11           (b) Inquiry into and consideration of conviction records  
12 for prospective real estate transactions shall take place only  
13 after a person has received a conditional offer of sale,  
14 exchange, rental, or lease of real property which may be  
15 withdrawn if the person has a conviction record that bears a  
16 rational relationship to the use or occupancy of the housing  
17 accommodation.



1        (c) For purposes of this section, "conviction" means an  
2 adjudication by a court of competent jurisdiction that the  
3 defendant committed a crime, not including final judgments  
4 required to be confidential pursuant to section 571-84; provided  
5 that the owner or other person engaging in a real estate  
6 transaction, or real estate broker or salesperson, may consider  
7 the defendant's conviction record falling within a period that  
8 shall not exceed the most recent ten years, excluding periods of  
9 incarceration. If the defendant claims that the period of  
10 incarceration was less than what is shown on the defendant's  
11 conviction record, the owner or other person engaging in a real  
12 estate transaction, or real estate broker or salesperson, shall  
13 provide the defendant with an opportunity to present documentary  
14 evidence of a date of release to establish a period of  
15 incarceration that is shorter than the sentence imposed for the  
16 defendant's conviction.

17        (d) Notwithstanding subsections (b) and (c), the  
18 requirement that inquiry into and consideration of a defendant's  
19 conviction record may take place only after the individual has  
20 received a conditional offer of sale, exchange, rental, or lease  
21 of real property, and the limitation to the most recent ten-year  
22 period, excluding the period of incarceration, shall not apply



1 to owners or other persons engaging in real estate transactions,  
2 or real estate brokers or salespersons, who are expressly  
3 permitted to inquire into an individual's criminal history for  
4 housing purposes pursuant to any federal or state law other than  
5 subsection (a), including but not limited to sections 201G-32  
6 and 201G-42."

7 SECTION 2. Section 515-2, Hawaii Revised Statutes, is  
8 amended by adding a new definition to be appropriately inserted  
9 and to read as follows:

10 "Arrest and court record" includes any information about  
11 an individual having been questioned, apprehended, taken into  
12 custody or detention, held for investigation, charged with an  
13 offense, served a summons, arrested with or without a warrant,  
14 tried, or convicted pursuant to any law enforcement or military  
15 authority."

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

18 **"§515-3 Discriminatory practices.** It is a discriminatory  
19 practice for an owner or any other person engaging in a real  
20 estate transaction, or for a real estate broker or salesperson,  
21 because of race, sex, including gender identity or expression,  
22 sexual orientation, color, religion, marital status, familial



1 status, ancestry, disability, age, arrest and court record, or  
2 human immunodeficiency virus infection:

3 (1) To refuse to engage in a real estate transaction with  
4 a person;

5 (2) To discriminate against a person in the terms,  
6 conditions, or privileges of a real estate transaction  
7 or in the furnishing of facilities or services in  
8 connection therewith;

9 (3) To refuse to receive or to fail to transmit a bona  
10 fide offer to engage in a real estate transaction from  
11 a person;

12 (4) To refuse to negotiate for a real estate transaction  
13 with a person;

14 (5) To represent to a person that real property is not  
15 available for inspection, sale, rental, or lease when  
16 in fact it is available, or to fail to bring a  
17 property listing to the person's attention, or to  
18 refuse to permit the person to inspect real property,  
19 or to steer a person seeking to engage in a real  
20 estate transaction;

21 (6) To print, circulate, post, or mail, or cause to be  
22 published a statement, advertisement, or sign, or to



1 use a form of application for a real estate  
2 transaction, or to make a record or inquiry in  
3 connection with a prospective real estate transaction,  
4 that indicates, directly or indirectly, an intent to  
5 make a limitation, specification, or discrimination  
6 with respect thereto;

7 (7) To offer, solicit, accept, use, or retain a listing of  
8 real property with the understanding that a person may  
9 be discriminated against in a real estate transaction  
10 or in the furnishing of facilities or services in  
11 connection therewith;

12 (8) To refuse to engage in a real estate transaction with  
13 a person or to deny equal opportunity to use and enjoy  
14 a housing accommodation due to a disability because  
15 the person uses the services of a guide dog, signal  
16 dog, or service animal; provided that reasonable  
17 restrictions or prohibitions may be imposed regarding  
18 excessive noise or other problems caused by those  
19 animals. For the purposes of this paragraph:

20 "Blind" shall be as defined in section 235-1;

21 "Deaf" shall be as defined in section 235-1;

