

SB1301

Measure Title: RELATING TO FAIR HOUSING EXEMPTIONS.

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.

Companion: HB1074

Package: Gov

Current Referral: CPN, JDL



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February 8, 2011

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce & Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 1301 Relating to Fair Housing Exemptions

HEARING: Wednesday, February 9, 2011 at 8:30 a.m.

Aloha Chair Baker, Vice-Chair Taniguchi and Members of the Committee:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, testifying on behalf of its 8,500 members. HAR would like to make the following **comments** with respect to S.B. 1301, which makes exemptions from the state fair housing law consistent with similar exemptions found in the Federal Fair Housing Act.

Section 3 of S.B. 1301 amends HRS §515-4, relating to exemptions under the State Fair Housing law, by making the exemptions thereunder subject to both owners and lessors. HAR is unclear whether the amendments proposed in Section 3 of S.B. 1301 are intended to broaden the scope of the current law, as "lessor" could apply to a manager or leasing agent. Also, a lessor could be construed to mean the person leasing the property to a tenant or lessee.

HAR believes that, with respect to Section 3 of S.B. 1301, "owner" be retained because including a lessor may create confusion as to exactly who has the exemption.

Mahalo for the opportunity to testify.

Attachment



Fair Housing for All

Home » Resource Library » Regulations and Guidance » 24 C.F.R. Part 100

Subpart A

42 C.F.R. § 100.1 Authority.

This regulation is issued under the authority of the Secretary of Housing and Urban Development to administer and enforce title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act).

42 C.F.R. § 100.5 Scope.

(a) It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. No person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

(b) This part provides the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions.

(c) Nothing in this part relieves persons participating in a Federal or Federally-assisted program or activity from other requirements applicable to buildings and dwellings.

42 C.F.R. § 100.10 Exemptions.

(a) This part does not:

- (1) Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted because of race, color, or national origin;
- (2) Prohibit a private club, not in fact open to the public, which, incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members;
- (3) Limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling; or
- (4) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(b) Nothing in this part regarding discrimination based on familial status applies with respect to housing for older persons as defined in subpart E of this part.

(c) Nothing in this part, other than the prohibitions against discriminatory advertising, applies to:

- (1) The sale or rental of any single family house by an owner, provided the following conditions are met:
 - (i) The owner does not own or have any interest in more than three single family houses at any one time.
 - (ii) The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this paragraph (c)(1) of this section applies to only one such sale in any 24-month period.
- (2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

42 C.F.R. § 100.20 Definitions.

The terms Department, Fair Housing Act, and Secretary are defined in 24 CFR part 5.

Aggrieved person includes any person who—

- (a) Claims to have been injured by a discriminatory housing practice; or
- (b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

Broker or Agent includes any person authorized to perform an action on behalf of another person

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HAWAI‘I CIVIL RIGHTS COMMISSION

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February 9, 2011
Conference Room 229
8:30 a.m.

To: The Honorable Rosalyn Baker, Chair
Members of the Senate Committee on Commerce and Consumer Affairs

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

Re: S.B. No. 1301

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 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 and urges your favorable consideration.