

DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
&

THE HOUSE COMMITTEE ON JUDICIARY

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

MARCH 2, 2015
2:15 PM

TESTIMONY OFFERING COMMENTS ON H.B. 25, H.D. 1, RELATING TO
DISCRIMINATION.

TO THE HONORABLE ANGUS L. K. McKELVEY, CHAIR,
AND TO THE HONORABLE KARL RHOADS, CHAIR,
AND TO THE HONORABLE JUSTIN H. WOODSON, VICE CHAIR,
AND TO THE HONORABLE JOY A. SAN BUENAVENTURA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs (“Department”), Office of
Consumer Protection (“OCP”), offers the following comments on H.B. 25, H.D. 1,
Relating to Discrimination.

H.B. 25, H.D. 1 adds four new sections to the Hawaii Residential Landlord-Tenant
Code to prohibit discrimination based on lawful source of income and adds definitions for
“rental transaction” and “source of income.”

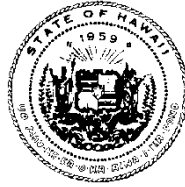
The Department defers to the Hawaii Civil Rights Commission on the merits of the bill, but if these new sections are adopted, the Department strongly believes that they should be placed in Chapter 515, Hawaii Revised Statutes (“HRS”), (Discrimination in Real Property Transactions) and not in HRS Chapter 521 (Residential Landlord-Tenant Code) because HRS Chapter 515, which solely focuses on “Discrimination in Real Property Transactions”, specifically regulates the type of conduct reflected in this bill.

The Landlord-Tenant Code’s cornerstone is the regulation of matters that are intrinsically associated with the landlord tenant relationship, such as: the payment of rent; a landlord’s obligations to provide fit premises; security deposits; and the repair of defects to the premises. It does not focus on discriminatory practices. Conversely, Chapter 515 specifically regulates discrimination in housing. In fact, HRS Section 515-16(6) sets forth a litany of prohibitions associated with “the enjoyment of a housing accommodation” and explicitly bars discrimination in housing, based on race, sex, color, religion, marital status, familial status, ancestry, disability, age, or HIV status.

In view of the foregoing, the Department strongly believes that HRS Chapter 521 is ill-suited for the prohibitions that this Bill contemplates, especially since a Chapter already exists that appears to be a perfect fit.

Thank you for the opportunity to offer comments regarding H.B. 25, H.D. 1.

DAVID Y. IGE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
Honolulu, Hawaii 96817

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

AND

HOUSE COMMITTEE ON JUDICIARY

Monday, March 2, 2015 at 2:15 P.M.
Room 325, Hawaii State Capitol

In consideration of

House Bill 25, HD1

Relating to Discrimination

Honorable Chair McKelvey, Honorable Chair Rhoads, and Members of the House Committee on Consumer Protection & Commerce, and the House Committee on Judiciary, thank you for the opportunity to provide you with comments regarding House Bill (H.B.) 25, House Draft 1 (HD1) relating to discrimination.

The Hawaii Public Housing Authority (HPHA) strongly supports the enactment of this measure, which would prohibit discrimination based on lawful sources of income in the rental of real estate, including advertisements for available rental units.

The HPHA's mission is to promote adequate and affordable housing, economic opportunity and a suitable living environment free from discrimination through its public housing and rental assistance programs. The HPHA serves the State's most vulnerable populations, including those earning less than thirty percent of the Area Median Income (AMI), the disabled and the elderly.

One of the programs in which the HPHA assists our low-income families is through the Housing Choice Voucher Program, also known as "Section 8". The Section 8 program is one of the federal government's major programs for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market, including single-family homes, townhouses and apartments. This program currently brings

approximately 20 million dollars a year on the island of Oahu, supports over 1,900 families and over 6,000 individuals. The HPHA has recently started the process to lease up participants on its Section 8 waitlist, and hopes to have an additional 300 families participating in the program.

Because of the overwhelming need in our community to assist our low-income families, we are hopeful that with the passage of this measure, our Section 8 participants will be considered as tenants and given a chance to apply for vacant units. The Section 8 program is an important part of the State's efforts in addressing the affordable housing needs of our low-income families, and the HPHA is willing to work and assist all landlords that would like to participate in the program.

