



DAVID Y. IGE  
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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. 2646, RELATING TO THE LANDLORD-TENANT CODE**

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 (OCP). The Department supports this bill.

The purposes of this bill are to: (1) prohibit landlords from recovering possession of dwelling units from tenants if habitability of premises is significantly impaired; (2) set a tenant's liability for rent if habitability of premises is significantly impaired; and (3) provide remedies for retaliatory evictions.

The Landlord-Tenant Information Center is staffed by OCP investigators and volunteers who provide landlords and tenants with information regarding landlord-tenant laws to help them resolve disputes relating to security deposits, late fees, and repairs. The most common complaint the center receives from tenants is a landlord failing to make repairs in a timely manner. While it is unclear if this type of complaint would result

in a dwelling unit becoming uninhabitable, this bill would incentivize landlords to keep their rental unit in a safe and sanitary condition.

Hawaii law allows a tenant to deduct up to \$500 from the following month's rent for the cost of repairs if the landlord does not respond to the tenant's written repair request within 12 business days. However, the cost to repair conditions that materially affect health and safety can exceed \$500, leaving the tenant with limited recourse to address, for example, an unsanitary plumbing or a dangerous electrical issue.

Hawaii renters already face one of the least affordable rental markets in the nation and often cannot find alternative housing if they are evicted. The Department supports this measure's deterrence of landlords from evicting tenants if the habitability of premises is significantly impaired.

Thank you for the opportunity to testify on this bill.



Josh Frost - President • Patrick Shea - Treasurer • Kristin Hamada  
Nelson Ho • Summer Starr

Wednesday, January 29, 2020

Relating to the Landlord-Tenant Code  
Testifying in Support

Aloha Chair and members of the committee,

The Pono Hawai'i Initiative (PHI) **supports SB2646 Relating to the Landlord-Tenant Code.** This measure seeks to balance the rights of the tenant with the right of the landlord by creating clear lines of responsibility within a rental agreement. Clarifying that tenants are required to pay rent and landlords are required to maintain habitability of the property.

A tenant has the right to request necessary maintenance without the fear of eviction. Hawai'i hasn't codified the warranty of habitability and the rules are largely based on case law. This has led to confusion and lack of enforcement and resulted in tenants losing their homes.

Please **vote in favor** of this measure and further protect the rights of tenants, many of whom do not have the financial ability to fight their case or the potential retaliatory evictions that could arise if changes to statute are not made. All Hawai'i residents are entitled to safe and sanitary housing.

For all these reasons, we urge you to move this bill forward.

Mahalo for the opportunity,  
Gary Hooser  
Executive Director  
Pono Hawai'i Initiative



**CGPTA**  
**Chinatown Gateway Plaza Tenant Association**  
**Since 2006**

**To: Committee on Commerce, Consumer Protection, and Health (CPH)**

**From: Chinatown Gateway Plaza Tenant Association (CGPTA)**

Date: Thursday, January 30, 2020, 9:30 AM

Place: Conference Room 229, State Capitol, 415 South Beretania Street

**Re: Strong Support for SB2646, Relating to the Landlord-Tenant Code.**

Aloha e Chair Baker, Vice Chair Chang, and Members of the Committee on CPH,

My name is Steve Lohse, I'm a resident of Chinatown Gateway Plaza (CGP), a 200-unit, city-owned, affordable housing project in Chinatown. I'm also a cofounder of the CGP Tenant Association (CGPTA), organized by CGP residents in 2006 to represent our resident voice in matters of concern to our Chinatown community. On behalf of the CGPTA, thank you for this opportunity to submit written testimony in **Strong Support of SB2646**.

As a resident of city-owned affordable housing, I can testify that owner/manager actions can lack transparent accountability and appear very arbitrary if not frightening at times. With a recognized and active tenant association, we are able to mitigate this uneven accountability somewhat, but what protection do Hawaii's renter households have that don't have lawyers or tenant associations?

We know that the principle of contract-based landlord-tenant equity that we need already exists in Hawaii Supreme Court rulings; however, this principle is not yet formally recognized by the Legislature and so not reliably enforced regarding habitability violations and retaliatory evictions.

**Please pass SB2646** to codify and protect landlord-tenant equity in Hawaii, where 43% of all households statewide and over 50% in Honolulu are renters. Thank you!

