
From: Dara Carlin, M.A. [breaking-the-silence@hotmail.com]
Sent: Tuesday, March 17, 2009 10:22 PM
To: CPN Testimony
Subject: HB812 HD2 to be heard Wednesday, March 18th at 9:00am in Room 229 by the Committee on Commerce & Consumer Protection

Importance: High

LATE

TO: Senator Baker, Chair
Senator Ige, Vice Chair
Members of the Committee on Commerce & Consumer Protection

FROM: Dara Carlin, M.A.
881 Akiu Place
Kailua, HI 96734
(808) 218-3457

DATE: March 18, 2009

RE: Support for HB812 HD2

Good morning. If you have not had the experience of being stalked, harassed, confronted or surprised by the unexpected presence of someone whose hurt or terrorized you before, I hope you'll be able to just trust me when I say that it is not an experience you easily get over or recover from, especially if the incident has occurred in or near your home - a place you believed to be a refuge, safe. If your attacker or stalker shows up even once in, on or near your place of residence, chances are that you will not feel reassured of your safety from that person no matter how much safety planning, preventive/precautionary measures you take or court orders you have. The instinct to flee the situation or environment is overwhelming and is by nature a survival instinct, but it's also natural for us to want to stay in and protect our homes.

Victims of domestic violence typically do not have the luxury of a planned escape; more frequently they've got to leave on a moment's notice and leave everything behind them (which in turn gets held hostage by the abuser and is used as bargaining chips to get her back or punish her for her defiance/abandonment). For victims of sexual assault, having to live "at the scene of the crime" does not assist in their recovery from it. In these extreme positions, being released as a tenant from the lease/rental agreement would help the survivor of these events tremendously.

Please understand that victim-survivors will not see this as "a golden opportunity" to willfully break a binding contract (so many victims do not leave their abusers because of marriage - another binding contract) but as an emergency escape to avoid the grasp of someone they've known to cause them harm.

Thank you for your time and consideration.

Respectfully,

Dara Carlin, M.A.
Independent Domestic Violence Survivor Advocate

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March 17, 2009

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce & Consumer Protection
State Capitol, Room 325
Honolulu, Hawaii 96813

LATE

RE: H.B. 812, H.D. 2, Relating to Domestic Violence

HEARING DATE: Wednesday, March 18, 2009 at 8:30 a.m.

Aloha Chair Baker and Members of the Committee:

I am Myoung Oh, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members. HAR expresses concerns and submits the following comments regarding H.B. 812, H.D. 2 which allows a tenant who is a victim of domestic violence, sexual abuse, or harassment by stalking to terminate his or her rental agreement.

H.B. 812, H.D. 2 requires a victim to provide notice of termination to landlord within 60 days of a TRO or protective order and within 60 days of an affidavit executed by a prosecuting attorney. The bill further provides that, once notice is given, the rental agreement will terminate within fifteen days.

HAR feels that the bill as written is problematic and creates ambiguities regarding the duties and obligations of landlord and tenant in the event of a domestic violence situation. For these reasons, HAR respectfully requests that the Committee consider the attached proposed S.D. 1. We believe that the proposed S.D. 1 serves to clarify this measure in several respects, as follows:

- 1) Removal of temporary restraining orders: HAR agrees with the suggestion of the prior Committees (House Committees on Consumer Protection & Commerce and Judiciary, HSCR 711) to limit proof of a domestic violence incident by protective orders only, rather than including temporary restraining orders. HAR feels that this limitation will address potential abuses of the process provided under this measure.
- 2) Duties and obligations of the parties: HAR requests that additional language be considered to clarify the rights and responsibilities of the parties in a domestic violence situation. Our changes includes language to address specifics regarding termination of the contract, the procedure by which the tenant would vacate the premises, and the remaining tenant's obligations.

HAR looks forward to participating in further discussion on this measure.

Mahalo for the opportunity to testify.

