

ACT 171

H.B. NO. 2496

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

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

SECTION 1. The purpose of this Act is to conform the Real Estate Transactions Law, which prohibits discrimination in matters related to housing and real estate, with the federal Fair Housing Amendments Act of 1988. The Department of Housing and Urban Development (HUD) has published notice that Hawaii's law is no longer substantially equivalent to federal law. HUD intends to decertify Hawaii unless these amendments are enacted. Certification is necessary in order for Hawaii to receive federal funds for the investigation of housing discrimination cases. In addition, this Act makes "steering" unlawful discrimination.

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

1. By adding two¹ new definitions to be appropriately inserted and to read as follows:

"Age" means over the age of majority or emancipated minors.

"Familial status" means the status of: a parent having legal custody of and domiciled with a minor child or children, a person who is domiciled with a minor child or children and who has written or unwritten permission from the legal parent, a person who is pregnant, or any person who is in the process of securing legal custody of a minor child or children.

"Steering" includes the practice of directing persons who seek to enter into a real estate transaction toward or away from real property in order to deprive them of the benefits of living in a discrimination-free environment."

2. By amending the definition of "handicapped status" to read as follows:

"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 current illegal use of or addiction to a controlled substance or alcohol or drug abuse that [impairs a person's activities or] threatens the property or safety of others."

3. By deleting the definition of "parental status".

["Parental status" means that status of a person who has legal custody and control of a minor child, or minor children, and with whom the minor child, or minor children, maintains a place of abode.]

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 salesperson, because of race, sex, color, religion, marital status, [parental] familial status, ancestry, handicapped status, age, 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[.], or to steer a person seeking to engage in a real estate transaction;
- (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;
- (8) To refuse to engage in a real estate transaction with a person due to handicapped status because the person uses the services of a certified guide, signal, or service 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] a real estate transaction; as used in this chapter, the "reasonableness" of [the] a restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances. Depending on the circumstances, a "reasonable restriction" may require the owner of the service, guide, or signal dog to comply with one or more of the following:
 (A) Provide proof that the animal is a service dog, 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; or
 (D) 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;

"Service dog" means any dog individually trained and certified by a

- nationally recognized service dog organization to assist a person with a disability in performing essential activities of daily living; "Signal dog" means any dog individually trained and certified by a nationally recognized signal dog organization 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)[.];
 - (10) To refuse to permit, at the expense of a person with a handicapped status, reasonable modifications to existing premises occupied or to be occupied by the person if modifications may be necessary to afford the person full enjoyment of the premises. A real estate broker or salesperson, where it is reasonable to do so, may condition permission for a modification on the person agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
 - (11) To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with handicapped status equal opportunity to use and enjoy a housing accommodation;
 - (12) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after March 13, 1991, to fail to design and construct housing accommodations in such a manner that:
 - (A) The housing accommodations have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and
 - (B) With respect to housing accommodations with an accessible building entrance:
 - (i) The public use and common use portions of the housing accommodations are accessible to and usable by handicapped persons;
 - (ii) Doors allow passage by persons in wheelchairs; and
 - (iii) All premises within covered multifamily housing accommodations contain an accessible route into and through the housing accommodations; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements in the bathroom walls allow installation of grab bars; and kitchens and bathrooms are accessible by wheelchair; or
 - (13) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker's organization, or other service, organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership, or participation."

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 up to four 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] familial 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, a representative of such person, or a real estate broker or salesperson, to whom an inquiry or 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:] because of race, sex, color, religion, marital status, familial status, ancestry, handicapped status, age, or HIV (human immunodeficiency virus) infection:

- (1) To discriminate against the applicant [because of race, sex, color, religion, marital status, parental status, ancestry, 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, handicapped status, or HIV infection.] unless such records are required by federal law;
- (3) To discriminate in the making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling, or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or
- (4) To discriminate in the selling, brokering, or appraising of residential real property."

