

JAN 25 2023

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# A BILL FOR AN ACT

RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the State has one of  
2 the highest percentages of renter households in the nation, with  
3 forty-three per cent of households in the State consisting of  
4 renters. The legislature recognizes that the State also has the  
5 least amount of affordable housing in the nation, resulting in  
6 thousands of Hawaii's families, many of whom are facing  
7 eviction, being unable to find alternative housing. The  
8 legislature further recognizes that evictions increase  
9 homelessness, unemployment, crime, and mental and physical  
10 illness. Further, children who experience an eviction often  
11 show signs of slower academic progress and other developmental  
12 impairments. Ultimately, each eviction results in significant  
13 financial and social costs to the evicted household and the  
14 surrounding community.

15           The legislature believes that eviction procedures must  
16 carefully balance the landlord's need for sufficient enforcement  
17 against the tenant's need for sufficient protection. The



1 legislature further finds that without adequate safeguards,  
2 tenants can become targets for abuse during eviction  
3 proceedings. Currently, the residential landlord-tenant code  
4 makes it difficult for tenants to defend themselves against  
5 wrongful evictions. While the code clearly outlines landlords'  
6 responsibilities, it fails to provide tenants with suitable  
7 methods of recourse and ways to hold landlords accountable in  
8 various situations.

9 The legislature notes that leases, like other contracts,  
10 are reciprocal. The Hawaii supreme court has held that  
11 landlords cannot require a tenant to pay rent if the tenant does  
12 not receive the basic services to which they are entitled.  
13 While many states have passed laws specifying that tenants  
14 cannot be forced to pay rent for uninhabitable premises, the  
15 legislature has failed to formally recognize this principle,  
16 resulting in a lack of enforcement and numerous unjust and  
17 illegitimate evictions.

18 The legislature acknowledges that landlords are prohibited  
19 from retaliating against tenants who request repairs to their  
20 respective homes or complain about health or safety code  
21 violations. However, although the residential landlord-tenant



1 code guarantees compensation for other landlord offenses, it  
2 also places on the tenant the burden of proving entitlement to  
3 compensation for a landlord's retaliation. The result is often  
4 that tenants who have been retaliated against are not made  
5 whole, allowing landlords to continue these retaliatory  
6 practices.

7 The legislature additionally finds that exposure to  
8 environmental hazards can cause serious harm to a child's  
9 health. Environmental hazards in poorly maintained housing can  
10 cause developmental delays, lower cognitive function, behavioral  
11 disorders, poor executive function, learning disabilities,  
12 neurobehavioral effects, hypertension, cancer, endocrine  
13 disorders, and many other long-term health problems. Socially  
14 and economically marginalized families are often most at-risk  
15 for these adverse effects since they have more language, time,  
16 and financial constraints. Ensuring a basic level of healthy  
17 housing will improve health, education, and achievement outcomes  
18 for the most vulnerable children while minimizing long-term  
19 costs to the State.

20 Accordingly, the purpose of this Act is to:



- 1 (1) Prohibit landlords from recovering possession of
- 2 dwelling units from tenants if habitability of
- 3 premises is significantly impaired;
- 4 (2) Set a tenant's liability for rent if habitability of
- 5 premises is significantly impaired; and
- 6 (3) Provide remedies for unlawful retaliatory evictions.

7 SECTION 2. Section 521-42, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 **"§521-42 Landlord to supply and maintain fit premises.**

- 10 (a) The landlord shall at all times during the tenancy:
  - 11 (1) Comply with all applicable building and housing laws
  - 12 materially affecting health and safety[+] with an
  - 13 affirmative duty to investigate and remediate health
  - 14 hazards;
  - 15 (2) Keep common areas of a multi-dwelling unit premises in
  - 16 a clean and safe condition;
  - 17 (3) Make all repairs and arrangements necessary to put and
  - 18 keep the premises in a habitable and safe condition[+]
  - 19 using licensed contractors certified by the State or
  - 20 federal government when disturbing hazardous



1           substances such as, but not limited to lead and  
2           asbestos;

3           (4) Maintain all paint, electrical, plumbing, and other  
4           facilities and appliances supplied by the landlord in  
5           good working order and condition, subject to  
6           reasonable wear and tear;

7           (5) Except in the case of a single family residence,  
8           provide and maintain appropriate receptacles and  
9           conveniences for the removal of normal amounts of  
10          rubbish and garbage, and arrange for the frequent  
11          removal of such waste materials; and

12          (6) Except in the case of a single family residence, or  
13          where the building is not required by law to be  
14          equipped for the purpose, provide for the supplying of  
15          running water as reasonably required by the tenant.

