



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Consumer Protection & Commerce
Friday, February 12, 2021 at 2:00 P.M.
Via Videoconference**

RE: HB 391, HD 1, RELATING TO THE RESIDENTIAL LANDLORD TENANT CODE

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

The Chamber of Commerce Hawaii ("The Chamber") **supports the intent** of HB 391, HD 1 which establishes a process for the early termination of a rental agreement for certain active duty servicemembers who receive military orders to vacate civilian housing and move into on-post government quarters; become eligible to live in on-post government quarters and failure to move into on-post government quarters will result in a forfeiture of basic allowance for housing; or die while serving on active duty.

The Chamber's Military Affairs Council (MAC) was established in 1985 to specifically advocate on behalf of Hawaii's military as it is the second economic driver for the State of Hawaii, comprised of business leaders, state and local officials, non-profit organizations, community leaders and retired U.S. flag and general officers to advocate and liaison with the military commands.

Hawaii's local military personnel and their families, having sacrificed in serving our country and our communities, frequently change housing, deploy overseas, or change work station. HB 391, HD 1 offers servicemembers and their families the ability to move to on-base housing when a unit becomes available.

As such, the ability to terminate off-base rental agreement with proper notice, verified documentation, and other proper certification to the landlord is reasonable and will help free up much needed rental units for local residents.

Thank you for this opportunity to provide testimony.

HB-391-HD-1

Submitted on: 2/10/2021 5:17:41 PM

Testimony for CPC on 2/12/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Estevan Montano	Individual	Support	No

Comments:

Salutations,

I am Estevan Montano and I would like to submit testimony in support of HB391. I am a Soldier currently stationed in Hawaii. In my profession, across many states and foreign countries I have seen Soldiers forced into barracks by their commands pursuant to Army regulations. When this happens they terminate the Soldier's allowance for housing. This has in multiple cases caused the Soldier to terminate a lease with heavy penalties and pay money they do not have. This would impact so many Soldier's especially here on Oahu. There are many military installations on Oahu and some of them have little or no barracks space for single Soldiers. These Soldiers usually end up being authorized a housing allowance to allow them to live close to where they work. One good example is Tripler Medical Center. Each of the Soldiers in Tripler is assigned to a base, like Schofield Barracks. They have duty at the hospital each day. Instead of giving them a barracks room at Schofield Barracks and force them to make that 25-45 minute commute (traffic dependent) they allow them to live locally or in on post family housing.

In summary, this would truly help a lot of Soldiers for many years. A Soldier's circumstances change a lot more than the average person, and because of that I personally believe it requires a little more consideration. This would save Soldier's thousands of dollars of penalties that were caused by circumstances beyond the Soldier/consumers control that were brought on do to military necessity.

Thank you for your consideration and time. I sincerely appreciate it.

Estevan Montano

TO: Hawaii State Legislature
FROM: Cassandra Chang
SUBJECT: Support of HB391
DATE: 11 FEB 2021

I support HB391. This Bill is necessary to protect our servicemembers. In some circumstances, servicemembers may be required to return to the barracks and their housing allowance discontinued regardless of their lease obligations in town. If they try to terminate their lease early, they can be subject to heavy penalties and thus placed in a very dangerous financial situation. This is a stress that can compromise their ability to concentrate on their warfighting duties. Please take care of our servicemembers and thank you for taking the time to consider this matter.

DAVID W.H. CHEE

Attorney at Law
1001 Bishop Street
ASB Tower, Suite 585
Honolulu, Hawaii 96813
Facsimile No. 808-208-8689

David W.H. Chee
Telephone: 808-539-1150
Email: dchee@dcheelaw.com

Christine S. Prepose-Kamihara
Telephone: 808-784-4963
Email: cprepose@dcheelaw.com

February 11, 2021

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

Re: HB 391, HD 1 - RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

Dear Representatives:

I am an attorney who practices in the field of landlord/tenant law, including residential matters. I have over 28 years' experience in the area and my clients manage over 10,000 residential dwellings across the State of Hawaii.

I am writing regarding the above-referenced bill, which appears to supplement the Federal Servicemembers Civil Relief Act ("SCRA"). Under the SCRA, a servicemember may terminate a term rental agreement without penalty if they receive deployment orders for a period of at least 90 days or receive permanent change of stations orders that require the servicemember to relocate.

