



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
House Committee on Consumer Protection & Commerce
Wednesday, February 10, 2021
2:00 p.m.
Via Videoconference**

**On the following measure:
H.B. 1376, Proposed H.D. 1 - RELATING TO THE LANDLORD-TENANT CODE**

Chair Johanson and Members of the Committee:

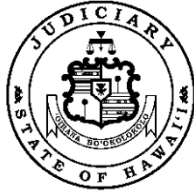
My name is Stephen H. Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection. The Department supports this bill.

The purposes of this bill are to: (1) extend the period for a notice of summary possession from five to fifteen days; (2) require landlords to enter into mediation and delays when a landlord may seek possession of a dwelling unit, if the tenant schedules or attempts to schedule a mediation; (3) require landlords to provide notice to the mediation centers that offer free mediation for residential landlord-tenant disputes; (4) restrict when a landlord may exercise these remedies depending on the amount of rent due; and (5) appropriate funds for the Office of the Administrative Director to administer required mediation. If enacted into law, the act will repeal one year after the expiration of the date of the final eviction moratorium imposed pursuant to a COVID-19 state of emergency declaration.

The Department supports proposed H.D. 1 because it builds into the summary possession of residential properties a mediation process to resolve issues related to the nonpayment of rent, up to one year after the expiration of the last eviction moratorium imposed, because of COVID-19. Mediation will encourage affected parties to reach a mutually beneficial resolution regarding a tenant's arrearages.

Additionally, the mediation process outlined in proposed H.D. 1 will benefit the Judiciary by reducing the huge number of summary possession cases it will need to dispose of, due to the COVID-19 pandemic.

Thank you for the opportunity to testify on this bill.



The Judiciary, State of Hawai'i

Testimony to the Thirty-First State Legislature, 2021 Session

House Committee on Consumer Protection & Commerce

Representative Aaron Ling Johanson, Chair

Representative Lisa Kitagawa, Vice Chair

February 10, 2021, 2:00 p.m.
State Capitol, Conference Room 329
VIA VIDEOCONFERENCE

by:

Mark M. Santoki

Acting Deputy Chief Court Administrator

First Circuit

WRITTEN TESTIMONY ONLY

Bill No. & Title: House Bill No. 1376 Proposed Draft 1–Relating to the Landlord-Tenant Code

Purpose: Extends the period for a notice of summary possession from five days to fifteen. Requires landlords to enter into mediation and delays when a landlord may seek possession of a dwelling unit if the tenant schedules or attempts to schedule mediation. Requires landlords to provide the notice to mediation centers that offer free mediation for residential landlord-tenant disputes. Restricts when a landlord may exercise these remedies depending on the amount of rent due. Appropriates funds for the office of the administrative director to administer required mediation. Repeals one year after the expiration date of the final eviction moratorium imposed pursuant to a COVID-19 state of emergency proclamation.

Judiciary's Position:

The Judiciary takes NO POSITION on this measure, but provides the following comments.

Mediation has always been used as an alternative for parties to resolve their cases without the necessity of a trial. This bill will allow for a process in which a landlord can begin eviction processes, but will also protect tenants and ensure the courts will not become overwhelmed with cases. Requiring mediation before a complaint may be filed with the court, rather than after a complaint is filed, will reduce the number of cases filed with the courts. By limiting the number of cases at returnable hearings, pretrial conferences, and trials, court resources can be used more efficiently. Requiring mediation before a complaint may be filed will also provide landlords and tenants with an opportunity to resolve their disputes before investing time and money into litigation.

Phasing in summary possession filings and prioritizing cases based on the length of the rent delinquency will provide for a more orderly disposition of cases. Expanding the notice period from 5 days to 15 days will give tenants additional time to cure any default by paying their rent or applying for rent relief to the extent such programs are available.

If the eviction moratorium is lifted without enactment of this bill, the Judiciary will likely be flooded with thousands of cases that our system will be unable to process in a timely manner.

With respect to Section 2, the Judiciary respectfully requests clarification through the following suggested revisions: ". . .for the **Judiciary to contract for** ~~office of the administrative director to administer the~~ mediation **services** required by this Act." The Judiciary has no comment on the amounts in Section 2.

