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February 15, 2024

The Honorable Jarrett Keohokalole, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol, Conference Room 229 & Videoconference

RE: Senate Bill 2100, Relating to Discriminatory Practices

HEARING: Thursday, February 15, 2024, at 9:35 a.m.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii and its over 11,000 members. HAR **opposes** Senate Bill 2100, which prohibits landlords from discriminating against a potential tenant based on the tenant's credit history, credit score, or creditworthiness. Expands prohibition on employers from discriminating against an individual in compensation or in the terms, conditions, or privileges of employment because of the individual's credit history or credit report.

The tenant screening process typically begins when the prospective tenant completes a rental application. Property managers manually review information and can rely on a tenant screening company to help produce tenant screening reports to assist with the screening process. The screening process can include reviewing credit reports, criminal background checks, eviction history, verifying employment, verifying personal references, and other records to properly vet tenants. Credit history is just one factor in screening applicants, but it is an important one.

Housing providers have a legitimate interest in assessing the risk associated with renting out a property. Credit history and creditworthiness are crucial indicators of a tenant's financial responsibility and ability to pay rent. Without the ability to compare these factors, housing providers would find themselves severely limited in their capacity to compare prospective tenants effectively or fairly.

Mahalo for the opportunity to testify.



SB-2100

Submitted on: 2/13/2024 10:54:08 AM

Testimony for CPN on 2/15/2024 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Victor K. Ramos	Individual	Oppose	Written Testimony Only

Comments:

Oppose: This is one of the few tools owners have to screen potential tenants. Credit history suggest reliability, dependability and ethical standards.



HAWAI‘I CIVIL RIGHTS COMMISSION **KOMIKINA PONO KIWILA O HAWAI‘I**

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Thursday, February 15, 2024

9:35am

Conference Room 229 & Videoconference
State Capitol, 415 South Beretania Street

To: The Honorable Jarrett Keohokalole, Chair
The Honorable Carol Fukunaga, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

The Honorable Henry J.C. Aquino, Chair
The Honorable Sharon Y. Moriwaki, Vice Chair
Members of the Senate Committee on Labor and Technology

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

Re: S.B. 2100

The Hawai‘i Civil Rights Commission (HCRC) supports the intent of Senate Bill (S.B.) 2100 and offers these comments. S.B. 2100 would amend Chapter 368F, Hawai‘i Revised Statutes (HRS) and prohibit landlords from discriminating against potential tenants based on their credit history, credit score, or creditworthiness. Additionally, the change would repeal HRS § 378-2.3 and expand the prohibition on employers from discriminating based on credit history or credit report.

The HCRC has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment (Chapter 378, Part I, HRS), housing (Chapter 515, HRS), public accommodations (Chapter 489, HRS), and access to state and state-funded services (section 368-1.5, HRS). 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.

This bill expands protections in both housing and employment. For protections in housing, this

bill amends Chapter 368F, HRS, passed last legislative session, and protects tenants and potential tenants from being discriminated against by housing providers based on the tenant's or potential tenant's source of income. While the HCRC does not enforce Chapter 368F, HRS, we recognize that credit scoring systems have a disparate impact on certain protected bases.

The National Fair Housing Alliance (NFHA) reports that current credit scoring systems penalize “people and communities [that] have been [historically] excluded from mainstream affordable credit based on race and national origin.”¹ This and other historical systems of *de jure* segregation, tax favoritism, and housing inequality led to the need to create fair housing and lending laws in the U.S. Nonetheless, devastating adverse credit events, such as those resulting from the COVID-19 pandemic and the devastating Maui Wildfires, may negatively impact one's ability to secure housing for years. This can further impact other areas of life, including employment. The HCRC supports the placement of S.B. 2100 in Chapter 368F, which prohibits landlords from discriminating against individuals based on source of income. Although HCRC does not enforce this section, it is an important step towards promoting fairness and equality in housing.

S.B. 2100 also repeals HRS § 378-2.7. In response to the Great Recession, in 2009, the state legislature amended HRS § 378-2 to prohibit discriminatory practices based on an individual's credit history or credit report in employment to protect individuals against the forced disclosure of personal information contained in an individual's credit history and credit report. , The exception was if the employer could demonstrate that the information in a worker's credit history or credit report was directly related to a Bona Fide Occupational Qualification (BFOQ) or was otherwise expressly exempt by HRS § 378-2.7. However, S.B. 2100 would repeal HRS § 378-2.7 which previously allowed employers to consider credit history and credit reports for managerial and supervisory positions and positions that are explicitly

¹ <https://nationalfairhousing.org/wp-content/uploads/2017/04/NFHA-credit-scoring-paper-for-Suffolk-NCLC-symposium-submitted-to-Suffolk-Law.pdf> (last accessed on February 12, 2024).

permitted or required to inquire into an individual's credit history for employment purposes according to federal or state law.

Our current employment discrimination laws aim to protect employees and job applicants from unnecessary scrutiny and intrusion of their credit history and credit reports. At the same time, employers need to comply with state and federal laws that may require them to check an individual's credit history based on the job duties and functions of the position. The state legislature recognizes this balancing act and has found that the protection against prohibited discriminatory practices based on credit history and credit report must find a "balance between workers' rights and employers' needs by limiting the use of the information to situations that directly relate to an individual's bona fide occupational qualification." Conf. Com. Rep. No. 31 (2009).

The HCRC acknowledges that not all managerial and supervisory positions require a credit history or credit report check. These checks should only be done if there is a BFOQ or job-related need. Subjecting all managerial or supervisory positions to be exempted from protections of HRS § 378-2(a)(8), without a showing of a BFOQ or a job-related need, may discriminate against individuals who are otherwise qualified for certain positions. To address this, the HCRC proposes an amendment to HRS § 378-2.7:

§378-2.7 Employer inquiries into and consideration of credit history or credit report. ~~{a}~~ Notwithstanding section 378-2(a)(8):

- (1) Inquiry into and consideration of a prospective employee's credit history or credit report may take place only after the prospective employee has received a conditional offer of employment, which may be withdrawn if information in the credit history or credit report is directly related to a bona fide occupational qualification;
- (2) The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to employers who are expressly permitted or required to inquire into an individual's credit history for employment purposes pursuant to any federal or state law;
- ~~—(3) The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to managerial or supervisory employees; and~~

~~(4)~~ (3) The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to employers that are financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution.

~~—(b) For the purposes of this section:~~

~~—"Managerial employee" means an individual who formulates and effectuates management policies by expressing and making operative the decisions of the individual's employer.~~

~~—"Supervisory employee" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.~~

Thank you for the opportunity to testify in support and provide these comments to S.B. 2100.

SB-2100

Submitted on: 2/14/2024 9:32:22 AM

Testimony for CPN on 2/15/2024 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Corinne Solomon	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose SB2100