Importantly, if a servicemember exercises this right under the SCRA, once proper notice is provided to a landlord, the termination becomes effective 30 days after the next time rent payment is due. For example, if a servicemember provides notice and proper documentation to their landlord on February 15th, the termination will become effective March 31st, as the next time rent will be due is March 1. This balances the need for a servicemember to terminate a rental agreement because of a change in their duty, while allowing landlords to attempt to mitigate any damages caused by the tenant departing mid lease.

For a landlord, finding a new tenant can be a time consuming and expensive task. In order to get a unit re-rented, a landlord needs to clean and repair any damage left by the preceding tenant, advertise the unit, review applications, expend the cost to run criminal and credit checks and pay any leasing commissions that are incurred. If this process cannot be completed quickly, a landlord loses rent during the time the unit sits vacant.

It is for this reason that many landlords incentivize term leases. Landlords will generally offer discounted rent in exchange for a commitment to remain a tenant for a term of a year, thereby amortizing the cost of finding that tenant. For a landlord, this assurance of a term lease is important because it means that they will not need to expend the time and cost of finding a replacement tenant for at least a year. For a tenant, a term lease may provide less flexibility, but will offer a discount in rent. When flexibility is more important to a tenant, they have the option to enter into a month to month lease where they have the right to terminate on just 28 days' notice.

Like all contracts, once a landlord and tenant enter into a rental agreement, they are generally bound by its terms. The SCRA offers a narrow exception to that rule because of circumstances that are not knowable and beyond the control of a servicemember when they enter into their rental agreement. Specifically, the SCRA allows a servicemember to terminate a term lease because of their duties as a servicemember, not for any personal reasons unrelated to their work. This legislation seeks to do something much different.

HB 391, HD 1, if passed, would allow a servicemember to terminate a lease upon any order to vacate civilian housing. This is problematic.

I have seen several instances where a servicemember was required to vacate civilian housing and move onto post government quarters as a result of a disciplinary action or court martial against the servicemember. For example, I have seen servicemembers accused of abusing their spouses receive orders to vacate their home and live on base as a protective measure for the spouse. Under the current bill, this would be covered and allow for termination of a lease without penalty. A disciplined servicemember will receive a benefit at the expense of the landlord. Additionally, the spouse may be left without a home if he/she cannot independently support the rent.

Similarly, I have also seen a command issue an order to a servicemember to live on post government housing because the servicemember was not happy with his current housing and simply requested the order. It was not related to the need of the servicemember to live on post government housing, but related to their desire to no longer live at their current rental.

Based on the testimony and committee reports previously submitted on this Bill, it appears that the legislature is seeking to address a very specific scenario where a servicemember gets divorced during the term of their lease and as a result is required to live on post government housing. In such case, the termination would result not from the servicemember's duties as an active duty member of the military, but from personal reasons that are beyond the control of both the landlord and the military. If the legislature wishes to offer this additional protection to divorced servicemembers, then the legislation should be narrowly tailored for that purpose. As currently drafted, this bill offers the potential for much abuse.

In such case, for continuity, the legislature may want to adopt the notice requirements already made part of the SCRA wherein once proper notice is given, termination becomes effective 30 days after the next time rent is due. Otherwise, a divorcing servicemember will have greater protections than deployed servicemembers.

Additionally, this bill seeks to allow a servicemember to terminate a month to month tenancy, for similar reasons, by giving 15 days' notice. In Hawaii, a month to month tenant can already terminate a lease on 28 days' notice. A time period the legislature has previously deemed an appropriate and equitable notice period. It is unclear why the standard month to month termination notice would not be appropriate in this situation. Particularly since the legislation

Rep. Aaron Ling Johanson,
Chair Rep. Lisa Kitagawa, Vice Chair
Re HB 391, HD 1- Relating to the Residential Landlord Tenant Code
February 11, 2021
Page 3

proposes a 30 day notice period for a servicemember under in the same circumstances, but with a term lease.

Finally, the legislation provides for the ability to terminate the rental agreement of a servicemember who dies during active duty. Such protections are already provided for in the SCRA.¹

More study is necessary before the State of Hawaii changes its laws. This proposed legislation will result in difficult consequences for many landlords and for military dependents and consideration should be given to their needs too.

Thank you for the opportunity to submit testimony on this Bill.

