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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, January 31, 2023
Conference Room 229
9:05 a.m.**

**On the following measure:
S.B. 329, RELATING TO THE LANDLORD-TENANT CODE**

Chair Keohokalole and Members of the Committee:

My name is Mana Moriarty, 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 a dwelling unit from tenants if habitability of the premises is significantly impaired; (2) set a tenant's liability for rent if habitability of the premises is significantly impaired; (3) provide remedies for retaliatory evictions and; (4) update the landlord-tenant code to ensure a basic level of housing that will improve health, education, and achievement outcomes for the most vulnerable of children while minimizing long-term costs to the State by empowering tenants to bring their own civil actions to enforce the prohibition against 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 may represent a reasonable figure, especially when compared to damage claims under current landlord-tenant law. An unlawful retaliatory eviction prohibited by this bill would be treated in the same manner as an illegal lockout, for which existing law allows damages in an "amount equal to two months' rent" for victimized tenants¹. In view of the costs to the tenant of bringing a civil action to enforce the prohibition against retaliatory evictions, OCP recommends that two months' rent and court costs be the minimum amount of damages awarded. OCP suggests that page 11 line 6 of the bill be amended from: "in an amount equal to two months' rent" to "in an amount equal to no less than two months' rent." Establishing statutory minimum damages for tenants is 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.

¹ Hawaii Revised Statutes section 521-63.

January 31, 2023

The Honorable Jarrett Keohokalole, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol, Conference Room 229 & Videoconference

RE: Senate Bill 329, Relating to the Residential Landlord-Tenant Code and Children's Health.

HEARING: Tuesday, January 31, 2023, at 9:05 a.m.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i and its over 11,000 members. HAR **strongly opposes** Senate Bill 329, 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. Updates landlord-tenant code to ensure a basic level of health housing that will improve health, education, and achievement outcomes for the most vulnerable of children while minimizing long-term costs to the State.

Tenant Remedies for Habitability Already Covered Under the Law:

The Landlord-Tenant Code, Hawai'i Revised Statutes (HRS) §521, 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 the landlord fails to repair the unit, the tenant may perform repairs and provide the 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 the landlord fails to repair the unit, the tenant may perform repairs and provide the 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 the landlord fails to repair the unit, the tenant may perform repairs and provide the 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.

Additional Concerns with this Measure:

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 housing provider to assert that defense.

Additionally, "significant impairment" is not defined and subjective and could open the door to abuse. **Furthermore, as this bill is written if a unit does become uninhabitable a tenant cannot be temporarily removed from the dwelling for the housing provider to conduct repairs; therefore, there would be no recourse for a housing provider 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, Hawai'i REALTORS® strongly opposes this measure. Mahalo for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 0329, RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE AND CHILDREN'S HEALTH.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Tuesday, January 31, 2023 **TIME:** 9:05 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Bryan C. Yee or Benjamin M. Creps, Deputy Attorneys General

Chair Keohokalole and Members of the Committee:

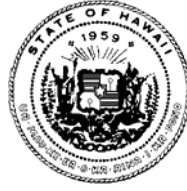
The Department of the Attorney General provides the following comments.

This bill prohibits a landlord from evicting residential tenants if the landlord breaches enumerated statutory duties, provided such breach results in the significant impairment of the habitability of the leased property, subject to the tenant paying rent capped at the fair rental value. The bill makes other updates to the landlord-tenant code intended to protect the health of tenants generally and to clarify circumstances in which a residential tenant may recover damages against a landlord.

The title of the bill may be subject to a legal challenge for having more than one subject. Pursuant to article III, section 14, of the Hawaii State Constitution, "Each law shall embrace but one subject, which shall be expressed in its title." The Hawaii Supreme Court has held that this provision is mandatory and a violation thereof would invalidate legislation. Schwab v. Ariyoshi, 58 Haw. 25, 31, 564 P.2d 135, 139 (1977). Here, the title of the bill appears to encompass two subjects: the Landlord Tenant Code and children's health. If possible, we recommend that another bill be used as a vehicle to carry out the purpose of the bill.

Thank you for the opportunity to present this testimony.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
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DEPARTMENT OF HUMAN SERVICES
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Honolulu, Hawaii 96809-0339

January 30, 2023

TO: The Honorable Senator Jarrett Keohokalole, Chair
Senate Committee on Commerce & Consumer Protection

FROM: Cathy Betts, Director

SUBJECT: SB 329 – RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE AND
CHILDREN'S HEALTH.

Hearing: January 31, 2023, 9:05 a.m.
Conference Room 229 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the measure's intent, provides comments, and defers to the Departments of Commerce & Consumer Affairs and Health.

PURPOSE: This bill aims to prohibit 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. Updates landlord-tenant code to ensure a basic level of health housing that will improve health, education, and achievement outcomes for the most vulnerable children while minimizing long-term costs to the State.

Numerous studies find that housing is a primary social determinant that affects an individual's long-term health outcomes. See [More Than Shelter: Housing for Urban Maternal and Infant Health](#).

Efforts and resources to improve housing quality in Hawaii, especially for low-income renters who compete for limited housing, are positive steps toward addressing housing and health disparities.

Thank you for the opportunity to provide comments on this measure.

LATE

SB-329

Submitted on: 1/30/2023 7:02:42 PM

Testimony for CPN on 1/31/2023 9:05:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Dear Senators,

Hawai‘i has one of the highest percentages of renter households in the nation (43%) and some of the least amount of affordable housing available, resulting in thousands of local families, many of whom are facing eviction, being unable to find alternative housing.

Evictions increase homelessness, unemployment, crime, and mental and physical illness. And children who experience an eviction often show signs of slower academic progress and other developmental impairments. Ultimately, each eviction results in significant financial and social costs to the evicted household and the surrounding community.

Currently, the residential landlord-tenant code makes it difficult for tenants to defend themselves against wrongful evictions. While the code clearly outlines landlords' responsibilities, it fails to provide tenants with suitable methods of recourse and ways to hold landlords accountable in various situations. Increasing protections for renters is warranted and badly needed.

Please pass SB329.

Mahalo!