Aloha no,  
Steve Lohse, Chair  
Chinatown Gateway Plaza Tenant Association (CGPTA)  
[CGP.Tenant.Association@gmail.com](mailto:CGP.Tenant.Association@gmail.com)



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

Testimony of Hawai'i Appleseed Center for Law and Economic Justice  
In Support of SB 2646 -- Relating to the Landlord-Tenant Code  
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 testify in **strong support** of SB 2646, which codifies the Hawai'i Supreme Court decision establishing a warranty of habitability and sets minimum damages for tenants who been subject to retaliatory evictions.

In December of last year, Lawyers for Equal Justice (LEJ)—a project of Hawai'i Appleseed focused on upholding the legal rights of Hawai'i's low-income and marginalized people—released a report entitled “Evicted in Hawai'i: Lives Hanging in the Balance” which found that only 4 percent of tenants had legal representation during the eviction process while 70 percent of landlords were represented. Not surprisingly, landlords won possession in 97 percent of observed cases. Even more depressing, approximately half of all tenants defaulted by not showing up for their first court hearing and were automatically evicted as a result.

Over the years, we have not had many legislative efforts in Hawai'i to improve tenant rights and make protections easier to assert successfully. SB 2646 gives us a unique opportunity to begin a dialogue about changing that dynamic. **The bill makes two important improvements to tenant rights and protections.**

The first improvement is to **amend the current Landlord-Tenant Code to include the concept of the warranty of habitability**. The principle of warranty of habitability is based on contract law: the tenant is responsible for paying the rent, while the landlord guarantees in return that the premises are habitable and in compliance with health, safety, and building codes. If the landlord fails to fulfill these obligations, then the tenant's rent can be reduced by an appropriate amount retroactively to the date of failure.

Key considerations for this first component of the bill include:

- **The “warranty of habitability” already exists in Hawai'i law.** The Hawai'i Supreme Court has made clear that “the tenant's obligation to pay rent and the landlord's duty to maintain the premises in habitable condition are mutually dependent.” Contracts are two-way streets: when tenants don't receive the basic services to which they are entitled, landlords cannot require them to pay rent.
- **Some state courts don't recognize warranty of habitability claims.** The Hawai'i State Legislature has never codified the warranty of habitability. Because the warranty of

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*Hawai'i Appleseed is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.*

habitability exists only in case law, it has gone largely unenforced, resulting in a great number of unjust and illegitimate evictions.

- **For many tenants, the warranty of habitability represents the only hope of receiving critical repairs.** Landlords are required to provide tenants with functional plumbing, electricity, hot water, pest-free premises, garbage disposal, and basic security. Nevertheless, some landlords ignore these obligations until a court intervenes. It is critical that tenants know the law is on their side when it comes to their fundamental rights.
- **Many other states have passed warranty of habitability laws.** For example: in California, the warranty of habitability has been passed into law. If a substantial breach is found—that is, if the tenant’s unit is unlivable due to the landlord’s negligence—the landlord cannot evict the tenant, provided the tenant pays any rent due based on the fair market value of the rental property.
- **Passing the warranty of habitability into law would do nothing more than reinforce current law and increase access to justice for Hawai‘i’s renters.** This would not be a novel addition to the law. Rather, it would simply work to ensure that cases are decided correctly and that tenants are not stripped of their rights.

The second improvement proposed by SB 2646 would be to **amend the Code to set minimum damages for retaliating against a tenant who requests repairs or reports health or safety code violations.** Important considerations for this component of the bill include:

- **Establishing minimum damages for retaliatory evictions would do nothing more than reinforce current law and increase access to justice for Hawai‘i’s renters.** It is already illegal for landlords to evict tenants for reporting sub-standard conditions. Minimum damages would simply give some teeth to the rules that already exist.
- **Anecdotal evidence suggests that retaliatory evictions are common in Hawai‘i.** Even though the law forbids it, tenants who complain about sub-standard conditions too often find themselves served with eviction notices from landlords who would rather not go to the trouble of bringing their rental units into compliance with health and safety regulations. This sort of retaliation is doubly harmful because it deters tenants from requesting repairs out of fear that doing so will put a target on their backs. Many tenants languish in unsanitary or unsafe units as a result.
- **Currently, the Landlord-Tenant Code puts the burden on tenants who have suffered retaliatory evictions to prove they are entitled to compensation.** Proving “damages” (the right to financial compensation) in court can be highly difficult, especially for tenants who are not familiar with the law, rules of evidence, and civil procedure. For this reason, most tenants never receive any form of compensation.