The HPHA appreciates the opportunity to provide the House Committee on Consumer Protection & Commerce, and the House Committee on Judiciary with the agency's position regarding H.B. 25, HD1. We respectfully request the Committee to pass this measure favorably, and we thank you very much for your dedicated support to address the affordable housing crisis facing Hawaii.



HB25 HD1
RELATING TO DISCRIMINATION

House Committee on Consumer Protection and Commerce
House Committee on Judiciary

March 2, 2015

2:15 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB25 HD1, which provides consumer protection to families participating in governmental housing assistance programs, by preventing landlords from discriminating against prospective tenants solely because of their Section 8 status.

OHA's strategic priorities include Ho'okahua Waiwai, or increasing the economic self-sufficiency of Native Hawaiians. This includes supporting greater stability in housing for our low-income beneficiaries and their families. To guide development of policy in this area, OHA has researched the housing needs of all families, including Native Hawaiians, currently receiving or on the waitlist for financial housing assistance from the Housing Choice Voucher (otherwise known as the Section 8) Program.

This measure may provide significant relief for OHA's housing-insecure beneficiaries, who may be disproportionately impacted by the lack of single-family housing opportunities in our islands. OHA's research indicates that most housing-insecure Native Hawaiian households include five or more individuals.¹ Unfortunately, the single-family rental units needed by such households are in very short supply. A recent Affordable Rental Housing Study Update² by the Hawai'i Housing and Finance Corporation shows sharp drops in rental listings over the last three years for both multi-family and single-family units on all islands. In some areas, rental housing listings have dropped by 80%³, with the number of single-family listings in Kaua'i at less than 10% of the number of listings available three years ago. The difficulties of finding housing due to the lack of such single-family rentals is greatly exacerbated for very low income families, when landlords refuse to allow them to use the Section 8 housing vouchers they may be entitled to. **With such a scarcity of rental listings, consumer protection mechanisms,**

¹ OFFICE OF HAWAIIAN AFFAIRS, HAWAI'I RENTERS STUDY 2013: UNDERSTANDING THE HOUSING NEEDS OF NATIVE HAWAIIAN AND NON-HAWAIIAN SECTION 8 HOUSEHOLDS (2013), available at <http://www.oha.org/wp-content/uploads/2015/01/OHA-Hawaii-Renters-Study-2013-Full-Report.pdf>.

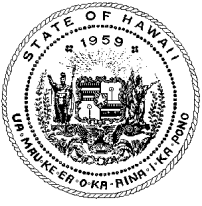
² See HAWAI'I HOUSING AND FINANCE CORPORATION, RENTAL HOUSING STUDY 2014 UPDATE (2014), available at <http://dbedt.hawaii.gov/hhfdc/resources/reports/>.

³ RICK CASSIDAY, MAUI RENTAL MARKET AFFORDABLE RENTAL HOUSING STUDY UPDATE 2014 (2014), available at <http://dbedt.hawaii.gov/hhfdc/files/2015/02/RENTAL-HOUSING-STUDY-2014-UPDATE-COUNTY-OF-MAUI.pdf>

such as protection from Section 8 discrimination, are therefore necessary to ensure meaningful access to housing opportunities for those very low income families whom the federal government has identified as needing housing assistance. Such a mechanism also ensures that families do not spend overly long periods of time trying to use federal dollars allocated for our state, to the point where they may be unable to spend such federal funds, and even lose their voucher eligibility when they are unable to secure housing.

OHA notes that this measure's prohibition of Section 8 discrimination is nationally recognized as an important consumer protection policy. Several states, including California, Connecticut, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont, and Wisconsin, as well as the District of Columbia, and most larger metropolitan areas such as New York City, San Francisco, Seattle, Portland, Chicago, Philadelphia, Memphis, St. Louis, and Los Angeles, have all adopted laws that prohibit landlords from refusing to rent to those who participate in housing voucher programs. This bill is one way to ensure that our Housing Choice Voucher Program operates effectively and efficiently, and that our low-income individuals are given parity in searching for rental housing opportunities, particularly during times of increased competition for units.

OHA therefore urges the Committees to **PASS** HB25 HD1. Mahalo nui for the opportunity to testify on this measure.



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 2, 2015
Rm. 325, 2:15 p.m.

