

SB127

Measure Title: RELATING TO DISCRIMINATION.

Report Title: Landlord-tenant Code; Discrimination in Rental Transactions; Source of Income

Description: Amends the landlord-tenant code to prohibit discrimination based on lawful source of income in rental transactions, including advertisements for available rental dwelling units.

Companion:

Package: None

Current Referral: CPH, JDL

Introducer(s): K. RHOADS



DAVID Y. IGE
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LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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**PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION**

**TO THE SENATE COMMITTEE ON COMMERCE,
CONSUMER PROTECTION, AND HEALTH**

**THE TWENTY-NINETH LEGISLATURE
Regular Session of 2017**

**Tuesday, February 7, 2017
9:00 a.m.**

TESTIMONY ON SENATE BILL NO. 127, RELATING TO DISCRIMINATION.

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs (“DCCA”), Office of Consumer Protection (“OCP”) appreciates the opportunity to offer comments on Senate Bill No. 127, Relating to Discrimination. My name is Stephen Levins and I am the Executive Director of the OCP.

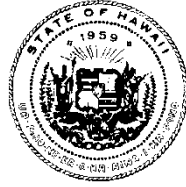
Senate Bill No. 127 adds seven new sections to the Hawaii Residential Landlord-Tenant Code to prohibit discrimination based on lawful source of income and adds definitions for “rental transaction” and “source of income.”

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 on Senate Bill No. 127. I will be happy to answer any questions the members of the Committee may have.



STATE OF HAWAII
HAWAII PUBLIC HOUSING AUTHORITY
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Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

TUESDAY, February 7, 2017
9:00AM
Room 229, Hawaii State Capitol

In consideration of
SB 127
RELATING TO DISCRIMINATION

Honorable Chair Baker and Members of the Senate Committee on Commerce, Consumer Protection, and Health, thank you for the opportunity to provide **comments** concerning Senate Bill 127, relating to discrimination.

The bill proposes the addition of a new part under Chapter 521, Hawaii Revised Statutes, to amend the landlord-tenant code to prohibit discrimination based on lawful sources of income in rental transactions, specifically Section 8 Housing Choice Vouchers.

The Hawaii Public Housing Authority (HPHA) has concerns regarding the sections entitled "Exception; untimely dwelling unit re-inspection," and "Late fee; untimely payment under low income housing assistance program."



1. To clarify a possible misunderstanding, re-inspections are not always needed following a failed inspection. Depending on the deficiency cited, a landlord may only need to submit documentation (e.g., photos, receipts) as proof that the issue has been fixed. If the submitted documentation is sufficient, the HPHA does not schedule a re-inspection.
2. The proposed language stating that a landlord may discriminate following a failed initial inspection if the HPHA fails to re-inspect within three business days, is not feasible. Based on our records, more than half of all rentals fail their initial inspections with varying degrees of deficiencies. With the large workload of the HPHA inspectors, it would not be possible to guarantee that a re-inspection could occur within a three-day window from the initial inspection. A minimum of two additional inspectors would be


needed to meet this additional administrative requirement. The HPHA respectfully recommend that this language be removed going forward.

3. Per Federal rules, the HPHA cannot pre-pay rent and cannot subsidize penalties for late payments. Thus, low-income tenants would be left to cover the 10% penalties in this section. Currently, the highest amount the HPHA pays in rent subsidies is around \$2,500. A 10% late fee will equal \$250 and will be left to the low-income tenant to bear the burden of paying.

The HPHA appreciates the opportunity to provide the Senate Committee on Commerce, Consumer Protection, and Health with the HPHA's comments regarding SB 127. We thank you very much for your dedicated support.



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February 7, 2017

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce, Consumer Protection, and Health
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 127, Relating to Discrimination

HEARING: Tuesday, February 7, 2017, at 9:00 a.m.

Aloha Chair Baker, Vice Chair Nishihara, and Members of the Committee:

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** S.B. 127 which adds a new part in the landlord-tenant code to prohibit discrimination based on lawful source of income in rental transactions, including advertisements for available rental dwelling units.

This measure 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 a sources 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 specific prohibition against discrimination based on sources 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 amounts to the creation of a new 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 undermines their ability to perform basic responsibilities set forth in the Landlord-Tenant code.

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 an occupying unit.



With a Section 8 tenant, the following process ensues, and it often takes months or longer for the unit to be occupied:


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.


Additionally, 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. Landlords and property managers may unnecessarily be exposed to potential liability for engaging in normal business practices.

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



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“innocence” and the time, expense and distraction associated with defending a discrimination claim can easily overwhelm the typical law abiding landlord.

For the foregoing reasons, we respectfully request that this committee hold this measure.

Mahalo for the opportunity to testify.





SB127
RELATING TO DISCRIMINATION

Senate Committee on Commerce, Consumer Protection, and Health

February 7, 2017

9:00 a.m.

Room 229

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **COMMENT** on SB127, which would provide 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, or their receipt of public benefits.

