



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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

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CATHERINE P. AWAKUNI COLÓN
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DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Housing
Thursday, March 18, 2021
9:15 a.m.**

**On the following measure:
S.B. 1388, S.D. 2, RELATING TO THE LANDLORD-TENANT CODE**

WRITTEN TESTIMONY ONLY

Chair Nakamura 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.

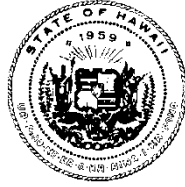
The purpose of this bill are to: (1) extend the period for a notice of summary possession from five to fifteen days; (2) require landlords to provide notice with specified terms and enter into mediation; (3) delay when a landlord may seek possession of a dwelling unit if the tenant schedules or attempts to schedule mediation; (4) require landlords to provide the notice to mediation centers that offer free mediation for residential landlord-tenant disputes; (5) restrict when a landlord may exercise these remedies depending on the amount of rent due; and (6) repeal one year after expiration of the governor's final eviction moratorium emergency supplementary proclamation related to the COVID-19 pandemic.

The Department supports this bill because it builds into the summary possession of residential properties a mediation process to resolve issues related to the nonpayment of rent. Mediation will encourage affected parties to reach a mutually beneficial resolution regarding a tenant's arrearages.

Additionally, the mediation process outlined in S.D. 2 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.

DAVID Y. IGE
GOVERNOR



DENISE ISERI-MATSUBARA
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
DENISE ISERI-MATSUBARA
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON HOUSING

March 18, 2021 at 9:15 a.m.
State Capitol, Room 423

In consideration of
S.B. 1388, S.D. 2
RELATING TO THE LANDLORD-TENANT CODE.

The HHFDC supports S.B. 1388, S.D. 2, which temporarily amends the Landlord-Tenant Code's summary possession provisions to establish a mediation process prior to the filing of summary possession actions to resolve issues related to nonpayment of rent.

This bill will encourage the mutually beneficial resolution of rent arrearages between landlords and tenants, and help to avert a flood of evictions due to the COVID-19 pandemic.

Thank you for the opportunity to testify.



SB1388 SD2
RELATING TO THE LANDLORD-TENANT CODE
Ke Kōmike Hale o ke Kuleana Hale Noho
House Committee on Housing

Malaki 18, 2021

9:15 a.m.

Hālāwai Keleka‘a‘ike

The Office of Hawaiian Affairs **SUPPORTS** SB1388 SD2, which extends the required notice period for summary possession actions from five days to 15 days; provides an opportunity for tenants to seek mediation during this time; and limits the use of summary possession actions for failure to pay rent during certain ranges of days following the expiration of the Governor’s final eviction moratorium, based on the number of months’ rent due. **OHA supports renter eviction protections to prevent the mass eviction of Hawai‘i residents, including a disproportionate number of Native Hawaiian renters, who are facing financial and housing insecurity due to the COVID-19 pandemic.**

Unfortunately, 34,000 – 65,000 households in Hawai‘i are at risk of eviction,¹ with Native Hawaiians being among the most vulnerable of those who could be evicted. Native Hawaiians disproportionately rely on the rental housing market, with Native Hawaiians’ homeownership rate lower than the state average.² Meanwhile, even prior to the pandemic, Native Hawaiians had fewer financial resources to weather financial emergencies due to their already lower per capita income (\$25,590) in comparison to the total state population (\$35,255), and their lower median household income (\$75,708) compared to the total state population (\$80,212);³ 12.3% of all Native Hawaiians also

¹ See Stout, Estimate of Households Experiencing Rental Shortfall and Potentially Facing Evictions, <https://app.powerbi.com/view?r=eyJrljoiNzRhYjg2NzAtMGE1MC00NmNjLTIOTMtYjM2NjFmOTA4ZjMyIiwidCI6Ijc5MGJmNjk2LTE3NDYtNGE4OS1hZjI0LTc4ZGE5Y2RhZGE2MSIsImMiOiN9> (last accessed March 17, 2021).