To: The Honorable Angus McKelvey, Chair
Members of the House Committee on Consumer Protection & Commerce

The Honorable Karl Rhoads, Chair
Members of the House Committee on Judiciary

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 25, H.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC supports H.B. No. 25, H.D.1, which amends the Landlord-Tenant Code (HRS Chapter 521) to prohibit housing discrimination against persons based on their source of income, including government or private assistance. While this new protection is different in kind from the protected bases under fair housing law, there is some correlation between the protected bases under federal and state fair housing law and those who receive rental assistance and other sources of income from government programs – many are people living with disabilities, families with children, single female heads of household, and members of racial minority groups.

In recent years a number of courts have held that other state discrimination laws which include protection for renters who have Section 8 vouchers as a source of income are not preempted by federal

Section 8 law (which states that participation in the Section 8 program is voluntary), and that the burden of participating in the Section 8 program is not onerous.

The HCRC supports H.B. No. 25, H.D.1, because it places the proposed new protections in the Landlord-Tenant Code, not in HRS Chapter 515. The Commission cannot predict the potential impact of adding source of income as a protected basis to the housing discrimination law. This new protected basis is different in kind from others covered under Chapter 515, and would include not only recipients of welfare or AFDC, but also recipients of Social Security, Supplemental Security Income and other government and non-government benefits or income. The HCRC had concerns over a similar bill introduced in 2014, which in its original form placed this new protection in Chapter 515 and under HCRC jurisdiction, because of the potential impact on complaint caseload and processing, especially in light of the impact of lost investigation and enforcement capacity since 2008.

H.B. No. 25, H.D.1, addresses the HCRC's concerns, placing these protections under HRS Chapter 521.

The HCRC suggests that the committee might consider creating an individual direct cause of action for violations of this new protection, with remedies including injunctive relief, a fine of not more than \$500, and attorney's fees. Such limited remedies would be better suited to address the purpose of the new protection, more so than providing the full panoply of remedies available under HRS chapter 515, including compensatory and punitive damages; this also mitigates against placing the new protection under chapter 515, because the HCRC opposes the creation of "lesser" protections within the state fair housing statute.

March 2, 2015

The Honorable Angus L.K. McKelvey, Chair
House Committee on Consumer Protection & Commerce

The Honorable Karl Rhoads, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 25, H.D.1, Relating to Discrimination

HEARING: Monday, March 2, 2015, at 2:15 p.m.

Aloha Chair McKelvey, Chair Rhoads, and Members of the Joint Committees:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,300 members. HAR **opposes** H.B. 25, H.D.1 which prohibits discrimination in the rental of real property based on lawful source of income..

H.B. 25, H.D.1, makes it a discriminatory practice under the Landlord-Tenant Code, similar to Hawaii's Fair Housing law (Hawai'i Revised Statutes Chapter 515), to engage in a broad list of discriminatory practices based on source of income. Provisions under HRS Chapter 515 apply to appraisals, mortgages, mortgage lending, real estate contracts, inspection, and real estate services.

HAR is concerned that this measure proposes to add a prohibition against discrimination based on lawful source of income to the Landlord-Tenant code, despite the existence of Chapter 515 which already protects against other discriminatory practices under Hawaii's fair housing law. This measure also elevates the "source of income" factor in the Landlord-Tenant code, and essentially equates it to the level of a "protected class" under Hawaii's fair housing law.

HAR believes that government subsidized programs, such as Section 8, are an important part of our community's social safety net. However, imposing this requirement on all landlords and property managers, even those outside of the Section 8 program, undermines their ability to perform basic responsibilities set forth in the Landlord-Tenant code.

When you compare the procedure for renting a unit to a non-Section 8 tenant, to a Section 8 tenant, the added cost, time, and liability exposure can be seen. If both tenants review the property, and submit applications on the same day, the following is an example of the additional time and complexity a Section 8 tenant adds to the process.

If a non-Section 8 tenant's application is cleared and accepted, the tenant is contacted and a meeting is scheduled to sign the rental agreement, conduct the inspection of the unit and for the tenant to pay the prorated rent and security deposit. The landlord then has a rent paying tenant in the unit within days.

