

HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 4, 2021
Rm. 423, 9:00 a.m.

To: The Honorable Nadine K. Nakamura, Chair
The Honorable Troy N. Hashimoto, Vice Chair
Members of the House Committee on Housing

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 1390

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. 1390, which would amend the HRS to add a new chapter to prohibit housing discrimination against persons based on their source of income, including participation in a housing assistance program or requirements related to participation in a housing assistance program. 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 states and municipalities have enacted laws prohibiting discrimination in housing based on lawful source of income, including Section 8 vouchers as a source of income. Courts have held that these state and local laws 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.

As the COVID-19 pandemic continues, its economic repercussions affect income and housing. In this crisis, it is even more important to prohibit discrimination based on source of income.

HCRC has both supported and raised concerns about similar bills in the past, and this bill addresses those concerns. H.B. No. 1390 places the new prohibited practice in a new chapter of the HRS, with enforcement through direct civil action and provision for appropriate remedies. This addresses specific concerns raised by the HCRC in 2019 on a similar bill.

The HCRC supports H.B. No. 1390.



EXECUTIVE CHAMBERS
HONOLULU

February 4, 2021

TO: The Honorable Representative Nadine K. Nakamura, Chair
House Committee on Housing

FROM: Scott Morishige, MSW, Governor's Coordinator on Homelessness

SUBJECT: **HB 1390 – RELATING TO RENTAL DISCRIMINATION**

Hearing: Thursday, February 4, 2021, 9:00 a.m.
VIA VIDEO CONFERENCE
Conference Room 423, State Capitol

POSITION: The Governor's Coordinator strongly supports this measure with one suggested amendment. Specifically, the Coordinator suggests the bill be amended to increase the remedy from a fine of \$500 to damages not to exceed \$5,000.

PURPOSE: The purpose of the bill is to prohibit discrimination, including in advertisements for available real property, based on participation in a housing assistance program, or requirements related to participation in housing assistance programs, in real estate transaction and requirements.

This measure will address a key barrier to housing for many low-income and homeless individuals and families throughout the state. Connecticut, Maine, Massachusetts, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont, Washington, and Washington, D.C., have adopted statutes that prohibit rental discrimination based on source of income, which includes the use of housing vouchers. In December 2020, the Hawaii Interagency Council on Homelessness prioritized addressing source of income discrimination in rental housing as a key priority for the 2021 legislative session.

In addition, the adoption of source of income legislation is aligned with 'The Framework for an Equitable COVID-19 Homelessness Response' supported by the Center on Budget &

Policy Priorities, National Alliance to End Homelessness, National Innovation Service, National Health Care for the Homeless Council, National Low Income Housing Coalition, Urban Institute, Barbara Poppe and associates, and Matthew Doherty Consulting.

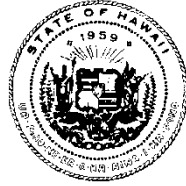
Homelessness remains one of the most pressing challenges facing Hawaii. Due to the pandemic related economic downturn, we anticipate the number of homeless individuals will significantly increase at a far greater magnitude than what followed the Great Recession. Previous statewide Point in Time counts showed an increase of over 2,100 homeless individuals between the 2009 economic recession and 2016. A steady focus on permanent housing, including maximized use of all available housing vouchers and programs, and rent and mortgage assistance or subsidies will be required to mitigate or reverse anticipated future increases in homelessness.

In response to the pandemic, the federal government has increased funding for housing subsidies available through the Emergency Solutions Grant (ESG) Rapid Rehousing, as well as similar long-term housing subsidies. However, many homeless individuals continue to experience difficulties in locating permanent housing, despite being assigned a housing voucher programs through programs such as Housing First, the State Rent Supplement Program, the Section 8 Housing Choice Voucher program, Tenant-Based Rental Assistance (TBRA), or the U.S. Department of Housing and Urban Development Veteran Affairs Supportive Housing (HUD VASH) program.