² U.S. Census Table S0201 Selected Population Profile in the United States, 2017 American Community Survey 1-Year, available at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_S0201&prodType=table (showing Native Hawaiian homeownership rate at 54.4%, compared to the statewide average of 58.5%); All Native Hawaiian: U.S. Census Bureau. (2018). American Community Survey (ACS). 1-year Estimates: 2017. HHL: Homestead Services Division. (02/20/18) Commission submittal. Retrieved on 11/15/2018 from <https://dhh.hawaii.gov/wp-content/uploads/2018/02/February-20-21-2018-HHC-Packet-Kapolei-Oahu1.pdf> (For non-DHHL properties, the Native Hawaiian homeownership rate is 15.8 percentage points below the statewide rate, or 42.7% vs. 58.5%.²)

³ Office of Hawaiian Affairs, Issue Brief: COVID-19 and Native Hawaiian Communities 3 available at https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/Issue-Brief.-Covid-19_corrected.pdf (last accessed March 17, 2021).

lived in poverty, compared to 8.8% of the total state population.⁴ These financial vulnerabilities were likely exacerbated by the pandemic: like other Hawai'i residents, many Native Hawaiians relied on the service and tourist industries to financially support their families, with 23.6% of working Native Hawaiians employed in service occupations that were severely impacted by the COVID-19 pandemic. **OHA accordingly supported the establishment and continuation of the current eviction moratorium, as a critical measure necessary to prevent the mass eviction of Native Hawaiians and other residents, and the ensuing wave of houselessness that would have been likely to occur.**

Given the financial challenges Native Hawaiians and many others currently face, and are likely to continue to face in the foreseeable future, continued protections are necessary to prevent the eviction of many Native Hawaiian and other renters across the islands, even after the end of the current eviction moratorium. OHA therefore supports this measure as providing additional, reasonable protections for the many, many renters who may need many more months, even after the pandemic subsides, to resume or secure employment and generate the income necessary to cure their back-due rent and avoid eviction.

Accordingly, OHA urges the Committee to **PASS** SB1388 SD2. Mahalo nui loa for the opportunity to testify on this important matter.

⁴ *Id.*

TESTIMONY IN SUPPORT OF SB 1388, SD2 –
RELATING TO RESIDENTIAL LANDLORD-TENANT CODE

House Committee on Housing –Via Videoconference

Representative Nadine K. Nakamura, Chair
Representative Troy N. Hashimoto, Vice Chair

Thursday, March 18, 2021 at 9:15 a.m.

The Legal Aid Society of Hawai'i (Legal Aid) submits testimony in support of SB 1388, SD2 - 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 these 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.

Legal Aid has previously submitted testimony on HB 1376 and SB 1388, companion bills. We support the bill before this committee and the iterations and evolution of HB 1376 and SB 1388. We support the mindful manner in which this legislation is attempting to address the potential crush of evictions, in conjunction with the end of the applicable eviction moratoriums. This bill provides a way to phase in the start of non-payment evictions while providing time for mediation and time to allow access to rental assistance funds through the Federal stimulus legislation.

In light of the currently 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.

We want to note one part of SB1388, SD2 that differs from the current HB1376. Subsection (g)(1) in SB1388, SD2 provides that a summary possession may not be filed until the **third** day after the end of the moratorium. Subsection (h)(1) in HB1376, HD1 provides that a summary possession may not be filed until the **first** day after the end of the moratorium. The reason to point out this difference is that HB1376 provides an effective date immediately after the moratorium ends while SB1388, SD2 provides a two-day gap period or hole for evictions after the end of the moratorium. It is subtle, but the first day makes more sense from our perspective.

There is another variation in (g) in SB 1388, SD2 compared to HB 1376, regarding when a landlord may issue a notice regarding payment of rent. Within the last two days we have seen the use of the tactic of suing a tenant for back rent, while not asking for them to be evicted. The court papers served on a tenant for payment of rent versus eviction and payment of rent are very similar to a tenant and represent the ultimate pressure tactic to force a tenant out. We find the language in (g) in SB 1388, SD2 as acceptable and useful.

I want to reiterate, SB 1388, SD2 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 SB 1388, SD2.

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.



Medical-Legal Partnership Hawai'i

A Project of the William S. Richardson School of Law
2515 Dole Street, Honolulu, Hawai'i 96822

SB1388 SD2: RELATING TO THE LANDLORD-TENANT CODE

House Committee on Housing

March 18, 2021; 9:15am

The Medical-Legal Partnership represents patients at a community health center with their legal needs, including eviction cases. Most of our clients are from communities disproportionately impacted by the coronavirus pandemic. We offer the following **COMMENTS** on **SB1388 SD2**. This bill could benefit from amendments to ensure tenants are not prejudiced by the coronavirus pandemic in decades to come, and to require that tenants facing eviction are informed of their rights and responsibilities. Above all, we urge that summary possessions should not occur until the severe issues processing unemployment insurance and rental assistance funds from yet to be released federal funds (e.g. CARES Act funds) are rectified.