- **Clearly, retaliatory evictions are always damaging—at the very least, tenants must spend time and money fighting in court, and there are severe consequences associated with physical displacement.** Eviction directly fuels homelessness and leads to lower educational achievement, higher rates of crime, domestic abuse, and substance abuse, and poorer health outcomes generally.
- **Other states have recognized the inherently damaging nature of retaliatory evictions and established minimum damages for tenants who can show they were retaliated against.** Two months' rent plus court costs represents a reasonable figure.
- **The Landlord-Tenant Code already guarantees minimum damages for certain violations of the law.** Section 521-63 of the Code, which covers illegal lockouts, provides for damages in an “amount equal to two months' rent” for victimized tenants. That is exactly what is being proposed in this bill. Retaliatory evictions are very similar to illegal lockouts—in both cases, the tenant is being unlawfully forced from their home. SB 2646 would therefore eliminate a discrepancy in the law and expand existing protections to tenants who need them.
- **By establishing minimum damages for tenants who have suffered retaliatory evictions, the legislature would discourage landlords from retaliating against tenants.** Currently, landlords who retaliate against tenants do so with relative impunity. The promise of meaningful fines would be an effect deterrent to blatantly unlawful behavior.
- **A minimum damages level would also speed up trials, and give victimized tenants just compensation for the hardship they have endured.** Currently, it is almost never worth a tenant's time to pursue a retaliatory eviction case. The prospect of numerous court hearings and complex procedural requirements, coupled with the very real possibility of receiving nothing at the end of case, is enough to deter even those with the strongest cases from exercising their rights. If tenants were assured of a least a minimum level of compensation for their time and effort, they would much more often receive their due.

We appreciate your consideration of this testimony. We urge you to pass SB 2646.

January 27, 2020

**The Honorable Rosalyn H. Baker, Chair**

Senate Committee on Commerce, Consumer Protection and Health  
State Capitol, Room 229  
Honolulu, Hawaii 96813

**RE: S.B. 2646, Relating to the Landlord-Tenant Code**

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

Aloha Chair Baker, Vice Chair Chang and Members of the Committee:

I am Ken Hiraki Government Affairs Director, submitting written testimony on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 10,000 members. HAR **strongly opposes** Senate Bill 2646, which prohibits landlords from recovering possession of a dwelling unit from tenants if habitability of the premises is significantly impaired. Sets a tenant's liability for rent if habitability of the premises is significantly impaired. Provides remedies for retaliatory evictions.

**Due Process Concerns**

"Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Tr. Co*, 339 U.S. 306, at 313, 70 S.Ct. 652, at 656, 94 L.Ed 865.

This measure, allows tenants to unilaterally assert that their unit is "significantly impaired". There is no provision for an owner to dispute or seek impartial review of whether "significant impairment" has occurred. Moreover, if the tenant caused the unit to become uninhabitable, there is no opportunity for the landlord to assert that defense.

**Additional Concerns with the Measure**

Additionally, significantly impaired is not defined and subjective and could open the door to abuse.

Furthermore, if a unit does become uninhabitable and a tenant cannot be temporarily removed from the dwelling to conduct repairs, there would be no recourse for a property owner to fix the damaged unit.



### **Tenant Remedies for Habitability Already Covered Under the Law**

Under the Landlord-Tenant Code, Hawai'i Revised Statutes (HRS) §521, it imposes strict habitability obligations upon landlords and clear remedies for tenants for failure to properly maintain a rental unit or for engaging in improper retaliation evictions.

Regarding repairs and landlord obligations to maintain habitability of a unit and tenant remedies, the Code provides the following:

#### **Landlord Obligations / Tenant Remedies:**

- HRS §521-64(c) and (d). **Emergency repairs** must be initiated within **3 business days**. If landlord fails to repair the unit, tenant may perform repairs and provide landlord with receipts and deduct up to \$500 from the next month's rent.
- HRS § 521-64(a) and (b). Repairs for **law, code or ordinance violations** must be initiated **within 5 business days**. If landlord fails to repair unit, tenant may perform repairs and provide landlord with receipts and deduct up to \$500 or one month's rent, whichever is greater.
- HRS §521-64(c). **General repairs** must be initiated **within 12 business days**. If landlord fails to repair unit, tenant may perform repairs and provide landlord with receipts and deduct up to \$500 from next month's rent.