According to feedback from service providers, many landlords are reluctant to rent to individuals who have a voucher or who report receiving case management through Housing First or a similar program. Providers have shared that many advertisements for housing specifically state “No Section 8” or “No Vouchers.” The Coordinator’s office has also received direct calls and e-mails from constituents who cite discrimination against individuals with a housing voucher as a key factor related to their homelessness.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

STATE OF HAWAII

HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
POST OFFICE BOX 17907
HONOLULU, HAWAII 96817

Statement of
Hakim Ouansafi

Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON HOUSING

Thursday, February 4, 2021
9:00 AM - Room 423, Hawaii State Capitol

In consideration of

HB 1390

RELATING TO RENTAL DISCRIMINATION

Honorable Chair Nakamura and Members of the House Committee on Housing, thank you for the opportunity to provide testimony concerning House Bill (HB) 1390, relating to rental discrimination.

The Hawaii Public Housing Authority (HPHA) **supports** the enactment of HB 1390, which prohibits discrimination, including in advertisements for available real property, based on participation in a housing assistance program or requirements related to participation in housing assistance programs, in real estate transactions and requirements.

One of the programs in which the HPHA assists our low-income families is through the Section 8 Housing Choice Voucher Program, also known as "Section 8 HCV". The Section 8 HCV 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 \$38.45 million dollars a year primarily on the island of Oahu, supports over 2,800 families and over 8,400 individuals.

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 HCV participants will be considered as tenants and given a chance to apply for vacant rental units in the private market.

In the last few years, the HPHA received feedback that many landlords advertise “No Section 8” and refuse to consider Section 8 participants because they believe that they will not be good tenants. Over the past several months, when the HPHA launched a “lease in place” preference, we were surprised to learn that many landlords did not want to participate in the Section 8 program even though their current renters had been with them for many years. We discovered that many landlords prefer cash payments for tax purposes.

The Section 8 HCV program is an important part of the State’s efforts in addressing the affordable housing needs of our low-income families. All families go through a criminal background, sex offender and Homeland Security screenings before being given a voucher to pursue a rental unit, 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 Committee with the HPHA’s testimony. We thank you very much for your dedicated support.

February 4, 2021

The Honorable Nadine Nakamura, Chair

House Committee on Housing

Via Videoconference

RE: H.B. 1390 Relating to Rental Discrimination

HEARING: Thursday, February 4, 2021, at 9:00 a.m.

Aloha Chair Nakamura, Vice Chair Hashimoto, and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, testifying on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its over 10,000 members. HAR **opposes** House Bill 1390 which prohibits discrimination, including in advertisements for available real property, based on participation in a housing assistance program or requirements related to participation in housing assistance programs, in real estate transactions and requirements.

HAR believes that government subsidized housing assistance programs, such as Section 8, are an important part of our community's social safety net. However, the section 8 process mandates additional paperwork, inspections and processes, which is not required by other applicants. As a result, housing providers participating in section 8 often forfeit their first month's rent in addition to having to wait 3 months or longer for a subsequent rental check. While property managers may possess the experience and knowledge necessary to navigate safely through this process, it may be too complex, expensive and time consuming for the average housing provider.

Additionally, the issue of whether a property owner is engaged in a discriminatory practice, simply by choosing not to participate in a housing assistance program, becomes subjective and ambiguous. As a result, even the most diligent property owner could find himself or herself the subject of a discrimination complaint.

HAR believes that it is not a good practice to make government assistance housing programs, which are optional to participate in, to be considered a discriminatory practice. Instead, we should focus on providing incentives or removing barriers to encourage property owners to participate in these valuable programs.

Mahalo for the opportunity to testify.



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COMMITTEE ON HOUSING
THURSDAY, 2/4/21, 9 AM, Room No. 423

HB1390 RELATING TO HOUSING DISCRIMINATION
Bepie Shapiro, Legislative Committee, League of Women Voters of Hawaii

Chair Nakamura, Vice-Chair Hashimoto, and Committee Members:

The League of Women Voters of Hawaii supports this bill, which prohibits discrimination based on participation in, or eligibility for, housing assistance programs, in rental transactions and requirements.

The effect of Hawaii's shortage of affordable housing is especially felt by individuals with very low incomes. Through various rental assistance programs, such individuals may have sufficient income, such as vouchers, to pay observed, both nationally and in Hawaii, that landlords often resist renting to applicants who will use, for example, Section 8 vouchers to pay their rent. This discrimination, based presumably in many cases on discriminatory assumptions about the responsibility and trustworthiness of individuals with incomes low enough to qualify for public assistance, unjustly deprives those individuals of an affordable residence. HB1390 allows landlords to use all the screening methods they normally use to choose desirable tenants – the only requirement under this bill is that they do not refuse tenants on the basis of their eligibility for, or participation in, public housing assistance.