With a Section 8 tenant, the following process ensues, and it often takes 2 months or longer prior to the landlord receiving the first rental check:

1. The Section 8 tenant's application is cleared, and if accepted, the tenant is contacted and advised to bring the Section 8 paperwork to the office for completion;
2. The next day the tenant comes in and delivers the paperwork. The Landlord completes the rental agreement and Section 8 paperwork and the tenant submits it to Section 8;
3. Section 8 then processes the paper work which takes approximately one to two weeks;
4. Section 8 then contacts the Landlord to advise the Landlord of their acceptance and to schedule an inspection by a Section 8 inspector which takes 1 to 3 days before inspection takes place;
5. The inspector does the inspection and submits it to Section 8;
6. If there are no discrepancies found during the inspection, Section 8 advises the Landlord that the rental agreement is accepted and the tenant may be checked in the unit;
7. At the inspection and check-in the tenant pays the security deposit;
8. The tenant's rental agreement goes into effect after the property is inspected by the Section 8 inspector and when they are given occupancy;
9. The average Section 8 application usually takes a minimum of 12 days, and more often takes 18 to 24 days; and
10. In addition, the Landlord normally must wait from 30 to 45 days to receive the prorated rent and first months full rent from Section 8.

While professional property managers may possess the experience and knowledge necessary to navigate safely through this process, this process is likely too complex, expensive and time-consuming for the average landlord. By prohibiting discrimination based on the source

of income, all landlords and property managers would be unnecessarily exposed to potential liability for engaging in normal business practices.

Property managers who accept Section 8 housing applicants on a regular basis often express their frustration with the program's procedures and implementation. There is inconsistent application of paperwork requirements. Successful completion of forms may depend on which case worker is reviewing them and property inspection requirements are applied differently by different inspectors.

At times, defects are reported by the inspector and corrected by the landlord, only to have a different inspector sent to check on the corrections who finds others, not noted by the first inspector. These defects are sometimes as small as a dining room ceiling light hanging three inches too low or the space under a bedroom door being ¼ inch too high or louver cranks too hard to turn.

HAR further raises the issues of whether someone is engaged in a discriminatory practice based on source of income is very subjective and ambiguous. As a result, even the most diligent and scrupulous landlord could find himself or herself the subject of a fair housing complaint. In such cases, the difficult task of proving one's "innocence" and the time, expense and distraction associated with defending a discrimination claim can easily overwhelm the typical law abiding landlord.

Finally, "source of income" is clearly in a different category from the protected classes of race, color, religion, national origin, familial status, handicap or gender identification. Each of the current protected classes was adopted to address a particular history of discrimination which we as a country and a state could no longer tolerate and claim to be just. However, financial information clearly has a legitimate place in business decisions, such as that of a landlord-tenant relationship.

Mahalo for the opportunity to testify.



March 2, 2015

The Honorable Angus L.K. McKelvey, Chair
House Committee on Consumer Protection & Commerce

The Honorable Karl Rhoads, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 25, H.D.1, Relating to Discrimination

HEARING: Thursday, January 16, 2014, at 2:00 p.m.

Aloha Chair McKelvey, Chair Rhoads, and Members of the Joint Committees:

My name is Amanda Frazier, Property Manager and Chief Operating Officer at Cornerstone Properties where we specialize in Residential Property Management and represent over 500 doors. I am speaking in opposition to H.B. 25, H.D.1 which prohibits discrimination in the rental of real property based on lawful source of income.

I personally rent to several Section 8 recipients, and have a great relationship with these tenants. They take very good care of the properties and always pay their portion of the rent on time. I have no issues with Section 8 recipients whatsoever.

However, the Section 8 program is very difficult to work with, which is the number one reason more of my clients do not go through Section 8. One of the biggest setbacks is the amount of time it takes to get a new tenant into the property and get paid on time.

In a standard procedure, we would accept a good applicant based on credit, verification of employment and income amount, and previous landlord references. Once approved, they could come into our office, sign a rental agreement, and start their lease in some cases, the very same day.

However, with Section 8, this process is much longer. After a Section 8 applicant is approved, they must take a copy of the lease to the Section 8 office and fill out additional paperwork. Once completed, an inspection must be scheduled and completed. If not passed, repairs must be made before another inspection. Upon passing of the inspection, final paperwork is completed. Once that is done and the tenant can finally move in, one to two weeks may have passed. At this time, the first rent check usually does not come in until the following month.

As you can see, this leaves the home owner without income for their rental property for weeks to over a month at a time. This is a great hardship on many home owners. Most investment property owners that I work with are dependent on the rental income in order to pay their mortgage on time.