Very truly yours,

/s/ David Chee

David W.H. Chee

¹ See Section (a)(3) of 50 U.S. Code § 3955 - Termination of residential or motor vehicle leases.

HB-391-HD-1

Submitted on: 2/11/2021 11:40:04 AM

Testimony for CPC on 2/12/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Levi K. Hookano	Individual	Support	No

Comments:

Aloha Chair Johanson, Vice-Chair Kitagawa, and Members of the House Committee on Consumer Protection and Commerce:

I am testifying in strong support of HB391. I am testifying in my personal capacity and my views do not reflect the position of the Army or the United States Army Judge Advocate General's Corps.

The greatest beneficiaries of this bill will be our junior enlisted Servicemembers, who are the most vulnerable military population. Passing this bill will help them to focus on their mission to fight and win the nation's wars, instead of focusing on how they will make rent on a home they can no longer afford while still paying for necessities. It will also prevent unnecessary troubles for both the Servicemember and landlord. Similar laws are already on the books in Florida, Georgia, and Washington.

Passing this bill will have a positive impact on thousands of Servicemembers, allowing them to focus on their mission. The most common situation where a Servicemember will need to terminate a lease early under this bill is when a junior enlisted Servicemember gets divorced and must move into the barracks. From 2015 – 2020, the Schofield Barracks Legal Assistance Office assisted more than 1,950 Servicemembers and dependents, in the grades of E1-E5, with divorce or separation related matters. In the event of a divorce where these Servicemembers no longer have any dependents, or they do not get physical custody of any children, they will be required to move into the barracks, regardless of any valid lease that is signed. Unless an exception to policy is granted by the command, the Servicemember will lose their housing allowance and will likely not be able to afford their rent any longer.

This bill ensures that Servicemembers will not have to face evictions or serious financial hardship if they are no longer eligible for basic housing allowance through no fault of their own. A junior enlisted Servicemember, in the grades of E1-E5, with less than 4 years of service in the military, has base pay ranging from \$1,732 - \$2,891/month (CY2020). According to Zillow, the average rent in Honolulu is \$2,349. These Servicemembers will face intense financial struggles if forced to pay penalties or remain in the home for the duration of their lease.

The penalties for early termination of a lease can be significant and is a lose-lose situation for Servicemembers and landlords. Under the current landlord tenant code, the tenant shall be liable to the landlord for the lesser of the following amounts for vacating the home before the lease is over:

(1) The entire rent due for the remainder of the term; or

(2) All rent accrued during the period reasonably necessary to re-rent the dwelling unit at the fair rental, plus the difference between such fair rent and the rent agreed to in the prior rental agreement and a reasonable commission for the renting of the dwelling unit.

A landlord would have a tenant that is unable to pay the rent, or any penalties, and have to go through the trouble and additional costs to either evict or go through collections on these Servicemembers. The Servicemember would take a significant hit to their finances and credit, which could adversely affect their career, especially if they hold a security clearance. The time, efforts, costs, and impacts of this situation has no benefits to landlords and Servicemember tenants.

It is for these reasons that I strongly urge this committee to recommend moving HB391 forward with a positive recommendation.

HB-391-HD-1

Submitted on: 2/11/2021 11:49:24 AM

Testimony for CPC on 2/12/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sara Jarman	Individual	Support	No

Comments:

The following testimony comes from someone who has worked with soldiers over the past several months, advising soldiers as their counsel, on their various landlord tenant issues. The particular issue discussed below, is one that I have seen frequently.

This legislation generally, would be of tremendous benefit to soldiers for a myriad of reasons, but one population it would be particularly advantageous for is that of junior enlisted soldiers. For example, when a junior enlisted soldier is going through a divorce, they are generally required to go back and live at the barracks, and that means terminating a lease mid-way or at the beginning. This forces them to pay off the remainder of the lease with the meager pay they already make, in a place they are no longer living, sometimes even creating a situation where they have to pay for their ex-spouse's living situation at their old apartment as they cannot break the lease. Whereas in civilian life, couples have more liberty in what their living situation looks like following divorce or separation, in a military situation, there typically is less freedom. As illustrated earlier, if there is a junior enlisted spouse, that individual will likely have to go back to the barracks, being forced to pay out the remainder of their lease at an apartment they do not live at anymore. Considering the landlord's situation as well, the thirty-day notification period provided for in the legislation, allows ample opportunity for the landlord to find a new tenant, without losing income they would have otherwise received.