



The Judiciary, State of Hawai'i

Testimony to the Thirty-First State Legislature, 2022 Regular Session

House Committee on Consumer Protection & Commerce

Representative Aaron Ling Johanson, Chair

Representative Lisa Kitagawa, Vice Chair

February 2, 2022, 2:00 p.m.

Via Videoconference

WRITTEN TESTIMONY ONLY

By:

Michelle D. Acosta

Deputy Chief Court Administrator

District Court of the First Circuit

Bill No. and Title: House Bill No. 1862 – Relating to Eviction Records

Purpose: Requires that all court records of any eviction proceeding be sealed within specified timeframes upon resolution of the proceeding. Authorizes the court to seal certain eviction records prior to the expiration of these timeframes upon motion by a tenant who is able to demonstrate that certain conditions apply. Requires the clerk of the court to provide access to sealed eviction records to the tenant. Makes it a discriminatory practice to require a person to disclose a sealed eviction record as a condition of certain real property transactions. Prohibits discrimination in real property transactions against a person with a sealed eviction record.

Judiciary's Position:

The Judiciary takes no position on the merits of the bill and submits the following concerns for the Legislature's consideration.

This bill would require the court to seal any summary possession or ejectment case brought by a landlord against a tenant either 1) 30 days after final resolution if the landlord does not prevail or 2) three years after landlord's claim regardless of the final disposition of the claim.

This measure would make it a discriminatory practice to require disclosure of any sealed eviction records in certain real property transactions.

The Judiciary has concerns regarding provision #1 (section 2, page 3, lines 10-12), which would require the court to seal a summary possession or ejectment case after thirty days if possession was not obtained by the landlord. The Judiciary does not currently have any process that would alert court staff to the disposition of a case after 30 days. This would cause strain on limited court staff.

The Judiciary also has concerns regarding provision #2 (section 2, page 3, line 13-16), which would require the court to seal the case after three years regardless of the final disposition of the claim. When a case is sealed in the Judiciary Information Management System (JIMS) the case is no longer accessible by the parties electronically. All documents subsequently filed by either party will have to be submitted to the court in person or by mail. Section 657-5, Hawai'i Revised Statutes (HRS) presumes that a judgment has been paid or discharged after 10 years unless the judgment is extended for another 10 years. Meaning a judgment can be collected upon for up to 20 years. As part of the collection process, a judgment creditor, such as a plaintiff-landlord, will often submit motions for garnishments, order for examinations, writ of executions or writ of attachments in an effort to collect on the judgment. These documents are often submitted to the court well beyond three years. This provision also does not take into consideration a case that has been appealed. Sealing the document would increase paper filing causing strain on limited court staff and difficulties to the parties.

The Judiciary would anticipate that significant changes will need to be made to JIMS in order to pursue an automatic feature that would allow for the sealing of eviction records in either situation. It would be difficult to implement a change of this nature as the Judiciary is currently set to launch JIMS in Family Court in April, 2022. The Judiciary would request an effective date well into the future.

Further, as currently written Section 2, does not distinguish residential landlord-tenant cases from commercial landlord-tenant cases. Commercial landlord-tenant cases are brought pursuant to Chapter 666.

While the Judiciary understands the hardships that can result from an eviction, it is important to note that court records are generally open to the public. This allows the public to have confidence in the court system by knowing that access to court records are open, transparent and available.

Thank you for the opportunity to testify on this measure.



February 2, 2022

The Honorable Aaron Ling Johanson, Chair

House Committee on Consumer Protection and Commerce

Via Videoconference

RE: H.B. 1862, Relating to Eviction Records

HEARING: Wednesday, February 2, 2022, at 2:00 p.m.

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

I am Peter Davis, Chair 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 10,800 members. HAR **opposes** House Bill 1862, which requires that all court records of any eviction proceeding be sealed within specified timeframes upon resolution of the proceeding. Authorizes the court to seal certain eviction records prior to the expiration of these timeframes upon motion by a tenant who is able to demonstrate that certain conditions apply. Requires the clerk of the court to provide access to sealed eviction records to the tenant. Makes it a discriminatory practice to require a person to disclose a sealed eviction record as a condition of certain real property transactions. Prohibits discrimination in real property transactions against a person with a sealed eviction record.

It is a costly process for a housing provider to begin eviction proceedings and if it reaches that level, there more than likely would be existing circumstances warranting the proceedings. Additionally, besides non-payment of rent, there are also situations where eviction is due to health and safety concerns, such as a tenant threatening the safety and health of others or damaging the property. As such, housing providers rely on this information to make informed decisions and HAR believes that these records should not be sealed.

For the foregoing reasons, we respectfully request that this measure be held. Mahalo for the opportunity to testify.

HB-1862

Submitted on: 2/1/2022 11:08:13 AM

Testimony for CPC on 2/2/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
R Laree McGuire	Individual	Oppose	No

Comments:

Strongly oppose.

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February 1, 2022

Representative Aaron Johanson, Chair
Representative Lisa Kitagawa, Vice-Chair
House Committee on Consumer Protection and Commerce

Re: HB1862 Relating to Eviction Records. Testimony in strong opposition.
Wednesday, February 2, 2022 at 2 p.m.

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

I have been licensed to practice law in the State of Hawaii since 1978 and since then a good part of my practice has been in representing commercial landlord and property management firms that serve residential landlords. Since March 2020, I have been a member of the State District Court Civil Working Group of judges, attorneys and mediation centers tasked with addressing issues facing the district courts relating to and arising from the evictions of tenants from residential properties during the pandemic.

This is also a bad bill. Many landlords rely on the district court records when vetting prospective tenants because it would not be prudent or good business sense to rent to people who do not comply with their obligations under the rental agreement, i.e., paying rent and complying with rules, regulations and covenants. Also, most landlords do not want to spend time and money litigating claims against their tenants so these eviction court records are part of their due diligence when vetting prospective tenants.

Based on the foregoing, please do not pass this bill.

Very Truly Yours,


Yuriko J, Sugimura

