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JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce, Consumer Protection, and Health  
Thursday, January 30, 2020  
9:30 a.m.  
State Capitol, Conference Room 229**

**On the following measure:  
S.B. 2610, RELATING TO LANDLORD-TENANT LAW**

Chair Baker and Members of the Committee:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection. The Department opposes this bill.

Senate Bill No. 2610 seeks to establish a pre-trial damage deposit program that would single out defendants in landlord tenant property damage cases for extra procedural requirements not placed on defendants in any other civil proceedings. Specifically, this bill would require a defendant/tenant in a property damage case, to deposit the monies allegedly not covered by the security deposit into a trust account administered by the court, where it would presumably stay until the court enters judgment in the case.

The Department opposes this measure because it believes that the required payment scheme outlined by the bill imposes unreasonable requirements on renters that is not present in any other court proceeding. It is unnecessary. Present legal remedies are sufficient in order to allow a landlord to recover monies allegedly owing to

them by their tenant. They can file suit, allege damages, prove them, obtain a judgment and then make efforts to collect on the judgment.

The Department believes that this Bill is problematic because it requires the tenant to make a payment to the court prior to having the opportunity to be heard to contest why they should not have to pay that money to the trust fund administered by the court. Consequently, the Department believes that this Bill should be held.

Thank you for the opportunity to testify on this bill.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2020**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2610, RELATING TO LANDLORD-TENANT LAW.

**BEFORE THE:**

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

**DATE:** Thursday, January 30, 2020      **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Christopher J.I. Leong, Deputy Attorney General

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Chair Baker and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to allow a court to hold funds in the amount of alleged tenant-caused property damage until a hearing may be held and, in the event of a default judgment, provide a way for landlords to be made whole by encouraging tenants to appear and contest the landlord's claim if they disagree with the allegations rather than leaving the jurisdiction.

This bill may be subject to due process challenges. The Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Hawai'i (article I, section 5) both prohibit the deprivation of property without due process of law. Although subsection (a) of the new section on page 2, lines 10-19, does not affect a tenant's right to contest liability for any property damage following the deposit of funds into court, a tenant would be ordered by a court to deposit funds in the amount of the landlord's alleged but unproven damages without an opportunity to be heard by the court on the issue of liability in any meaningful manner.

To avoid a constitutional challenge on due process grounds, we recommend amending subsection (a) to read as follows:

**“§521- Damages to property; trust fund.** (a) At the request of either the tenant or the landlord in any court proceeding in which repair costs of tenant-caused property damage is in dispute and the claimed amount of repair costs exceed the tenant's security deposit, the court may order the tenant to deposit up to the amount of claimed damages into the court as

provided under subsection (b); provided that the court shall consider the likelihood of success on the merits, the probable amount of damages, and the tenant's ability to deposit the claimed amount. No deposit, or failure to deposit, into the fund ordered under this section shall affect the tenant's rights to contest the amount claimed by the landlord, or to assert either that the property damage is not tenant-caused or any other grounds for non-liability under this chapter.”

Thank you for the opportunity to provide comments.



**HAWAII APPLESEED**  
CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai'i Appleseed Center for Law and Economic Justice  
In Opposition to SB 2610 -- Relating to Landlord-Tenant Law  
Senate Committee on Commerce, Consumer Protection, and Housing  
Thursday, January 30, 2020, 9:30 AM, in conference room 229

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Dear Chair Baker, Vice Chair Chang, and members of the Committee:

Thank you for the opportunity to provide testimony in **OPPOSITION** to **SB 2610**. The bill would require tenants to deposit into a trust account amounts a landlord *merely alleges* the tenant owes for damages above and beyond the security deposit the tenant has already entrusted to the landlord.

Landlords already have the ability to require a security deposit equal to one-month's rent, placing a significant financial burden on families struggling to make ends meet who are forced to come up with two month's rent rather than one.

If a landlord wrongfully withholds the security deposit, a tenant must pursue a small claims court action. In such cases, the landlord is not required to place the security deposit into a trust account. Instead, the landlord retains the deposit unless the court awards the return of the deposit to the tenant, a process which favors the landlord, placing the burden on the tenant.

As suggested by the prefatory language of the SB2610, tenants often move away from the state when they vacate a unit. Such tenants have no recourse if their landlord wrongfully retains their security deposit, because the deposit is often worth less than the cost of pursuing its return.

SB2610 would further tilt the process in favor of landlords, requiring, without due process of law, that a tenant handover additional money based solely on the landlord's say-so, at a time when the tenant is likely needing to pay another security deposit and first month's rent at a new residence.

We appreciate your consideration of this testimony. We urge you to vote *against* SB 2610.



**LATE**

**TESTIMONY IN OPPOSITION TO SB 2610 –  
RELATING TO RESIDENTIAL LANDLORD-TENANT CODE**

Senate Committee on Consumer Protection and Health – Room 229

Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair

Thursday, January 30, 2020 at 9:30 a.m..

The Legal Aid Society of Hawai'i (Legal Aid) submits testimony in opposition to SB 2610 – Relating to Residential Landlord-Tenant Code. For Legal Aid, this testimony is submitted by Dan O'Meara, Managing Attorney of Legal Aid's Housing and Consumer Unit, a unit that provides legal assistance including housing and landlord/tenant matters. This testimony will only be in written form for this meeting as I am unable to attend.

SB 2610 states that it is meant to address the circumstance in which there is a dispute regarding "tenant-caused property damage." The only circumstance in which there can be a dispute as to property damage is if both the landlord and tenant both appear in court. A dispute would not exist simply if a landlord claims excess damages in a summary possession complaint – it takes a disagreement as to the damages to have a dispute.