The League of Women Voters of Hawaii supports fair and equitable public policies in all arenas; HB1390 provides such a policy in the rental housing market.

Thank you for the opportunity to submit testimony.



HB 1390, RELATING TO RENTAL DISCRIMINATION

FEBRUARY 4, 2021 · HOUSE HOUSING COMMITTEE
· CHAIR REP. NADINE K. NAKAMURA

POSITION: Support.

RATIONALE: Imua Alliance supports HB 1390, relating to rental discrimination, which prohibits discrimination, including in advertisements for available real property, based on participation in a housing assistance program or requirements related to participation in housing assistance programs, in real estate transactions and requirements.

Hawai'i is facing a looming eviction crisis. During COVID-19, unemployment skyrocketed to levels not seen since the Great Depression. A recent study found that our state is experiencing the slowest unemployment rate recovery in the nation, moreover, with our rate hovering at approximately 9 percent in December. Thousands of people who haven't lost their jobs have instead seen their employment hours and earnings slashed, as the economic downturn lingered throughout 2020 and into the new year.

Financial precarity has become the norm for many families, who are unable to pay their full rent and have accumulated rental debts. Currently, the state's eviction moratorium protects these families from being removed from their homes. Yet, the eviction moratorium will eventually expire as the public health emergency passes, leaving thousands of people at risk of losing their housing.

Rental assistance discrimination will only make their plight worse as they try to navigate a path back to financial and housing security, especially for low-income families who already do or soon will be forced to rely on government assistance to survive.

Today, **our state’s ongoing lack of affordable housing exacerbates the economic insecurity suffered by local families, which sex traffickers use to prey upon potential victims with false promises of financial stability and prosperity.** Hawai’i residents face the highest housing costs in the nation, at more than twice the national average. Researchers who authored the National Low Income Housing Coalition’s *Out of Reach 2020* report found that a full-time worker would need to earn \$38.76/hour to afford a two-bedroom apartment at fair market value in our state, with Honolulu experiencing a 67 percent increase in fair market rent between 2005 and 2015. Average rent for a two-bedroom unit surpassed \$2,000 in recent years, with minimum wage workers needing to log 117 hours per week to afford a modest one-bedroom apartment at fair market value and 153 hours per week to afford a two-bedroom—a number that is equivalent to working over 20 hours a day with no days off year-round. In the past five years alone, Honolulu rent has increased by more than 25 percent. While 42 percent of Hawai’i residents are renters (a number that does not include individuals and families renting outside of the regulated rental market), they earn an average wage of \$17.17/hour, according to NLIHC, scarcely enough to meet their basic needs.

One out of every four households in Hawai’i report that they are “doubling up” or are three paychecks or less away from being homeless, per the Hawai’i Appleseed Center for Law and Economic Justice. Additionally, over 60 percent of households are severely cost-burdened, following NLIHC data, meaning that they pay more than 30 percent of their income for housing costs, a number that rises to over 80 percent of extremely low-income households, with only 74 homes available for every 100 households earning 80 percent of their respective area’s median income.

Notably, housing costs increased during the pandemic. In Honolulu, median single-family home prices reached a record of \$880,000 last October, **driven largely by sales to residential property investors.** Unsurprisingly, our state is now experiencing population decline. Hawai’i saw domestic out-migration increase for a third consecutive year in 2019, as the state’s high cost of living continued to push people to the mainland. Census estimates show that our state’s population dropped by 8,866 people from July 2019 to July 2020, when births, deaths, and migration were accounted for. That population drop is nearly double the loss seen in 201,

when Hawai'i one of just ten states in the country to lose population, according to the U.S. Census Bureau. People are simply being priced out of paradise.