Thank you for the opportunity to testify on this measure.

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
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Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura




Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 9, 2021

TO: Honorable Aaron Ling Johanson, Chair
House Committee on Consumer Protection & Commerce

FROM: 
Yuki Lei Sugimura
Councilmember

DATE: February 9, 2021

SUBJECT: **SUPPORT FOR HB 1376, RELATING TO THE LANDLORD-TENANT
CODE**

Thank you for the opportunity to testify in SUPPORT of this important measure. The purpose of this measure is to extend the period for a notice of summary possession to fifteen days following a failure to pay rent, to require landlords to enter into mediation, and delay when a landlord may seek possession of a dwelling unit if the tenant schedules or attempts to schedule mediation.

I SUPPORT this measure as it will help our communities get back to normal operations with evictions through mediation. The ongoing pandemic has created incredible hardship for both tenants and landlords, and requiring mediation works toward fair resolutions for failures to pay rent.

For the foregoing reasons, I SUPPORT this measure.

February 10, 2021

The Honorable Aaron Ling Johanson, Chair
House Committee on Consumer Protection and Commerce
Via Videoconference

RE: House Bill 1376, Relating to the Landlord-Tenant Code

HEARING: Wednesday, February 10, 2021, at 2:00 p.m.

Aloha Chair Johanson, Vice Chair Kitagawa, and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, testifying 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 **supports** House Bill 1376 which extends the period for a notice of summary possession from five days to fifteen. Requires landlords to enter into mediation and delays when a landlord may seek possession of a dwelling unit if the tenant schedules or attempts to schedule mediation. Requires landlords to provide the notice to mediation centers that offer free mediation for residential landlord-tenant disputes. Restricts when a landlord may exercise these remedies depending on the amount of rent due. Appropriates funds for the Office of the Administrative Director to administer required mediation. Repeals one year after the expiration date of the final eviction moratorium imposed pursuant to a COVID-19 state of emergency proclamation.

Due to the COVID-19 pandemic, through no fault of their own, thousands of Hawaii's residents have lost their jobs, which includes both housing providers and renters.

To address this, there has been an eviction moratorium in Hawai'i since April 16, 2020. Additionally, there is a federal moratorium until the end of March 2021. Also, the recently passed COVID relief package will provide an additional \$200 million to help both Hawai'i renters and housing providers. Ultimately, rental assistance programs are the most helpful because it helps renters who need their rents covered and it also help housing providers who may have also lost their jobs and rely on the income from the rental property.

At some point, the moratorium will have to end. HAR believes this measure is a workable solution that provides a balanced approach by encouraging communication between both the renter and housing provider. Furthermore, the mediation process can help both parties understand their options, such as possible rental assistance and help that is available.

Mahalo for the opportunity to testify.

**TESTIMONY IN SUPPORT OF HB 1376 (Proposed HD1) –
RELATING TO RESIDENTIAL LANDLORD-TENANT CODE**

House Committee on Consumer Protection and Commerce – Room 329 Via Videoconference

Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice Chair

Wednesday, February 10, 2021 at 2:00 p.m.

The Legal Aid Society of Hawai`i (Legal Aid) submits testimony in support of HB 1376 (Proposed HD1) – Relating to Residential Landlord-Tenant Code. For Legal Aid, this testimony is submitted by Dan O’Meara and I am the Managing Attorney of Legal Aid’s Housing and Consumer Unit, a unit that provides legal assistance on landlord/tenant and housing matters, as well as consumer issues. Since the start of the pandemic, our caseloads for landlord/tenant matters has doubled with over 900 cases being opened. We have been providing technical assistance on this issues, working with the Judiciary, social service organizations, government entities, foundations, and the bar to provide training and legal information, and to work on creating solutions to maintaining housing during this public health crisis.

The current environment for evictions due to non-payment has been, and will continue to be, very fluid. There is currently a State of Hawaii moratorium for evictions due to non-payment of rent and the Federal CDC eviction moratorium for non-payment of rent currently extends to March 31, 2021. However, the end date of these moratoriums has constantly been shifting and extended since March 2020. In addition, a variety of Federal stimulus packages have been passed and are proposed that will provide landlords and tenants rental assistance.