16          Prior to the initial date of initial occupancy, the  
17          landlord shall inventory the premises and make a written record  
18          detailing the condition of the premises and any furnishings or  
19          appliances provided. Duplicate copies of this inventory shall  
20          be signed by the landlord and by the tenant and a copy given to  
21          each tenant. In an action arising under this section, the



1 executed copy of the inventory shall be presumed to be correct.  
2 If the landlord fails to make such an inventory and written  
3 record, the condition of the premises and any furnishings or  
4 appliances provided, upon the termination of the tenancy shall  
5 be rebuttably presumed to be the same as when the tenant first  
6 occupied the premises.

7 (b) The landlord and tenant may agree that the tenant is  
8 to perform specified repairs, maintenance tasks, and minor  
9 remodeling only if:

10 (1) The agreement of the landlord and tenant is entered  
11 into in good faith and is not for the purpose of  
12 evading the obligations of the landlord;

13 (2) The work to be performed by the tenant is not  
14 necessary to cure noncompliance by the landlord with  
15 section 521-42(a)(1); and

16 (3) The agreement of the landlord and tenant does not  
17 diminish the obligations of the landlord to other  
18 tenants.

19 (c) If a landlord's failure to materially comply with  
20 subsection (a) results in the significant impairment of the  
21 habitability of the premises:



1       (1) No action or proceeding to recover possession of the  
2       dwelling unit may be maintained against the tenant,  
3       nor shall the landlord otherwise cause the tenant to  
4       be removed from the dwelling unit involuntarily;  
5       provided that:

6       (A) The tenant continues to pay rent equal to the  
7       fair rental value of the premises or the agreed  
8       upon rent, whichever is less; and

9       (B) The landlord's ability to recover possession of  
10      the unit is restored upon:

11      (i) Termination of the rental agreement in  
12      accordance with law or terms of the  
13      agreement; or

14      (ii) Restoration of the premises to a habitable  
15      condition,

16      whichever comes first; and

17      (2) The tenant's liability for rent, from the date of  
18      significant impairment, shall not exceed the fair  
19      rental value of the premises."

20           SECTION 3. Section 521-63, Hawaii Revised Statutes, is  
21 amended by amending subsection (b) to read as follows:



1           "(b) If the condition referred to in subsection (a) was  
2 caused wilfully or negligently by the landlord[7] or was the  
3 result of noncompliance with 521-42(a), the tenant may recover  
4 any damages sustained as a result of the condition."

5           SECTION 4. Section 521-74, Hawaii Revised Statutes, is  
6 amended to read as follows:

7           "**§521-74 Retaliatory evictions and rent increases**  
8 **prohibited.** (a) Notwithstanding that the tenant has no written  
9 rental agreement or that it has expired, so long as the tenant  
10 continues to tender the usual rent to the landlord or proceeds  
11 to tender receipts for rent lawfully withheld, no action or  
12 proceeding to recover possession of the dwelling unit may be  
13 maintained against the tenant, nor shall the landlord otherwise  
14 cause the tenant to quit the dwelling unit involuntarily, nor  
15 demand an increase in rent from the tenant; nor decrease the  
16 services to which the tenant has been entitled, after:

17           (1) The tenant has complained in good faith to the  
18               department of health, landlord, building department,  
19               office of consumer protection, or any other  
20               governmental agency concerned with landlord-tenant  
21               disputes of conditions in or affecting the tenant's





1 dwelling unit which constitutes a violation of a  
2 health law or regulation or of any provision of this  
3 chapter; or

4 (2) The department of health or other governmental agency  
5 has filed a notice or complaint of a violation of a  
6 health law or regulation or any provision of this  
7 chapter; or

8 (3) The tenant has in good faith requested repairs under  
9 section 521-63 or 521-64.

