

STAND. COM. REP. NO.

711

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 812
H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committees on Consumer Protection & Commerce and
Judiciary, to which was referred H.B. No. 812, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO DOMESTIC VIOLENCE,"

beg leave to report as follows:

The purpose of this bill is to protect domestic violence
victims by allowing them to terminate their rental agreement
without penalty after notifying the landlord in writing and
attaching either:

- (1) A copy of a temporary restraining order (TRO) or
protective order (PO); or
- (2) A written report prepared by a law enforcement officer
showing that allegations of domestic abuse, sexual
assault, or harassment by stalking were filed.

The Honolulu Police Department, Hawaii State Coalition
Against Domestic Violence, Sex Abuse Treatment Center, Legal Aid
Society of Hawaii, and several concerned individuals testified in
support of this bill. The Department of the Prosecuting Attorney
of the City and County of Honolulu, Hawaii Association of
REALTORS, and a concerned individual provided comments.

HB812 HD2 HSCR CPC-JUD HMS 2009-2522



There are concerns that this bill:

- (1) Allows terminations of rental agreements to be based on criminal offenses, such as sexual assault and harassment by stalking, that may exceed the scope of this bill's title, "Relating to Domestic Violence"; and
- (2) Provides for the attachment of police reports to the notice to terminate the rental agreement, even though current procedures apparently do not permit the release of police reports to the public without a court subpoena, which may create additional time delays and expenses for victims attempting to provide notice to a landlord under this measure.

Accordingly, your Committees have amended this bill by:

- (1) Eliminating all references to specific criminal offenses and instead providing that termination of a rental agreement under this measure may be based on an act of abuse of a family or household member;
- (2) Replacing the police report attachment provision with one allowing the attachment of an affidavit executed by a prosecuting attorney regarding the victim's need for safety, using the criteria currently applied under section 574-5(e), Hawaii Revised Statutes (HRS), for endangered individuals seeking a name change without the standard publication requirement;
- (3) Providing that:
 - (A) Any tenant who does not vacate within 15 days of providing the landlord notice to terminate the rental agreement is to be treated as a holdover tenant on a month-to-month tenancy; and
 - (B) Any other co-tenant under the rental agreement is to be treated as a tenant on a month-to-month tenancy 15 days after the notice to terminate the rental agreement has been given;

and

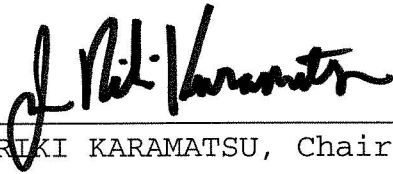
- (4) Changing the effective date to November 1, 2009.



Your Committees further note that while this bill provides for the attachment of TROs or POs to the notice of rental agreement termination, it may be preferable to limit this provision to POs only in the interest of discouraging fraudulent uses of the process established by this bill. This is because TROs are ex parte orders that may be issued without prior notice to the respondent and based only on the account of the alleged victim (section 586-4, HRS). Following the issuance of a TRO, a court hearing is held at which both parties may present their arguments on whether the protections of the TRO should continue through the issuance of a PO (sections 586-5 and 586-5.5, HRS).

As affirmed by the records of votes of the members of your Committees on Consumer Protection & Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 812, H.D. 1, as amended herein, and recommend that it pass Third Reading in the form attached hereto as H.B. No. 812, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committees on Consumer
Protection & Commerce and
Judiciary,



JON RIKI KARAMATSU, Chair



ROBERT N. HERKES, Chair



Record of Votes of the Committee on Consumer Protection & Commerce

Bill/Resolution No.: HB 812 HD1	Committee Referral: HUS, CPC/JUD	Date: 2/26/09		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) 2 <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
CPC Members	Ayes	Ayes (WR)	Nays	Excused
1. HERKES, Robert N. (C)				✓
2. WAKAI, Glenn (VC)	✓			
3. BELATTI, Della Au				✓
4. CABANILLA, Rida	✓			
5. CARROLL, Mele				✓
6. ITO, Ken	✓			
7. KARAMATSU, Jon Riki	✓			
8. LUKE, Sylvia	✓			
9. McKELVEY, Angus L.K.				✓
10. MIZUNO, John M.	✓			
11. MORITA, Hermina M.				✓
12. SOUKI, Joseph M.				✓
13. TSUJI, Clift	✓			
14. MARUMOTO, Barbara C.	✓			
15. THIELEN, Cynthia	✓			
TOTAL (15)	9	0	0	6
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center;">_____ committee acronym(s)</div>				
Vice Chair's or designee's signature: <u>Cynthia Thielen</u>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				

