



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Judiciary  
Tuesday, February 23, 2021  
9:45 a.m.**

**On the following measure:  
S.B. 35, S.D. 1, RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE**

**WRITTEN TESTIMONY ONLY**

Chair Rhoads 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 (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 failure would result in a

dwelling unit becoming uninhabitable, this bill will incentivize landlords to keep their rental unit safe and sanitary.

Under Hawaii law, a tenant has the legal right to request necessary repairs without being evicted. If the landlord does not respond to the tenant's written repair request within 12 business days, the tenant can deduct up to \$500 from the following month's rent for the cost of repairs. 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.

Section 3 of this measure establishes a clear standard of damages for tenants who fall victim to retaliatory evictions. Other states, like California, already have minimum damages for tenants who were illegally retaliated against for asserting their lawful rights. In this regard, two months' rent plus court costs represents a reasonable figure, especially when compared to damage claims under current landlord-tenant law. An unlawful eviction is treated in the same manner as an illegal lockout, which provides for damages in an "amount equal to two months' rent" for victimized tenants<sup>1</sup>. In view of the foregoing, establishing statutory minimum damages for tenants will be in the interests of justice and will deter unscrupulous landlords from engaging in unlawful conduct.

Thank you for the opportunity to testify on this bill.

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<sup>1</sup> Hawaii Revised Statutes section 521-63.

February 23, 2021

**The Honorable Karl Rhoads, Chair**

Senate Committee on Judiciary

Via Videoconference

**RE: Senate Bill 35, SD1, Relating to the Residential Landlord-Tenant Code**

**HEARING: Tuesday, February 23, 2021, at 9:45 a.m.**

Aloha Chair Rhoads, Vice Chair Keohokalole, 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 **strongly opposes** S.B. 35, SD1, 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.

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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.



## SB 35, SD 1, RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

FEBRUARY 23, 2021 · SENATE JUDICIARY  
COMMITTEE · CHAIR SEN. KARL RHAODS

**POSITION:** Support.

**RATIONALE:** Imua Alliance supports SB 35, SD 1, relating to the residential landlord-tenant code, 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.

Hawai'i is facing a looming eviction crisis. During COVID-19, unemployment skyrocketed to levels not seen since the Great Depression. A recent study found that our state is experiencing the slowest unemployment rate recovery in the nation, moreover, with our rate hovering at approximately 9 percent in December. Thousands of people who haven't lost their jobs have instead seen their employment hours and earnings slashed, as the economic downturn lingered throughout 2020 and into the new year.

Financial precarity has become the norm for many families, who are unable to pay their full rent and have accumulated rental debts. Currently, the state's eviction moratorium protects these families from being removed from their homes. Yet, the eviction moratorium will eventually expire as the public health emergency passes, leaving thousands of people at risk of losing their housing.

**Retaliatory evictions are a real threat for renters who've been harmed by the recession and are navigating a path back to financial and housing security, especially low-income families who are relying on expiring rental subsidies to survive.**

Today, **our state's ongoing lack of affordable housing exacerbates the economic insecurity suffered by local families, which sex traffickers use to prey upon potential victims with false promises of financial stability and prosperity.** Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Researchers who authored the National Low Income Housing Coalition's *Out of Reach 2020* report found that a full-time worker would need to earn \$38.76/hour to afford a two-bedroom apartment at fair market value in our state, with Honolulu experiencing a 67 percent increase in fair market rent between 2005 and 2015. Average rent for a two-bedroom unit surpassed \$2,000 in recent years, with minimum wage workers needing to log 117 hours per week to afford a modest one-bedroom apartment at fair market value and 153 hours per week to afford a two-bedroom—a number that is equivalent to working over 20 hours a day with no days off year-round. In the past five years alone, Honolulu rent has increased by more than 25 percent. While 42 percent of Hawai'i residents are renters (a number that does not include individuals and families renting outside of the regulated rental market), they earn an average wage of \$17.17/hour, according to NLIHC, scarcely enough to meet their basic needs.

One out of every four households in Hawai'i report that they are “doubling up” or are three paychecks or less away from being homeless, per the Hawai'i Appleseed Center for Law and Economic Justice. Additionally, over 60 percent of households are severely cost-burdened, following NLIHC data, meaning that they pay more than 30 percent of their income for housing costs, a number that rises to over 80 percent of extremely low-income households, with only 74 homes available for every 100 households earning 80 percent of their respective area's median income.

