

JAN 26 2011

A BILL FOR AN ACT

RELATING TO FAIR HOUSING EXEMPTIONS.

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

1 SECTION 1. The purpose of this Act is to make the
2 exemptions from prohibited discriminatory practices in our state
3 fair housing laws consistent with similar exemptions found in
4 the federal Fair Housing Act by clarifying that the exemptions
5 apply to lessors as well as owners, that the exemptions do not
6 apply to advertising, publications or statements, and by making
7 the groups protected in Section 515-16, Hawaii Revised Statutes,
8 consistent with the rest of that chapter.

9 SECTION 2. Section 515-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§515-3 Discriminatory practices.** It is a discriminatory
12 practice for an owner or any other person engaging in a real
13 estate transaction, or for a real estate broker or salesperson,
14 because of race, sex, including gender identity or expression,
15 sexual orientation, color, religion, marital status, familial
16 status, ancestry, disability, age, or human immunodeficiency
17 virus infection:

S.B. NO. 1301

- 1 (1) To refuse to engage in a real estate transaction with
2 a person;
- 3 (2) To discriminate against a person in the terms,
4 conditions, or privileges of a real estate transaction
5 or in the furnishing of facilities or services in
6 connection therewith;
- 7 (3) To refuse to receive or to fail to transmit a bona
8 fide offer to engage in a real estate transaction from
9 a person;
- 10 (4) To refuse to negotiate for a real estate transaction
11 with a person;
- 12 (5) To represent to a person that real property is not
13 available for inspection, sale, rental, or lease when
14 in fact it is available, or to fail to bring a
15 property listing to the person's attention, or to
16 refuse to permit the person to inspect real property,
17 or to steer a person seeking to engage in a real
18 estate transaction;
- 19 ~~(6) To print, circulate, post, or mail, or cause to be~~
20 ~~published a statement, advertisement, or sign, or to~~
21 ~~use a form of application for a real estate~~
22 ~~transaction, or to make a record or inquiry in~~

S.B. NO. 1301

1 ~~connection with a prospective real estate transaction,~~
2 ~~that indicates, directly or indirectly, an intent to~~
3 ~~make a limitation, specification, or discrimination~~
4 ~~with respect thereto;]~~

5 [(+7)] (6) To offer, solicit, accept, use, or retain a
6 listing of real property with the understanding that a
7 person may be discriminated against in a real estate
8 transaction or in the furnishing of facilities or
9 services in connection therewith;

10 [(+8)] (7) To refuse to engage in a real estate transaction
11 with a person or to deny equal opportunity to use and
12 enjoy a housing accommodation due to a disability
13 because the person uses the services of a guide dog,
14 signal dog, or service animal; provided that
15 reasonable restrictions or prohibitions may be imposed
16 regarding excessive noise or other problems caused by
17 those animals. For the purposes of this paragraph:

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

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

20 "Guide dog" means any dog individually trained by
21 a licensed guide dog trainer for guiding a blind.

S.B. NO. 1301

1 person by means of a harness attached to the dog and a
2 rigid handle grasped by the person;

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

14 (A) Observe applicable laws including leash
15 laws and pick-up laws;

16 (B) Assume responsibility for damage caused
17 by the dog; or

18 (C) Have the housing unit cleaned upon
19 vacating by fumigation, deodorizing,
20 professional carpet cleaning, or other
21 method appropriate under the
22 circumstances.

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

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

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

8 ~~[(+9)]~~ (8) To solicit or require as a condition of engaging
9 in a real estate transaction that the buyer, renter,
10 or lessee be tested for human immunodeficiency virus
11 infection, the causative agent of acquired
12 immunodeficiency syndrome;

13 ~~[(+10)]~~ (9) To refuse to permit, at the expense of a person
14 with a disability, reasonable modifications to
15 existing premises occupied or to be occupied by the
16 person if modifications may be necessary to afford the
17 person full enjoyment of the premises. A real estate
18 broker or salesperson, where it is reasonable to do
19 so, may condition permission for a modification on the
20 person agreeing to restore the interior of the
21 premises to the condition that existed before the
22 modification, reasonable wear and tear excepted;

