



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 Commerce and Consumer Protection
Thursday, February 11, 2021
9:30 a.m.
Via Videoconference**

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

Chair Baker 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 enter into mediation and delays when a landlord may seek possession of a dwelling unit, if the tenant schedules or attempts to schedule a mediation; (3) require landlords to provide notice to the mediation centers that offer free mediation for residential landlord-tenant disputes; and (4) restrict when a landlord may exercise these remedies depending on the amount of rent due.

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.B. 1388 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.

February 9, 2021

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce and Consumer Protection

Via Videoconference

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

HEARING: Thursday, February 11, 2021, at 9:30 a.m.

Aloha Chair Baker, Vice Chair Chang and Members of the Committees,

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 which extends the period for a notice of summary possession from five days to fifteen. Requires landlords to enter into mediation and 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 on June 1, 2022.

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 the end of March 2021. Also, the recently passed COVID relief package will provide an additional \$200 million 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.



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of the Hawai'i Appleseed Center for Law & Economic Justice
In Support with Amendments of SB 1388 – Relating to the Landlord-Tenant Code
Senate Committee on Commerce and Consumer Protection
Thursday, February 11, 2021, 9:30 am, conference room 229

Dear Chair Baker and members of the Committee:

Thank you for the opportunity to provide testimony in **SUPPORT with Amendments** of SB 1388, which would provide desperately needed protection from eviction to tenants who have been struggling to pay rent because of the COVID-19 medical and economic crises, as well as provide a path forward from those crises for tenants, landlords, the courts and the general public. We strongly endorse the core concepts of the bill:

- an extension of a blanket eviction moratorium through the next few months;
- a requirement that landlords make mediation available to tenants prior to filing a court action;
- a standard, clearly worded notice provision for landlords to provide to tenants informing them of the opportunity to mediate;
- well-funded and well-organized mediation from experienced mediators to assist landlords and tenants access rental assistance funds and negotiate rent reductions, and payment plans;
- a gradual phase-out of the moratorium over the course of four months, starting with those tenants who are farthest behind in rent.

We do believe that the bill should be amended to allow for a possible delay in the phase-out of the moratorium. If the governor or the federal government decide that their respective moratoriums must be extended to protect public health, the four-month phase-out schedule should start when those moratoriums end (as opposed to the firm May 1 start of the phase-out in the current version of the bill).

Hawai'i faces two crises arising from the COVID-19 pandemic. The first is the medical crisis arising from the deadly and contagious nature of the disease, and the need to protect public health by ensuring that everyone can observe social distancing and other measures as much as possible. It now appears possible that this crisis will be resolved or greatly mitigated by the summer, allowing a return to some semblance of normal life. Until we reach that point, the eviction moratorium should remain in place; evictions will force tenants to move to new housing, move in with friends or relatives, or become homeless. These moves threaten the health not only of the tenants who have to move, but also the general public because increased density and homelessness promote the spread of the disease.

The Hawai'i Appleseed Center for Law and Economic Justice is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.

The second crisis is an economic one, resulting from the shutdown of much of the state's economy. Thousands of tenants across the state have become unemployed or have seen sharp drops in income. Landlords have lost significant amounts of income on which they depended for paying their own bills. Although rental assistance has prevented many serious problems, the economic picture for many landlords and tenants remains dire. The Economic Research Organization of the University of Hawai'i reported in January on the results of its survey of landlords on conditions in November:

[T]he number of renters behind on their rent remained substantially higher than pre-COVID baseline conditions. In a normal month, most landlords expect about 5% of their tenants to be late on rent, and about 2% falling at least a month behind. In November, 17% of tenants were late and, most troublingly, 7.5% were over a month late on rent. This figures are despite the active participation of nearly 40% of our landlords in the various rent relief programs (which they reported assisting 6.5% of their tenants).¹

Landlord representatives report similar data.

SB 1388 is an innovative and effective measure to address both the public health and economic challenges. The bill's mediation provisions will allow tenants and landlords to work out payment plans, and potentially negotiate rent reductions and forgiveness of arrearages. Mediation will also help ensure that tenants and landlords take advantage of opportunities for rental assistance from all levels of government (county, state and federal) as well as private sources. The bill provides some language of a clear and helpful notice that landlords can provide to tenants informing them of the opportunity to mediate (although some of the wording could be clarified).