1           "Guide dog" means any dog individually trained by  
2 a licensed guide dog trainer for guiding a blind  
3 person by means of a harness attached to the dog and a  
4 rigid handle grasped by the person;

5           "Reasonable restriction" shall not include any  
6 restriction that allows any owner or person to refuse  
7 to negotiate or refuse to engage in a real estate  
8 transaction; provided that as used in this paragraph,  
9 the "reasonableness" of a restriction shall be  
10 examined by giving due consideration to the needs of a  
11 reasonable prudent person in the same or similar  
12 circumstances. Depending on the circumstances, a  
13 "reasonable restriction" may require the owner of the  
14 service animal, guide dog, or signal dog to comply  
15 with one or more of the following:

- 16           (A) Observe applicable laws including leash laws and  
17 pick-up laws;
- 18           (B) Assume responsibility for damage caused by the  
19 dog; or
- 20           (C) Have the housing unit cleaned upon vacating by  
21 fumigation, deodorizing, professional carpet

1 cleaning, or other method appropriate under the  
2 circumstances.

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

5 "Service animal" means any animal that is trained  
6 to provide those life activities limited by the  
7 disability of the person;

8 "Signal dog" means any dog that is trained to  
9 alert a deaf person to intruders or sounds;

10 (9) To solicit or require as a condition of engaging in a  
11 real estate transaction that the buyer, renter, or  
12 lessee be tested for human immunodeficiency virus  
13 infection, the causative agent of acquired  
14 immunodeficiency syndrome;

15 (10) To refuse to permit, at the expense of a person with a  
16 disability, reasonable modifications to existing  
17 premises occupied or to be occupied by the person if  
18 modifications may be necessary to afford the person  
19 full enjoyment of the premises. A real estate broker  
20 or salesperson, where it is reasonable to do so, may  
21 condition permission for a modification on the person  
22 agreeing to restore the interior of the premises to

1           the condition that existed before the modification,  
2           reasonable wear and tear excepted;

3           (11) To refuse to make reasonable accommodations in rules,  
4           policies, practices, or services, when the  
5           accommodations may be necessary to afford a person  
6           with a disability equal opportunity to use and enjoy a  
7           housing accommodation;

8           (12) In connection with the design and construction of  
9           covered multifamily housing accommodations for first  
10          occupancy after March 13, 1991, to fail to design and  
11          construct housing accommodations in such a manner  
12          that:

13          (A) The housing accommodations have at least one  
14          accessible entrance, unless it is impractical to  
15          do so because of the terrain or unusual  
16          characteristics of the site; and

17          (B) With respect to housing accommodations with an  
18          accessible building entrance:

19                 (i) The public use and common use portions of  
20                 the housing accommodations are accessible to  
21                 and usable by disabled persons;





- 1                   (ii) Doors allow passage by persons in
- 2                               wheelchairs; and
- 3                   (iii) All premises within covered multifamily
- 4                               housing accommodations contain an accessible
- 5                               route into and through the housing
- 6                               accommodations; light switches, electrical
- 7                               outlets, thermostats, and other
- 8                               environmental controls are in accessible
- 9                               locations; reinforcements in the bathroom
- 10                              walls allow installation of grab bars; and
- 11                              kitchens and bathrooms are accessible by
- 12                              wheelchair; or
- 13           (13) To discriminate against or deny a person access to, or
- 14                      membership or participation in any multiple listing
- 15                      service, real estate broker's organization, or other
- 16                      service, organization, or facility involved either
- 17                      directly or indirectly in real estate transactions, or
- 18                      to discriminate against any person in the terms or
- 19                      conditions of such access, membership, or
- 20                      participation."

21           SECTION 4. Section 515-5, Hawaii Revised Statutes, is  
22 amended to read as follows:

1           **"§515-5 Discriminatory financial practices.** It is a  
2 discriminatory practice for a person, a representative of such  
3 person, or a real estate broker or salesperson, to whom an  
4 inquiry or application is made for financial assistance in  
5 connection with a real estate transaction or for the  
6 construction, rehabilitation, repair, maintenance, or  
7 improvement of real property, because of race, sex, including  
8 gender identity or expression, sexual orientation, color,  
9 religion, marital status, familial status, ancestry, disability,  
10 age, arrest and court record, or human immunodeficiency virus  
11 infection:

- 12           (1) To discriminate against the applicant;
- 13           (2) To use a form of application for financial assistance  
14 or to make or keep a record or inquiry in connection  
15 with applications for financial assistance that  
16 indicates, directly or indirectly, an intent to make a  
17 limitation, specification, or discrimination unless  
18 the records are required by federal law;
- 19           (3) To discriminate in the making or purchasing of loans  
20 or the provision of other financial assistance for  
21 purchasing, constructing, improving, repairing, or  
22 maintaining a dwelling, or the making or purchasing of



1 loans or the provision of other financial assistance  
 2 secured by residential real estate; or  
 3 (4) To discriminate in the selling, brokering, or  
 4 appraising of residential real property."