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] because of race, sex, color, religion, marital status, [parental] familial status, ancestry, [or] handicapped status, age, or [who are infected by the] HIV (human immunodeficiency virus)[,] infection, 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] familial status, ancestry, handicapped status, age, or HIV infection is void, except a limitation, 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, representative of a person, real estate broker or salesperson, for the purpose of inducing a real estate transaction from which the person[:]¹, representative, broker or salesperson may benefit financially, because of race, sex, color, religion, marital status, ancestry, handicapped status, age, or HIV infection:

- (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 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. Section 515-8, Hawaii Revised Statutes, is amended to read as follows:

"§515-8 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 [or of one sex] in a real property transaction[.], unless membership in such religion is restricted on account of race, color, or ancestry."

SECTION 9. Section 515-9, Hawaii Revised Statutes, is amended to read as follows:

"§515-9 Enforcement. The civil rights commission has jurisdiction over the subject of real property transaction practices and discrimination made unlawful by this chapter. The commission has the following powers:

- (1) To receive, initiate, investigate, seek to conciliate, hold hearings on, and pass upon complaints alleging violations of this chapter in accordance with the procedure established in chapter 368[:], except that investigations shall be completed within one hundred days and a final administrative disposition shall be made within one year of the date of the receipt of the complaint, unless impracticable to do so;
- (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. Before a finding of reasonable cause, chapter 368 to the contrary notwithstanding, the commission may issue a notice of right to sue upon written request of the complainant

which must be exercised within ninety days of receipt of the notice or one year after the filing of the complaint, whichever is later. The commission may make rules authorizing any individual designated to exercise these powers in the performance of official duties;

- (3) Chapter 368 to the contrary notwithstanding, after a finding of reasonable cause, to notify the complainant, respondent, or an aggrieved person on whose behalf the complaint was filed, that an election may be made to file a civil action in lieu of an administrative hearing. The election must be made not later than twenty days after receipt by the electing party of the notice. The electing party shall be provided with a notice of right to sue which must be exercised within ninety days of receipt of that notice or one year after the filing of the complaint, whichever is later. The commission will provide legal representation to the complainant in the event of an election by any party. After the filing of a civil action, the parties may stipulate to have the matter remanded for an administrative hearing;
- [(3)] (4) To furnish technical assistance requested by persons subject to this chapter to further compliance with the chapter or an order issued thereunder;
- [(4)] (5) To make studies appropriate to effectuate the purposes and policies of this chapter and to make the results thereof available to the public;
- [(5)] (6) To render at least annually a comprehensive written report to the governor and to the legislature. The report may contain recommendations of the commission for legislative or other action to effectuate the purposes and policies of this chapter; and
- [(6)] (7) In accordance with chapter 91, to adopt rules to effectuate the purposes and policies of this chapter, including rules requiring the inclusion in advertising material of notices prepared or approved by the commission.”

SECTION 10. Section 515-16, Hawaii Revised Statutes, is amended to read as follows:

“§515-16 Other discriminatory practices. It is a discriminatory practice for a person, or for two or more persons to conspire:

- (1) To retaliate, threaten, or discriminate against a person because of the exercise or enjoyment of any right granted or protected by this chapter, or because the person has opposed a discriminatory practice, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this chapter;
- (2) To aid, abet, incite, or coerce a person to engage in a discriminatory practice;
- (3) [Wilfully to] To interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter or with the performance of a duty or the exercise of a power by the commission; [or]
- (4) [Wilfully to] To obstruct or prevent a person from complying with this chapter or an order issued thereunder[.];
- (5) To intimidate or threaten any person engaging in activities designed to make other persons aware of, or encouraging such other persons

- to exercise rights granted or protected by this chapter; or
 (6) To threaten, intimidate or interfere with persons in their enjoyment of a housing accommodation because of the race, sex, color, religion, marital status, familial status, ancestry, handicapped status, age, or HIV infection of such persons, or of visitors or associates of such persons."

SECTION 11. Section 515-18, Hawaii Revised Statutes, is amended to read as follows:

"§515-18 Conciliation agreements. (a) Section 368-4 to the contrary notwithstanding, any conciliation agreement which results after a finding of cause shall be subject to the approval of the commission and shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this chapter.

(b) It is a discriminatory practice for a party to a conciliation agreement made under this chapter to violate the terms of the agreement."

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 1992.

(Approved June 12, 1992.)

Note

1. So in original.