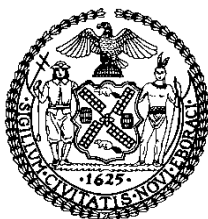


Committee on Civil Rights
Alesha S. Brown, Committee Counsel
Muzna Ansari, Policy Analyst
Eisha Wright, Finance Division Unit Head
Kaitlin Caruso, Counsel
Annie Decker, Deputy Director of Legislative Drafting Unit



THE COUNCIL

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COMMITTEE ON CIVIL RIGHTS

Council Member Darlene Mealy, Chair

March 21, 2016

Proposed Int. No. 815-B: By Council Members Lander, Chin, Johnson, Mendez, Rosenthal, King, Lancman and Constantinides

Title: A Local Law to amend the administrative code of the city of New York, in relation to protecting the right to truthful information under the city human rights law and expressly providing a cause of action for employers and principals whose rights are violated by conduct to which their employees or agents are subjected.

I. INTRODUCTION

On Monday, March 21, 2016, the Committee on Civil Rights, chaired by Council Member Darlene Mealy, will hold a hearing to vote on Proposed Introductory Bill Number 815-B (“Int. No. 815-B”), a Local Law to amend the administrative code of the city of New York, in relation to protecting the right to truthful information under the city human rights law and expressly providing a cause of action for employers and principals whose rights are violated by conduct to which their employees or agents are subjected. On September 21, 2015, the Committee held a hearing on Int. No. 815-B. At that hearing testimony was submitted and heard from the New York City Commission on Human Rights (“the Commission”), advocates, and other interested parties.

II. BACKGROUND

The New York City Human Rights Law (“HRL”), embodied in the New York City Charter and title eight of the New York City Administrative Code, is one of the most expansive and comprehensive human rights laws in the nation. The HRL protects a number of classes of persons from discrimination in the areas of employment, housing, public accommodations, and more.¹ Protected classes covered under the HRL include race, national origin, disability, sexual orientation, alienage or citizenship status, gender, partnership status, age, and others.²

While the HRL is comprehensive, there is potential to strengthen it by including additional protections. Int. No. 815-B would expand the right to not be told false information for discriminatory reasons, which currently only exists in the HRL against real estate brokers and salespeople offering housing, land, and commercial space, to a variety of other activity covered

¹ N.Y.C. Admin. Code §8-101 *et se.q*

² Id.

under the HRL, including the availability of housing, land, and commercial space, admission certain organizations, lending, employment, and access to public accommodations. It would also give principals and employers a cause of action when their rights are violated by discrimination against their agents or employees, as long as the discrimination happened while the agent or employee was working for the principal or employer, and make a technical correction to the HRL.

III.INT. NO. 815-B

The HRL currently prohibits real estate brokers and salespeople from making false statements about the availability of housing, land, or commercial space for a discriminatory reason. This prohibition is often referred to as the “right to truthful information,” and is particularly useful in making it easier for testers and the organizations that employ testers to investigate potential discrimination to bring and prove discrimination claims in court or before the Commission on Human Rights. Many organizations rely on testers to investigate potential discrimination, including, in some cases, the Commission on Human Rights. Proposed Int. No. 815-B would introduce or broaden the right to truthful information for a variety of additional activity covered by the HRL, including: the availability and terms and conditions of sale or lease for housing, land, or commercial space; admission to or membership in a Multiple Listing Service or similar organizations; lending; employment; and access to public accommodations (which include many providers of goods and services, including restaurants, stores, and even some government entities).

Int. No. 815-B would also expressly give principals and employers a cause of action if their rights under the HRL are violated by discriminatory conduct that their agents or employees

are subjected to while acting within the scope of that agency or employment relationship by creating a partial definition of who constitutes a “person aggrieved” under the HRL. This recognition would be especially useful for artificial entities such as for-profit or not-for-profit corporations which necessarily transact their business through employees and agents. For purposes of bringing such a claim, agent or employee’s protected status (such as race, gender, religion or sexual orientation) would be imputed to the principal or employer. It would not matter, for the purposes of bringing such a claim, if the entity alleged to have discriminated knew about the agency or employment relationship. Int. No. 815-B would not, however, disturb any existing basis or theory for demonstrating standing or a cause of action under the HRL. In holding the covered entity responsible for what it has done to the principal or employer, Int. No. 815-B would seek to enhance the deterrent effect of the City HRL.

Not everything that happens to an employee will implicate the rights of that person’s employer. For example, a cleaning company has been hired by a commercial office building to clean its offices each evening. On the way to the commercial office building, one of the cleaning company’s employees takes a detour to go shopping at a store, and is discriminated against at the store in violation of her right to access and use a public accommodation on equal terms and conditions as everyone else. If the trip to the store was not within the scope of the employment relationship or a result of that relationship, however, the cleaning company’s rights would not have been violated by the discrimination and so it would not have standing to bring a claim under the language added by Int. No. 815-B.

In addition, Int. No. 815-B would reaffirm the principle that the only injury needed to achieve standing under the City HRL is the invasion of a right created, granted, or protected by the law.

Finally, Int. No. 815-B would correct Code section 8-107(9) by adding back a review provision inadvertently dropped from the law by prior legislation.

Int. No. 815- B would go into effect 120 days after it becomes law, except that section 5 takes effect on the later of 120 days after it becomes law or on the effective date of Int. 805-A for the year 2016. Section 12 takes effect immediately and is deemed to have been in effect as of October 27, 2015. Finally, section 14 takes effect on the later of 120 days after it becomes law or on the effective date of Int. 832-A for the year 2016.