

JAN 28 2009

A BILL FOR AN ACT

RELATING TO DISCRIMINATION IN REAL PROPERTY TRANSACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that one out of every
2 seven people in Hawaii keeps an animal as a companion. Yet
3 thousands of animals are euthanized each year because pet
4 owner/tenants are prohibited from keeping pets in rental housing
5 units. The court system is clogged with pet-related eviction
6 proceedings that sometimes result in homeless tenants as well as
7 pets.

8 The purpose of the Act is to prohibit landlords from
9 discriminating against a tenant with a pet.

10 SECTION 2. Section 515-3, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§515-3 Discriminatory practices. It is a discriminatory
13 practice for an owner or any other person engaging in a real
14 estate transaction, or for a real estate broker or salesperson,
15 because of race, sex, including gender identity or expression,
16 sexual orientation, color, religion, marital status, familial



1 status, ancestry, disability, age, ownership of a domesticated
2 animal, or human immunodeficiency virus infection:

3 (1) To refuse to engage in a real estate transaction with
4 a person;

5 (2) To discriminate against a person in the terms,
6 conditions, or privileges of a real estate transaction
7 or in the furnishing of facilities or services in
8 connection therewith;

9 (3) To refuse to receive or to fail to transmit a bona
10 fide offer to engage in a real estate transaction from
11 a person;

12 (4) To refuse to negotiate for a real estate transaction
13 with a person;

14 (5) To represent to a person that real property is not
15 available for inspection, sale, rental, or lease when
16 in fact it is available, or to fail to bring a
17 property listing to the person's attention, or to
18 refuse to permit the person to inspect real property,
19 or to steer a person seeking to engage in a real
20 estate transaction;

21 (6) To print, circulate, post, or mail, or cause to be
22 published a statement, advertisement, or sign, or to



1 use a form of application for a real estate
2 transaction, or to make a record or inquiry in
3 connection with a prospective real estate transaction,
4 that indicates, directly or indirectly, an intent to
5 make a limitation, specification, or discrimination
6 with respect thereto;

7 (7) To offer, solicit, accept, use, or retain a listing of
8 real property with the understanding that a person may
9 be discriminated against in a real estate transaction
10 or in the furnishing of facilities or services in
11 connection therewith;

12 (8) To refuse to engage in a real estate transaction with
13 a person or to deny equal opportunity to use and enjoy
14 a housing accommodation due to a disability because
15 the person uses the services of a guide dog, signal
16 dog, or service animal; provided that reasonable
17 restrictions or prohibitions may be imposed regarding
18 excessive noise or other problems caused by those
19 animals. For the purposes of this paragraph:

20 "Blind" shall be as defined in section 235-1;

21 "Deaf" shall be as defined in section 235-1;



1 "Guide dog" means any dog individually trained by
2 a licensed guide dog trainer for guiding a blind
3 person by means of a harness attached to the dog and a
4 rigid handle grasped by the person;

5 "Reasonable restriction" shall not include any
6 restriction that allows any owner or person to refuse
7 to negotiate or refuse to engage in a real estate
8 transaction; provided that as used in this paragraph,
9 the "reasonableness" of a restriction shall be
10 examined by giving due consideration to the needs of a
11 reasonable prudent person in the same or similar
12 circumstances. Depending on the circumstances, a
13 "reasonable restriction" may require the owner of the
14 service animal, guide dog, or signal dog to comply
15 with one or more of the following:

- 16 (A) Observe applicable laws including leash laws and
17 pick-up laws;
- 18 (B) Assume responsibility for damage caused by the
19 dog; or
- 20 (C) Have the housing unit cleaned upon vacating by
21 fumigation, deodorizing, professional carpet



1 cleaning, or other method appropriate under the
2 circumstances.

3 The foregoing list is illustrative only, and neither
4 exhaustive nor mandatory;

5 "Service animal" means any animal that is trained
6 to provide those life activities limited by the
7 disability of the person;

8 "Signal dog" means any dog that is trained to
9 alert a deaf person to intruders or sounds;

10 (9) To solicit or require as a condition of engaging in a
11 real estate transaction that the buyer, renter, or
12 lessee be tested for human immunodeficiency virus
13 infection, the causative agent of acquired
14 immunodeficiency syndrome;

15 (10) To refuse to permit, at the expense of a person with a
16 disability, reasonable modifications to existing
17 premises occupied or to be occupied by the person if
18 modifications may be necessary to afford the person
19 full enjoyment of the premises. A real estate broker
20 or salesperson, where it is reasonable to do so, may
21 condition permission for a modification on the person
22 agreeing to restore the interior of the premises to