We understand that experienced mediators are available to conduct the expected number of mediations. The legislature should ensure that mediation efforts are adequately funded. The state will recover the expense of mediation many times over for each mediation that prevents an eviction.

SB 1388 also helps our judicial system from being overwhelmed by a flood of eviction actions the day the moratorium ends. The bill sensibly mediation for tenants who have the most back rent, and allows landlords to move to evict those tenants if an agreement cannot be reached.

We believe, however, that the committee should amend SB1388. The bill currently sets May 1, 2021 as the firm date for the beginning of the phase-out of the moratorium. The committee should provide for the possibility that the governor or the federal government decides that public health requires the extension of current moratoriums past May 1. The legislation should say that in that case, the phase-out will begin when the applicable moratorium ends.

We appreciate your consideration of this testimony.

¹ [November Rental Market: Troubling Signs Remain As State Prepares for an Uncertain 2021 · UHERO \(hawaii.edu\)](#)

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 9, 2021

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

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

Dear Senators:

I am writing in support of SBI388.

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

Presently, the Governor has ordered an eviction moratorium that prevents eviction of tenants for nonpayment of rent. While this has allowed tenants to stay in their homes even if they do not pay their rent, this situation has allowed Hawaii renters to run up debts to their landlords. These debts have not been forgiven by the moratorium and will allow tenants to be evicted once the moratorium ends. If the promised Federal rental-relief money is not wisely and widely distributed, there will be a lot of evictions.

The State needs a plan to avoid a potential crush of evictions. Fortunately, this bill provides a viable plan. The first part of the bill, sections (a) through (g), provides an eviction-diversion program that requires landlords to attempt mediation with their tenants before an eviction action is filed. This is the most important part of the bill since, if the mediation is successful, there may be no need for an eviction at all. Landlords and tenants can avoid the costs and disruption that an eviction will cause.

If mediation is not successful, then section (h) of the bill provides for a phased return to eviction actions, starting with tenants whose balances exceed four months' rent. You will note, however, that even section (h) is, itself, an eviction diversion program in that every tenant in the State can avoid eviction by paying their rent balance down, over time, below the thresholds stated in paragraphs (h)(1)-(4). For example, if a tenant owes five months' rent in April, they can avoid eviction if they get their debt down to less than four months' rent by May 1, 2021. They can again avoid eviction by reducing their debt to less than three months' rent by July 1, 2021, less than two months' rent by September 1, 2021, and less than one month's rent by November 1, 2021. This bill will, in essence, put all tenants in the entire State of Hawaii on a reasonable payment plan and allow tenants to avoid eviction. Evictions will be reserved for only those tenants who are causing the most financial damage to their landlords.

This bill, if adopted, will not make many landlords happy. Landlords have invested their time, energy, and money in the homes they provide to their tenants, and they have watched as the Governor's moratorium has taken away their incomes and their ability to control their losses. This bill does not relieve that loss. However, it offers a path to normalcy and allows landlords to address those tenants with the largest debts first. As difficult as it may be for some landlords to accept, this bill offers the most reasonable alternative we have to the seemingly endless moratorium.

This plan will allow the many residential tenants in the State to keep their homes while giving landlords back some control. I encourage the legislature to adopt this bill.

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator Stanley Chang, Vice Chair

February 9, 2021

Page 2

Please let me know if you have any questions.

Very truly yours,

/s/ David Chee

David W.H. Chee

LATE

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

Senate Committee on Commerce and Consumer Protection – Room 229 Via Videoconference

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

Thursday, February 11, 2021 at 9:30 a.m.

The Legal Aid Society of Hawai'i (Legal Aid) submits testimony in support of SB 1388 – 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 this 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.

SB 1388 is a companion bill to HB 1376 (HD1). Legal Aid submitted testimony for HB 1376 (HD1) and this testimony is reflective of SB 1388. We realize this testimony is late and want to let the committee know that we cannot appear at 9:30 to testify due to a scheduling conflict. We appreciate the opportunity address this important work of the legislature before this committee regarding the potential eviction crisis.

The current environment for evictions due to non-payment has been, and will continue to be, very fluid. There is currently a State of Hawaii moratorium for evictions due to non-payment of rent and the Federal CDC eviction moratorium for non-payment of rent currently extends to March 31, 2021. However, the end date of these moratoriums has constantly been shifting and extended since

March 2020. In addition, a variety of Federal stimulus packages have been passed and are proposed that will provide landlords and tenants rental assistance.