Unsurprisingly, our state is now experiencing population decline. Hawai'i saw domestic out-migration increase for a third consecutive year in 2019, as the state's high cost of living continued to push people to the mainland. Census estimates show that our state's population dropped by 8,866 people from July 2019 to July 2020, when births, deaths, and migration were accounted for. That population drop is nearly double the loss seen in 201, when Hawai'i one of just ten states in the country to lose population, according to the U.S. Census Bureau. People are simply being priced out of paradise.

Without question, Hawai'i's lack of affordable housing exacerbates our state's homelessness crisis. In a recently released report, Chief Medical Examiner Dr. Masahiko Kobayashi said that 127 people who were considered homeless at the time of their deaths died on O'ahu in 2019, up from 120 deaths in 2018 and an increase of 46 percent from 2017 (87 deaths).

Furthermore, over 30 percent of juvenile arrests in Hawai'i are for running away from home, the highest proportion in the nation. Nationally, one in seven young people between the ages of 10 and 18 will run away. Approximately 75 percent of runaways are female, while 46 percent of runaway and homeless youth report being physically abused, 38 percent report being emotionally abused, and 17 percent report being forced into unwanted sexual activity by a family or household member, according to the National Conference of State Legislatures.

Roughly 30 percent of runaway children will be approached for sexual exploitation within 48 hours of being on the run, according to the National Center for Missing and Exploited Children, with over 80 percent being approached for the commercial sex trade during the course of their time on streets. A federal study found that an estimated 38,600 runaway youth have been sexually assaulted, in the company of someone known to be sexually abusive, or engaged in sexual activity in exchange for money, food, or shelter.

Runaways are perceived as easy targets for sex traffickers because they lack stable shelter, a supportive environment, and financial resources, placing them at greater risk of forced prostitution and sexual servitude. Traffickers exploit our limited number of available shelter beds to lure young people into exploitation. As the homeless childcare provider Covenant House observes, traffickers tell homeless youth that shelters are full and ask, "Where are you going to go? Why don't you come with me? I'll take care of you." Coupled with threats of and actual physical and sexual violence against the victims or their families, these coercive techniques compel runaway youth to remain enslaved.

LGBTQ youth, who comprise an estimated 40 percent of the runaway and homeless youth population in the United States, are exponentially more likely to fall prey to human traffickers because of discrimination, family and community trauma, and a longing for comfort and acceptance (an estimated 26 percent of LGBTQ adolescents are rejected by their families and

put out of their homes simply for being open and honest about who they are). In providing care for victims of human trafficking, we have heard their stories hundreds of times.

We cannot continue to allow the islands to be used as a private Monopoly board for real estate speculators. To ensure that our islands are affordable for ourselves and future generations, we must take bold action **now** to increase our affordable housing supply for working families and ensure that low-income families who are participating in our state's rental market—and who are often Native Hawaiian, Micronesian, Pacific Islander, or other people of color—do not face retaliation as a result of economic hardship.



**SB-35-SD-1**

Submitted on: 2/21/2021 9:21:26 AM

Testimony for JDC on 2/23/2021 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Will Caron	Individual	Support	No

Comments:

Dear Committee Members,

Please support SB35. 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. This basic protection for tenants from being taken advantage of should extend to preventing landlords from evicting tenants as well.

Additionally, while retaliatory evictions are already illegal, anecdotal evidence suggests that retaliatory evictions are rampant in Hawai'i. Even though the law forbids it, tenants who complain about sub-standard conditions 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 ins and outs of the rules of evidence and civil procedure (i.e., all tenants who aren't lawyers). As a result, many tenants who have been retaliated against never receive any sort 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.

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, knowing that the odds they will be held accountable for their actions are extremely slim. The promise of meaningful fines would be an effective deterrent to blatantly unlawful behavior.

A minimum damages law would also speed up trials, and give victimized tenants judgments that consistently recognize the hardship they have endured. As the law currently stands, 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 that the tenant will receive nothing by the end of case, is enough to deter even those with the most compelling 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.

Establishing minimum damages for retaliatory evictions would increase access to justice for Hawai'i's renters. The change to the existing law would not be drastic. However, such a meaningful change would give some teeth to the rules that already exist. Ensuring that landlords who retaliate against tenants are forced to account for their actions would go a long way towards achieving the purpose of the law currently on the books.

Mahalo for the opportunity to testify.