

ACT 193

S. B. 786.

A Bill for an Act Relating to the Prevention of Discrimination in Real Property Transactions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose; construction. (a) The purpose of this Act is to secure for all individuals within the State freedom from discrimination because of race, color, religion, or national origin in connection with real

property transactions, and thereby to protect their interest in personal dignity, to make available to the State their full productive capacities, to secure the State against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights and privileges of individuals within the State.

(b) This Act shall be construed according to the fair import of its terms and shall be liberally construed to further the purpose stated in this section.

SECTION 2. Definitions. In this Act, unless the context otherwise requires:

- (1) "Department" means the department of regulatory agencies.
- (2) "Director" means the director of regulatory agencies.
- (3) "Discriminatory practice" means a practice designated as discriminatory under the terms of this Act.
- (4) "Housing accommodation" includes any improved or unimproved real property, or part thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home or residence of one or more individuals.
- (5) "National origin" includes the national origin of an ancestor.
- (6) "Person" refers to the definition of section 1-24, Revised Laws of Hawaii 1955, and includes a legal representative, partnership, receiver, trust, trustee, trustee in bankruptcy, the State, or any governmental entity or agency.
- (7) "Real estate broker or salesman" means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these.
- (8) "Real estate transaction" includes the sale, exchange, rental, or lease of real property.
- (9) "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

SECTION 3. Discriminatory practices. It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesman, because of race, color, religion, or national origin:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(4) To refuse to negotiate for a real estate transaction with a person;
(5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his attention, or to refuse to permit him to inspect real property;

(6) To print, circulate, post, or mail or cause to be so published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto; or

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

SECTION 4. Exemptions. The provisions of section 3 do not apply:

(1) To the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other if the lessor or a member of his family resides in one of the housing accommodations; or

(2) To the rental of a room or rooms in a housing accommodation by an individual if he or a member of his family resides therein.

SECTION 5. Discriminatory financial practices. It is a discriminatory practice for a person to whom application is made for financial assistance in connection with a real estate transaction or for the construction, rehabilitation, repair, maintenance, or improvement of real property, or a representative of such a person:

(1) To discriminate against the applicant because of race, color, religion, or national origin;

(2) To use a form of application for financial assistance or to make or keep a record or inquiry in connection with applications for financial assistance which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination as to race, color, religion, or national origin.

SECTION 6. Restrictive covenants and conditions. (a) Every provision in an oral agreement or a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, color, religion, or national origin is void.

(b) Every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, color, religion, or national origin, is void, except a limitation of use on the basis of religion of real property held by a religious institution or organization or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.

(c) It is a discriminatory practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title.

SECTION 7. Blockbusting. It is a discriminatory practice for a person, for the purpose of inducing a real estate transaction from which he may benefit financially:

(1) To represent that a change has occurred or will or may occur in the composition with respect to race, color, religion, or national origin of the owners or occupants in the block, neighborhood, or area in which the real property is located, or

(2) To represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

SECTION 8. Religious institutions. It is not a discriminatory practice for a religious institution or organization or a charitable or educational organization operated, supervised, or controlled by a religious institution or organization to give preference to members of the same religion in a real property transaction.

SECTION 9. Enforcement; powers of department to prevent unlawful discrimination. The department shall have jurisdiction over the subject of real property transaction practices and discrimination made unlawful by this Act. The department has the following powers:

(1) To receive, initiate, investigate, seek to conciliate, hold hearings on, and pass upon complaints alleging violations of this Act;

(2) At any time after a complaint is filed, to require answers to interrogatories, compel the attendance of witnesses, examine witnesses under oath or affirmation, and require the production of documents relevant to the complaint. The department may make rules authorizing any individual designated to exercise these powers in the performance of official duties;

(3) To furnish technical assistance requested by persons subject to this Act to further compliance with the Act or an order issued thereunder;

(4) To make studies appropriate to effectuate the purposes and policies of this Act and to make the results thereof available to the public;

(5) To render at least annually a comprehensive written report to the governor and to the legislature. The report may contain recommendations of the department for legislative or other action to effectuate the purposes and policies of this Act;

(6) In accordance with chapter 6C, Revised Laws of Hawaii 1955, to adopt, promulgate, amend, and rescind rules and regulations to effectuate the purposes and policies of this Act, including regulations requiring the inclusion in advertising material of notices prepared or approved by the director.

SECTION 10. Complaint and subsequent proceedings. (a) A per-

son claiming to be aggrieved by a discriminatory practice, his agent, or the attorney general, may file with the department a written complaint stating that a discriminatory practice has been committed, setting forth the facts upon which the complaint is based, and setting forth facts sufficient to enable the department to identify the person charged (hereinafter the respondent). The department shall promptly investigate the allegations of discriminatory practice set forth in the complaint and shall immediately furnish the respondent with a copy of the complaint. The complaint must be filed within ninety days after the alleged discriminatory practice occurs.

(b) If within sixty days after the complaint is filed it is determined by the department that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice, the department shall issue an order dismissing the complaint and shall furnish a copy of the order to the complainant, the respondent, the attorney general and such other public officers and persons as the department deems proper. The respondent is entitled to recover from the complainant attorney's fee, not to exceed \$100, if such cost is incurred.