Additionally, under HRS §521-42, a landlord has a duty to supply and maintain a fit premises at all times during the tenancy, which includes the following under subsection (a):

1. Complying with all applicable building and housing laws materially affecting health and safety.
2. Keeping the common areas of a multi-dwelling unit clean and safe
3. Making all repairs to keep the unit in a livable condition.
4. Maintaining electrical, plumbing and other facilities in good working order.
5. Providing garbage bins and frequent waste removal.
6. Providing running water.

Furthermore, under HRS §521-74, a landlord is prohibited from doing a retaliatory eviction and rent increase if a tenant in good faith requested repairs or complained in good faith to a governmental agency concerned with landlord-tenant disputes or to the landlord directly. If a landlord violates this section, a tenant can recover damages, legal costs and reasonable attorney fees.

Based on existing law regarding landlord obligations and tenant remedies, this measure does not seem necessary. Furthermore, existing law seems to sufficiently cover damages for retaliatory evictions and habitability of a unit.

For the foregoing reasons, we respectfully request that this measure be held.



 | 808-733-7060

 | 1259 A'ala Street, Suite 300  
Honolulu, HI 96817

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Mahalo for the opportunity to testify on this measure.

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**LATE**

**SB-2646**

Submitted on: 1/29/2020 11:01:17 AM  
Testimony for CPH on 1/30/2020 9:30:00 AM

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

Comments:

Testimony of Victor Geminiani

Regarding SB2646, Senate CPH

Thursday, February 22nd, 2020 at 9:30 AM

Thank you for the opportunity to testify in **strong support** of SB 2646, which codifies the Hawaii Supreme Court decision establishing a warranty of habitability and sets minimum damages for a tenant who proves the landlord instituted an eviction process in retaliation for the tenant requesting repairs or seeking government assistance in correcting to endure health and safety violations in the apartment. My name is Victor Geminiani and, until retirement in August, had spent the past 25 years in our island state working on issues affecting the rights of the low/moderate income residents by directing the Legal Aid Society of Hawaii and founding/directing the Hawaii Appleseed Center for Law and Economic Justice.

As you may know, in a year ago, Lawyers for Equal Justice (LEJ) released a report entitled “Evicted in Hawaii: Lives Hanging in the Balance” which found that only 4% of tenants had legal representation during the process while 70% of landlords were represented. Not surprisingly, landlords won possession in 97% of the cases. Even more depressing over 50% of tenants defaulted and did not show up for the first hearing and were automatically evicted.

Over the years, we have not had many legislative efforts in Hawaii to improve tenant rights and make protections easier to assert successfully. SB2646 gives us that unique opportunity to begin a dialogue about changing that dynamic. **Bill 2646 makes two important improvements to tenant rights and protections.**

The first improvement is to **amend the current Landlord-Tenant Code to include the concept of the warranty of habitability.** The principle of warranty of habitability is based on contract law: the tenant is responsible for paying the rent, while the landlord guarantees in return that the premises are habitable and in compliance with health, safety, and building codes. If the landlord fails to fulfill these obligations, then the

tenant's rent can be reduced by an appropriate amount retroactively to the date of failure.

- **The “warranty of habitability” already exists in Hawai‘i law.** The Hawai‘i Supreme Court has made clear that “the tenant’s obligation to pay rent and the landlord’s duty to maintain the premises in habitable condition are mutually dependent.” Contracts are two-way streets: when tenants don’t receive the basic services to which they are entitled, landlords cannot require them to pay rent.
- **Some state courts don’t recognize warranty of habitability claims.** The Hawai‘i State Legislature has never codified the warranty of habitability. Because the warranty of habitability exists only in case law, it has gone largely unenforced, resulting in a great number of unjust and illegitimate evictions.
- For many tenants, the warranty of habitability represents the only hope of receiving critical repairs. Landlords are required to provide tenants with functional plumbing, electricity, hot water, pest-free premises, garbage disposal, and basic security. Nevertheless, some landlords ignore these obligations until a court intervenes. It is critical that tenants know the law is on their side when it comes to their fundamental rights.
- **Many other states have passed warranty of habitability laws.** For example: in California, the warranty of habitability has been passed into law. If a substantial breach is found—that is, if the tenant’s unit is unlivable due to the landlord’s negligence—the landlord cannot evict the tenant, provided the tenant pays any rent due based on the fair market value of the rental property.
- **Passing the warranty of habitability into law would do nothing more than reinforce current law and increase access to justice for Hawai‘i’s renters.** This would not be a novel addition to the law. Rather, it would simply work to ensure that cases are decided correctly and that tenants are not stripped of their rights.