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 relating to Native Hawaiians and housing security, OHA has researched the housing needs of all families, including Native Hawaiians, currently receiving or on the waitlist for the Housing Choice Voucher Program or other Section 8 programs.

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 short supply: studies in recent years have shown sharp drops in rental listings for both multi-family and single-family units on all islands.² The difficulties of finding adequate housing is greatly exacerbated for very low-income families, when landlords refuse to allow them to use the Section 8 housing vouchers they are entitled to. **With such a scarcity of rental listings, the consumer protection mechanisms in this bill are necessary to ensure that very low-income Native Hawaiian and other families are able to actually use the government support provided to them, to secure what little housing opportunities may be available.** The anti-discrimination mechanisms in this measure will also ensure that families do not spend overly long periods of time trying to use federal dollars allocated to our state, to the point where they may be unable to spend such federal funds, or even lose their voucher eligibility.

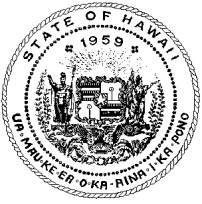
OHA notes that this measure's prohibition of Section 8 discrimination is nationally recognized as an important consumer protection policy. Several states, including, California, Connecticut, Maine, Massachusetts, Minnesota, New Jersey, North Dakota,

¹ OFFICE OF HAWAIIAN AFFAIRS, HAWAII 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 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>; HAWAII HOUSING AND FINANCE CORPORATION, RENTAL HOUSING STUDY 2014 UPDATE (2014), available at <http://dbedt.hawaii.gov/hhfdc/resources/reports/>.

Oklahoma, Oregon, Utah, Vermont, and Wisconsin, as well as other large metropolitan areas such as the District of Columbia, 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 therefore reflects a well-established policy, to ensure that our Housing Choice Voucher programs operate effectively and efficiently, and that low-income individuals and families are able to access housing opportunities that may be otherwise foreclosed to them.

Accordingly, OHA urges the Committee to **PASS** SB127. Mahalo nui for the opportunity to testify on this measure.



HAWAI‘I CIVIL RIGHTS COMMISSION

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February 7, 2017
Rm. 229, 9:00 a.m.

To: The Honorable Rosalyn Baker, Chair
Members of the Senate Committee on Consumer Protection & Health

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

Re: S.B. No. 127

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 strongly supports S.B. No. 127, 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 S.B. No. 127, 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.

S.B. No. 127, addresses the HCRC's concerns, placing these protections under HRS Chapter 521. (In 2015, H.B. No. 25 did so as well.)

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.

To this end, the HCRC suggests an amended S.D.2, amending Section 2 of the bill by changing the title of the new part of chapter 521 and adding a new section on remedies (and enforcement by civil action) at the end of the new part, and inserting a new Section 3, as follows:

SECTION 2. Chapter 521, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

Part . SOURCE OF INCOME

* * * * *

§521- Remedies for discrimination based on source of income.

(a) Section 521-77 to the contrary notwithstanding, the office of consumer protection shall not receive, investigate and attempt to resolve any dispute arising under this part.

(b) If a person engaging in a rental transaction engages in a discriminatory practice based on source of income prohibited under this part, any aggrieved renter may bring a civil action in district court for appropriate injunctive relief, within one year of the occurrence of the alleged violation.

(c) In an action brought pursuant to subsection (b), a district court may:

(1) Issue an injunction to enjoin violation of this part.

(2) In any case that it issues an injunction pursuant to paragraph (1), may also assess a fine not to exceed \$500.

(3) In any case that it issues an injunction pursuant to paragraph (1), may also award reasonable attorneys fees incurred in the civil action.

SECTION 3. Section 521-8, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

""Rental transaction" means any part of a process or transaction for the rental or lease of premises.

"Source of income" means any lawful source of money paid directly or indirectly to a tenant or potential tenant, including:

(1) Any lawful profession or occupation;

(2) Any government or private assistance, grant, loan, or rental assistance program, including low-income housing assistance certificates and vouchers under the United States Housing Act of 1937, as amended; and

(3) Any gift, inheritance, pension, annuity, alimony, child support, or other consideration or benefit."



February 7, 2017

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce, Consumer Protection, and Health

State Capitol, Room 229

Honolulu, Hawaii 96813

RE: S.B. 127, Relating to Discrimination

HEARING: Tuesday, February 7, 2017, at 9:00 a.m.

Aloha Chair Baker, Vice Chair Nishihara, and Members of the Committee:

I am Chad Deal Government Affairs Director testifying on behalf of the Kaua`i Board of Realtors® and it's 650 members. The Kaua`i Board **OPPOSES S.B. 127** which adds a new part in the landlord-tenant code to prohibit discrimination based on lawful source of income in rental transactions, including advertisements for available rental dwelling units.

Government subsidized programs such as Section 8 are necessary but adding "source of income" as a "protected class" places undue burden on Landlords.

Hawai`i's Fair Housing Law HRS: chapter 515 already protects against such discriminatory practices in the Landlord-Tenant code.

Mahalo for the opportunity to submit testimony.

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