In light of the currently approved and proposed rental assistance programs, and the rental housing crisis, this bill provides flexible relief to tenants, landlords, the judiciary and the government and private agencies that have to address the potential of increased homelessness.

HB 1376 extends the 5-business day notice period for non-payment of rent to at least 15-days, 30 days if the tenant agrees to mediation. Once the eviction moratoriums end, this bill allows a last chance for the landlord and tenant to seek rental assistance or reach an agreement before an eviction occurs. This will allow an opportunity for a soft landing and allows the statutory timing flexibility to take advantage of any current or future Federal assistance. The bill also allows the landlord and tenant a formal trigger to mediate and negotiate a resolution, hopefully before any eviction has to occur.

The provisions of this bill would provide a minimum 15-days before an eviction is filed - even if the tenant does not appear in court and defaults. In a 2019 study, 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. This bill provides one last cushion before a tenant would give up and default. This bill is consistent with a public policy of working hard to preserve housing.

Subsection (h) staggers the number of evictions by staging the evictions sooner for tenants who are further behind on their rent. This will help to avoid an all at once flood of eviction filings in the court. And the extra time will encourage tenants to become more current on their rent to avoid eviction. This section is a valuable part of the protections for all parties involved. The phasing of evictions is reflective that the pandemic, economy, and a tenant's ability to pay rent have varied for a year and will continue to vary over the next year through mindful legislation.

One subsection needs a one-word change, essentially a meaningful typo. Subsection (b)(9) needs the change reflected in the strike-through and **red** – a change of “or” to “and”:

(9) That the landlord or landlord's agent may file an action for summary possession if the rent due is not paid ~~or~~ **and** if mediation is not scheduled within fifteen calendar days, regardless of whether the scheduled mediation session occurs within the fifteen calendar days, after receipt of the fifteen calendar day notice;

HB 1376 will be a valuable tool to mitigate the impact of a flood of evictions. This bill also provides a mechanism to help lessen an eviction crisis in a thoughtful manner through legislation. Thank you for this opportunity to provide testimony. Legal Aid supports HB 1376 (Proposed HD1).

Sincerely,

/s/ Daniel J. O'Meara
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 2020 provided legal assistance to over 7,300 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.

LATE

HB-1376

Submitted on: 2/9/2021 2:16:48 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Catherine M Matthews	Callahan Realty, Ltd.	Support	No

Comments:

The Honorable Aaron Ling Johanson, Chair House Committee on Consumer Protection and Commerce

RE: House Bill 1376, Relating to the Landlord-Tenant Code

HEARING: Wednesday, February 10, 2021, at 2:00 p.m.

Aloha Chair Johanson, Vice Chair Kitagawa, and Members of the Committee,

Thank you for allowing me to submit testimony in favor of this Bill. I have personally witnessed many good residents of our state, tenants and property owners alike, go through serious financial hardship through no fault of their own as a result of the COVID-19 pandemic. I support this bill as it provides for mediation and delays when a Landlord can seek possession of their unit as long as mediation is sought. Furthermore, the restrictions based on amount due are sound and fair given the current situation.

Most importantly there is a new very large relief package on it's way. The relief package helps tenants pay their rent and the property owners that cannot pay their mortgages and other bills as result of not receiving rent. Many small property owners have lost jobs themselves and without the rental income cannot sustain thier own financial obligations. The finite term of the period allows for all those involved to expeditiously seek relief and understand remedies available to them.

Respectfully Submitted,

Catherine M Matthews

DAVID W.H. CHEE

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Honolulu, Hawaii 96813
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February 9, 2021

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Aaron Ling Johanson, Chair
Rep. Lisa Kitagawa, Vice Chair

Re: HB 1376-RELATING TO THE LANDLORD-TENANT CODE

Dear Representatives:

I am writing in support of HB 1376 H.D.1.

I am an attorney practicing landlord-tenant law. I have been doing this work for 28 years.

