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**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 Judiciary
Thursday, February 20, 2020
9:15 a.m.
State Capitol, Conference Room 016**

**On the following measure:
S.B. 2996, RELATING TO THE LANDORD-TENANT CODE**

Chair Rhoads 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 oftentimes 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.

February 20, 2020

The Honorable Karl Rhoads, Chair

Senate Committee on Judiciary

State Capitol, Room 016

Honolulu, Hawaii 96813

RE: S.B. 2996, Relating to the Landlord-Tenant Code

HEARING: Thursday, February 20, 2020, at 9:15 a.m.

Aloha Chair Rhoads, Vice Chair Keohokalole, 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 2996, 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.

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.

Also, 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.

Due Process Concerns:

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.

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.

Mahalo for the opportunity to testify on this measure.



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

Wednesday, February 19, 2020

Relating to the Landlord-Tenant Code
Testifying in Support

Aloha Chair and members of the committee,

The Pono Hawai'i Initiative (PHI) **supports SB2996 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 Judiciary (JDC)
From: Chinatown Gateway Plaza Tenant Association (CGPTA)
Date: Thursday, February 20, 2020, 9:15 a.m.
Place: Conference Room 016, State Capitol, 415 South Beretania Street

Re: Strong Support for SB2996, Relating to the Landlord-Tenant Code.

Aloha e Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee on JDC,

My name is Steve Lohse, I'm a constituent of Sen. Karl Rhoads and 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 affordable housing and Chinatown communities. On behalf of the CGPTA, thank you for this opportunity to submit the following written **Strong Support for SB2996**:

(1) Regarding habitability, the CGPTA hosted a House Meeting last year with our Resident Manager, and the discussion was entirely about maintenance. Work orders were going missing, resident frustrations and management defenses were heating up. At our CGPTA initiative, we were able to calm and sort this out, but what remedy do Hawaii's renter households have who do not have active tenant associations or lawyers to represent resident voice and landlord-tenant equity?

(2) Regarding retaliatory evictions, also last year, a vision-impaired CGP resident assisted an elderly neighbor to move a mattress in the freight elevator. She then received a threat of eviction for using the freight elevator, an over-the-top retaliatory threat for using a landlord-supplied/maintained service in a multi-dwelling-unit premises on a Sunday without the Resident Manager present. This upset resident appealed her treatment to our CGPTA, and I'm now appealing to you.

(3) In fact, the landlord-tenant equity that we needed in both situations already exists in Hawaii Supreme Court rulings! However, this principle is not yet formally recognized by the Lege and so not reliably enforced regarding habitability violations and retaliatory evictions. Realtors argue that the landlord-tenant equity that we seek amounts to unilateral tenant assertions. In truth, landlord-tenant equity corrects the current prevalence of unilateral landlord assertions!

Please, pass SB2996 to codify and protect landlord-tenant equity in Hawaii, where over 40% of all households statewide and over 50% of Honolulu households are renters. Thank you!

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



TO: Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary

FROM: Ryan Kusumoto, President & CEO of Parents And Children Together (PACT)

DATE/LOCATION: February, 20, 2020; 9:15 a.m., Conference Room 016

RE: TESTIMONY IN SUPPORT OF SB 2996– RELATING TO THE LANDLORD-TENANT CODE

We ask you to support SB 2996 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, and provides remedies for retaliatory evictions. We support this bill which aims to protect the rights of tenants, a majority of whom do not have additional time or resources to dedicate to fighting their case when faced with retaliatory evictions and for whom evictions could be detrimental to their futures. All Hawaii residents should be entitled to safe, stable housing.

- Tenants should not be subjected to sub-standard conditions of living nor should they be subjected to unfair treatment or retaliatory evictions when reporting health and safety violations to their landlords.
- Landlords have a responsibility to upkeep and maintain properties and adhere to all health and safety standards and building codes.
- A Hawaii 2018 *Lawyers for Economic Justice* study noted that in 2017 approximately 1,600-1,800 households were evicted.
- Evictions are a lose-lose situation for both landlords and tenants who are forced to invest both time and money into
- 42% of Hawaii residents are renters with Hawaii having one of the highest percentages of renter households in the nation.
- Many Hawaii renters are cost burdened (spending more than 30%, for many more than 50%, of their income on rent), which makes it difficult to have any disposable income let alone funds to spend on legal representation when faced with retaliatory evictions.
- The *Lawyers for Economic Justice* study also noted that when faced with evictions, these renters would need to also likely incur additional expenses (i.e. moving fees, new rental application fees, security deposit) that would put them further into a financial hole and perpetuate issues of poverty and homelessness in Hawaii.

- Establishing minimum damages for tenants who can prove they suffered retaliatory evictions would hopefully deter landlords from unlawfully retaliating against tenants and, in the case of retaliatory evictions, provide compensation for hardships tenants endured.

Parents And Children Together serves over 90% of individuals and families who are living in deep poverty. Many of the individuals and families we work with are hard-working, brave, resourceful and resilient. They work hard to make ends meet and amongst juggling school and/or work they also commit a lot of time to “agency time” (seeking out resources to support their families). These are individuals and families who are already living paycheck to paycheck or for whom, one setback could mean a snowball effect of “hard luck” which puts them back into the vicious cycles of poverty and possibly homelessness. It is important that we continue to support all the people of Hawaii and create fair laws that help our residents continue to live, work and secure hopeful and healthy futures here in our home state.

Founded in 1968, Parents And Children Together (PACT) is one of Hawaii’s not-for-profit organizations providing a wide array of innovative and educational social services to families in need. Assisting more than 15,000 people across the state annually, PACT helps families identify, address and successfully resolve challenges through its 18 programs. Among its services are: early education programs, domestic violence prevention and intervention programs, child abuse prevention and intervention programs, childhood sexual abuse supportive group services, child and adolescent behavioral health programs, sex trafficking intervention, poverty prevention and community building programs.

Thank you for the opportunity to testify in **support of SB 2996**, please contact me at (808) 847-3285 or rkusumoto@pacthawaii.org if you have any questions.



HAWAII APPLESEED
CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai'i Appleseed Center for Law and Economic Justice
In Support of SB 2996 – Relating to the Child Protective Act
Senate Committee on Judiciary
Thursday, February 20, 2020, 9:15 AM, in conference room 016

Dear Chair Rhoads, Vice Chair Keohokalole, and members of the Committee:

Thank you for the opportunity to testify in **strong support** of SB 2996, 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.

The bill amends the current Landlord-Tenant Code to include the basic concept of the warranty of habitability. The warranty of habitability is based on longstanding principles of 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 his or her 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 said “the tenant's obligation to pay rent and the landlord's duty to maintain the premises in habitable condition are mutually dependent.” Some Hawai'i state courts, however, have failed to 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 unjust and illegitimate evictions. 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 2996 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. It is already improper for landlords to evict tenants for reporting sub-standard conditions. Minimum damages would simply give some teeth to the rules that already exist.

We appreciate your consideration of this testimony. We urge you to pass SB 2996.

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.

LATE

SB-2996

Submitted on: 2/19/2020 8:45:51 PM

Testimony for JDC on 2/20/2020 9:15:00 AM

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

Comments:

Testimony of Victor Geminiani

Regarding SB2996, Senate Judiciary Committee

Thursday, February 20nd, 2020 at 9:15 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. **SB 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 at 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 Judiciary 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