S.B. NO. 130

1 [~~(11)~~] (10) To refuse to make reasonable accommodations in
2 rules, policies, practices, or services, when the
3 accommodations may be necessary to afford a person
4 with a disability equal opportunity to use and enjoy a
5 housing accommodation;

6 [~~(12)~~] (11) In connection with the design and construction
7 of covered multifamily housing accommodations for
8 first occupancy after March 13, 1991, to fail to
9 design and construct housing accommodations in such a
10 manner that:

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

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

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

22 (ii) Doors allow passage by persons in

S.B. NO. 1301

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wheelchairs; and

(iii) All premises within covered multifamily housing accommodations contain an accessible route into and through the housing accommodations; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements in the bathroom walls allow installation of grab bars; and kitchens and bathrooms are accessible by wheelchair; or

~~(13)~~ (12) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker's organization, or other service, organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership, or participation."

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

3 **"§515-4 Exemptions.** (a) Section 515-3 does not apply:

4 (1) To the rental of a housing accommodation in a
5 building which contains housing accommodations for not
6 more than two families living independently of each
7 other if the owner or lessor resides in one of the
8 housing accommodations; or

9 (2) To the rental of a room or up to four rooms in a
10 housing accommodation by an [~~individual~~] owner or
11 lessor if the [~~individual~~] owner or lessor resides
12 therein.

13 (b) Nothing in section 515-3 shall be deemed to prohibit
14 refusal, because of sex, including gender identity or
15 expression, sexual orientation, or marital status, to rent or
16 lease housing accommodations:

17 (1) Owned or operated by a religious institution
18 and used for church purposes as that term is
19 used in applying exemptions for real property
20 taxes; or

21 (2) Which are part of a religiously affiliated
22 institution of higher education housing

1 program which is operated on property that
2 the institution owns or controls, or which is
3 operated for its students pursuant to Title
4 IX of the Higher Education Act of 1972.

5 (c) Nothing in this chapter regarding familial status or
6 age shall apply to housing for older persons as defined by 42
7 United States Code section 3607(b)(2)."

8 SECTION 4. 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, including gender identity or
14 expression, sexual orientation, color, religion,
15 marital status, familial status, ancestry, disability,
16 age, or human immunodeficiency virus infection of such
17 persons, or of visitors or associates of such
18 persons[-];
- 19 (7) To print, circulate, post, or mail, or cause to be
20 published a statement, advertisement, or sign, or to
21 use a form of application for a real estate
22 transaction, or to make a record or inquiry in

SB. NO. 1301

Report Title:

Fair Housing; Exemptions

Description:

Makes exemptions from state fair housing laws consistent with similar exemptions found in the federal Fair Housing Act and makes protected groups consistent throughout Chapter 515, Hawaii Revised Statutes.

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO FAIR HOUSING EXEMPTIONS.

PURPOSE: To make state law exemptions from prohibited discriminatory practices in housing consistent with similar exemptions found in the federal Fair Housing Act by clarifying that the exemptions apply to lessors as well as owners, by clarifying that the exemptions do not apply to advertising, publications or statements and by making the groups protected under section 515-16, Hawaii Revised Statutes, consistent with the rest of that chapter.

MEANS: Amend sections 515-3, 515-4, and 515-16, Hawaii Revised Statutes.

JUSTIFICATION: Currently section 515-4(a)(1) exempts a "lessor" who resides in a duplex and who is renting out the other unit, and section 515-4(a)(2) exempts an "individual" who lives in a house and who is renting up to four rooms in that house, from the state's fair housing laws. The proposed amendment would add the consistent clarifying language "owner or lessor" to section 515-4(a)(1) and (2), clarify that the exemptions do not apply to advertising, publication or statements, by moving that prohibition from section 515-3 to section 515-16, and making the groups protected under section 515-16 consistent with the rest of that chapter.

Impact on the Public: Would clarify who the fair housing exemptions apply to.

Impact on the Department and other agencies:

Clarification of these exemptions would decrease the number of complaints filed and/or decrease the amount of time to investigate respondents claiming these exemptions.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LBR 153.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.