



HAWAI'I CIVIL RIGHTS COMMISSION

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March 29, 2011
Conference Room 325
3:30 p.m.

To: The Honorable Gilbert Keith-Agaran, Chair
Members of the House Committee on Judiciary

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 (4th 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.