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S.B. NO. 3295

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

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

SECTION 1. The purpose of this Act is to clarify that discrimination in real property transactions on the basis of a person's handicapped status is illegal in every kind of transaction covered by chapter 515, Hawaii Revised Statutes. This Act also clarifies that it is not illegal to discriminate on the basis of parental status with regard to housing for older persons.

SECTION 2. Section 515-2, Hawaii Revised Statutes, is amended as follows:

1. By deleting the definition "physical handicap".

[“Physical handicap” means a physical impairment which substantially limits one or more of a person's major life activities.”]

2. By adding a new definition to be appropriately inserted and to read:

“Handicapped status” 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 abuse that impairs a person's activities or threatens the property or safety of others.”

3. By amending the definition of “real estate broker or salesman” to read as follows:

“Real estate broker or [salesman] salesperson” 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] purports to be engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by a 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.”

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

§515-3 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,] salesperson, because of race, sex, color, religion, marital status, parental status, ancestry, [physical handicap,] handicapped status, or HIV (human immunodeficiency virus) infection:

(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 the person's attention, or to refuse to permit the person 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;
- (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; [provided that it shall not be a discriminatory practice under this section to exclude a person based on parental status, or to so advertise or otherwise state, from a real estate transaction or housing accommodation developed specifically for the elderly. For the purposes of this paragraph an elderly person is a person who is sixty-two years of age or older. Nothing in this section shall affect covenants, bylaws, or administrative provisions established in accordance with chapter 514A or established under organizational documents and proprietary leases for housing cooperatives, placing restrictions based upon parental status, existing prior to April 19, 1984;]
- (8) To refuse to engage in a real estate transaction with a blind or deaf person because the person uses the services of a certified guide or signal dog; provided that reasonable restrictions or prohibitions may be imposed regarding excessive noise or other problems caused by those animals. For the purposes of this paragraph:
 - “Blind” shall be as defined in section 235-1;
 - “Deaf” shall be as defined in section 235-1;
 - “Guide dog” means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person;
 - “Reasonable restriction” shall not include any restriction that allows any owner or person to refuse to negotiate or refuse to engage in the real estate transaction; as used herein, the “reasonableness” of the restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances as the blind or deaf person. Depending on the circumstances, a “reasonable restriction” may require the owner of the certified guide or signal dog to comply with one or more of the following:
 - (A) Provide proof that the animal is a certified guide dog or signal dog;
 - (B) Observe applicable laws including leash laws and pick-up laws;
 - (C) Assume responsibility for damage caused by the dog;

- (D) Use a harness with a rigid handle on the dog at all times; or
- (E) Have the housing unit cleaned upon vacating, by fumigation, deodorizing, professional carpet cleaning, or other method appropriate under the circumstances.

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

“Signal dog” means any dog trained to alert a deaf person to intruders or sounds; or

- (9) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection (HIV), the causative agent of acquired immunodeficiency syndrome (AIDS).”

SECTION 4. Section 515-4, Hawaii Revised Statutes, is amended to read as follows:

“§515-4 Exemptions. (a) Section 515-3 does 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 the lessor’s 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 the individual or a member of the individual’s family resides therein.

(b) Nothing in this chapter regarding parental status shall apply to housing for older persons as defined by 42 U.S.C. section 3607(b)(2).”

SECTION 5. Section 515-5, Hawaii Revised Statutes, is amended to read as follows:

“§515-5 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, sex, color, religion, marital status, parental status, ancestry, [physical handicap,] handicapped status, or HIV (human immunodeficiency virus) infection;
- (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, sex, color, religion, marital status, parental status, ancestry, [physical handicap,] handicapped status, or HIV infection.”

SECTION 6. Section 515-6, Hawaii Revised Statutes, is amended to read as follows:

“§515-6 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, sex, color, religion, marital status, parental status,

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ancestry, [with a physical handicap,] or handicapped status, or who are infected by the HIV (human immunodeficiency virus), 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, sex, color, religion, marital status, parental status, ancestry, [physical handicap,] handicapped status, or HIV infection is void, except a limitation [of use], on the basis of religion or sex, on the use 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. Section 515-7, Hawaii Revised Statutes, is amended to read as follows:

“**§515-7 Blockbusting.** It is a discriminatory practice for a person, for the purpose of inducing a real estate transaction from which the person may benefit financially:

- (1) To represent that a change has occurred or will or may occur in the composition with respect to race, sex, color, religion, ancestry, [or a physical handicap] or handicapped status 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. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act, upon its approval, shall take effect retroactive to June 27, 1989.

(Approved June 25, 1990.)