1 the condition that existed before the modification,
2 reasonable wear and tear excepted;

3 (11) To refuse to make reasonable accommodations in rules,
4 policies, practices, or services, when the
5 accommodations may be necessary to afford a person
6 with a disability equal opportunity to use and enjoy a
7 housing accommodation;

8 (12) In connection with the design and construction of
9 covered multifamily housing accommodations for first
10 occupancy after March 13, 1991, to fail to design and
11 construct housing accommodations in such a manner
12 that:

13 (A) The housing accommodations have at least one
14 accessible entrance, unless it is impractical to
15 do so because of the terrain or unusual
16 characteristics of the site; and

17 (B) With respect to housing accommodations with an
18 accessible building entrance:

19 (i) The public use and common use portions of
20 the housing accommodations are accessible to
21 and usable by disabled persons;



- 1 (ii) Doors allow passage by persons in
- 2 wheelchairs; and
- 3 (iii) All premises within covered multifamily
- 4 housing accommodations contain an accessible
- 5 route into and through the housing
- 6 accommodations; light switches, electrical
- 7 outlets, thermostats, and other
- 8 environmental controls are in accessible
- 9 locations; reinforcements in the bathroom
- 10 walls allow installation of grab bars; and
- 11 kitchens and bathrooms are accessible by
- 12 wheelchair; or

13 (13) To discriminate against or deny a person access to, or

14 membership or participation in any multiple listing

15 service, real estate broker's organization, or other

16 service, organization, or facility involved either

17 directly or indirectly in real estate transactions, or

18 to discriminate against any person in the terms or

19 conditions of such access, membership, or

20 participation."

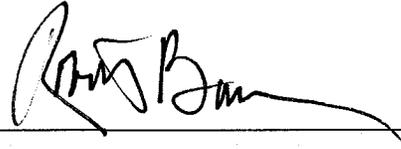
21 SECTION 3. New statutory material is underscored.



1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY:

A handwritten signature in black ink, appearing to be "Chris Brown", written over a horizontal line.

Report Title:

Real Property Transactions; Pets

Description:

Prohibits landlords from discriminating against tenants with pets.





HAWAI`I CIVIL RIGHTS COMMISSION

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

February 26, 2009
Rm. 229, 8:30 a.m.

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

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

Re: S.B. No. 1157

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 opposes SB 1157, which amends H.R.S. §515-3 to include ownership of a domesticated animal as a protected basis in real estate transactions. Presently H.R.S. §515-3 precludes discrimination on the grounds of race, sex (including gender identity or expression), sexual orientation, color, religion, marital status, familial status, ancestry, disability, age or human immunodeficiency virus infection. The proposed new protection is different in kind from the existing statutory bases which protect persons from historically documented forms of

invidious discrimination. Ownership of animals does not share the same historical basis of invidious discrimination.

Importantly, existing discrimination laws protect disabled persons who use guide dogs, signal dogs, service and companion animals in real estate transactions, public accommodations, and certain employment contexts. These animals are not considered “pets” under the law. As such, the proposed law will not affect existing protections for disabled persons.

Should the legislature pass this provision, the HCRC anticipates a significant rise in complaints. The U.S. Census reports that 52% of Hawai'i's residents are homeowners. With a balance of 48% of Hawai'i's residents in the rental market and statistics showing that 1 out of 7 persons in Hawai'i owns a pet, the HCRC faces a steep and certain rise in complaints. If S.B. No. 1157 is enacted into law, the HCRC will require addition funding and an investigation position, or timely investigation of fair housing complaints will be adversely affected.

February 25, 2009

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce & Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 1157 Relating to Discrimination in Real Property Transactions

HEARING DATE: Thursday, February 26, 2009 at 8:30 a.m.

Aloha Chair Baker and Members of the Committee:

I am Myoung Oh, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members. HAR **opposes** S.B. 1157 which creates a protected class by prohibiting discrimination in real estate transactions based on the ownership of a domesticated animal.

HAR believes that S.B. 1157 is overly broad as it would create a protected class of owners of domesticated pets in **all** types of real property transactions – whether residential or commercial.

HAR respectfully requests that S.B. 1157 be held due to the broad language and creation of a new and unique protected class

However, if the Committee is inclined to pass this measure, we humbly request the following amendment:

1. An effective date of November 1, 2009 should be specified so that HAR may review and revise its Rental Agreement and other forms accordingly.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.



