

Date of Hearing: June 19, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 329 (Mitchell) – As Amended May 17, 2019

SENATE VOTE: 24-11

SUBJECT: Discrimination: housing: source of income

SUMMARY: Prohibit landlords from discriminating against tenants who rely upon housing assistance paid directly to landlords, such as a Section 8 voucher. Specifically, **this bill:**

- 1) Expands Federal Employment and Housing Act's (FEHA) definition of "source of income" to include lawful, verifiable income paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers under Section 8 of the U.S. Housing Act of 1937.
- 2) States that it is the intent of the Legislature to provide a participant in a housing voucher program an opportunity to receive a thorough and fair vetting when they seek housing.

EXISTING LAW:

- 1) States, as part of FEHA that it is against public policy to discriminate on the basis of source of income in housing accommodations.
- 2) Declares that the opportunity to seek, obtain, and hold housing without discrimination because of source of income is a civil right.
- 3) Makes it unlawful for the owner of any housing accommodation to discriminate against or harass any person because of the source of income of that person.
- 4) Specifies certain acts that constitute unlawful discrimination, including either of the following:
 - a) Using a financial or income standard in the rental of housing that fails to account for the aggregate income of persons residing together or proposing to reside together on the same basis as the aggregate income of married persons residing together or proposing to reside together; or
 - b) In instances where there is a government rent subsidy, using a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant.
- 5) Specifies that it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income.

- 6) Provides that a person intends to unlawfully discriminate if one of the protected classes played a motivating factor in committing a discriminatory housing practice, as specified. A violation can be found when the act has the effect of unlawfully discriminating, regardless of the intent, as specified.
- 7) Defines “source of income” to mean lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant, but specifies that a landlord is not considered a representative of a tenant.

FISCAL EFFECT: Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

Background: California’s high housing costs dramatically worsen poverty. Under the U.S. Census Bureau’s official poverty measure, 16 percent of Californians lived in poverty in 2013, but this measure does not take into account differences in living costs across the country or count non-cash benefits such as rent subsidies as income. After adjusting for these factors, California’s poverty rate jumps to 23 percent, primarily due to high housing. California also has a large and growing population of people experiencing homelessness.

Housing Choice Vouchers: According to the Center for Budget Priorities, 300,000 Californians receive Housing Choice Vouchers, more commonly called “Section 8 vouchers.” The federal voucher program includes Section 8 vouchers which are broadly available to lower income individuals and families and VASH vouchers for lower income or homeless veterans. To qualify for a voucher, a tenant’s income cannot exceed 50% of the county average median income. A voucher holder is required to pay 30% of their income toward rent and the remaining percentage is subsidized by the Federal government. In addition, a voucher holder must find a landlord that will accept a voucher within 60 days of receiving the voucher or it expires.

Existing law prohibits landlords from discriminating against a tenant based on their source of income, however, it defines source of income as verifiable income paid directly to a tenant or paid to a representative of a tenant, but specifies that a landlord is not considered a representative of a tenant. Because rent payments for a portion of a voucher holder’s rent are paid by the Federal Government landlords can refuse to accept the voucher.

Requirements on landlords: Landlords are not required to reduce the rent if they accept a Section 8 voucher. A tenant pays their portion of the rent directly to the landlord and the remaining portion is paid by the local housing authority which awards and administers the vouchers on behalf of the federal government. The housing authority verifies a voucher applicant’s source of income and assets before they can be eligible to receive a voucher. To be eligible to accept a voucher, a landlord is required to attend class and have their property inspected for basic code violations.

Evidence that discrimination exists: This bill would prohibit landlords from discriminating against a tenant with a Section 8 voucher. There is both statistical and anecdotal evidence showing that landlords refuse to take housing vouchers. “Success rates” measure the frequency with which a voucher holder is able to find a place to live before the voucher expires. In 2001, a study commissioned by HUD found that the national success rate was just 69 percent. It was even lower in high demand markets such as Los Angeles.

More recent studies have reached similar conclusions. A 2018 investigation commissioned by HUD and carried out by the Urban Institute found that, nationally, an average of one in 40 advertised rental housing units was potentially eligible for rental with a Section 8 voucher. In Los Angeles, the figure was closer to one in 50. When the investigators called the potentially available units and asked, “Do you accept housing vouchers?” 76 percent of Los Angeles landlords said no. Veterans have a harder time securing housing using a VASH voucher than families and individuals with Section 8 vouchers. The Los Angeles Housing Authority reports data showing, for instance, that VASH housing vouchers have the lowest success rate amongst housing vouchers the Authority issues. The success rate for general (non-veteran) Section 8 recipients is 60 percent. The success rate for the Authority’s other non-veteran housing vouchers is 67 percent. By comparison, the success rate for HUD-VASH vouchers is a mere 33 percent.

