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**PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION  
TO THE HOUSE COMMITTEE ON HOUSING  
THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2017**

**JANUARY 31, 2017  
9:30 AM**

**TESTIMONY OPPOSING H.B. 226, RELATING TO THE LANDLORD TENANT CODE.**

**TO THE HONORABLE TOM BROWER, CHAIR,  
AND TO THE HONORABLE NADINE K. NAKAMURA, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs, Office of Consumer Protection (“OCP”) opposes H.B. 226, Relating to the Landlord-Tenant Code. My name is Stephen Levins and I am the Executive Director of the OCP.

H.B. 226 eliminates the five day notification requirement for the eviction of a tenant for delinquent rent, allows a landlord to prohibit access to a dwelling unit upon court awarding possession of the unit, and allows a landlord to dispose of a tenant’s personal property.

The OCP opposes elimination of the five day notification requirement because it unnecessarily changes longstanding law in the State of Hawaii to the detriment of tenants. Under current law, if a tenant is deficient on their rental payment they are

afforded a brief period of time to try to bring their account current. They can seek assistance from family or friends, get a short term loan, or seek alternative funding from a social service agency. Amending the law in this manner will undermine the hopes of tenants wishing to make sincere efforts to remain in their housing and could ultimately compound Hawaii's homeless crisis by accelerating an unnecessary summary possession.

H.B. 226 would also negatively impact financially solvent tenants who are unintentionally late with their rental payments. For example, if a financial institution failed to forward an automatic rental payment, a landlord could conceivably initiate summary possession proceedings. There would be no grace period to help rectify the problem.

The OCP is also opposed to the remainder of this measure since current law already adequately addresses the rights and remedies of a landlord to take possession of a dwelling unit, dispose of personalty, and resolve matters with a holdover tenant.

Thank you for the opportunity to offer comments opposing H.B. 226. I would be happy to answer any questions members of the Committee may have.



From: mailinglist@capitol.hawaii.gov  
 Sent: Monday, January 30, 2017 9:27 PM  
 To: HSGtestimony  
 Cc: vgemini@ gmail.com  
 Subject: Submitted testimony for HB226 on Jan 31, 2017 09:30AM  
 Attachments: Eviction study 1 31 17.pdf

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**HB226**

Submitted on: 1/30/2017

Testimony for HSG on Jan 31, 2017 09:30AM in Conference Room 423

Submitted By	Organization	Testifier Position	Present at Hearing
victor geminiani	Individual	Comments Only	No

Comments: Chair Brower and members of the committee, Thank you for an opportunity to testify today in strong opposition to HB 226. I apologize for this late testimony but I just found out about the timing and substance of this hearing. The eviction process in Hawaii is broken and tenants are the victims of that system’s failures. The results of that victimization reside in our streets. HB 226 would only help to further tip the imbalance of justice against tenants. Safe, stable housing provides a foundation for building a successful life—a foundation that can quickly crumble because of an improper eviction. Absence of housing stability increases the likelihood of homelessness, domestic violence, adverse impacts on health and depressed children’s educational outcomes. These consequences perpetuate generational cycles of poverty and give rise to serious social costs. Despite these severe consequences to individual households and the community as a whole, tenants facing eviction in Hawaii have relatively little support to ensure they are not improperly removed from their homes. Evictions are conducted much more quickly than a typical court case through a process known as “summary possession.” The streamlined process is designed to quickly return possession of the premises to the landlord. In exchange, landlords are required to closely adhere to certain rules intended to level the playing field between landlords and tenants. However, the process is only fair to the extent the parties involved understand the rules. A party with superior knowledge of the process gains great advantage, creating an imbalance in what was intended to be a fair process. In Hawaii, landlords almost always have the advantage. The majority of landlords are represented by legal counsel who can guide them through the process, or in many cases appear through professional agents experienced with the process, while the percentage of represented tenants is close to nil. It is not surprising landlords regain possession in almost every case. Certainly, in many cases, the landlord prevails because there was adequate cause for eviction. However, for a significant percentage of cases, a tenant’s lack of representation and understanding of the proceedings results in an appearing tenant’s inability to identify and present valid defenses or otherwise effectively advocate for himself or herself or, in the frequent instances where tenants fail to appear, a default judgment in favor of the landlord. Indeed, various studies indicate represented tenants were six to ten times more likely to win in court, compared with unrepresented tenants. In partnership with law students at the University of Hawaii-Manoa William S. Richardson School of Law and the Legal Aid