Hawaii Council of Associations of Apartment Owners

P.O. Box 726, Aiea, HI, 96701
Phone: 485-8282 Fax: 485-8282
Email: HCAAO@hawaii.rr.com

February 22, 2009

Sen. Rosalyn Baker, Chair
Sen. David Ige, Vice-Chair
Senate Committee on Commerce and Consumer Protection

RE: TESTIMONY IN OPPOSITION TO SB 1157 RE
DISCRIMINATION IN REAL PROPERTY TRANSACTIONS
Hearing: Thursday, Feb. 26, 2009, 8:30 a.m. Conf. Rm. #229

Chair Baker, Vice-Chair Ige and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO).

HCAAO opposes this bill and asks that it be held. The proposed revision to HRS 515-3 that would make pet-owners a "protected class" under this discrimination statute is totally unfair to a landlord who happens to own a unit in a no-pet condominium or co-operative housing corporation since the landlord, in that case, cannot unilaterally override the condominium's or the co-op housing corporation's declaration to allow his or her tenant to have a pet. Allowing an override of the condominium declaration prohibiting pets would undermine the association's self-governance that is the lynchpin of HRS 514A and HRS 514B.

Further SB 1157 is unnecessary. The federal Fair Housing Act (at 42 USC §§ 3602(h) and 3604(B)) already provides that a resident in a rental or housing unit may keep a pet in a no-pets building as long as the resident provides a signed letter from a mental health practitioner or doctor that the tenant or resident has symptoms of a mental or physical disorder that would be alleviated by allowing the tenant to have a pet. This is part of the reasonable accommodations that must be provided to the pet owner under federal law. Violations can be reported to the Hawaii Civil Rights Commission, the local agency authorized by the federal law to investigate and enforce Fair Housing provisions.

In 2000, we helped Rep. Marilyn Lee draft a House Resolution supporting pets owners in condos and rental units and that resolution incorporated the Fair Housing language requiring condo boards and landlords of rental units to make reasonable accommodations to renters who complied with the federal requirements. Express language in that resolution required it to be transmitted to the Hawaii Humane Society and to HCAAO and we circulated to all of our member associations.

Most if not all condominium boards are aware of the Fair Housing law and our member associations have been allowing residents to have pets so long as they receive a letter from a doctor that includes the information required by the Fair Housing law triggering the right to reasonable accommodations.

Rather than pass another law that will unfairly affect apartment owners and landlords in "no-pets" condominium or co-op buildings, I suggest passing a Senate Resolution similar to the House resolution passed in 2000 and having organizations like the Humane Society conduct educational programs to assist renters who want to have pets.

Finally, by creating "pet owners" as a protected class, associations and apartment building managers would not be able to remove a pet that becomes a nuisance, which is totally unfair to the other residents in the building or project.

For these reasons, we ask that you defer action on this bill.

Thank you for the opportunity to testify.


Jane Sugimura
President



Mililani Town Association

95-303 Kaloapau Street
Mililani Town, HI 96789
Phone (808) 623-7300

February 25, 2009

Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
Committee on Commerce & Consumer
Protection
State Capitol
Honolulu, HI 96813

VIA EMAIL: CPNTestimony@Capitol.hawaii.gov

Re: S.B. No. 1157 – Relating to Discrimination in Real Property Transactions
Hearing: Thursday, February 26, 2009, 8:30 am, Conf Room 229

Dear Chair Baker, Vice-Chair Ige and Committee Members:

My name is Eric Matsumoto, Vice-President of the Mililani Town Association (MTA). I have served in MTA leadership capacities on the board for 24 of the last 30 years. MTA encompasses 16,000 plus units involving both single family units and numerous townhouse and apartment sub-associations where a number of homeowners rent their units to military and others needing to rent vice purchase.

We strongly oppose this measure for the following reasons:

- This bill that totally overlooks the intended discrimination practices against individuals based, in part, on federal legislation, by attempting to add “domesticated animal” to this protected category, is harmful to and tramples on the rights of those having purchased units in “no pets” AOAOs, the primary target.
- The bill does not specifically identify what animals constitute a “domesticated animal”, nor does it take into account the kinds of, say species of dogs. Also, would parrots constitute a “domesticated animal”? If yes, they can be very annoying and loud and more-so in close quarter AOAOs.
- More egregious, is that there is no identified overpowering need for “domesticated animals” to be given a protected class stature over service animals.
- Also, as a protected class, would “domesticated animal” violations result in the punishment as violations of race, sex, etc.?

Lastly, because of the variability in the construction of units that impact noise transmission, odor transmission, health concerns, and most importantly, the living environment in each project, to even attempt to legislate, across the board, this desire to have “domesticated animals” creates a “can of worms” for the homeowners/residents who bought and reside in these close quarter living environments. These kinds of issues should be left to the projects to decide.

Based on the above, we strongly urge this bill be deferred.

