



NEIL ABERCROMBIE
GOVERNOR

DWIGHT Y. TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor

February 16, 2012

To: The Honorable Clayton Hee, Chair,
The Honorable Maile S.L. Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary and Labor

Date: Friday, February 16, 2012
Time: 10:00 a.m.
Place: Conference Room 016, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations (DLIR)

**RE: SB2842 RELATING TO CIVIL ACTIONS FOR DISCRIMINATORY PRACTICES IN
REAL PROPERT TRANSACTIONS**

I. OVERVIEW OF PROPOSED LEGISLATION

The purpose of this proposal is to make state law provisions relating to the filing of civil actions in housing discrimination cases consistent with provisions found in the federal Fair Housing Act (FHA).

DLIR strongly supports this administration proposal that will satisfy federal conformity issues and allow the Hawaii Civil Rights Commission (HCRC) to continue to receive federal funds from the U.S. Department of Housing and Urban Development (HUD).

II. CURRENT LAW

Currently, H.R.S. § 515-9 allows an aggrieved person to file a civil action only after filing an administrative complaint with the HCRC and obtaining a notice of right to sue.

III. COMMENTS ON THE SENATE/HOUSE BILL

SB2842 would allow the HCRC to meet federal requirements for the continued

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receipt of federal funds to investigate dual-filled fair housing complaints. HUD reviewed and approved the language in the proposal. DLIR urges approval of the measure.



HAWAII CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 17, 2012
Conference Rm. 016
10:00 a.m.

To: The Honorable Clayton Hee, Chair
and Members of the Senate Committee on Judiciary and Labor

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawaii Civil Rights Commission

Re: S. B. No. 2842

The Hawaii 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 Hawaii 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. 2842. This is an administration bill requested by the HCRC in order to maintain state fair housing law in substantial equivalence with the federal Fair Housing Act, as required for continued receipt of federal funds.

The purpose of this bill is to make state law provisions relating to the filing of civil actions in housing discrimination cases consistent with provisions found in the federal Fair Housing Act (FHA). Specifically, the bill amends H.R.S. §515-9 to allow an aggrieved person to file a civil action in an appropriate court no later than two years after the occurrence or termination of an alleged discriminatory housing practice, without first filing an administrative complaint with the HCRC and obtaining a notice of right to sue. The bill also allows the HCRC to issue a right to sue on a complaint filed with the commission if it determines that a civil action alleging similar facts has also been filed.

Currently, H.R.S. § 515-9 allows an aggrieved person to file a civil action only after filing an administrative complaint with the HCRC and obtaining a notice of right to sue. The enforcement provisions of the FHA do not include such administrative exhaustion requirements. Rather, they provide an aggrieved person the option of filing a civil action without first filing an administrative complaint.

The HCRC receives federal funding through a cooperative agreement with the U.S. Department of Housing and Urban Development (HUD) for investigation of dual-filed fair housing complaints under state laws and the FHA. The HUD cooperative agreement requires state fair housing law to be “substantially equivalent” to the FHA. In May 2011, the HCRC received a notice from Kenneth Carroll, Director, HUD Fair Housing Assistance Program Division, directing the HCRC to seek amendment of our state law to make it substantially equivalent to the FHA by providing for civil enforcement by an aggrieved person by the commencement of a court action without exhaustion of administrative remedies. Attached please find Mr. Carroll’s letter to that effect.

S.B. No. 2842 satisfies the federal law requirement of substantial equivalency. HUD has reviewed the proposed language and approved it. For these reasons, the HCRC supports S.B. No. 2842 and urges that the bill be given favorable consideration and approval.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

MAY 5 - 2011

William D. Hoshijo
Executive Director
Hawaii Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, HI 96813-5095

Dear Mr. Hoshijo:

I am writing to you regarding the administrative exhaustion requirement for housing discrimination complaints in the Hawaii Administrative Code.

The enforcement provisions of the federal Fair Housing Act (the Act) do not include an administrative exhaustion requirement. Rather, they provide an aggrieved person the option of filing an administrative complaint, a civil action, or both. 42 U.S.C. § 3613. A law that HUD deems substantially equivalent must have an enforcement scheme that is consistent with the Act. 24 C.F.R. § 115.204 (g). In addition, a substantially equivalent law may not place excessive burdens on aggrieved persons that might discourage the filing of complaints. 24 C.F.R. § 115.204 (a)(3).

Unlike the Act, the Hawaii Administrative Code requires a complainant make a written request for a right-to-sue letter from the Hawaii Human Rights Commission (HHRC) prior to filing a civil action. HI ADC § 12-46-20 (a)(2). Such a requirement places a burden on aggrieved persons that may discourage complaint filings. HHRC should therefore seek an amendment to the Hawaii Administrative Code to remove the administrative exhaustion requirement.

We recognize that § 12-46-20 (a)(2), as written, existed when HUD deemed the Hawaii fair housing law substantially equivalent in 1992. However, if a state or local agency seeking to obtain substantial equivalence now enforced a fair housing law with such a provision, for the reasons stated above, HUD would require that agency to repeal the provision before HUD deemed the law substantially equivalent.

My understanding is that the Hawaii legislature convenes every January. Please ensure that HHRC seeks an amendment on this issue prior to its next recertification in 2014 and please keep me apprised of these efforts. If you have any questions, please contact Isabel Torres-Davis, of my staff, at (202) 402-2124.

Sincerely,



Kenneth J. Carroll, J.D., M.P.A., Director
Fair Housing Assistance Program Division

cc: Chuck Hauptman, Director, Region IX FHEO

LATE TESTIMONY

Shawn A. Luiz
Attorney at Law
1132 Bishop Street
Suite 1520
Honolulu, Hawaii 96813
Tel. (808) 538-0500 Fax (808) 538-0600 E-mail: attorneyluiz@msn.com

February 17, 2012

Via Facsimile to (808) 586-7334

SB 2842
COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Relating to Civil Actions for Discriminatory Practices in Real Property Transactions
Friday, Feb. 17, 2012
10:00 a.m.
Room 016

The Legislature should expand SB 2842 to provide complete immunity to persons who refuse to rent for religious grounds:

Language suggested is as follows: HRS 515-3(1)-(11) will be amended as follows, (12) the term discriminate shall not include "refusal to rent for a sincere religious belief."

In summation, SB 2842 should be amended to provide maximum First Amendment Immunity.

Very Truly Yours,



Shawn A. Luiz