Presently, the Governor has ordered an eviction moratorium that prevents eviction of tenants for nonpayment of rent. While this has allowed tenants to stay in their homes even if they do not pay their rent, this situation has allowed Hawaii renters to run up debts to their landlords. These debts have not been forgiven by the moratorium and will allow tenants to be evicted once the moratorium ends. If the promised Federal rental-relief money is not wisely and widely distributed, there will be a lot of evictions.

The State needs a plan to avoid a potential crush of evictions. Fortunately, this bill provides a viable plan. The first part of the bill, sections (a) through (g), provides an eviction-diversion program that requires landlords to attempt mediation with their tenants before an eviction action is filed. This is the most important part of the bill since, if the mediation is successful, there may be no need for an eviction at all. Landlords and tenants can avoid the costs and disruption that an eviction will cause.

If mediation is not successful, then section (h) of the bill provides for a phased return to eviction actions, starting with tenants whose balances exceed four months' rent. You will note, however, that even section (h) is, itself, an eviction diversion program in that every tenant in the State can avoid eviction by paying their rent balance down, over time, below the thresholds stated in paragraphs (h)(1)-(4). For example, if a tenant owes five months' rent in April, they can avoid eviction if they get their debt down to less than four months' rent by May 1, 2021. They can again avoid eviction by reducing their debt to less than three months' rent by July 1, 2021, less than two months' rent by September 1, 2021, and less than one month's rent by November 1, 2021. This bill will, in essence, put all tenants in the entire State of Hawaii on a reasonable payment plan and allow tenants to avoid eviction. Evictions will be reserved for only those tenants who are causing the most financial damage to their landlords.

This bill, if adopted, will not make many landlords happy. Landlords have invested their time, energy, and money in the homes they provide to their tenants, and they have watched as the Governor's moratorium has taken away their incomes and their ability to control their losses. This bill does not relieve that loss. However, it offers a path to normalcy and allows landlords to address those tenants with the largest debts first. As difficult as it may be for some landlords to accept, this bill offers the most reasonable alternative we have to the seemingly endless moratorium.

This plan will allow the many residential tenants in the State to keep their homes while giving landlords back some control. I encourage the legislature to adopt this bill.

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Aaron Ling Johanson, Chair

Rep. Lisa Kitagawa, Vice Chair

February 9, 2021

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Please let me know if you have any questions.

Very truly yours,

/s/ David Chee

David W.H. Chee

HB-1376

Submitted on: 2/9/2021 1:56:25 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph E Cardoza	Individual	Support	No

Comments:

Chair: Hon. Aaron Ling Johanson, Chair

Vice Chair: Hon. Lisa Kitagawa, Vice Chair

Committee: House Committee on Consumer Protection & Commerce

Testimony of: Joseph E. Cardoza

Organization: None

Hearing Date: Wednesday, February 10, 2021

Hearing Time: 2:00 p.m.

Place: Via Videoconference

Conference Room 329

Hawai'i State Capitol

415 South Beretania Street

Honolulu, Hawai'i

House Bill: HB No. 1376, Proposed HD1

Position: Testimony in Support of HB No. 1376, Proposed HD1

I am submitting this testimony in my individual capacity and in support of HB No. 1376 and Proposed HD1.

HB No. 1376 and Proposed HD1 are designed to address, for a limited time, the unique and challenging circumstances presented by the Coronavirus Pandemic and its impact on rental housing in Hawai'i. When combined with the federally funded rent relief program that will make rent assistance available dating back to March 2020, HB No. 1376 and Proposed HD1 create an equitable balance for landlords and tenants. HB No. 1376 and Proposed HD1 will provide landlords and tenants with the opportunity to mediate prior to landlords filing an eviction case. This will give landlords and tenants the chance to explore all options in order to survive this difficult period. Without this bill, the outcome could be serious for all concerned, including landlords, tenants, and the community.

For the foregoing reasons, I support HB No. 1376 and Proposed HD1.

Thank you for the opportunity to submit this written testimony. I do not plan to testify during the videoconference hearing.

