

ACT 214

H.B. NO. 1715

A Bill for an Act Relating to Civil Rights.

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

SECTION 1. The purpose of this Act is to prohibit discriminatory practices in real property transactions (housing) on the basis of sexual orientation, gender identity, or expression. Presently, employment is one of the few areas in which discrimination because of sexual orientation is prohibited. Just as a person should not be denied a job because of the person's sexual orientation (heterosexual, homosexual, or bisexual), a person should not be denied a home because of the person's sexual orientation, gender identity, or expression.

Although this Act contains a narrow exception for housing accommodations at religiously affiliated institutions of higher education, this Act should not be interpreted to undermine the State's commitment to civil rights. Housing laws presently permit landlords to follow their individual value systems in selecting tenants to live in the landlords' own homes (or duplexes). But persons engaged in the business of providing rental housing cannot be allowed to ignore civil rights laws that apply to all. The religious accommodation in this Act is intended primarily to grant private homeowners who open their homes to university students a degree of certainty that the religious institution's student housing program criteria will withstand challenges.

SECTION 2. Section 515-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““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.

“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.”

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, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, 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 [sø] 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 [sø] 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, [whieh] that 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 or to deny equal opportunity to use and enjoy a housing accommodation due to a disability because the person uses the services of a guide dog, signal dog, or service animal; 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 a real estate transaction; provided that as used in this paragraph, the “reasonableness” of 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 animal, guide dog, or signal dog to comply with one or more of the following:

- (A) Observe applicable laws including leash laws and pick-up laws;
- (B) Assume responsibility for damage caused by the dog; or

- (C) 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 animal” means any animal that is trained to provide those life activities limited by the disability of the person;

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

- (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 disability, 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 a disability 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 disabled 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 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 resides therein.

(b) Nothing in section 515-3 shall be deemed to prohibit refusal, because of sex, including gender identity or expression, sexual orientation, or marital status, to rent or lease housing accommodations:

- (1) Owned or operated by a religious institution and used for church purposes as that term is used in applying exemptions for real property taxes; or
- (2) Which are part of a religiously affiliated institution of higher education housing program which is operated on property that the institution owns or controls, or which is operated for its students pursuant to Title IX of the Higher Education Act of 1972.

~~(b)~~ (c) Nothing in this chapter regarding familial status or age shall apply to housing for older persons as defined by 42 United States Code 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, because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or ~~[HIV-](human immunodeficiency virus[)]~~ infection:

- (1) To discriminate against the applicant;
- (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] that~~ indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination unless ~~[such] the~~ 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 by amending subsections (a) and (b) to read as follows:

“(a) Every provision in an oral agreement or a written instrument relating to real property ~~[which] that~~ purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or ~~[HIV-](human immunodeficiency virus[)]~~ infection, is void.

ACT 214

(b) Every condition, restriction, or prohibition, including a right of entry or possibility of reverter, ~~[which] that~~ directly or indirectly limits the use or occupancy of real property on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or ~~[HIV] human immunodeficiency virus~~ infection is void, except a limitation, on the basis of religion, 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.”

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, or a real estate broker or salesperson, for the purpose of inducing a real estate transaction from which the person, representative, or real estate broker or salesperson may benefit financially, because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or ~~[HIV] human immunodeficiency virus~~ infection:

- (1) To represent that a change has occurred or will or may occur in the composition 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. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved July 11, 2005.)