



Bill Title: House Bill 392, Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing

Committee: Judiciary Committee

Date: February 4, 2025

Position: Unfavorable

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose members consist of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities. Our members house over 538,000 residents of the State of Maryland. MMHA also represents over 250 associate member companies who supply goods and services to the multi-housing industry.

House Bill 392 allows a person to intercept a wire, oral or electronic communication if the person is working as a fair housing tester for such a program operated by the Federal Government, the State, local government or non-profit civil rights organization. The person must be a party to the communication and the interception is for the purpose of obtaining a fair housing violation under federal, state or local law.

While combating housing discrimination is a laudable and necessary goal, this bill raises serious concerns about privacy, accountability, and the potential for abuse. Below are reasons MMHA opposes this legislation:

- **Erosion of Privacy Protections:** House Bill 392 undermines the fundamental privacy rights guaranteed by two-party consent laws. These laws are in place to ensure that individuals can communicate freely without fear of being recorded without their knowledge. Allowing exceptions for specific individuals or programs erodes these protections and sets a troubling precedent for future exceptions. Two-party consent laws have long been recognized as an essential safeguard for personal and business communications. If fair housing testers are permitted to secretly record conversations, it weakens the very foundation of these privacy protections and diminishes public trust in legal safeguards. In 2023, California, a two-party consent state, considered similar legislation before the Sponsor withdrew the bill.
- **Risk of Abuse and Overreach:** House Bill 392 lacks sufficient oversight mechanisms to prevent abuse by individuals or organizations conducting fair housing tests. Without clear guidelines on how and when such recordings can be made, there is a significant risk that individuals might misuse this authority for purposes beyond legitimate fair housing enforcement. This could lead to unauthorized recordings that invade privacy and harm reputations. Moreover, House Bill 392 does not specify the qualifications or training required for fair housing testers, increasing the risk of overreach by unregulated actors.



- **Chilling Effect on Legitimate Communications:** If housing providers and real estate agents fear they may be secretly recorded during routine conversations, it could create a chilling effect on open and transparent communication. This may discourage cooperative engagement and hinder legitimate efforts to resolve tenant or housing issues through dialogue. Open communication is essential in housing transactions, and this legislation risks undermining the trust necessary for productive relationships between landlords and tenants.
- **Potential for Entrapment and Unfair Practices:** The lack of clear guidelines and safeguards could encourage unethical tactics or entrapment by testers seeking to provoke potentially discriminatory responses. Secret recordings, especially when taken out of context, could be used unfairly against housing providers who may not have intended to discriminate. Entrapment tactics undermine the integrity of fair housing enforcement and may lead to costly and time-consuming legal disputes.
- **Increased Litigation and Legal Challenges:** House Bill 392 is likely to result in increased litigation, as individuals and organizations challenge the legality of recordings made without their consent. Additionally, it may conflict with existing state and federal laws that protect privacy, leading to further legal complications and potential court challenges. The increased burden on the judicial system and the potential costs of defending against such challenges should be carefully considered before moving forward with this bill.
- **Alternative Methods for Enforcement Exist:** Fair housing violations can often be documented through non-intrusive methods, such as written communications, publicly accessible information, or direct observation. These methods respect the privacy of all parties while still providing the necessary evidence to support fair housing enforcement. Rather than creating exceptions to two-party consent laws, efforts should focus on strengthening existing methods of enforcement that do not compromise privacy rights.
- **Negative Public Perception:** Permitting secret recordings by individuals acting on behalf of government or non-profit programs risks generating negative public perception. This may undermine support for fair housing initiatives by fostering distrust in the methods used to enforce them. Public confidence in both privacy laws and anti-discrimination efforts is essential for their effectiveness.

While the goal of eliminating housing discrimination is essential, House Bill 392 takes an approach that compromises privacy rights, lacks sufficient safeguards, and risks public trust. There are more balanced and effective ways to strengthen fair housing enforcement without eroding fundamental privacy protections.

For these reasons, the Maryland Multi-Housing Association respectfully requests an unfavorable report on House Bill 392.



Please contact Aaron J. Greenfield at 410.446.1992 if you have any questions.