



**Testimony of
Amy Nelson, Executive Director
Fair Housing Center of Central Indiana
on SB 558
Senate Civil Law - January 30, 2017**

Mr. Chairman, and members of the Committee, my name is Amy Nelson and I am the Executive Director of the Fair Housing Center of Central Indiana (FHCCI). The FHCCI is a nonprofit organization working to promote fair housing and address incidents of housing discrimination. We urge a Do Not Pass on SB 558 due to its occupancy standard restriction and inclusionary zoning ban.

SB 558 would allow housing landlords in Indiana to limit occupancy to two persons per bedroom *regardless* of the size of the rental unit, size of the bedrooms, presence of any loft, office or den, or any local safety code allowing additional occupants. The passage of SB 558 would increase discrimination against families with children who are protected under state and federal fair housing laws by decreasing their housing opportunities. The bill's language is also in direct conflict with court rulings and guidance from the U.S. Department of Housing & Urban Development (HUD). It is likely to impact our state's fair housing substantial equivalency if passed.

Over the past two decades, dwelling units have increasingly been built with more square footage to accommodate changing housing needs. These units have more habitable space, often with larger master suites, larger family rooms, and the additions of dens, lofts, and offices. Developers have overwhelmingly targeted so-called "young professionals" with large one- and two-bedroom units and a decreasing emphasis on three and four bedroom units. This change in design has unfairly impacted families with children, who are protected under fair housing laws, due to their larger family sizes. Families with three, four, or more children already face extreme difficulties in finding affordable housing options. Strict two person per bedroom policies unfairly limit the housing opportunities for families with three or more children in an already difficult housing market. Essentially, what is available to these families costs more because there is less of it available.

This legislation appears to be the result of fair housing cases which have challenged housing providers with restrictive occupancy standards. Housing providers who enforce occupancy policies without regard to any of the factors that HUD has instructed housing providers to consider—such as the size of the unit, the configuration of the unit, or any limitations imposed by the local occupancy code—have a predictable and disparate impact on families with children. This is due to families with children being significantly more likely to be affected by policies that limit the number of people who can live in an apartment unit.

Our state is already challenged with an affordable housing crisis for most Hoosier families. The United Way ALICE report rated many counties in Indiana with “poor” ratings due to the lack of affordable housing options.¹ The National Low Income Housing Coalition ranks Indiana 38th in the country for housing affordability.² The head of household of a family needing a three-bedroom unit would need to work, on average, 108 hours *per week* at minimum wage to afford the average three-bedroom in Indiana. A head of household needing the average four-bedroom unit in Indiana would need to work 122 hours per week. In Marion County, the hours increase to 115 hours for a three-bedroom and 131 hours for a four-bedroom unit.

There is simply no legitimate business necessity for strict two-person per bedroom policies which would be allowed under this legislation. While preventing overcrowding is a legitimate concern for a housing provider, local occupancy codes are similarly enacted to prevent overcrowding and protect the health and safety of occupants of a dwelling and, in some situations, a housing provider’s policy may be allowed to be more restrictive due to local occupancy codes. Certainly, a housing provider conforming their policy to the limitations imposed by the local occupancy code would be a less discriminatory alternative to a two-person per bedroom policy, as it would increase the number of families with children eligible to rent units in its communities. Further, as tenants at most properties are responsible for paying their own utilities, housing providers with restrictive occupancy policies cannot argue that any additional costs associated with tenants’ use of water or other utilities justifies its restrictive policy. If there is concern about damage, families are responsible for any damage above and beyond reasonable wear and tear like any tenant. Absent any legitimate business necessity for its practices, a rigid two person per bedroom occupancy policy violates federal and Indiana state fair housing laws.

The Indiana Fair Housing Law was deemed by the U.S. Department of Housing & Urban Development (HUD) to be a substantially equivalent fair housing law to the federal Fair Housing Act. With this designation came funding to the Indiana Civil Rights Commission and other equivalent local Human Rights Commissions to enforce fair housing laws on HUD’s behalf. In conversations with HUD personnel, HUD is extremely concerned that if SB 558 is passed it will mean a loss of the state and locality substantial equivalency. This would mean a substantial loss of funds to our state and cities including job loss. In addition, filed fair housing complaints would then be handled by HUD-Chicago’s Regional Office instead of locally. Barbara Malone of the Indiana Civil Rights Commission is present today to answer any questions.

As noted previously, Indiana has a serious affordable housing crisis. As areas have changed, housing prices have increased and cities are considering inclusionary zoning to ensure there are some affordable units. Otherwise, people are forced further and further away from jobs which impacts the ability of employers to find an adequate workforce. We have seen this happen in Hamilton County where employers are closing early due to a lack of workforce because employees can’t find anywhere nearby to live and there’s insufficient transit to commute long distances.

¹ http://www.unitedwayalice.org/documents/14UW%20ALICE%20Report_IND_Lowres_10.24.15.pdf

² <http://nlihc.org/oor/indiana>

Under an inclusionary zoning policy, no one is making a developer bid and build where the policies applies. No one is asking a developer to lose money on a project. If the project does not work for a developer, they do not have to build it. However, the project may be affordable to another developer and they would seek to build. We have cities across our nation use inclusionary zoning policies to face affordable housing barriers. These cities have successfully won in court when challenges. Judges have ruled it is within the city's right to ensure affordable housing for its residents. Consequently, we need to allow cities to have options in their toolkits to face the needs of their particular city, especially around affordable housing.

The Fair Housing Center of Central Indiana (FHCCI) urges Do Not Pass on SB 558. Let's make sure families with children have access to safe, affordable housing that meets the needs of their families and is free from discrimination.