The second improvement would be to **amend the Code to set minimum damages for retaliating against a tenant who requests repairs or reports health or safety code violations.**

- **Establishing minimum damages for retaliatory evictions would do nothing more than reinforce current law and increase access to justice for Hawai‘i’s renters.** It is already illegal for landlords to evict tenants for reporting sub-standard conditions. Minimum damages would simply give some teeth to the rules that already exist.
- **Anecdotal evidence suggests that retaliatory evictions are rampant in Hawai‘i.** Even though the law forbids it, tenants who complain about sub-standard conditions too often find themselves served with eviction notices from landlords who would rather not go to the trouble of bringing their rental units into compliance with health and safety regulations. This sort of retaliation is doubly harmful because it deters tenants from requesting repairs out of fear that doing so will put a target on their backs. Many tenants languish in unsanitary or unsafe units as a result.

- **Currently, the Landlord-Tenant Code puts the burden on tenants who have suffered retaliatory evictions to prove they are entitled to compensation.** Proving “damages” (the right to financial compensation) in court can be highly difficult, especially for tenants who are not familiar with the law, rules of evidence, and civil procedure. For this reason, most tenants never receive any form of compensation.
- **Clearly, retaliatory evictions are always damaging—at the very least, tenants must spend time and money fighting in court, and there are severe consequences associated with physical displacement.** Eviction directly fuels homelessness and leads to lower educational achievement, higher rates of crime, domestic abuse, and substance abuse, and poorer health outcomes generally.
- **Other states have recognized the inherently damaging nature of retaliatory evictions and established minimum damages for tenants who can show they were retaliated against.** Two months’ rent plus court costs represents a reasonable figure.
- **By establishing minimum damages for tenants who have suffered retaliatory evictions, the legislature would discourage landlords from retaliating against tenants.** Currently, landlords who retaliate against tenants do so with relative impunity. The promise of meaningful fines would be an effective deterrent to blatantly unlawful behavior.
- **A minimum damages level would also speed up trials, and give victimized tenants just compensation for the hardship they have endured.** Currently, it is almost never worth a tenant’s time to pursue a retaliatory eviction case. The prospect of numerous court hearings and complex procedural requirements, coupled with the very real possibility of receiving nothing at the end of case, is enough to deter even those with the strongest cases from exercising their rights. If tenants were assured of a least a minimum level of compensation for their time and effort, they would much more often receive their due.

I wish to thank the Senate CPH Committee for an opportunity to testify in strong support for SB 2646 and urge the Committee to pass the bill to improve tenant rights in the islands.

Aloha,

Victor Geminiani



**LATE**

Young Progressives Demanding Action  
P.O. Box 11105  
Honolulu, HI 96828

January 29, 2020

**TO: Senate Committee on Consumer Protection & Health**  
**RE: Testimony in support of SB2646**

Dear Senators,

Young Progressives Demanding Action (YPDA) advocates for public policies that reflect the values of young people throughout the State of Hawai'i. One of those values is a belief in the fundamental human rights of all people, one of which—we believe—is a right to housing. In a power dynamic like that between landlord and tenant, the imbalance is often so severe as to invite abuse. When this happens, YPDA believes it is the duty of the government to step in and create public policy that balances out the power dynamic, preventing further abuse.

We believe that SB2646 begins to correct the imbalance of power found between landlords and tenants in the State of Hawai'i. It accomplishes this by codifying the Hawai'i Supreme Court decision establishing a warranty of habitability—binding duties and responsibilities to which the landlord must adhere, and by providing recourse for retaliatory evictions.

The concept of the warranty of habitability is important because it creates a kind of contract between the tenant, who is responsible for paying the rent, and the landlord, who is responsible for keeping the premises habitable and in compliance with health, safety, and building codes. If the landlord fails to fulfill these obligations, then the tenant's rent can be reduced by an appropriate amount retroactively to the date of failure.

By combining this with amendments to the Landlord-Tenant Code to set minimum damages for retaliating against a tenant who requests repairs or reports health or safety code violations, the state can provide protections for tenants who are, too often, at an extreme disadvantage in the dynamic between landlord and tenant, and strike a better balance of power between the two parties, which is important for preventing abuse.

No one is saying landlords are inherently bad people, but the fact of the matter is that abuse does happen, and routinely. Not all of it is severe, and not all of it is intentional. But providing some form of protection for tenants can reduce the likelihood of any kind of abuse occurring.

Please pass SB2646 through your committee unamended. Mahalo.

Will Caron  
Co-Chair