10 (b) Notwithstanding subsection (a), the landlord may  
11 recover possession of the dwelling unit if:

12 (1) The tenant is committing waste, or a nuisance, or is  
13 using the dwelling unit for an illegal purpose or for  
14 other than living or dwelling purposes in violation of  
15 the tenant's rental agreement;

16 (2) The landlord seeks in good faith to recover possession  
17 of the dwelling unit for immediate use as the  
18 landlord's own abode or that of the landlord's  
19 immediate family;



- 1           (3) The landlord seeks in good faith to recover possession  
2           of the dwelling unit for the purpose of substantially  
3           altering, remodeling, or demolishing the premises;
- 4           (4) The complaint or request of subsection (a) relates  
5           only to a condition or conditions caused by the lack  
6           of ordinary care by the tenant or another person in  
7           the tenant's household or on the premises with the  
8           tenant's consent;
- 9           (5) The landlord has received from the department of  
10          health certification that the dwelling unit and other  
11          property and facilities used by or affecting the use  
12          and enjoyment of the tenant were on the date of filing  
13          of the complaint or request in compliance with health  
14          laws and regulations;
- 15          (6) The landlord has in good faith contracted to sell the  
16          property, and the contract of sale contains a  
17          representation by the purchaser corresponding to  
18          paragraph (2) or (3); or
- 19          (7) The landlord is seeking to recover possession on the  
20          basis of a notice to terminate a periodic tenancy,



1           which notice was given to the tenant previous to the  
2           complaint or request of subsection (a).

3           (c) Any tenant from whom possession has been recovered or  
4 who has been otherwise involuntarily dispossessed, in violation  
5 of this section, is entitled to recover the damages sustained by  
6 the tenant in an amount equal to two months' rent and the cost  
7 of suit, including reasonable attorney's fees.

8           (d) Notwithstanding subsection (a), the landlord may  
9 increase the rent if:

10          (1) The landlord has received from the department of  
11 health certification that the dwelling unit and other  
12 property and facilities used by and affecting the use  
13 and enjoyment of the tenant were on the date of filing  
14 of the complaint or request of subsection (a) in  
15 compliance with health laws and regulations;

16          (2) The landlord has become liable for a substantial  
17 increase in property taxes, or a substantial increase  
18 in other maintenance or operating costs not associated  
19 with the landlord's complying with the complaint or  
20 request, not less than four months prior to the demand  
21 for an increase in rent; and the increase in rent does



1 not exceed the prorated portion of the net increase in  
2 taxes or costs;

3 (3) The landlord has completed a capital improvement of  
4 the dwelling unit or the property of which it is a  
5 part and the increase in rent does not exceed the  
6 amount which may be claimed for federal income tax  
7 purposes as a straight-line depreciation of the  
8 improvement, prorated among the dwelling units  
9 benefited by the improvement;

10 (4) The complaint or request of subsection (a) relates  
11 only to a condition or conditions caused by the want  
12 of due care by the tenant or another person of the  
13 tenant's household or on the premises with the  
14 tenant's consent; or

15 (5) The landlord can establish, by competent evidence,  
16 that the rent now demanded of the tenant does not  
17 exceed the rent charged other tenants of similar  
18 dwelling units in the landlord's building or, in the  
19 case of a single-family residence or where there is no  
20 similar dwelling unit in the building, does not exceed  
21 the market rental value of the dwelling unit.



1        (e) Notwithstanding subsections (b) and (d) to the  
2 contrary, subsection (a) shall apply without exception if the  
3 department of health or other governmental agency has notified  
4 the landlord about a health hazard and recommended actions are  
5 incomplete."

6        SECTION 5. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9        SECTION 6. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11        SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'ASL', is written over a horizontal line.

# S.B. NO. 1205

**Report Title:**

Landlord-Tenant Code; Children's Health; Habitability;  
Retaliatory Evictions

**Description:**

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.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

