

March 18, 2021

The Honorable Clarence Nishihara, Chair

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce and Consumer Protection

Via Videoconference

RE: House Bill 391, HD3, Relating to the Residential Landlord-Tenant Code

HEARING: Thursday, March 18, 2021, at 1:00 p.m.

Aloha Chair Nishihara, Chair Baker, and Members of the Joint Committees,

I am Tracy Leverone, Member of the Government Affairs Committee, 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 **opposes** House Bill 391, HD3, 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, and failure to move into on-post government quarters will result in a forfeiture of Basic Allowance for Housing ("BAH"); or who die while serving on active duty.

Hawai'i REALTORS® appreciates our servicemembers and their service to our country. Under current federal law, the Servicemembers Civil Relief Act ("SCRA") already provides legal protections for a servicemember to cancel a Rental Agreement, which includes being deployed or if a servicemember unfortunately dies while in military service. Federal law recognizes these protections for service members to address situations that occur while in the service of their country.

HAR would note that the Rental Agreement is a legally binding contract between two parties. Tenants, and not just servicemembers, unfortunately deal with the issue of divorce or numerous other reasons why they must move out before a Rental Agreement term expires. Communication is key between the housing provider and the tenant. In situations where a tenant must move, it is not uncommon for the housing provider or property manager to work with the tenant or the tenant could pay an early termination fee, which is set forth by the Rental Agreement. As such, HAR believes this measure is unnecessary, especially since it is regulating a private contract between two parties.

HAR would further note that with this may have the unintended consequence of discouraging renting to our military knowing that they could void the Rental Agreement if required to move to on-base housing, especially with a 15-day notice requirement to terminate a rental agreement contained in this measure.

If the Committee is inclined to pass this measure, we would respectfully request a November 1 effective date. This would allow HAR to make amendments to the Rental Agreement and educate our members on the new provisions.

Mahalo for the opportunity to testify.

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HB-391-HD-3

Submitted on: 3/15/2021 9:45:05 AM

Testimony for PSM on 3/18/2021 1:00:00 PM

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

Comments:

Aloha Chairs Nishihara and Baker, Vice-Chairs English and Chang, and Members of the Committees:

I am testifying in strong support of HB391, HD3. 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. I support this committee making the following amendment to HB391 HD3:

1. Amending HB391 HD3, to address landlord concerns for the timeline of breaking a month-to-month lease. Paragraph (b) should be amended to read: "...provided that the servicemember tenant submits at least ~~fifteen~~ twenty-eight days written notice to the landlord." This gives the landlord more time to prepare and find a new tenant.
2. The same type of amendment should be made to paragraph (d) to amend the notice from a family member terminating a lease to the landlord when a Servicemember tenant dies during active duty from fifteen days to 28 days.
3. Additionally, paragraph (d), allowing termination of a lease by a deceased Servicemember's family member, should be amended to include a deceased Servicemember's personal representative if there is a will. Although the Servicemembers Civil Relief Act (SCRA) includes a provision that allows the spouse of a deceased Servicemember to terminate a residential lease, it does not allow for any other member of the family or a personal representative to do so. Specifically, the SCRA states: "The spouse of the lessee on a lease described in subsection (b) may terminate the lease during the one-year period beginning on the date of the death of the lessee...." 50 USC §3955(a)(3). It should also be noted that the SCRA allows a spouse to terminate a residential lease if a Servicemember suffers catastrophic illness or injury. I would support such an inclusion in this bill as well.
4. I also support an amendment to paragraph (f) to increase the notice requirement of early termination from a landlord to non-terminating tenants who fail to demonstrate an ability to pay the rent from fourteen days to at least 28 days. For month-to-month leases, a landlord is currently required to give at least 45 days notice if the landlord is terminating a lease.

The reasons why it is important for a Servicemember to be allowed to break an off-post lease if they will lose their housing allowance are outlined below.

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 and prevent unnecessary troubles for both the Servicemember and landlord. Similar laws are already on the books in Florida, Georgia, and Washington.

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 and necessary living expenses.

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. 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 \$1,785 - \$2,844/month (CY2021). 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 will result in a lose-lose situation.

I would also like to clarify that the provisions in this bill are not covered by the Servicemembers Civil Relief Act or Hawaii's Civil Relief for State Military Forces. These laws allow for a Servicemember to break their lease early when they are mobilized for active duty to deploy for at least 90 days or receives orders for a permanent change of station to another duty location. The SCRA also allows the spouse of a Servicemember to break a lease if the Servicemember dies while on active duty or suffers a catastrophic illness or injury, but not any other family member or personal representative. See 50 U.S.C. § 3955 and Haw. Rev. Stat. § 657D-25.

It is for these reasons that I strongly urge this committee to recommend moving HB391 HD3 forward with amendments. Mahalo for all of your time and commitment to Hawaii.

HB-391-HD-3

Submitted on: 3/12/2021 4:44:12 PM

Testimony for PSM on 3/18/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Goljuch, Sr.	Individual	Support	No

Comments:

I definitely support HB391.

HB-391-HD-3

Submitted on: 3/16/2021 2:56:40 AM

Testimony for PSM on 3/18/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Azuma Chrupalyk	Individual	Comments	No

Comments:

The military should not be living in civilian homes. 100% of them should be housed on the base.

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March 17, 2021

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
Senator Clarence K. Nishihara, Chair
Senator J. Kalani English, Vice Chair

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

LATE

Re: HB 391, HD 3 - RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

Dear Representatives:

I previously submitted testimony on this bill and am writing to supplement my prior comments.

As I have previously testified, I oppose this bill because it will hurt landlords and make landlords reluctant to rent to servicemembers.

This legislation, if enacted, would allow a servicemember who has executed a rental contract for a specific term to break their rental contract, without penalty, by giving a landlord 30 days' notice. This will, in all likelihood, cause financial damage to a landlord who has relied on their renter to fulfill the terms of their lease contract. It will also create financial risk for landlords who rent to servicemembers, since they will no longer be able to rely upon the lease commitments of servicemembers.

I anticipate that landlord will either avoid such financial risk by no longer renting to servicemembers, or mitigate their risk by either charging a higher rental rate or only offering short term leases. That will potentially cause housing instability for servicemembers who plan to live here for the long term.

If the legislature wants to pass this bill, however, I suggest that you insert a requirement that the servicemember seeking to be relieved of his/her rent obligations be required to first ask their commander to keep his/her housing allowance before giving notice. I understand from prior legislative testimony that once a servicemember receives notice that their housing allowance will be terminated and they will be required to live on base, they have the ability to petition their command for an exception. If such an exception is granted, the servicemember will maintain his housing allowance and will be allowed to live out the term of his rental contract. A result that would benefit both the servicemember and their landlord.

The language of the bill should be modified as follows (starting at page 2):

1 (1) Receives military orders requiring the servicemember

Senator Clarence K. Nishihara, Chair
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2 tenant to vacate civilian housing and move into
3 on-post government quarters; and
4 (2) Failure to move into on-post government quarters will
5 result in a forfeiture of the servicemember tenant's
6 basic allowance for housing;
7 provided that the servicemember tenant submits at least thirty
8 days written notice to the landlord and also submits proof to the
landlord that the servicemember unsuccessfully petitioned the servicemember's
commander to maintain the housing in the rented unit for the duration of the
rental agreement.

Thank you for the opportunity to submit testimony on this Bill. Please let me know if you have any questions.

Very truly yours,

/s/ David Chee

David W.H. Chee