HOUSE OF REPRESENTATIVES
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Aaron Ling Johanson, Chair
Rep. Lisa Kitagawa, Vice Chair

HEARING: Wednesday, February 10, 2021
2:00 p.m.
VIA VIDEOCONFERENCE
Conference Room 329
State Capitol
415 South Beretania Street

HB1376: Relating to the Landlord-Tenant Code Bill

TO THE HONORABLE AARON LING JOHANSON, CHAIR AND THE
HONORABLE LISA KITAGAWA, VICE CHAIR AND MEMBERS OF THE COMMITTEE

My name is Tracey Wiltgen and I am writing in support of HB 1376. The purpose of this bill is to encourage landlords and tenants to engage in mediation and negotiate payment plans that will benefit both landlord and tenant, and ultimately prevent a flood of evictions in the courts that would lead to thousands of tenants and their families losing their residences and becoming homeless.

Due to the Coronavirus pandemic, a moratorium was created to protect tenants financially impacted by the economic downturn caused by the pandemic, and keep them in their homes. While the spirit of the moratorium supports the needs of tenants, due to the longevity of the pandemic and the accompanying lengthening of the moratorium, landlords have suffered financially, as many have received little or no rent to cover their own expenses to maintain the property and in many instances, make the mortgage payments on the property. It has been almost one year since the moratorium was initiated. As a result, many landlords, as well as tenants, have been significantly impacted financially over the past year. When the moratorium ends, there could be a flood of eviction filings necessitated by the fact that landlords have suffered significant loss. This scenario would overwhelm the courts and ultimately end with many tenants being evicted without anywhere to go, thereby further increasing an already large homeless population in the State.

HB 1376 proposes three key actions that would help to prevent a flood of evictions and more importantly, support the future financial stability of both landlords and tenants. First, HB 1376 proposes lengthening the period of notice before a landlord can initiate an eviction proceeding from 5 to 15 days, giving the tenant more time to prepare for negotiating a payment plan or alternately, finding a new place to live. Second, HB 1376 requires the tenant to engage in

mediation with the landlord. And finally, HB 1376 proposes a staggered process for filing evictions based on the amount of back rent owed. These three key components of HB 1376 are critical steps in avoiding a flood of evictions that would ultimately lead to more families becoming homeless.

The 15-day notice gives tenants time to receive the notice when they live in a rural area in which they infrequently pick up their mail from a P.O. Box, or in other instances, don't understand the meaning of the notice and may need to seek the help or advice of family, friends, interpreter, legal counsel, or other resources.

The requirement of mediation provides landlords and tenants with the opportunity to engage in safe, productive conversations with the help of an impartial mediator, to discuss realistic options of negotiating payment plans for back rent, reduced rent moving forward, forgiveness of back rent for moving out, workout options for rent owed, and many other creative solutions that would save both landlord and tenant the time and stress from fighting it out in court. In these challenging economic times, working out a resolution that maintains a valuable tenant for the future and enables a family to stay in their residence, can be a win for the people involved, as well as the community in which they reside.

Finally, the staggered process for filing evictions based on the amount of back rent proposed by HB 1376 is essential for preventing a flood of eviction filings when the moratorium ends. According to the data from the UHERO landlord survey and the Census Pulse data, approximately 8% of renters, or 14,800 families, are between one and six months behind in their rent for a total of approximately \$54,316,000. If the moratorium were to lift on February 14th, the current deadline for the ending of the State moratorium, and the landlord of every tenant behind on their rent filed for eviction, then thousands of families would end up homeless. With the staggered process, increased notice, and requirement for participating in mediation, landlords and tenants will be incentivized to engage in conversations that can lead to negotiated agreements that support realistic payments to landlords and secure housing for the tenants, or alternately, payment plans that help offset the current heavy financial burden of many landlords, and debt-free path forward for tenants.

The Coronavirus and the accompanying collapse in Hawaii's economy has created a state of emergency that requires creative thinking and collaborative action that will enable everyone to move forward and ultimately survive and thrive. HB 1376 is an example of such creative thinking and collaboration that is designed to assist landlords and tenants. Your favorable approval of HB 1376 is essential. Passage of this bill will be a major step toward supporting tenants and landlords and re-strengthening Hawaii's communities.

Sincerely,

Tracey S. Wiltgen

Tracey S. Wiltgen