(c) Unless the department has issued an order dismissing the complaint pursuant to this section, it shall endeavor to eliminate the alleged discriminatory practice by conference, conciliation, and persuasion. The terms of a conciliation agreement reached with the respondent may require him to refrain in the future from committing discriminatory practices of the type stated in the agreement and to take such affirmative action as in the judgment of the department will carry out the purposes of this Act and may include consent by the respondent to the entry in court of a consent decree embodying terms of the conciliation agreement. If a conciliation agreement is entered into, the department shall issue an order stating its terms and furnish a copy of the order to the complainant, the respondent, the attorney general, and such other public officers and persons as the department deems proper. Except for the terms of the conciliation agreement, neither the department nor any officer or employee thereof shall make public, without the written consent of the complainant and the respondent, information concerning efforts in a particular case to eliminate a discriminatory practice by conference, conciliation, or persuasion, whether or not there is a determination of reasonable cause or a conciliation agreement.

(d) At any time in its discretion but not later than one year from the date of a conciliation agreement, the department shall investigate whether the terms of the agreement are being complied with by the respondent. Upon a finding that the terms of the agreement are not being complied with by the respondent, the department shall take affirmative action as authorized in section 13.

(e)(1) At any time after a complaint is filed, the department may file a petition in the circuit court in a circuit in which the subject of the complaint occurs, or in a circuit in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this Act, including an order or decree

restraining him from doing or procuring any act tending to render ineffectual any order the department may enter with respect to the complaint. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, but no such relief or order extending beyond five days shall be granted except by consent of the respondent after hearing upon notice to the respondent and a finding by the court that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice;

(2) If a complaint is dismissed by final order of the department or a court after a court has granted temporary relief or a restraining order under subsection (e)(1), the respondent shall be entitled to recover from the State damages and costs, not to exceed a total of \$500, sustained by reason of the temporary relief or restraining order in an action in the court which granted the temporary relief or restraining order.

SECTION 11. Hearing. (a) Within sixty days after a complaint is filed, unless the department has issued an order dismissing the complaint or stating the terms of a conciliation agreement, the department shall serve on the respondent by registered or certified mail a written notice, together with a copy of the complaint as it may have been amended, requiring the respondent to answer in writing the allegations of the complaint at a hearing before the director or a hearing examiner at a time and place specified in the notice. A copy of the notice shall be furnished to the complainant, the attorney general, and such other public officers and persons as the department deems proper. The notice shall conform to and the hearing shall be conducted in accordance with chapter 6C, Revised Laws of Hawaii 1955.

(b) The respondent may file an answer with the department in person or by registered or certified mail in accordance with the rules of the department. The department shall furnish a copy of the answer to the complainant and any other party to the proceeding. The complainant may amend a complaint and the respondent may amend an answer at any time prior to the issuance of an order based on the complaint, but no order shall be issued unless the respondent has had the opportunity of a hearing on the complaint or amendment on which the order is based.

(c) The case in support of the complaint shall be presented at the hearing by the department. Efforts in a particular case to eliminate a discriminatory practice by conference, conciliation, and persuasion shall not be received in evidence.

(d) A respondent who has filed an answer or whose default in answering has been set aside for good cause shown may appear at the hearing with or without representation, may examine and cross-examine witnesses and the complainant, and may offer evidence. The complainant and the attorney general may intervene, examine and cross-examine witnesses, and may present evidence.

(e) If the respondent fails to answer the complaint, the department or the hearing examiner may enter his default and the hearing shall proceed on the evidence in support of the complaint. The default may be set aside for good cause shown upon equitable terms and conditions.

(f) Testimony taken at the hearing shall be under oath and transcribed. If the testimony is not taken before the department, the record shall be transmitted to the department. After the hearing, the department upon notice to all parties with an opportunity to be heard may take further evidence or hear argument.

SECTION 12. Dismissal after hearing. If the department determines that the respondent has not engaged in a discriminatory practice, the department shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint and furnish a copy of the order to the complainant, the respondent, the attorney general, and such other public officers and persons as the department deems proper.

SECTION 13. Determination of discriminatory practice; relief.
(a) If the department determines that the respondent has engaged in a discriminatory practice, the department shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory practice and to take such affirmative actions as in the judgment of the department will carry out the purposes of this Act. A copy of the order shall be delivered to the respondent, the complainant, the attorney general, and to such other public officers and persons as the department deems proper.

(b) Affirmative action ordered under this section may include but is not limited to:

(1) Sale, exchange, lease, rental, assignment, or sublease of real property to an individual;

(2) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent;

(3) Reporting as to the manner of compliance;

(4) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the department and inclusion of such notices in advertising material;

(5) Cancellation, rescission or revocation of a contract, deed, lease, or other instrument transferring real property, which is the subject of a complaint of a discriminatory practice, to a person who had actual knowledge or record notice, prior to the transfer or the execution of the legally binding obligation to make the transfer, that a determination of reasonable cause had been made with respect to the discriminatory practice;

(6) Payment to an injured party of profits obtained by the respondent through a violation of section 7, subject to the principles of equity;

(7) Payment to the complainant of damages for an injury caused by the discriminatory practice and costs, including a reasonable attorney's fee. Unless greater damages are proven, damages may be assessed at \$500 for each violation.