I am concerned that making "source of income" a protected class may be dangerous. We would normally deny an applicant based on poor credit or the fact that they don't make enough income to pay the rent, regardless of the



source. However, with a new law in place protecting “source of income” I see many potential fraudulent discrimination lawsuits.

I also see that this may force owners to go through the Section 8 program, which would set them back into financial hardship.

I am in the business of helping everyone. I believe that if Section 8 could follow our standard practice guidelines such as paying rent up front when it’s due at the time of the signing of the rental agreement, just like everyone else, and following standard Hawaii State paperwork instead of requiring many additional paperwork, it would solve the issue that is currently faced.

Thank you for allowing me to submit this testimony.

Amanda Frazier, (B)

Property Manager, COO

Cornerstone Properties

BILL RAMSEY, INC.

Property Managers

March 2, 2015

The Honorable Angus L.K. McKelvey, Chair

House Committee on Consumer Protection & Commerce

The Honorable Karl Rhoads, Chair

House Committee on Judiciary

State Capitol, Room 325

Honolulu, Hawaii 96813

RE: H.B. 25, H.D.1, Relating to Discrimination

HEARING: Monday March 2, 2015, at 2:15 p.m.

Aloha Chair McKelvey, Chair Rhoads, and Members of the Joint Committees:

I am William Ramsey, president of Bill Ramsey, Inc., a residential property management company that represents approximately 700 property owners. I am speaking in opposition to H.B. 25, H.D.1 which prohibits discrimination in the rental of real property based on lawful source of income.

Generally landlords are not in opposition to renting to Section 8 tenants, even if there are too many ads that include "No Section 8". This phrase is usually included in ads to avoid the telephone calls and the need to explain why they don't take Section 8. Laziness in most cases. Section 8 gives the tenant 30 days to find a place once they are issued a voucher. If they don't find something, they can file for a 30 day extension. They have to find a place in 60 days or they may lose their voucher. The tenants call every ad they see to find something. And they usually issue the vouchers in bunches so there are a large numbers of tenants calling all at once.

The opposition is not to the tenant but to the Section 8 program, with its bureaucracy and inefficiencies that place a larger financial and procedural burden than necessary on the landlords.

The problems with the program begin as soon as the section tenant applies for a rental unit. Where a non-subsidized tenant can apply for a rental, be accepted and have their lease signing, initial occupancy inspection and occupancy completed in two days, the Section 8 tenant must.

1. Obtain acceptance
2. Have the owner prepare the rental agreement
3. Deliver the agreement to Section 8 for review and approval
4. Wait for the department to schedule an inspection of the rental by a Section 8 inspector.

5. Wait for the inspector to pass the unit or return to owner with a list of items that need to be completed before the unit can be re-inspected for compliance.
6. Finally pick up the paperwork at Section 8 and take it to the owner for signing. Return the paperwork to Section 8 for approval
7. Owner must then do tax paperwork required and Section 8 must process paperwork for the owner to be paid

During this time, which can be up to a minimum of two weeks the tenant is not allowed by Section 8 to occupy the rental and the landlord does not collect any rent.

With this system, why would a landlord pick a Section 8 tenant if a qualified non-subsidized tenant is ready to rent?

After the Section 8 tenant occupies the rental, other problems occur with the bureaucracy.

These are a few of the actual problems that my company has encountered:

If an existing tenant becomes delinquent or fails to meet their obligations, a landlord must notify Section 8, with the result that Section 8 will warn the tenant. But, any further problem with payment or conduct has sometimes resulted in Section 8 cancelling its contract with the tenant with little or no notice to the owner and demanding the Landlord repay back subsidy payments. This does not terminate the rental agreement and leaves the Landlord with a tenant who cannot pay their rent, in addition to an inflated delinquency which unfortunately results in the landlord having to take legal action against the tenant to terminate rental agreement.

Where there is a change of property ownership, there have be problems with Section 8 making timely payment changes. The payments made payable to the old owner may continue for a period of time with the new owner not able to cash the checks and therefore receiving no income. Recently one of our clients acquired a property in September 2014 but didn't start receiving regular payments until December 2014. In February 2015 they finally received payments for the period September thru November of 2014.

The decisions by inspectors are final with no appeal. When an inspector conducts an inspection, the inspection notes whether the tenant or the landlord is responsible for correcting the problems.