1. Evictions and summary possessions during the pandemic should be expunged, and provisions should be added to the bill to require expungement and sealing of related court records.

The effects of the pandemic on housing insecurity for local families will continue long into the future if we allow the court records of summary possessions to remain on individuals' records and prejudice their search for housing. Many other states have already moved to allow individuals to expunge eviction records¹; other states are looking to pass similar legislation to administratively expunge or seal all pandemic evictions. We recommend amendments to this bill to do the same. We would also suggest that the expungement could be broad to cover all evictions during the pandemic. While the moratoriums target evictions based on non-payment of rent, we have seen some landlords move to evict based on the pretext of 'lease violations' for behaviors previously condoned for years.

2. Notice to the tenant by the landlord of the opportunity to cure and enter into mediation could be expanded.

In our experience, the incentive to 'cure' a backlog in rent is highest before a landlord has filed for summary possession. At that time, tenants are able to avoid what are often the worst consequences of a summary possession: a record which can prejudice them in their subsequent search for housing. Therefore, it is key to this bill not only acts to divert cases from court for the purposes of mediation but allow time for tenants to cure non-payment. Tenants also need time to seek legal council or get their notice translated or reviewed by advocates. Messaging about the eviction moratorium in languages other than English has been seriously lacking. As a result, our program has interacted with both landlords and tenants who are still simply unaware of the meaning

¹ Nevada, Oregon, and Minnesota allow for expungements. Ohio, Illinois, Massachusetts and Washington D.C. have local laws that allow for sealing of court records.. Other states like New York allow expungement after agreement between landlords and tenant.



Medical-Legal Partnership Hawai'i

A Project of the William S. Richardson School of Law
2515 Dole Street, Honolulu, Hawai'i 96822

of the moratoriums as well as deadlines and dates. We have seen language access needed for both landlords and tenants. Also, we cannot stress enough how difficult it was for clients to access rental assistance funds, as well as the **sheer number of landlords who refused to accept the assistance or failed to accept that most assistance applications took longer than two months to process.** While mediation can be a helpful tool, and we applaud this bill moving the trigger to mediate before a court filing, it is often equally important that a tenant enter mediation informed of their rights and responsibilities, and have adequate time to seek rental assistance.

Additionally, during the pandemic, we have seen more than a 100% increase in clients seeking assistance at our program, and we expect that other legal service providers have the same. Equally difficult is facing increased client needs while dealing with pandemic related communication issues, particularly with low-income families who often lack phone, internet and technology and rely on in-person visits to complete intakes. Requiring longer notice from the landlord to the tenant of notice to cure may be just as beneficial as mediation.

3. The sample form incorporated into other drafts is helpful and should be re-inserted in the bill, and updated to include information about language access and how to call the courts or look up court date information.

As discussed above, the pandemic has exacerbated existing language access issues, as well as procedural challenges, for both tenants and landlords. For example, more than three years ago a report² by Lawyers for Equal Justice detailed how the court summons forms attached to summary possession notices are confusing for clients. The forms only indicate that tenants should 'appear at court five business days after date of service.' **The date of service, however, is never featured on the summons. Defaults are often a result of tenants incorrectly calculating their court date,** or taking too long to find an advocate who can read and identify the required date. This is particularly worsened during the pandemic when in person services are closed. I cannot emphasize enough the number of clients we have worked with even during the pandemic who have simply miscalculated or been unaware of their court date. Our program conducts community trainings on how to find their court date and other self advocacy skills. Including instructions for language access, could help direct individuals to the best appropriate place and further ensure needy families do not get lost in the shuffle.

Mahalo for the opportunity to provide comments.

² See Evicted in Hawai'i: Lives Hanging in the Balance available at <https://www.hiequaljustice.org/reports/evicted-hawaii>

March 18, 2021

The Honorable Nadine Nakamura, Chair

House Committee on Housing

Via Videoconference

RE: S.B. 1388, SD2, Relating to the Landlord-Tenant Code

HEARING: Thursday, March 18, 2021, at 9:15 a.m.

Aloha Chair Nakamura, Vice Chair Hashimoto, 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** Senate Bill 1388, SD2, which extends the required period for a notice of summary possession from five days to fifteen. Requires landlords to provide notice with specified terms and enter into mediation. 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. Repeals one year after expiration of the governor's final eviction moratorium emergency supplementary proclamation related to the coronavirus disease 2019 pandemic.

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 April 13, 2021. Also, the recently passed federal American Rescue Plan will provide Hawai'i with an additional \$152 million in rent and utility assistance, which is in addition to the \$200 million from the December COVID relief law, 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 helps 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.