Society of Hawaii, the Hawaii Appleseed Center for Law and Economic Justice conducted an observational study and case analysis of 205 eviction hearings on the island of Oahu in the summer and fall of 2010. A group interview with presiding District Court Judges was also conducted in August 2010. Later, between March and May 2016, Hawaii Appleseed conducted an additional 25 observations and solicited additional comments from leaders in the legal community to evaluate whether recent developments had an impact on eviction outcome statistics. Generally, there was no difference. The results of the study in both periods confirmed a stark disparity in legal representation and dissemination of legal information between landlords and tenants, and a resulting disparity in substantive case outcomes. Across the observed return hearings in 2010, 70 percent of landlords were represented by counsel,<sup>3</sup> as opposed to 4 percent of tenants. The results for observed return hearings in 2016 were only slightly different, with 68 percent of landlords and 0 percent of tenants represented. Average hearing times varied greatly between judges but the average return hearing lasted only 75 seconds. The disparity in these percentages is even more glaring if it is considered that landlords may have their cases brought by knowledgeable and experienced “agents” who are likely to be professional real estate or management agents with superior knowledge of the process. About half of all eviction cases resulted in default judgment for the landlord due to the tenants not responding to the complaint or appearing at the return hearing. Unsurprisingly, landlords regained possession in 97 percent of the summary possession proceedings. Attached to this testimony is the recent article on evictions in Hawaii printed in the Hawaii Bar Journal. HB 226 would add significantly to the number of people who would face immediate homelessness and the speed with which they would be forced to exercise their most limited of options given the crisis we have in affordable rental units. Please vote against this bill. Aloha, Victor Geminiani Co Executive Director The Hawaii Appleseed Center for Law and Economic Justice

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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January 31, 2017

**LATE**

2017 Hawaii Regular Legislative Session

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Representative Joy A. Buenaventura, Member  
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HB-226 Relating to The Landlord Tenant Code

**RE: Strongly Support Simplifying Chapter 521, Landlord-Tenant Code**

My name is Linda W.L. Starr. I have been a landlord for more than fifteen (15) years. I use to have two apartments. Over the past five (5) years, I have had to use Section 521-86 to evict two tenants who refused to pay the agreed monthly rent.

Section 521-2 states that the purposes and policies of the Chapter are:

- a. To simplify, clarify, modernize and revise the law governing the rental of dwelling units, and the rights and obligations of landlords and tenants of dwelling units.
- b. To encourage landlords and tenants to maintain and improve the quality of housing in this State.
- c. To revise the law of residential landlord and tenant by changing the relationship from one based on the law of conveyance to a relationship that is primarily contractual in nature.

As far as ITEM-a is concerned, in practice HRS 521 there is little recourse for landlords to enforce the landlord's rights. In actuality, the sole recourse that landlords are given is the right to "beg the Courts" to allow them to exercise their stated rights.

As far as ITEM-b is concerned, there is nothing in HRS 521 for tenants to maintain or improve the quality of housing.

As far as ITEM-c there is not an effective nor an efficient manner for landlords to be reasonably assured that tenants would pay rent in-full and on-time.

There currently is a burden on landlord to give written "five business days to pay rent" demand notice to tenants who knowingly and willfully refuse to pay the monthly rent.

As a matter of fact, the written five-business day demand letter guarantees the non-rent paying tenants can stay an additional month rent-free at the expense of the landlord.

Number Of Calendar Day	Activity
01	Full month Rent owed and due
02, 03, 04	Grace period for rent to be available to owner
05	Issue Five (5) Business Days Notice to pay rent
06, 07, 08, 09, 10, 11, 12, 13	Five business days excludes weekend and holiday
14	Issue Tenant notice for Court Action
15	File Court Notice, Request Court for hearing date
16, 17, 18, 19, 20, 21, 22	Wait for scheduled Court date
23	Landlord and Tenant appear before Judge
24, 25, 26, 27, 28	Judge makes decision and Court order notarized
29	Court Processor notifies tenant of eviction
30	Landlord allowed to change Locks to rental unit

Please allow HB-226 to advance through the Legislative process and become law this Legislative Session.

Thank you for taking the time to read, understand, and hopefully take action on the contents of my testimony

Sincerely'

*Linda W.L. Starr*

Linda W.L. Starr

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