Recently an inspector noted items which required owner correction. We advised Section 8 that we had repeatedly corrected these items on previous occasions and continuous damage was being caused by the tenant. We were advised the inspector's findings were final and that the owner was responsible for correcting the items. Section 8 notified us that they were terminating the tenants contract effective February 28th but that they would be abating the payments and would no longer be making payments effective February 1. Under the terms of the

Section 8 contract, Section 8 is allowed to abate the rent. The contract also prohibits the owner from pursuing collection of the Section 8 portion of the rent from the tenant. And it prohibits the owner from pursuing action for eviction based on non-payment of rent by Section 8. According to the contract "The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment" "PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment."

These are just a few of the problems property owners can face if accepting Section 8. They are all caused by Section 8 bureaucracy, its rules and inefficiencies, not be the tenants themselves.

I support the protection of tenants from discrimination but please do not pass a law that protects a program that is a detriment to the welfare of both its recipients and their landlords. Correct the problem, not the result.

Thank you for allowing me to submit this testimony.

A handwritten signature in black ink, appearing to read "William B. Ramsey". The signature is cursive and somewhat stylized.

William B. Ramsey, CPM, (B)
President
Bill Ramsey, Inc.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 01, 2015 12:22 PM
To: CPCtestimony
Cc: matterswecareabout@gmail.com
Subject: Submitted testimony for HB25 on Mar 2, 2015 14:15PM
Attachments: TESTIMONY OF A WINDWARD LANDLORD.docx

HB25

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
P&P	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

TESTIMONY OF A WINDWARD LANDLORD

HOUSE BILL NO. 25, HOUSE DRAFT 1

Hearing Before the
Committees on Consumer Protection and Commerce and Judiciary

Monday, March 2, 2015, 2:15 p.m.

State Capitol, Conference Room 325

Chairs McKelvey and Rhoads and Members of the Committees:

Thank you for this opportunity to testify on House Bill No. 25, House Draft 1. We understand the bill as proposing to take away our ability to consider income when evaluating a rental application. We strongly oppose the bill.

My husband and I are the owners of a home that we currently rent. This is the home that we raised our daughter in. We are only renting our home because my father passed away and we moved in with my mother to take care of her. She is now 92 years old.

We are so appalled at the proposal to treat income as a type of unconscionable discrimination like discrimination based on race, sexual orientation, or disability. Furthermore, the proposal targets landlords like us and not mortgage companies or financial institutions that hold power and wealth.

House Bill 25 threatens to take away a significant means of determining how responsible a tenant will be. The bill threatens to make unlawful a landlord's consideration of whether a rental applicant will be able to repair any damage caused by the tenant that may cost more to repair than the rental deposit.

If the State of Hawaii is so sure that "Section 8" tenants will be responsible tenants, the State should sign the rental agreement as a guarantor or co-tenant to back up its confidence. By not doing so, the State is placing the burden of paying for the repair of damage to the property caused by a Section 8 tenant upon the landlord. A tenant who cannot afford to pay the monthly rent without the State's assistance may be judgment proof.

We understand that housing in Hawaii is a societal problem. My husband and I do our part by keeping our rent reasonable, on the lower end of houses similar to ours. It is simply unfair to place the financial burden of repairing possible damage to a home or lot caused by a tenant on the shoulders of landlords like us.

We cannot let our home fall into disrepair. We plan to eventually return to our home or save it for our daughter.

Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice Chair
COMMITTEE ON JUDICIARY

Rep. Mark J. Hashem, Chair
Rep. Jo Jordan, Vice Chair
COMMITTEE ON HOUSING

Rep. Angus L.K. McKelvey, Chair
Rep. Justin H. Woodson, Vice Chair
COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

David W.H. Chee, Esq.
808-539-1150
dchee@tqlawyers.com

February 27, 2015

RE: H.B. 25, Relating to Discrimination

HEARING: March 2, 2015 at 2:15 p.m.

Dear Committee Members:

I am an attorney who practices in the field of landlord/tenant law, including residential matters. I am writing in opposition to HB25 HD1.

This proposed legislation will not accomplish its stated goal of affording persons receiving Section 8 housing assistance with an equal opportunity to find housing.

I. The proposed legislation will not change the number of landlords that participate in the Section 8 program because it does not change the Section 8 program.