DAVID W.H. CHEE

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March 16, 2021

HOUSE COMMITTEE ON HOUSING
Rep. Nadine K. Nakamura, Chair
Rep. Troy N. Hashimoto, Vice Chair

Re: SB 1388, SD2- RELATING TO THE LANDLORD-TENANT CODE

Dear Representatives:

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

I am writing in support of SB 1388 SD2, except with respect to section (g) at line 17 of page 8, which says (emphasis added):

(g) No landlord may issue a notice demanding payment of rent; bring a summary proceeding for possession; an action for rent alone; or any other proceeding, action, or suit for a tenant's failure to pay rent except as follows:

This language is not in keeping with the original purposes of the bill or the eviction moratorium. The purpose of the Governor's moratorium was to keep renters housed during the pandemic. This goal is and was motivated by a public health concern – people without homes cannot shelter in place and cannot easily quarantine or isolate. However, there is no public health benefit to landlords not getting paid.

In Hawaii, if a landlord wishes to recover possession of a dwelling unit and recover money owed, they file a Summary Possession/Assumpsit Complaint – that one form allows for eviction (“summary possession”) and to collect amounts owed based on breach of the rental agreement (“assumpsit”). If a landlord is only seeking money owed, and is not seeking to evict, the landlord may file an Assumpsit Complaint only. The filing of an Assumpsit Complaint, and sending out demands for payment related to an Assumpsit Complaint, do not jeopardize a tenant's ability to continue to live in a rented premises. If a landlord files an Assumpsit Complaint for rent alone, the Court does not have the power to order a tenant to vacate, the Court only has the power to determine if money is owed by the tenant, whether the tenant has a defense to non-payment and the amount of such debt after such defenses are considered.

Section (g) will make it the policy of the State of Hawaii to prevent landlords from acting to collect rent, regardless of the reason that rent is not being paid and even in instances where a tenant's housing is not threatened. This section (g) prevents a landlord from even asking his/her tenant to pay the rent that is owed. As such, section (g) raises constitutional issues (i.e. interference with contracts, takings). It does not help keep people housed.

HOUSE COMMITTEE ON HOUSING

Rep. Nadine K. Nakamura, Chair

Rep. Troy N. Hashimoto, Vice Chair

SB 1388, SD2- RELATING TO THE LANDLORD-TENANT CODE

Page 2

Section (g) is also simply unfair to landlords. Imposing this – on top of the monetary losses caused by the State’s year-long eviction moratorium – will drive even more landlords to quit the business and sell their properties.

Please reconsider section (g).

Please let me know if you have any questions.

Very truly yours,

/s/ David Chee

David W.H. Chee

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

COMMITTEE ON HOUSING
Rep. Nadine K. Nakamura, Chair
Rep. Troy N. Hashimoto, Vice Chair

HEARING: Thursday March 18, 2021
9:15 a.m.

VIA VIDEOCONFERENCE

SB 1388: Relating to the Landlord-Tenant Code Bill

TO THE HONORABLE NADINE NAKAMURA, CHAIR AND THE HONORABLE TROY HASHIMOTO, VICE CHAIR AND MEMBERS OF THE COMMITTEE

My name is Tracey Wiltgen, and I am writing in support of SB 1388. 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 also suffered financially, as many have received little or no rent to cover their own expenses to maintain their property, and in some instances, make the mortgage payments on the property. It has been a year since the moratorium was initiated. When the moratorium ends, there could be a flood of eviction filings necessitated by the fact that thousands of tenants are behind on their rent, and 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.

SB 1388 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, SB 1388 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, SB 1388 requires the tenant to engage in mediation with the landlord. And finally, SB 1388 proposes a staggered process for filing evictions based on the amount of back rent owed.

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. Additionally, the longer notice gives tenants with more time to seek the help or advice of family, friends, interpreter, legal counsel, or other resources, before responding.

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 SB 1388 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 April 13th, 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 a debt-free path forward for tenants.

The Coronavirus pandemic 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. SB 1388 is an example of such creative thinking and collaboration that is designed to assist landlords and tenants. Your favorable approval of SB 1388 is essential. Passage of this bill will be a major step toward supporting tenants and landlords and re-strengthening Hawaii's communities.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tracey S. Wiltgen', with a small dot above the final letter.

Tracey S. Wiltgen

SB-1388-SD-2

Submitted on: 3/17/2021 4:24:58 PM

Testimony for HSG on 3/18/2021 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Thomas Brandt	Individual	Support	No

Comments:

Support.