State of Hawaii
House of Representatives
The Twenty-fifth Legislature

HSCR 711

Record of Votes of the Committee on Judiciary

Bill/Resolution No.: <i>HB 812, HD 1</i>	Committee Referral: <i>HVS, CPC/JUD</i>	Date: <i>2/26/09</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
JUD Members	Ayes	Ayes (WR)	Nays	Excused
1. KARAMATSU, Jon Riki (C)	✓			
2. ITO, Ken (VC)	✓			
3. BELATTI, Della Au				✓
4. CABANILLA, Rida	✓			
5. CARROLL, Mele				✓
6. HERKES, Robert N.				✓
7. LUKE, Sylvia	✓			
8. McKELVEY, Angus L.K.				✓
9. MIZUNO, John M.	✓			
10. MORITA, Hermina M.				✓
11. OSHIRO, Blake K.	✓			
12. SOUKI, Joseph M.				✓
13. TSUJI, Clift	✓			
14. WAKAI, Glenn	✓			
15. MARUMOTO, Barbara C.	✓			
16. THIELEN, Cynthia	✓			
TOTAL (16)	10	0	0	6
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <small>_____ committee acronym(s)</small>				
Vice Chair's or designee's signature:				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				

A BILL FOR AN ACT

RELATING TO DOMESTIC VIOLENCE.

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

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

4 "§521- Termination of tenancy; domestic violence. (a)

5 Notwithstanding any statutory provision to the contrary, a
6 tenant may notify the landlord that the tenant or a household
7 member was the victim of an act that constitutes abuse of a
8 family or household member, and that the tenant intends to
9 terminate the rental agreement.

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

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

16 (2) A dated affidavit executed by a county deputy
17 prosecuting attorney showing that the victim's need
18 for protection meets the same criteria as is required



1 for name change without publication under section 574-
2 5(e).

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

8 (d) If notice to terminate the rental agreement is
9 provided to the landlord under this section, the tenant shall be
10 released from any rent payment obligation under the rental
11 agreement without penalty; provided that:

12 (1) Any tenant who does not vacate within fifteen days of
13 providing the landlord notice under this section shall
14 be treated as a holdover tenant on a month-to-month
15 tenancy; and

16 (2) Section 521-44, regarding security deposits, shall
17 apply.

18 (e) Beginning fifteen days after notice to terminate a
19 rental agreement has been given under this section, any co-
20 tenant under the rental agreement, other than the tenant
21 entitled to give notice under this section, shall be treated as
22 a tenant on a month-to-month tenancy.



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

4 SECTION 2. New statutory material is underscored.

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



Report Title:

Landlord-Tenant; Domestic Violence Victims; Cancellation of
Lease

Description:

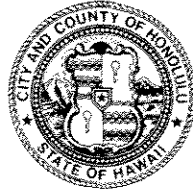
Allows a tenant who is a victim of domestic violence to
terminate his or her rental agreement. (HB812 HD2)



POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org

MUFI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
KARLA A. GODSEY
DEPUTY CHIEFS

OUR REFERENCE LM-NTK

March 18, 2009

The Honorable Rosalyn H. Baker, Chair
and Members
Committee on Commerce and
Consumer Protection
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Baker and Members:

Subject: House Bill No. 812, H.D. 2, Relating to Domestic Violence

I am Richard C. Robinson, captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 812, H.D. 2, Relating to Domestic Violence. Passage of this bill would provide added protection to victims of domestic violence, sexual abuse, or harassment by stalking. Victims who need to relocate immediately for their safety will not be burdened with rental agreement obligations.

The Honolulu Police Department urges you to support House Bill No. 812, H.D. 2, Relating to Domestic Violence.

Thank you for the opportunity to testify.

Sincerely,

Handwritten signature of Richard C. Robinson in black ink.

RICHARD C. ROBINSON, Captain
Criminal Investigation Division

APPROVED:

Handwritten signature of Boisse P. Correa in black ink, written over a horizontal line.

BOISSE P. CORREA
Chief of Police



Hearing date and time: March 18, 2009 9a.m., COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

RE: H.B. 812 HD2, RELATING TO DOMESTIC VIOLENCE

TO: Chair Senator Baker, Vice Chair Senator Ige and members of the Committee on Commerce and Carol Lee (clee@hscadv.org), Hawaii State Coalition Against Domestic Violence

Aloha, my name is Ana Maring. The Hawaii State Coalition Against Domestic Violence (HSCADV). HSCADV is a private non-profit agency which serves as a touchstone agency for the majority of domestic violence programs throughout the state. For many years HSCADV has worked with the Hawaii Legislature by serving as an educational resource and representing the many voices of domestic violence programs and survivors of domestic violence.

HSCADV strongly supports HB812 HD2.

In a 1998 study, 22 percent of 777 individuals surveyed stated that they had fled their home because of domestic violence¹. It is imperative that victims of domestic violence be able to exercise many different options for their safety and the safety of their children. This may include changing the locks on their current home or breaking a lease to flee for safety.