The decision to accept or not accept Section 8 vouchers for rent payment is not necessarily about the tenant or the tenant's level of income or wealth. It is, however, always about whether the landlord is willing and able to participate in the Section 8 program.

As you can see from the City and County of Honolulu's website, Section 8 housing assistance can only happen after a landlord has made a contract with the government. See, <http://www.honolulu.gov/cms-dcs-menu/site-dcs-sitearticles/1338-cad-section-8.html> ("Eligible participants receive a Housing Choice Voucher which entitles them to search for a rental unit. A contract to pay subsidies is signed between the City and the owner once the rental unit and the lease are approved.")

A copy of a recent contract form can be found at <http://www.honolulu.gov/rep/site/dcs/onlineforms/dcs-2013landlordinformationpacket.pdf>. A review of the contract reveals that, in exchange for payment, landlords must accept 12 pages of strict obligations presented in dense, small-font, legalese.

Many of the terms are unattractive. For example, by entering into the agreement, a landlord agrees to allow the government to audit his or her records, and must allow the government “full and free” access to any computers, equipment or facilities containing records related to the rental. For most private landlords in Hawaii, this would mean allowing the government full and free access to their home and giving the government full and free access to all information on their computers. See, paragraph 11 on “Page 6 of 12” of the Sample HAP Contract.

In addition to giving up fundamental rights of privacy, a landlord that enters into the HAP contract also gives up the fundamental right to evict a tenant if rent is not paid. See, paragraph 5.c. on Page 9 of 12 of the Sample HAP Contract, which says, “(a) PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.” So, when Section 8 does not pay, a landlord cannot take his or her property back.

Finally, sometimes a landlord is not able to participate in the Section 8 program because their unit does not meet Section 8’s requirements. As reflected in the websites above, part of process a landlord must undergo prior to being approved to receive Section 8 funds is an inspection of the rental unit to ascertain whether it meets Section 8 standards. If the unit is not approved then the landlord will not be able to receive Section 8 funds and will not be able to accept tenants who require Section 8 to pay the rent. Especially for owners of modest properties, the cost of required improvements may not be affordable.

Fundamentally, the reason that the Section 8 program is not more widely embraced is that the Section 8 program is, for many landlords, more trouble than it is worth. The refusal to accept Section 8 is not necessarily a reflection of a desire not rent to low-income tenants, but a refusal to enter into a one-sided contract. This legislation does not change that.

Perhaps a different approach would be to make participation in the Section 8 program more attractive for landlords. Providing incentives, such as favorable tax rates or other tax incentives, may eliminate any issue.

II. The proposed legislation would not make refusing Section 8 tenants illegal.

In addition to the issues above, the proposed legislation will not make it illegal to refuse Section 8 tenants. The legislation would make it illegal to discriminate based on “source of income.” That phrase is defined as “any legal source of money paid directly or indirectly to a tenant or potential tenant...”

Section 8 money is never paid directly or indirectly to a tenant. The money is always paid to the landlord. So, if this legislation became law it would still be entirely legal to discriminate against persons receiving Section 8 aid because such aid is not a “source of income.”

III. The proposed legislation is contradictory.

While making it illegal to discriminate against a person based on their source of income, the proposed statute allows landlords to evaluate the stability, security, and credit worthiness of a potential renter. Presumably, the purpose of evaluating these factors is to assist in making a decision as to whether to take an individual applicant on as a tenant. Since there is a very strong relationship between a person’s financial stability, security, and credit worthiness and their source of income, allowing evaluation of these factors necessarily allows evaluating a prospective tenant’s source of income. In other words, this proposed legislation would make it both legal and illegal to evaluate a prospective tenant’s source of income. This is confusing at least.

IV. Evaluating the source income of Section 8 tenants is important.

As reflected in the websites cited above, Section 8 often does not pay all of the rent for a tenant. The tenant must come up with the funds that Section 8 does not. It would only be prudent for a prospective landlord to evaluate the source of income for applicants to make sure that they will be able to pay their share of the rent consistently.

V. The proposed legislation has ramifications far beyond Section 8 tenants.

Since the legislation makes it illegal to discriminate based on source of income it raises many interesting questions that are not clearly answered by the legislation. For example, would it be discriminatory for a landlord to refuse to rent to the CEO of a neo-Nazi organization because of the source of his income?