

CHAPTER 489
DISCRIMINATION IN PUBLIC ACCOMMODATIONS

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Case Notes

Person may bring action under chapter if person is discriminated against in public accommodations because the furnisher of the accommodations believes person to be handicapped, whether or not person is actually handicapped. 72 H. 150, 808 P.2d 1276.

"PART I. GENERAL PROVISIONS

Note

Sections 489-1 to 489-8 designated as Part I by L 2000, c 227, §3.

[§489-1] Purpose; construction. (a) The purpose of this chapter is to protect the interests, rights, and privileges of all persons within the State with regard to access and use of public accommodations by prohibiting unfair discrimination.

(b) This chapter shall be liberally construed to further the purposes stated in subsection (a). [L 1986, c 292, pt of §1]

Cross References

Civil rights commission, see chapter 368.

" **§489-2 Definitions.** As used in this chapter:

"Disability" means the state of having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment. The term does not include alcohol or drug use that impairs a person's activities or threatens the property or safety of others.

"Gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

"Person" has the meaning prescribed in section 1-19 and includes a legal representative, partnership, receiver, trust, trustee, trustee in bankruptcy, the State, or any governmental entity or agency.

"Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind whose goods, services,

facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors. By way of example, but not of limitation, place of public accommodation includes facilities of the following types:

- (1) A facility providing services relating to travel or transportation;
- (2) An inn, hotel, motel, or other establishment that provides lodging to transient guests;
- (3) A restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises of a retail establishment;
- (4) A shopping center or any establishment that sells goods or services at retail;
- (5) An establishment licensed under chapter 281 doing business under a class 4, 5, 7, 8, 9, 10, 11, or 12 license, as defined in section 281-31;
- (6) A motion picture theater, other theater, auditorium, convention center, lecture hall, concert hall, sports arena, stadium, or other place of exhibition or entertainment;
- (7) A barber shop, beauty shop, bathhouse, swimming pool, gymnasium, reducing or massage salon, or other establishment conducted to serve the health, appearance, or physical condition of persons;
- (8) A park, a campsite, or trailer facility, or other recreation facility;
- (9) A comfort station; or a dispensary, clinic, hospital, convalescent home, or other institution for the infirm;
- (10) A professional office of a health care provider, as defined in section 323D-2, or other similar service establishment;
- (11) A mortuary or undertaking establishment; and
- (12) An establishment that is physically located within the premises of an establishment otherwise covered by this definition, or within the premises of which is physically located a covered establishment, and which holds itself out as serving patrons of the covered establishment.

No place of public accommodation defined in this section shall be requested to reconstruct any facility or part thereof to comply with this chapter.

"Sexual orientation" means having a preference for heterosexuality, homosexuality, or bisexuality, having a history of any one or more of these preferences, or being identified

with any one or more of these preferences. "Sexual orientation" shall not be construed to protect conduct otherwise proscribed by law. [L 1986, c 292, pt of §1; am L 1990, c 210, §1; am L 1992, c 33, §5; am L 2006, c 76, §2]

Attorney General Opinions

County grant of a liquor license to a condominium bar where entry would be restricted to members and their guests does not conflict with section. Att. Gen. Op. 91-01.

" **§489-3 Discriminatory practices prohibition.** Unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability are prohibited. [L 1986, c 292, pt of §1; am L 1990, c 210, §2; am L 1992, c 33, §5; am L 2006, c 76, §3]

Law Journals and Reviews

An Analysis of Hawai'i's Tradition of "Local" Ethnic Humor. 30 UH L. Rev. 219.

Case Notes

Individual plaintiffs' claims under this section were reinstated against defendants, where one of the defendants allegedly made a racial slur that was either directed at or witnessed by the individual plaintiffs. 300 F. Supp. 2d 1003.

" **[\$489-4] Exception, privacy requirements.** The provision of separate facilities or schedules for female and for male patrons, does not constitute a discriminatory practice when such separate facilities or schedules for female and for male patrons are bona fide requirements to protect personal rights of privacy. [L 1986, c 292, pt of §1]

" **§489-5 Other discriminatory practices.** (a) It is a discriminatory practice for two or more persons to conspire:

- (1) To retaliate or discriminate against a person because the person has opposed an unfair discriminatory practice;
- (2) To aid, abet, incite, or coerce a person to engage in a discriminatory practice; or

(3) Wilfully, to obstruct, or prevent, a person from complying with this chapter.