The provisions of this bill would not apply or function if the tenant does not appear in court and defaults. In studies on a judiciary committee it was found that approximately 50% of summary possession cases result in a default – that is, the tenant does not appear in court. In those cases of default, the tenant is not there to be ordered to deposit disputed damages with the court. For the provisions of this bill to apply, both landlord and tenant would have to appear and then have a dispute as to damages. The more likely monetary dispute is non-payment of rent rather than damages.

Further, the process of an eviction through summary possession is a two-part, bifurcated process. First possession is addressed, quickly. The landlord's goal of getting possession of the property back is an expedited process. Once possession is determined, the court undertakes the second part of the process, a determination of damages, if a landlord chooses to seek damages. Typically, if damages are being sought, the landlord continues the process so that the court can adjudicate any damages, e.g., unpaid rent, damages beyond the security deposit, attorney fees, or other damages resulting from the eviction. Often landlords do not pursue damages because the most common cause for eviction is non-payment of rent. Landlords often do not pursue damages because, if the tenant already could not pay the rent, there is very little likelihood the tenant will then be able to pay back rent or further damages, and many landlords do not choose to spend more money to try to collect money that is just not there (whether or not the tenant left the State or not).

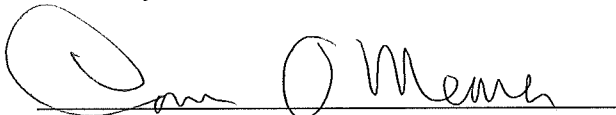
The realistic chance that this proposed structure can work to address the unusual circumstance for which it is intended is minimal. Without getting into the likely due process challenge of making someone pay a potential judgment before a court can decide who is liable, SB 2610 is attempting to fix an unfortunate situation of excess damage before there has been a determination as to whether there was excess damage. Landlords who have this type of concern can provide for regular inspections in their lease and monitor the condition of the property during the term of the lease, or just do what everyone else has to do who is damaged by someone else, spend the money to get a judgment and try to collect through the usual means in the court process. Leaving the State and not being able to get recourse for damages is not only a landlord concern. We see many tenants, including those in the military, who leave the State and are unable get their security deposit returned because they cannot come back to small claims court simply to try to get their security deposit back to dispute a landlord withholding a security deposit.

SB 2610 could have a chilling effect on the low-income population served by Legal Aid who would have less incentive to appear to defend themselves in an eviction if they cannot be

certain whether their landlord will try to have them forced to pay money, in advance, into the court. What happens if the tenant does not have the money to comply with the court order?

Thank you for this opportunity to provide testimony. Legal Aid opposes SB 2610.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. O'Meara", written over a horizontal line.

Daniel J. O'Meara, Esq.  
Managing Attorney Housing and Consumer Unit  
Legal Aid Society of Hawai'i

*The Legal Aid Society of Hawai'i is the only legal service provider with offices on every island in the state, and in 2019 provided legal assistance to over 7,500 Hawai'i residents in the areas of consumer fraud, public assistance, family law, the prevention of homelessness, employment, protection from domestic violence, and immigration. Our mission is to achieve fairness and justice through legal advocacy, outreach, and education for those in need.*



**SB-2610**

Submitted on: 1/28/2020 12:44:33 AM

Testimony for CPH on 1/30/2020 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Keith Young	Individual	Support	No

## Comments:

My name is Keith Young, I am the person pushing for this Law. The reason we need this law, is because a lot of times, when a tenant wrecks a rental and has not paid their rent, you end up taking them to court, because the security deposit is not enough to cover the damages and unpaid rents. When you go to court the first time, it is only to see if the tenant agrees with the amount owed and if they are willing to pay. They then demand a trial, which can take a couple months. At which time, they move to the mainland. As where in my case, the husband came to the trial and told the Judge that his wife was in Queen Kapiolani Hospital giving birth to twins and having complications, he also stated that the wife knows more of what was going on, instead of him in this case. The Judge was simpathetic and did not even ask for proof that the wife was in the hospital. The trial was postpone another 4 months. When time came, My attorney and I showed up for court and went through all the motions and won the judgment, because the tenants did not even show up for court. They skipped and moved to Texas. It is harder to collect a judgement in another State then the State that the judgement is served. If the state had a law, such as SB2610, then maybe they would have showed up for court. Maybe the tenants would have agreed to pay the money at the first hearing, before running up the attorney bill. Bottom line, I have a Judgement for \$6000 that I cannot collect. This also husts the state, because if the tenants do not pay rent, the landlord does not pay GE Taxes. What we need to do is level the field where both sides have a chance in court. The Landlord is not going anywhere, because they own property. The Tenants on the other hand do not own anything to tie them down to the State of Hawaii and are free to leave with out paying the bills they owe. I also had another tenant that was the same thing. The aparently do this for a living. After search the court records, they have had about 30 different cases in 10 years. These people sem to do this and skip to California, then come back in 1-3 year intervals. We really need this law.

**SB-2610**

Submitted on: 1/29/2020 6:07:16 PM

Testimony for CPH on 1/30/2020 9:30:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Thomas D. Farrell	Individual	Support	No

Comments:

Sorry that I did not have time to submit formal testimony. Continuances should not only be limited in number but also short in duration. The respondent should not be under an order to have no contact with the children for up to 90 days and unable to get a hearing until the 89th day. Continuances should be limited to 15 day increments. Two, and then dismiss without prejudice. It is also unfair to respondents to have to keep coming back over and over. I had a client who had to show up three times and who finally gave up and stipulated to an Order for Protection. That client couldn't afford to pay us to sit and wait, and couldn't afford to lose a job because of repeated absences for court appearances. That is a real denial of justice, because that client was falsely accused and the case should have been heard and decided on the merits.