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

**Before the  
Senate Committee on Judiciary  
Friday, February 25, 2022  
9:30 a.m.  
Via Videoconference**

**WRITTEN TESTIMONY ONLY**

**On the following measure:**

**S.B. 2494, S.D. 1, RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE**

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 the dwelling unit 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.

DAVID Y. IGE  
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DIRECTOR

JOSEPH CAMPOS II  
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STATE OF HAWAII  
**DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339  
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February 24, 2022

TO: The Honorable Senator Karl Rhoads, Chair  
Senate Committee on Judiciary

FROM: Cathy Betts, Director

SUBJECT: **SB 2494 SD1 – RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE.**

Hearing: February 25, 2022, 9:30 a.m.  
Via Videoconference, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports the intent of this measure to provide additional protections for tenants.

**PURPOSE:** The purpose of the bill prohibits landlords from recovering possession of a dwelling unit from tenants if habitability of the dwelling unit is significantly impaired. Sets a tenant's liability for rent if habitability of the dwelling unit is significantly impaired. Provides remedies for retaliatory evictions. (SD1) The SD1 amended the measure by:

- (1) Clarifying that a tenant shall cooperate with the landlord to allow for the restoration of the dwelling unit to a habitable condition and continue to pay rent equal to the fair rental value of the unit or the agreed upon rent, whichever is less;
- (2) Replacing the term "premises" with the term "dwelling unit," where appropriate;  
and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

The long-lasting impacts of eviction and housing instability on the well-being of children and families are well-documented. More protections for tenants are needed. The current pandemic crisis is impacting fixed and low-income individuals and families, as they cannot keep up with the increasing housing and consumer goods costs.

Thank you for the opportunity to testify on this bill.

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February 25, 2022

**The Honorable Karl Rhoads, Chair**

Senate Committee on Judiciary

Via Videoconference

**RE: S.B. 2494, SD1, Relating to the Residential Landlord-Tenant Code**

**HEARING: Friday, February 25, 2022, at 9:30 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 10,800 members. HAR **strongly opposes** S.B. 2494, 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 housing providers and clear remedies for tenants for failure to properly maintain a rental unit or for engaging in improper retaliation evictions.

Regarding repairs and housing provider's obligations to maintain habitability of a unit and tenant remedies, the Code provides the following:

- 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.

Additionally, under HRS §521-42, a housing provider 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 housing provider 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 housing provider directly.

If a housing provider 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 housing provider 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.