Sincerely yours,

Eric M. Matsumoto
Vice-President, Board of Directors

Cc: Sen Kidani, Sen Bunda
Rep Lee, Rep Yamane

LAW OFFICES OF PHILIP S. NERNEY, LLLC

A LIMITED LIABILITY LAW COMPANY
201 MERCHANT STREET, SUITE 1500, HONOLULU, HAWAII 96813
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February 22, 2009

Senator Rosalyn H. Baker
Chair, Committee on Commerce
and Consumer Protection
415 S. Beretania Street
Honolulu, Hawaii 96813

Re: SB 1157/Oppose-2/26 @ 8:30 a.m.
Commerce and Consumer Protection

Dear Senator Baker:

I am an attorney in private practice. I have represented condominium and community associations full time since 1990.¹

SB 1157 should not be enacted. Pet ownership is not an immutable characteristic. It is a choice.

Section 1 of SB 1157 includes the assertion that "one out of every seven people in Hawaii keeps an animal as a companion." If that is true, it means that 85.71% of the population does not keep an animal.

The Legislature would be prudent to carefully study the alleged basis for this radical proposal to deprive property owners of substantial property rights. Section 1 of the bill contains assertions indicating that:

- "thousands of animals are euthanized each year because pet owners/tenants are prohibited from keeping pets in rental housing units." (Emphasis added)
- "The court system is clogged with pet-related eviction proceedings that sometimes result in homeless tenants as well as pets." (Emphasis added)

These assertions have rather more the ring of hysteria than of empirical data.

Civil rights laws should be respectable, and not the refuge of special interests. Proposals like this diminish the legacy of the civil rights movement.

¹ In the interest of fuller disclosure, I should mention that I am a member of the CAI Legislative Action Committee.

Senator Rosalyn H. Baker
February 22, 2009
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Even if some relief were in order, this proposal does not require pet owners to be responsible for their pets. Disabled people using guide dogs, signal dogs or service animals are at least subject to "reasonable restrictions." See, HRS Section 515-3(8).

Must every high-rise condominium owner be liable to ride the elevator with a huge Rottweiler or some pit bull? Please, no.

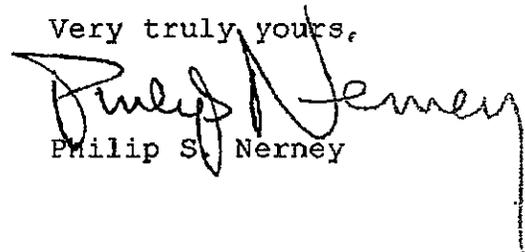
Condominium and community associations sometimes use democratic processes to choose whether to allow or to prohibit pets. Why would the Legislature deprive them of such democratic rights?

The recognition that pets can pose dangers to people and to property is not "discrimination" from a conventional civil rights perspective. Pets can create horrible nuisances, and some pet owners are irresponsible.

The burden of proof should be on the proponents of such a bill to demonstrate, by clear and convincing evidence, a compelling basis for pet owners to be included in the civil rights laws. Those proponents should also be obliged to carefully craft some measure that takes frank account of the real costs to others that pet companionship entails, and that places complete responsibility for mitigating all such costs and harms onto the pet owner.

Please do not pass SB 1157.

Very truly yours,



Philip S. Nerney

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 21, 2009 2:56 PM
To: CPN Testimony
Cc: refrey2001@yahoo.com
Subject: Testimony for SB1157 on 2/26/2009 8:30:00 AM

Testimony for CPN 2/26/2009 8:30:00 AM SB1157

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: Richard Frey
Organization: Individual
Address:
Phone:
E-mail: refrey2001@yahoo.com
Submitted on: 2/21/2009

Comments:
Owners renting their property should not be forced to make existing occupants live with the noise, smells, and disruption caused by other tenant's pets.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 2:30 PM
To: CPN Testimony
Cc: tedwalkey@hmcmtg.com
Subject: Testimony for SB1157 on 2/26/2009 8:30:00 AM

Testimony for CPN 2/26/2009 8:30:00 AM SB1157

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: Ted Walkey
Organization: Individual
Address:
Phone: 8085936868
E-mail: tedwalkey@hmcmtg.com
Submitted on: 2/25/2009

Comments:

I am offering my opinion on SB 1157 as a landlord. I am opposed to this bill for 4 reasons:

- 1) It makes a pet owner a protected class of citizen.
- 2) It exposes me and potential tenants to pet dander to which they maybe allergic.
- 3) It usurps the right of people who have purchased a unit in a no pet building to enjoy the benefits of not having to put up the smell, noise, and droppings of pets.
- 4) There is no limit on the number or types of pets.