(c) In the case of a respondent who is found by the department to have engaged in a discriminatory practice in the course of performing under a contract or subcontract with the State or a county, or agency thereof, if the

discriminatory practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of his employment, the department shall so certify to the contracting agency. Unless the department's finding of a discriminatory practice is reversed in the course of judicial review under section 14, the finding of discrimination is binding on the contracting agency.

(d) Thirty days after an order is issued under this section, unless a petition by the respondent for judicial review is pending, the department may publish or cause to be published the name of a person who has been determined to be engaged in a discriminatory practice.

SECTION 14. Judicial review; enforcement. (a) A complainant or respondent aggrieved by an order of the department, including an order dismissing a complaint, or stating the terms of a conciliation agreement, may obtain judicial review.

(b) The proceeding for review or enforcement is initiated by filing a petition in the circuit court. Copies of the petition shall be served upon all parties of record. Within thirty days after the service of the petition upon the department or within such further time as the court may allow, the department shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. The court may reverse or modify the order if substantial rights of the petitioner have been prejudiced because the findings of fact of the department are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The court shall have power to grant such temporary relief or restraining order as it deems just, and to enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the department, or remanding the case to the department for further proceedings. All such proceedings shall be heard and determined by the court as expeditiously as possible and with precedence over all other matters before it, except matters of like nature.

(c) If the department has failed to schedule a hearing in accordance with subsection 11(a) or has failed to issue an order within one hundred and eighty days after the complaint is filed, the complainant, respondent, or the attorney general may petition the circuit court in a circuit in which the alleged discriminatory practice set forth in the complaint occurs or in which the petitioner resides or transacts business for an order directing the department to take such action. The court shall follow the procedure set forth in subsection (b) so far as applicable.

(d) An objection not urged at a hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remit the case to the department in the interest of justice for the purpose of adducing additional specified and material

evidence and seeking findings thereon; provided he shows good cause for the failure to adduce such evidence before the department.

(e) The jurisdiction of the circuit court shall be exclusive and its final judgment or decree shall be subject to an appeal to the supreme court. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(f) A proceeding under this section must be initiated within thirty days after a copy of the order of the department is received, unless the petition is filed under subsection (c). If no proceeding is so initiated, the department may obtain a decree of the court for enforcement of its order upon showing that a copy of the petition for enforcement was served on the respondent and that the respondent is subject to the jurisdiction of the court.

SECTION 15. Subpoenas; witnesses. (a) Upon written application to the department a party to a proceeding is entitled as of right to the issue of subpoenas for deposition or hearing in the name of the department by an individual designated pursuant to its rules requiring attendance and the giving of testimony by witnesses and the production of documents. A subpoena so issued shall show on its face the name and address of the party at whose request the subpoena was issued. On petition of the individual to whom the subpoena is directed and notice to the requesting party, the department or an individual designated pursuant to its rules may vacate or modify the subpoena.

(b) Witnesses whose depositions are taken or who are summoned before the department or its agents shall be entitled to the same witness and mileage fees as are paid to witnesses subpoenaed in the circuit court of the State.

(c) If a person fails to comply with a subpoena issued by the department, the circuit court for the circuit in which the person is found, resides, or transacts business, upon application of the department or the party requesting the subpoena, may issue an order requiring compliance. In any proceeding brought under this section, the court may modify or set aside the subpoena.

SECTION 16. Other discriminatory practices. It is a discriminatory practice for a person, or for two or more persons to conspire,

(1) To retaliate or discriminate against a person because he has opposed a discriminatory practice, or because he has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act;

(2) To aid, abet, incite, or coerce a person to engage in a discriminatory practice;

(3) Wilfully to interfere with the performance of a duty or the exercise of a power by the department; or

(4) Wilfully to obstruct or prevent a person from complying with this Act or an order issued thereunder.

SECTION 17. Attempts. An attempt to commit, directly or indirectly, a discriminatory practice is a discriminatory practice.

SECTION 18. Conciliation agreements. It is a discriminatory practice for a party to a conciliation agreement made under this Act to violate the terms of the agreement.

SECTION 19. Public contractors. Upon receiving a certification made under subsection 13(c), a contracting agency may take appropriate action to

(1) Terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with this Act, and

(2) Assist the State and all counties, and agencies thereof, to refrain from entering into further contracts, or extensions or other modifications of existing contracts, with the respondent until the department is satisfied that the respondent will carry out policies in compliance with this Act.

SECTION 20. Prima facie evidence. In a proceeding under this Act, a written, printed, or visual communication, advertisement, or other form of publication, or written inquiry, or record, or other document purporting to have been made by a person is prima facie evidence that it was authorized by him.

SECTION 21. There is appropriated out of the general revenues of the State of Hawaii the sum of \$20,000, or so much thereof as may be necessary, to the department of regulatory agencies for the purpose of this Act.

SECTION 22. This Act shall take effect upon its approval.

(Approved June 4, 1967.)