

ACT 31

S.B. NO. 1301

A Bill for an Act Relating to Fair Housing Exemptions.

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

SECTION 1. The purpose of this Act is to make the exemptions from prohibited discriminatory practices in our state fair housing laws consistent with similar exemptions found in the federal Fair Housing Act by clarifying that the exemptions apply to lessors as well as owners, that the exemptions do not apply to advertising, publications, or statements, and by making the groups protected

in section 515-16, Hawaii Revised Statutes, consistent with the rest of chapter 515, Hawaii Revised Statutes.

SECTION 2. 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 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;]~~ with a real estate transaction;
- (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 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 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, that indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;~~
- ~~(7)~~ (6) 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;]~~ with a real estate transaction;
- ~~[(8)~~ (7) 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)~~] (8) 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, the causative agent of acquired immunodeficiency syndrome;
- [~~(10)~~] (9) 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]~~; ~~provided that 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)~~] (10) 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)~~] (11) 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)~~] (12) 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 3. Section 515-4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:
 “(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 owner or 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]~~ owner or lessor if the ~~[individual]~~ owner or lessor resides ~~[therein.]~~ in the housing accommodation.”
2. By amending subsection (c) to read:
 “(c) Nothing in this chapter regarding familial status or age shall apply to housing for older persons as defined by Title 42 United States Code [section] Section 3607(b)(2).”

SECTION 4. 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) 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;
- (4) To obstruct or prevent a person from complying with this chapter or an order issued ~~[thereunder;]~~ pursuant to this chapter;
- (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, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection of ~~[such]~~ the persons, or of visitors or associates of ~~[such]~~ the persons~~[-]; or~~
- (7) To print, circulate, post, or mail, or cause to be 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, that indicates, directly or indirectly, an intent to make a limitation or specification, or to discriminate because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection.”

SECTION 5. Statutory material to be repealed is bracketed and stricken.
New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.
(Approved April 29, 2011.)