Several states across the country have already adopted laws to outlaw discrimination against tenants with housing vouchers. Within California, Berkeley, Corte Madera, East Palo Alto, Fairfax, Novato, San Anselmo, San Diego, San Rafael, Santa Monica, Woodland, and Marin County have all passed local ordinances prohibiting such discrimination. According to the author, both the City and County of Los Angeles are currently considering instituting such a ban as well.

Arguments in support: The sponsors of the bill, write to clarify several concerns that have been raised with the bill, “The bill does not require landlords to accept any tenant with housing assistance, does not prohibit landlords from screening for tenant suitability, and does nothing to prevent landlords from setting their rents at desired levels. It simply requires landlords to give families that receive housing assistance the same consideration as other families who wish to apply. There have also been claims this bill would increase the burden on local housing authorities. The bill, in fact, would not significantly alter the administration of the Section 8 Voucher program or other assistance programs; HUD authorizes Housing Authorities to use only a limited number of vouchers each year, and SB 329 would not increase the amount of assistance available or the burden on local housing authorities in the state. To the contrary, the bill ensures the efficient use of existing housing assistance by increasing the likelihood that families are able to find a landlord who will accept it, as opposed to returning their assistance for reprocessing because it has expired.”

Arguments in opposition: Opponents argue that SB 329 strips away property owner’s choice to contract or not contract with a property they own. They contend that the Section 8 approval process for landlords is complicated and can take up to 60 days, delaying their ability to collect rent. In addition, opponents contend landlords will face higher insurance rates if they accept Section 8 vouchers. Although insurance companies cannot deny coverage to a landlord that accepts a voucher, they can raise the rates.

Related legislation:

SB 222 (Hill) would underscore that housing discrimination on account of military or veteran status is unlawful in California by explicitly stating so within the Fair Employment and Housing Act (FEHA). In addition, by defining a Veterans Affairs Supportive Housing (VASH) voucher as a source of income for purposes of FEHA, this bill prohibits landlords from discriminating against a tenant on the basis that the tenant pays part or all of the rent using a VASH voucher. *This bill is pending a hearing in the Assembly Judiciary Committee.*

Double-referred: This bill was also referred to the Committee on Judiciary where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Housing Authorities (Co-Sponsor)
California Rural Legal Assistance Foundation (Co-Sponsor)
Housing California (Co-Sponsor)
Los Angeles County Board of Supervisors (Co-Sponsor)
National Housing Law Project (Co-Sponsor)
Western Center on Law & Poverty, Inc. (Co-Sponsor)
AARP California
AIDS Legal Referral Panel
ACCE Action
ACLU California
AFSCME
Association of Regional Center Agencies
Aspiranet
California State Association of Counties
California Coalition for Youth
California Voices for Progress
California YIMBY
Central California Legal Services
City Of San Jose
City Of Stockton
Community Clinic Association of Los Angeles County
Community Legal Services In East Palo Alto
County of Santa Clara
Disability Rights California
East Bay Community Law Center
Eric Garcetti, Mayor of Los Angeles
Fair Housing Advocates of Northern California
Fair Housing Council of the San Fernando Valley
Family Violence Appellate Project
Family Violence Law Center
Greater Napa Valley Fair Housing Center
Law Foundation of Silicon Valley
Leadership Council for Justice and Accountability
League of California Cities
League of Women Voters of California
Legal Aid Foundation of Los Angeles
Legal Aid of Marin

Los Angeles Homeless Services Authority
Los Angeles Homeless Services Authority
Mental Health Advocacy Services
National Association of Social Workers, California Chapter
Neighborhood Legal Services of Los Angeles County
NextGen California
Non-Profit Housing Association of Northern California
People Organized For Westside Renewal
Poverty & Race Research Action Council
Power
Public Counsel
Public Interest Law Project
Public Law Center
San Diego Housing Federation
Santa Monica Rent Control Board
State Council on Developmental Disabilities
Strategic Actions for a Just Economy
UDW/AFSCME Local 3930

Opposition

Affordable Housing Management Association -Pacific Southwest
Apartment Association of Orange County
Apartment Association, California Southern Cities
California Apartment Association
California Association of Realtors
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Rental Housing Association
East Bay Rental Housing Association
Southern California Rental Housing Association

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085