Without question, Hawai'i's lack of affordable housing exacerbates our state's homelessness crisis. In a recently released report, Chief Medical Examiner Dr. Masahiko Kobayashi said that 127 people who were considered homeless at the time of their deaths died on O'ahu in 2019, up from 120 deaths in 2018 and an increase of 46 percent from 2017 (87 deaths). Roughly 30 percent of children who are living on the streets will be approached for sexual exploitation within 48 hours of being away from home, according to the National Center for Missing and Exploited Children, with over 80 percent being approached for the commercial sex trade during the course of their time on streets. A federal study found that an estimated 38,600 runaway youth have been sexually assaulted, in the company of someone known to be sexually abusive, or engaged in sexual activity in exchange for money, food, or shelter.

Unsheltered keiki are perceived as easy targets for sex traffickers because they lack stable shelter, a supportive environment, and financial resources, placing them at greater risk of forced prostitution and sexual servitude. Traffickers exploit our limited number of available shelter beds to lure young people into exploitation. As the homeless childcare provider Covenant House observes, traffickers tell homeless youth that shelters are full and ask, "Where are you going to go? Why don't you come with me? I'll take care of you." Coupled with threats of and actual physical and sexual violence against the victims or their families, these coercive techniques compel runaway youth to remain enslaved.

LGBTQ youth, who comprise an estimated 40 percent of the runaway and homeless youth population in the United States, are exponentially more likely to fall prey to human traffickers because of discrimination, family and community trauma, and a longing for comfort and acceptance (an estimated 26 percent of LGBTQ adolescents are rejected by their families and put out of their homes simply for being open and honest about who they are). In providing care for victims of human trafficking, we have heard their stories hundreds of times.

We cannot continue to allow the islands to be used as a private Monopoly board for real estate speculators. To ensure that our islands are affordable for ourselves and future generations, we

must take bold action **now** to increase our affordable housing supply for working families and ensure that low-income families who are participating in our state's rental market—and who are often Native Hawaiian, Micronesian, Pacific Islander, or other people of color—are not discriminated against simply for being poor.

Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · kris@imuaalliance.org



Hawai'i

Committees: Committee on Housing
Hearing Date/Time: 9:00am, February 4, 2021
Place: Conference Room 423
Re: Testimony of the ACLU of Hawai'i in Support of H.B. 1390, Relating to Rental Discrimination

Dear Chair Nakamura, Vice Chair Hashimoto, and members of the Committee:

The American Civil Liberties Union of Hawai'i writes **in support of H.B. 1390 with one proposed amendment**: to raise the maximum penalty for a violation from \$500 to \$5,000 (§5(b)(2)). This bill prohibits discrimination in real estate transactions based on an individual's participation in a housing assistance program or requirements related to such programs.

The State of Hawai'i continues to struggle with one of the highest rates of homelessness in the country, at over 2.5 times the national average.¹ This is due, in large part, to the high cost of living and lack of affordable housing in the state.² Housing assistance programs like the federal Housing Choice Voucher program ("Section 8") are an essential means of alleviating high rental costs for struggling families—and in turn fighting our state's housing crisis. In 2016, a federal Department of Housing and Urban Development ("HUD") study found that compared to other means of intervention, long-term rental subsidies that enabled families to offset the cost of a unit in the private market led to the **best outcomes for reducing family homelessness "by far."**³

However, programs like Section 8 depend on private landlords' willingness to rent to participating individuals. Unfortunately, discrimination based on "source of income" is well-documented in housing markets across the country—and **there is no general federal law that protects against it.**⁴ As a result, many landlords flat out refuse, often including declarations that say "No Section 8" in their advertisements for available rentals. This prolongs the housing search for many renters, makes it extremely difficult to find habitable, safe housing, and can ultimately lead to the expiration of a voucher if certain time limits run out.

¹ *State of Homelessness: 2020 Edition*, NAT'L ALL. TO END HOMELESSNESS, available at <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-2020/> (HUD's 2019 Annual Point-in-Time Count found a national average of 17 homeless individuals per 10,000 people in the general population; Hawai'i had a rate of 45.1 homeless individuals per 10,000).

² *Hawaii's Affordable Housing Crisis*, HAWAI'I APPLESEED CTR. FOR LAW & ECON. JUSTICE, at 3–4 (July 2014), available at <http://www.hiappleseed.org/sites/default/files/Hi%20Appleseed%20Housing%20Crisis%20Report.pdf>.