A BILL FOR AN ACT

RELATING TO DOMESTIC VIOLENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 521, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§521- Termination of tenancy; domestic violence. (a) Notwithstanding any statutory provision to the contrary, a tenant may notify the landlord, at an address supplied to the tenant by the landlord, by certified mail, return receipt requested, postmarked before midnight, that the tenant or a household member was the victim of an act that constitutes abuse of a family or household member, and that the tenant intends to terminate the rental agreement.

(b) A notice to terminate a rental agreement under this section shall be in writing, with one of the following attached to the notice:

(1) A copy of a temporary restraining order or protective order, currently in effect and issued pursuant to chapter 586; or

(2) A dated affidavit executed by a county deputy prosecuting attorney showing that the victim's need for protection meets the same criteria as is required for name change without publication under section 574-5(e).

(c) The notice to terminate the rental agreement shall be given within sixty days of the date that any order described in subsection (b)(1) was issued, or within sixty days of the date that any affidavit described in subsection (b)(2) was executed, as applicable.

(d) If notice to terminate the rental agreement is provided to the landlord under this section, the tenant shall be released from any rent payment obligation. Upon notice given to the landlord pursuant to subsection (a), the rental agreement shall terminate on the fifteenth day from the date of such notice. The landlord and any and all tenants shall thereafter be released from all of their respective obligations under the rental agreement without penalty; provided that: — (1) Any tenant who does not vacate within fifteen days of providing the landlord notice under this section shall be treated as a holdover tenant on a month-to-month tenancy; and, provided that

the applicable provisions of this chapter shall apply with respect to termination of the agreement.

~~—(2) Section 521-44, regarding security deposits, shall apply.~~

(e) ~~Beginning fifteen days after~~ Upon notice to terminate a rental agreement has been given under this section, any co-tenant under the rental agreement, other than given to the landlord pursuant to subsection (a), the tenant entitled to give notice under this section, shall be treated as a tenant on a month to month tenancy, may vacate the premises within the fifteen day period following the notice, but shall remain obligated under the rental agreement through the fifteen day period.

(f) After the fifteen-day period provided in subsection (d) has lapsed, any remaining tenants under the rental agreement shall be treated as a tenant on a month-to-month tenancy under section 521-71.

(g) As used in this section, "household member" has the same meaning as and includes any family or household member as that term is defined in section 586-1."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on November 1, 2009.

A BILL FOR AN ACT

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SECTION 1. Chapter 521, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§521- Termination of tenancy; domestic violence. (a) Notwithstanding any statutory provision to the contrary, a tenant may notify the landlord, at an address supplied to the tenant by the landlord, by certified mail, return receipt requested, postmarked before midnight, that the tenant or a household member was the victim of an act that constitutes abuse of a family or household member, and that the tenant intends to terminate the rental agreement.

(b) A notice to terminate a rental agreement under this section shall be in writing, with one of the following attached to the notice:

(1) A copy of a protective order, currently in effect and issued pursuant to chapter 586; or

(2) A dated affidavit executed by a county deputy prosecuting attorney showing that the victim's need for protection meets the same criteria as is required for name change without publication under section 574-5(e).

(c) The notice to terminate the rental agreement shall be given within sixty days of the date that any order described in subsection (b)(1) was issued, or within sixty days of the date that any affidavit described in subsection (b)(2) was executed, as applicable.

(d) Upon notice given to the landlord pursuant to subsection (a), the rental agreement shall terminate on the fifteenth day from the date of such notice. The landlord and any and all tenants shall thereafter be released from all of their respective obligations under the rental agreement, provided that the applicable provisions of this chapter shall apply with respect to termination of the agreement.

(e) Upon notice given to the landlord pursuant to subsection (a), the tenant entitled to give notice may vacate the premises within the fifteen day period following the notice, but shall remain obligated under the rental agreement through the fifteen day period.

(f) After the fifteen-day period provided in subsection (d) has lapsed, any remaining tenants under the rental agreement shall be treated as a tenant on a month-to-month tenancy under section 521-71.

(g) As used in this section, "household member" has the same meaning as and includes any family or household member as that term is defined in section 586-1."

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