5 SECTION 5. Section 515-6, Hawaii Revised Statutes, is  
 6 amended to read as follows:

7 **"§515-6 Restrictive covenants and conditions.** (a) Every  
 8 provision in an oral agreement or a written instrument relating  
 9 to real property that purports to forbid or restrict the  
 10 conveyance, encumbrance, occupancy, or lease thereof to  
 11 individuals because of race, sex, including gender identity or  
 12 expression, sexual orientation, color, religion, marital status,  
 13 familial status, ancestry, disability, age, arrest and court  
 14 record, or human immunodeficiency virus infection, is void.

15 (b) Every condition, restriction, or prohibition,  
 16 including a right of entry or possibility of reverter, that  
 17 directly or indirectly limits the use or occupancy of real  
 18 property on the basis of race, sex, including gender identity or  
 19 expression, sexual orientation, color, religion, marital status,  
 20 familial status, ancestry, disability, age, or human  
 21 immunodeficiency virus infection is void, except a limitation,  
 22 on the basis of religion, on the use of real property held by a

1 religious institution or organization or by a religious or  
2 charitable organization operated, supervised, or controlled by a  
3 religious institution or organization, and used for religious or  
4 charitable purposes.

5 (c) It is a discriminatory practice to insert in a written  
6 instrument relating to real property a provision that is void  
7 under this section or to honor or attempt to honor such a  
8 provision in the chain of title."

9 SECTION 6. Section 515-7, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§515-7 Blockbusting.** It is a discriminatory practice for  
12 a person, representative of a person, or a real estate broker or  
13 salesperson, for the purpose of inducing a real estate  
14 transaction from which the person, representative, or real  
15 estate broker or salesperson may benefit financially, because of  
16 race, sex, including gender identity or expression, sexual  
17 orientation, color, religion, marital status, familial status,  
18 ancestry, disability, age, arrest and court record, or human  
19 immunodeficiency virus infection:

20 (1) To represent that a change has occurred or will or may  
21 occur in the composition of the owners or occupants in



1 the block, neighborhood, or area in which the real  
2 property is located; or

3 (2) To represent that this change will or may result in  
4 the lowering of property values, an increase in  
5 criminal or antisocial behavior, or a decline in the  
6 quality of schools in the block, neighborhood, or area  
7 in which the real property is located."

8 SECTION 7. Section 515-16, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§515-16 Other discriminatory practices.** It is a  
11 discriminatory practice for a person, or for two or more persons  
12 to conspire:

13 (1) To retaliate, threaten, or discriminate against a  
14 person because of the exercise or enjoyment of any  
15 right granted or protected by this chapter, or because  
16 the person has opposed a discriminatory practice, or  
17 because the person has made a charge, filed a  
18 complaint, testified, assisted, or participated in an  
19 investigation, proceeding, or hearing under this  
20 chapter;

21 (2) To aid, abet, incite, or coerce a person to engage in  
22 a discriminatory practice;

- 1 (3) To interfere with any person in the exercise or
- 2 enjoyment of any right granted or protected by this
- 3 chapter or with the performance of a duty or the
- 4 exercise of a power by the commission;
- 5 (4) To obstruct or prevent a person from complying with
- 6 this chapter or an order issued thereunder;
- 7 (5) To intimidate or threaten any person engaging in
- 8 activities designed to make other persons aware of, or
- 9 encouraging such other persons to exercise rights
- 10 granted or protected by this chapter; or
- 11 (6) To threaten, intimidate or interfere with persons in
- 12 their enjoyment of a housing accommodation because of
- 13 the race, sex, color, religion, marital status,
- 14 familial status, ancestry, disability, age, arrest and
- 15 court record, or HIV infection of such persons, or of
- 16 visitors or associates of such persons."

17 SECTION 8. New statutory material is underscored.

18 SECTION 9. This Act shall take effect upon its approval.

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

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**Report Title:**

Discrimination in Real Property; Rentals; Arrest and Court Record

**Description:**

Amends chapter 515, Hawaii Revised Statutes, to prohibit discrimination in real estate transactions because of arrest and court record.