³ *Family Options Study: 3-Year Impacts of Housing and Services Interventions for Homeless Families, Summary Report*, U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF POLICY DEV. & RESEARCH, at 4 (2016).

⁴ Mary K. Cunningham, Martha Galvez, Claudia L. Aranda, Robert Santos, Doug Wissoker, Alyse Oneto, Rob Pitingolo, James Crawford, *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers: Executive Summary*, U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF POLICY DEV. & RESEARCH, at 3–4 (2018); Alison Bell, Barbara Sard, Becky Koepnick, *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results: Lessons From Cities and States That Have Enacted Source of Income Laws*, CTR. ON BUDGET & POLICY PRIORITIES, at 1–2 (2018).

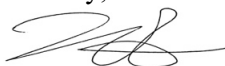
To combat this problem and allow housing assistance programs to serve their intended function, numerous states, cities, and counties have already adopted laws prohibiting source of income discrimination.⁵ Several studies have found that people living in areas with these non-discrimination laws are **more likely to succeed in securing a unit using a housing voucher**.⁶ Given their success, it is time for Hawai'i to join this growing list of locales as they break down a critical barrier to affordable housing and improve geographic mobility for low-income families.

Importantly, discrimination based on source of income **often also functions as discrimination against women and children** in reality. One 2016 report noted that 83% of households participating in the Section 8 voucher program were led by women, and 43% of participating households contained children.⁷ Property owners and landlords in Hawai'i should not be permitted to engage in behavior that is tantamount to sex or familial status discrimination under the pretense that they do not accept certain sources of income.

Finally, H.B. 1390 provides a remedy for violations of the law by enabling an individual to bring a direct cause of action in district court. To increase the deterrent effect of this law, however, we respectfully request that the Committee **amend** H.B. 1390 to increase the maximum penalty for a violation from \$500 to \$5,000 (§5(b)(2)).

For these reasons, the ACLU of Hawai'i **requests that the Committee support this measure, with the amendment discussed above**. Thank you for the opportunity to testify.

Sincerely,



Hope Kerpelman
Legal and Legislative Fellow
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.

⁵ Solomon Greene, Patrick Spauster, Martha Galvez, Daniel Teles, Philip Tegeler, *State and Local Voucher Protection Laws*, THE URBAN INST., at 3 (2020).

⁶ Alison Bell, Barbara Sard, Becky Koepnick, *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results: Lessons From Cities and States That Have Enacted Source of Income Laws*, CTR. ON BUDGET & POLICY PRIORITIES, at 1, 5–6 (2018).

⁷ Gail Quets, Áine Duggan, Gail Cooper, *A Gender Lens on Affordable Housing*, RE:GENDER, at 7 (2016).



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of the Hawai'i Appleseed Center for Law & Economic Justice
In Support of HB 1390 – Relating to Rental Discrimination
House Committee on Housing
Thursday, February 4, 2021, 1:00 PM, conference room 423

Dear Chair Nakamura, Vice Chair Hashimoto, and members of the Committee:

Thank you for the opportunity to provide testimony in **SUPPORT** of **HB 1390**, which would prohibit discrimination against tenants based on the tenants' source of income.

Non-discrimination protections such as what HB 1390 proposes are effective in helping ensure that tenants with income assistance are able to secure a rental unit. In the Section 8 Housing Choice Voucher context, studies have shown a lower rate of voucher denial in jurisdictions where such protections exist.¹ As of November 2020, 17 states had some form of protection for discrimination against HCV holders.²

HB 1390 would do much to ensure that households are not harmfully denied housing in spite of having access to resources to pay the rent.

We appreciate your consideration of this testimony.

¹ Alison Bell *et al.*, "Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results Lessons From Cities and States That Have Enacted Source of Income Laws," Center on Budget and Policy Priorities, December 20, 2018, <https://www.cbpp.org/sites/default/files/atoms/files/10-10-18hous.pdf>.

² Poverty & Race Research Action Council, "Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program—Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination," November 2020, <https://www.prrac.org/pdf/AppendixB.pdf>.

The Hawai'i Appleseed Center for Law and Economic Justice is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.