In light of the currently approved and 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.

SB 1388 extends the 5-business day notice period for non-payment of rent to at least 15-days, 30 days if the tenant agrees to mediation. Once the eviction moratoriums end, this bill allows a last chance for the landlord and tenant to seek rental assistance or reach an agreement before an eviction occurs. This will allow an opportunity for a soft landing and allows the statutory timing flexibility to take advantage of any current or future Federal assistance. The bill also allows the landlord and tenant a formal trigger to mediate and negotiate a resolution, hopefully before any eviction has to occur.

It should be noted that the form of the notice from the landlord in subsection (c) is meant as a safe-harbor for landlords to provide a template for their form notice for non-payment of rent. Subsection (c) provides a template for notice that is informed by, and consistent with, what the legislature has done in other settings. Specifically, HRS §667-101(b) provides a template for an affidavit for public sale by an AOA. That template is universally used in non-judicial AOA foreclosures.

The provisions of this bill would provide a minimum 15-days before an eviction is filed - even if the tenant does not appear in court and defaults. In a 2019 study, it was found that approximately 50% of summary possession cases result in a default – that is, the tenant does not appear in court. In those cases of default, the tenant is not there to be ordered to deposit disputed damages with the court. This bill provides one last cushion before a tenant would give up and default. This bill is consistent with a public policy of working hard to preserve housing.

Subsection (h) staggers the number of evictions by staging the evictions sooner for tenants who are further behind on their rent. This is the subsection in SB 1388 that can be updated to reflect the language in HB 1376 (HD1). This will help to avoid an all at once flood of eviction filings in the court. And the extra time will encourage tenants to become more current on their rent to avoid eviction. This section is a valuable part of the protections for all parties involved. The phasing of evictions is reflective that the pandemic, economy, and a tenant's ability to pay rent have varied for a year and will continue to vary over the next year through mindful legislation.

With respect to subsection (h) in SB 1388, specific dates are used for the effective date of phasing in the evictions. Because the eviction moratorium has proved to be a moving target, our suggestion is to link the effective date for phasing in the evictions to the end of the eviction moratorium. This would be an opportunity for the Governor's Proclamations and legislation to work together. Our suggestion for the change to (h) which reflects the same time frame as currently in SB 1388 is:

(h) No landlord may bring a summary proceeding for possession for a tenant's failure to pay rent except pursuant to this section and as follows:

(1) Beginning on the first day after the expiration date of the final eviction moratorium imposed pursuant to a state of emergency proclamation related to the COVID-19 emergency issued by the governor through the sixtieth day after the expiration date, the rent due is equal to or greater than four months' rent;

(2) Beginning on the sixty-first day after the expiration date of the final eviction moratorium through the one hundred twenty-first day after the expiration date, the rent due is equal to or greater than three months' rent;

(3) Beginning on the one hundred twenty second day after the expiration date of the final eviction moratorium through the one hundred eighty-second day after the expiration date, the rent due is equal to or greater than two months' rent; and

(4) Beginning on the one hundred eighty-third day after the expiration date of the final eviction moratorium through the three hundred sixty-fifth day after the expiration date, the rent due is equal to or greater than one month rent.

Another subsection needs a one-word change, essentially a meaningful typo. Subsection (b)(9) needs the change reflected in the strike-through and **red** – a change of “or” to “and”:

(9) That the landlord or landlord's agent may file an action for summary possession if the rent due is not paid ~~or~~ **and** if mediation is not scheduled within fifteen calendar days, regardless of whether the scheduled mediation session occurs within the fifteen calendar days, after receipt of the fifteen calendar day notice;

SB 1388 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 and the companion HB 1376 (Proposed HD1). We will be unavailable to testify at the Thursday February 11, 2021 meeting.

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.

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

LATE

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

HEARING: Friday, February 12, 2021
9:30 a.m.
VIA VIDEOCONFERENCE
Conference Room 229
State Capitol
415 South Beretania Street

SB 1388: Relating to the Landlord-Tenant Code Bill

TO THE HONORABLE ROSALYN BAKER, CHAIR AND THE HONORABLE STANLEY CHANG, 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 almost one 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.

HB 1376 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, HB 1376 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, HB 1376 requires the tenant to engage in mediation with the landlord. And finally, HB 1376 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 HB 1376 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 February 14th, 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,



Tracey S. Wiltgen