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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, February 2, 2021
9:30 a.m.
Via Videoconference**

**On the following measure:
S.B. 162, 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 is to specify that the amount of damages recoverable by a tenant subjected to an unlawful retaliatory eviction is equal to two months' rent.

S.B. 162 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 tenants¹. In view of the

¹ Hawaii Revised Statutes section 521-63.

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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.



SB 162, RELATING TO THE LANDLORD-TENANT CODE

FEBRUARY 2, 2021 · SENATE COMMERCE AND
CONSUMER PROTECTION COMMITTEE · CHAIR
SEN. ROSALYN H. BAKER

POSITION: Support.

RATIONALE: Imua Alliance supports SB 162, relating to the landlord-tenant code, which specifies that the amount of damages recoverable by a tenant subjected to an unlawful retaliatory eviction is equal to two months' rent.

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.



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Re: S.B. 162 (Relating To Landlord-Tenant Code)

Hearing Date/Time: February 2, 2021 9:30 a.m.

This testimony is submitted on behalf of the Collection Law Section ("CLS") of the Hawaii State Bar Association. The CLS is a division of the Hawaii State Bar Association and is comprised of attorneys who handle, among other things, summary possession and eviction proceedings.

The CLS **opposes** this Bill.

This Bill seeks to quantify the amount of damages recoverable by a tenant who has been subjected to an unlawful retaliatory eviction. It sets the amount of damages recoverable by the tenant as equal to two months rent plus costs of suit, including reasonable attorney's fees. As justification for setting the amount of damages recoverable by a wrongfully evicted tenant the bill notes that "although the residential landlord-tenant code guarantees compensation for other landlord offenses, it also places on the tenant the burden of proving entitlement to compensation for a landlord's retaliation."

There should be no reason why a tenant should be unable to quantify, and therefore should be excused from proving his actual damages suffered as a result of a wrongful eviction. There also is no reason to expect that the damages suffered by a wrongfully evicted tenant is likely to equal two months rent. In a tight housing market, the damages suffered by a tenant who has been wrongfully evicted may in fact exceed two months rent.

Landlords are typically required to prove their actual damages, and are not excused from presenting proof of damages. For example, if a landlord intends to retain any portion of a tenant's security deposit, the landlord must provide a written itemization of amounts withheld from the security deposit within 14 days of the tenancy termination. See Hawaii Revised Statutes Section 521-44.

One instance where the the Landlord-Tenant Code attempts to quantify damages recoverable by landlords is in the instance of holdover tenants. Hawaii Revised Statutes Section 521-71(e) provides that where a tenant remains in possession past the expiration of the rental term, the landlord may recover a sum not to exceed twice the monthly rent under the previous rental agreement computed and prorated on a daily basis for each day that the tenant remains in possession past the expiration of the rental term. However, recovery of twice the monthly rent is not guaranteed. The language in the statute reads, "the tenant **may** be liable to the landlord for a sum not to exceed twice the monthly rent". (emphasis added). In practice, judges often decline to hold tenants liable for holdover rent.

As there is no reason to expect that tenants would be unable to prove their actual damages, SB 162 is unnecessary.

Accordingly, we ask that your Committee "hold" this Bill and not pass it.

Thank you for considering our testimony.



ANN CORREA, ESQ.
Attorney for Collection
Law Section

The comments and recommendations submitted reflect the position/viewpoint of the Collection Law Section of the Hawaii State Bar Association only. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors.

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FEBRUARY 1, 2021

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

Re: S.B. No.162 - RELATING TO THE LANDLORD-TENANT CODE.

Dear Senators:

I am an attorney who practices in the field of landlord/tenant law, including residential matters. I have over 28 years' experience in the area and my clients manage over 10,000 residential dwellings across the State of Hawaii. I am writing regarding the above-referenced bill.

This bill is aimed at further deterring retaliatory evictions. To that end, it is important to note that the laws and Courts of the State of Hawaii already recognize the defense of retaliatory eviction to a summary possession (eviction) action. As such, if a tenant is being evicted in the State Courts, the Court will consider retaliatory eviction prior to ruling on whether to allow the tenant to stay. If the Court determines that the eviction is retaliatory then the eviction will not go forward.

The bill should be modified to account for this reality. A damages award should only be allowed if the Courts were not involved in the eviction. Therefore, I suggest modifying the bill as follows:

1 SECTION 2. Section 521-74, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:
3 "(c) Any tenant from whom possession has been recovered
4 or
5 who has been otherwise involuntarily dispossessed, in violation
6 of this section and without court order, is entitled to
7 recover ~~[the]~~ damages ~~[sustained~~
~~6 by the tenant]~~ in an amount equal to two months' rent, and the
7 cost of suit, including reasonable attorney's fees."

This modification will make it clear that, once a Court has heard and decided on the defense of retaliatory eviction, the issue of retaliatory eviction has been finally resolved. It will also discourage “self-help” evictions by landlords who do not seek Court permission before evicting tenants. Finally, it will provide some peace of mind for landlords who put their faith in the Court system and encourage them to seek justice through the courts.

Please let me know if you have any questions.

Very truly yours,

/s/ David Chee

David W.H. Chee