Often victims of domestic violence flee with little or money. If she seeks emergency shelter and fails to pay her rent and/or breaks her lease - it can destroy her rental and credit history. Studies have shown that victims and survivors of domestic violence have trouble finding apartments because they may have poor credit, rental, and employment histories as a result of their abuse². By allowing women to end their leases early if needed they can locate another place to live away from their batterer.

Hawaii continues to work to bring about many solutions to the issues impacting victims of domestic violence. HB812 HD2 is an important part of the puzzle that will assist victims in their journey to safety.

Thank you for the opportunity to testify.

¹ *Ten Cities 1997-1998: A Snapshot of Family Homelessness Across America*. Homes for the Homeless. Retrieved January

² Susan A. Reif and Lisa J. Krisher. 2000. "Subsidized Housing and the Unique Needs of Domestic Violence Victim." *Clearing House Review*. National Center on Poverty Law. Chicago, IL.

George J. Zweibel, Esq.
President, Board of Directors

M. Nalani Fujimori, Esq.
Interim Executive Director

TESTIMONY IN SUPPORT OF HB812 HD1 -
Relating to Domestic Violence

March 18, 2009 at 9:00 a.m.

The Legal Aid Society of Hawai'i ("Legal Aid") hereby provides testimony to the Committee on Human Services **in support of** HB812, relating to Domestic Violence which allows victims of domestic violence to terminate his or her rental agreement.

Legal Aid is the largest non-profit, private legal services organization in the State. We provide legal services for domestic violence victims and is one of the only legal service organizations to have a unit dedicated housing.

We are in support of this bill as it is critical for victims of domestic violence to be in a secure and safe home after an incident of domestic violence, sexual assault and/or harassment by stalking. Victims of these abuses should have the ability to terminate a lease without penalty in order to seek a safer housing situation.

Thank you for this opportunity to testify.

Sincerely,

Jennifer La'a
Fair Housing Program Manager
Domestic Violence Project Manager



OAHU CHAPTER

National Association of Residential Property Managers

March 17, 2009

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: H.B. 812, H.D. 2 Relating to Domestic Violence
Committee: Senate Committee on Commerce and Consumer Protection
Hearing Date and Time: March 18, 2009 at 9:00 a.m., Room 229

Dear Chair Baker and Members of the Senate Committee on Commerce and Consumer Protection:

On behalf of the O'ahu Chapter of the National Association of Residential Property Managers (NARPM), who is a group of professional property managers conducting property management on the island of O'ahu, we support the intent of H.B. 812, H.D. 2 but have concerns about the bill.

Line 5 "Notwithstanding any statutory provision to the contrary, a tenant may notify the landlord 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.

We interpret this to mean one tenant (of a number signed on the rental agreement) may terminate the **entire** rental agreement, making it necessary for the other tenants to vacate the unit. Any tenants remaining in the unit after the required 15 days notice will become holdover tenants on a month to month term.

Two different situations can occur that appear to be violating the rights of either the other tenants or the landlord.

In the first situation, four unrelated individuals sign a one year rental agreement. After one month one person becomes the victim of domestic violence from a person

not residing in the unit. Because the **one person has the right to terminate the lease**, the other three tenants become holdover tenants and lose their one year lease. They will lose the protection of their one year lease and can possibly be subject to legal action to remove them or a rent increase, with the required 45 day notice. If they choose to vacate they will incur the cost of moving.

In the second situation, the tenant giving notice is one of four tenants on the lease. The combined income of the four tenants makes it possible for them to qualify for the unit and pay the rent. With one fourth of the income gone, the remaining individuals cannot pay the rent. The remaining tenants will either be faced with removal with 45 days notice if the landlord determines they cannot pay the rent and takes precautionary action, or remaining and facing the possibility of not being able to continue to pay the rent. This would result in legal action against them and damage to their credit standing. This also puts the landlord in a position of losing the original agreement between qualified tenants and facing the expense of vacancy, or legal costs.

The other issue is return of the portion of the security deposit. Section 521-44 does not address the refund of a portion of the security deposit. If one tenant vacates under the provisions of this bill, is the landlord required to refund the portion of the deposit to the vacating tenant. How is that portion determined?

Since the security deposit is to be used for cleaning and/or repairs. If remaining tenants do not vacate at the end of the 15 day notice, is their portion of the security deposit to be used by the landlord for repairs and cleaning when they vacate even if it was caused by the vacated tenant? How can the landlord determine the condition of the unit when the notifying tenant vacates, if the other tenants are still in residence?

We understand the plight of the victim of domestic abuse, but we feel these questions must be addressed to protect the rights of the remaining tenants and the landlord who had no part in the problem.

Based on these concerns and scenarios, the Oahu Chapter of NARPM would respectfully ask that H.B 812 be deferred indefinitely, and allow various stakeholders to come to an agreed language during the interim that is balanced and equitable for tenants and property owners.

Thank you for allowing us to submit testimony on this bill.