DAVID W.H. CHEE

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February 2, 2021

HOUSE COMMITTEE ON HOUSING
Rep. Nadine K. Nakamura, Chair
Rep. Troy N. Hashimoto, Vice Chair

Re: HB No. 1390 - RELATING TO RENTAL DISCRIMINATION

Dear Representatives:

I am an attorney who practices in the field of landlord/tenant law, including residential matters. I have over 28 years' experience in the area and my clients manage over 10,000 residential dwellings across the State of Hawaii. I am writing regarding the above-referenced bill.

In Hawaii, too few landlords participate in the Section 8 program, so I generally agree with the intent of the legislation – to create opportunities for those with Section 8 vouchers to be able to find housing.

This proposed legislation, however, is not clear in what it will require of landlords in order to comply with its terms and can be read to cause absurd results. Because it is unclear how a landlord can comply with the law, I am writing in opposition to HB 1390.

Additionally, while the law seems aimed towards rental transactions, the law does not limit its scope to residential landlord-tenant transactions. It applies to long-term ground leases, agreements of sale, and any other real estate transaction in the State. The law will make normal and prudent business decisions in the transaction of real estate discriminatory.

A. What is required by this law for landlords?

It seems that the law seeks to prevent landlords from considering whether a prospective tenant is on a “housing assistance program” when considering them as a tenant – similar to how a landlord is not supposed to consider race, gender, familial status, etc.

It is not clear, however, whether this law would require every landlord to participate in every kind of “housing assistance program” and to what extent that participation is required. The proposed law would make it a discriminatory act to consider “requirements related to participation in a housing assistance program” in selecting tenants. It is not clear what this means.¹

¹ Although it seems the intent is to include only government programs in the definition of “housing assistance program,” the definition can be read to include any sort of housing assistance program, not just government programs. If the legislature intends that the source of income prohibition pertain only to government programs, please consider revising the definition to:

The law also can be read to require that all landlords participate in the Section 8 program. Is that the Legislature's intent? Presently, participation by landlords in the Section 8 program is completely voluntary. Many landlords choose to participate in the Section 8 program since the program provides a reliable source of income, especially during troubling economic times. Some landlords who want to participate in the Section 8 program cannot because the condition of their properties do not meet Section 8's standards. Other landlords choose not to participate in the program because it is unattractive to them.

What could be unattractive about a secure stream of rent? For many landlords, the requirements of the Section 8 agreement are too burdensome. 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 and one-sided. 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 and cell phones. See, paragraph 11 on "Page 6 of 12" of the Sample HAP Contract.

"Housing assistance program" means any government assistance, government grant, government loan, or government rental assistance program, including low-income housing assistance certificates and vouchers under the United States Housing Act of 1937, as amended.

Otherwise, the definition can be read to apply to any grant, any loan or any rental assistance program, in addition to government assistance programs. For example, under the current language, if there was a "Proud Boys Rental Assistance Program", arguably a landlord could not turn a prospective tenant away because of their participation in that rental assistance program.

Rep. Nadine K. Nakamura, Chair
Rep. Troy N. Hashimoto, Vice Chair
Re HB 1390- Relating to Rental Discrimination
February 2, 2021
Page 3

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.

As it is presently written, this legislation can be read to require all landlords to agree to any condition imposed by any government program, without regard to whether the landlord wants to, or even can, participate. This will drive many landlords out of the business and deprive the community of rental units - a resource that is scarce.

B. Pandemic Stimulus Considerations

Additionally, in the context of a pandemic and stimulus funds being released by various government entities to assist with rent, this law would make prudent business decisions in selecting tenants illegal. For example, if one prospective tenant has a steady job and income, and another is unemployed but has been approved to receive three months' rent from government stimulus funds, this legislation will make it illegal for a landlord to choose the tenant with the steady income.² That would be an absurd result.

So, while I agree that Section 8 recipients should have more options to find housing, this proposed legislation does not seem well-designed to achieve that end and will cause much disruption. This proposed bill will create confusion and litigation without any significant benefit.

Very truly yours,

/s/ David Chee

David W.H. Chee

² Of note – section (b) (page 5, line 13) makes it explicitly proper for a landlord to determine the ability of a prospective renter to pay the rent, but section (a) (page 3, line 19) makes it illegal to choose a prospective tenant who has a steady income over one who may only receive temporary stimulus funds (page 4, line 4)..