



# HAWAII CIVIL RIGHTS COMMISSION

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March 16, 2011  
Conference Room 325  
9:00 a.m.

To: The Honorable Rida Cabanilla, Chair  
Members of the House Committee on Housing

From: Coral Wong Pietsch, Chair  
and Commissioners of the Hawai'i Civil Rights Commission

Re: S.B. No. 1301, SD1

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai'i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

The HCRC supports S.B. No. 1301, SD1 which makes the "close living" exemptions from our state fair housing laws consistent with similar exemptions found in the federal Fair Housing Act (FHA) by: 1) clarifying that the exemptions apply to certain lessors as well as owners; and 2) clarifying that the exemptions do not apply to advertising, publications or statements. The bill also makes the groups protected under H.R.S. §515-16 consistent with the rest of Chapter 515.

Currently under H.R.S. §515-4(a)(1) a "lessor" who resides in a duplex and is renting out the other unit is exempt from the state's fair housing laws. Under H.R.S. §515-4(a)(2) an "individual" who lives in a house and is renting up to four rooms in that house, is also exempt from the state's fair housing laws. These two exemptions are known as the "close living" exemptions. The proposed amendments would add the consistent clarifying language "owner or lessor" to those sections and make these provisions consistent with

similar exemptions contained in the federal FHA, 42 U.S.C. §3603(b).

The proposed amendments would also clarify that these “close living” exemptions do not apply to advertising, publication or statements, by moving that prohibition from H.R.S. §515-3 to H.R.S. §515-16. This will make our state fair housing law consistent with FHA provisions that prohibit the printing or publishing of any notice, statement or advertisement relating to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, disability, familial status or national origin. See, 42 U.S.C. §3604(c). In interpreting that section of the FHA, federal courts have held that although certain owners or landlords are exempt from the FHA and may have discriminatory preferences, those owners or landlords do not have a right to publicize their intent to discriminate. See, United States v. Hunter, 459 F.2d 205, 213 (4<sup>th</sup> Cir. 1972), cert. denied, 409 U.S. 934 (1972). By making state law consistent with federal fair housing law, the amendment recognizes that discriminatory publication is a separate harm that should not be exempted from coverage even for those who fall under the “close living” exemptions.

Finally, the proposed amendments will make the groups protected under H.R.S. §515-16 consistent with the rest of that chapter.

For these reasons, the HCRC supports S.B. No. 1301, SD1 and urges your favorable consideration.



March 15, 2011  
TESTIMONY IN SUPPORT OF SB1301  
Housing Committee  
March 16, 2011 at 9:00 am in Room 325

The Legal Aid Society of Hawai'i hereby provides testimony to the House Committee on Housing in support of SB1301 – Relating to Fair Housing Exemptions.

The Fair Housing Enforcement Program (FHEP) of Legal Aid was established in 2001. Legal Aid has structured a fair housing program that ensures each housing discrimination complaint and respective client receives appropriate counsel and advice and is guided through proper intake and referral protocols. FHEP and the Hawaii Civil Rights Commission operate under a memorandum of understanding which defines the referral standards and procedures. Services offered under FHEP are available to all persons, statewide, protected by the Fair Housing Act, regardless of income.

As HRS §515 currently reads, an individual who lives in a home and rents out four or fewer rooms may freely and *publicly* discriminate against all individuals in any protected class. See HRS 515-4(a)(2). At this time, a housing provider may place a rental sign on their front lawn stating “no Japanese” and “no children” but be immune from liability under the state Fair Housing law if he lives under the same roof and rents four or fewer rooms. SB1301 seeks to eliminate this loophole which allows discriminatory advertising and statements. To be clear, SB1301 does not prevent a housing provider deciding to rent to someone based on a preference, if they live under the same roof and rent out four or fewer rooms; SB1301 merely states that housing providers may not make statements or publicly advertise their preference.

The Federal Fair Housing Act, and equivalent state laws, exempt owner-occupied residences where four or fewer rooms are rented. The key difference between the current HRS §515 and the federal Fair Housing Act, however, is that the federal Fair Housing Act specifically provides that a discriminatory statement or advertisement is illegal *even if* an individual lives in the home and rents out four or less rooms. Because of this difference, the current state Fair Housing Act is *not* an equivalent state law. Because of this, HUD can deny the State a Substantial Equivalent Certification. Loss of this Certification will allow the federal government to cease federal funding pursuant to the Fair Housing Act. See 24 CFR§115.204(a)(4).

The Legal Aid Society of Hawaii strongly supports SB1301, *A Bill for an Act Relating to Fair Housing Exemptions*. Passage of this bill will not only allow the state to continue to receive federal funds, it will stop current discriminatory housing ads and will provide victims of housing discrimination recourse in state court. Thank you for the opportunity to testify.

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