(b) It is a discriminatory practice to deny a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodations because of the known disability of an individual with whom the person is known to have a relationship or association. [L 1986, c 292, pt of §1; am L 1994, c 88, §3]

Case Notes

Summary judgment granted in favor of defendants with respect to a plaintiff's (a nonprofit corporation) claims under subsection (b); plaintiffs offered nothing to indicate that one of the defendants was hostile toward the disabled in general or those suffering with epilepsy in particular; without the evidence, plaintiffs' claim that the defendant denied the nonprofit corporation the full and equal enjoyment of a place of public accommodation because of the nonprofit corporation's association with persons known to be disabled was totally devoid of factual support. 300 F. Supp. 2d 1003.

" **§489-6 Complaint against unfair discrimination; reporting requirements.** The civil rights commission shall receive complaints of unfair discriminatory treatment in public accommodations in accordance with the procedures established under chapter 368; provided that this section shall not apply to complaints under part II of this chapter. [L 1986, c 292, pt of §1; am L 1989, c 386, §11; am L 2000, c 227, §4]

" **[§489-7] No limitation on causes of action.** Nothing in this chapter shall be construed to limit any cause of action based upon any unfair discriminatory practices for which a remedy is available under state or federal law. [L 1986, c 292, pt of §1]

" **§489-7.5 Suits by persons injured; amount of recovery, injunctions.** (a) Any person who is injured by an unlawful discriminatory practice, other than an unlawful discriminatory practice under part II of this chapter, may:

- (1) Sue for damages sustained, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys' fees together with the costs of suit; and

(2) Bring proceedings to enjoin the unlawful discriminatory practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorneys' fees together with the cost of suit.

(b) The remedies provided in subsection (a) shall be applied in class action and de facto class action lawsuits or proceedings provided that:

(1) The minimum \$1,000 recovery provided in subsection (a) shall not apply in a class action or a de facto class action lawsuit; and

(2) That portion of threefold damages in excess of compensatory damages shall be apportioned and allocated by the court in its exercise of discretion so as to promote effective enforcement of this part and deterrence from violation of its provisions.

(c) The remedies provided in this section are cumulative and may be brought in one action. [L 1989, c 386, §2; am L 2000, c 227, §5; am L 2001, c 55, §23]

" **§489-8 Civil penalty.** (a) It shall be unlawful for a person to discriminate unfairly in public accommodations.

(b) Any person, firm, company, association, or corporation who violates this part shall be fined a sum of not less than \$500 nor more than \$10,000 for each violation, which sum shall be collected in a civil action brought by the attorney general or the civil rights commission on behalf of the State. The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of this State. Each day of violation under this part shall be a separate violation.

(c) This section shall not apply to violations of part II of this chapter. [L 1987, c 294, §1; am L 1989, c 386, §12; am L 2000, c 227, §6; am L 2001, c 55, §24]

Rules of Court

Class actions, see HRCP rule 23; injunctions, see HRCP rule 65.

" **[§489-9] Motion picture theater accommodation.** *[Section effective January 1, 2016. Section repealed January 1, 2018. L 2015, c 39, §3.]* (a) A public accommodation that owns, leases, leases to, or operates a motion picture theater in more than two locations in the State shall provide open movie captioning during at least two showings per week of each motion picture that is produced and offered with open movie captioning.

(b) A public accommodation that owns, leases, leases to, or operates a motion picture theater in the State shall provide, upon request, audio description of any motion picture that is produced and offered with audio description.

(c) A violation of this section shall be a discriminatory practice.

(d) This section shall apply to motion pictures that are produced and distributed with the necessary auxiliary aids and services, including captioning and audio description. This section shall not prohibit the showing of a motion picture that is produced and distributed without captioning and audio description; provided that a public accommodation that owns, leases, leases to, or operates a motion picture theater shall provide notice to the public if a motion picture offered for viewing is produced and distributed without captioning or audio description.

(e) For the purposes of this section, "motion picture theater" means a movie theater, screening room, or other venue in use primarily for the exhibition of a motion picture. [L 2015, c 39, §1]

"[PART II.] BREASTFEEDING IN PUBLIC ACCOMMODATIONS

[\$489-21] Discriminatory practices; breastfeeding. It is a discriminatory practice to deny, or attempt to deny, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodations to a woman because she is breastfeeding a child. [L 2000, c 227, pt of §2]

" **[\$489-22] Private cause of action.** Any person who is injured by an unlawful discriminatory practice under this part may bring proceedings to enjoin the unlawful discriminatory practice, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorneys' fees, the cost of suit, and \$100. Any action under this part shall be subject to the jurisdiction of the district courts as provided in chapter 604, and may be commenced and conducted in the small claims division of the district court. [L 2000, c 227, pt of §2]

" **[\$489-23] Exclusion from civil rights commission.** Notwithstanding the provisions of chapter 368, this part shall not be subject to chapter 368 and shall not be enforced by the civil rights commission. [L 2000, c 227, pt of §2]