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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

JANUARY 25, 2016
2:00 PM

TESTIMONY OPPOSING H.B. 33, H.D. 1, RELATING TO THE RESIDENTIAL
LANDLORD-TENANT CODE.

TO THE HONORABLE ANGUS L. K. McKELVEY, CHAIR,
AND TO THE HONORABLE JUSTIN H. WOODSON, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs, Office of Consumer Protection (“OCP”) opposes H.B. 33, H.D. 1, Relating to the Residential Landlord-Tenant Code. My name is Stephen Levins and I am the Executive Director of the OCP.

H.B. 33, H.D. 1 sets requirements for tenant application screening fees. It stipulates that the amount of the fee must be commensurate with the costs of the services permitted, and requires that any fee amounts in excess of the services paid for be returned to the tenant. The Bill permits the landlord or the landlord’s agent to charge the applicant an administrative fee that is no greater than 50% of the application screening fee. The tenant must be provided with a copy of any report obtained using the fee within ten days.

The OCP opposes subsection (c), which permits the landlord or the landlord's agent to collect an administrative fee no greater than 50% of the application screening fee. Landlords or the landlords' agents should be allowed to recover only their costs with regard to the application screening fee. Tenant credit checks are easily available through the internet and cost the requestor between \$10 and \$25. Under these circumstances an administrative fee is clearly unnecessary and excessive, and authorizing one would create a windfall for landlords and their agents. Permitting the administrative fee would also incentivize use of expensive credit check services in order to raise the allowable administrative fee for landlords or their agents. As drafted, this legislation would weigh heavily on low-income renters who already face substantial challenges to find and stay in affordable housing.

If a landlord or their agent collected an application screening fee and an administrative fee, and then decided not to obtain information about the applicant pursuant to subsection (a), the landlord or their agent would be obligated to return any amount not used pursuant to subsection (a), but they would be permitted to retain the administrative fee. This would enable the abuses that this legislation seeks to prevent by providing an incentive for landlords or their agents to charge application screening fees even if they do not intend to obtain information about the applicant.

Thank you for the opportunity to offer comments opposing H.B. 33, H.D. 1. I would be happy to answer any questions members of the Committee may have.



HB33 HD1
RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE
House Committee on Consumer Protection and Commerce

January 25, 2016

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB33 HD1, which provides much-needed consumer protection to those seeking rental housing, by preventing landlords from charging prospective tenants “application screening fees” that are unreasonably more than the actual costs of screening a rental applicant. In addition, this bill ensures that screening fees are actually used for screening, by requiring landlords to provide prospective tenants with copies of any reports produced through their screening processes.

OHA’s strategic priorities include Ho‘okahua Waiwai, or increasing the economic self-sufficiency of Native Hawaiians. This includes supporting greater stability in housing for our low-income beneficiaries and their families. To guide development of policy relating to Native Hawaiians and housing security, OHA has researched the housing needs of Native Hawaiian families, including completing our own rental housing survey.

OHA’s research indicates that most housing-insecure Native Hawaiian households include five or more individuals.ⁱ Unfortunately, single-family rental units needed by such households are in short supply. A recent Affordable Rental Housing Study Updateⁱⁱ by the Hawai‘i Housing and Finance Corporation (HHFDC) shows sharp drops in rental listings over the last three years for both multi-family and single-family units on all islands. In some areas, rental housing listings have dropped by 80%.ⁱⁱⁱ **With such a scarcity of rental listings, consumer protection mechanisms are necessary to prevent the undue exploitation of families competing for what little housing opportunities are available.**

This measure helps to prevent such exploitation, by prohibiting landlords from charging unreasonable fees to rental applicants, and ensuring that tenants are only charged if they are actually screened. This bill also holds landlords accountable in actually carrying out any screenings they may charge for, by providing tenants with copies of reports obtained during the screening process.

Native Hawaiian renters in particular may benefit from this important consumer protection measure. Despite their higher-than-average labor force participation rates, Native Hawaiians also earn \$9,100 per capita less than the state average.^{iv} This bill is one way to ensure that such low-income individuals are not forced to use important financial

resources simply searching for rental housing opportunities, and offers all renters important consumer protection during times of increased competition for units.

OHA notes that the Office of Consumer Protection has recommended amendments to ensure the bill's intention to remove barriers to securing housing is fully realized.

OHA therefore urges the Committee to **PASS** HB33 HD1. Mahalo nui for the opportunity to testify on this measure.

ⁱ OFFICE OF HAWAIIAN AFFAIRS, HAWAII RENTERS STUDY 2013: UNDERSTANDING THE HOUSING NEEDS OF NATIVE HAWAIIAN AND NON-HAWAIIAN SECTION 8 HOUSEHOLDS (2013), *available at* <http://www.oha.org/wp-content/uploads/2015/01/OHA-Hawaii-Renters-Study-2013-Full-Report.pdf>.

ⁱⁱ See HAWAII HOUSING AND FINANCE CORPORATION, RENTAL HOUSING STUDY 2014 UPDATE (2014), *available at* <http://dbedt.hawaii.gov/hhfdc/resources/reports/>.

ⁱⁱⁱ RICK CASSIDAY, MAUI RENTAL MARKET AFFORDABLE RENTAL HOUSING STUDY UPDATE 2014 (2014), *available at* <http://dbedt.hawaii.gov/hhfdc/files/2015/02/RENTAL-HOUSING-STUDY-2014-UPDATE-COUNTY-OF-MAUI.pdf>

^{iv} OFFICE OF HAWAIIAN AFFAIRS, INCOME INEQUALITY AND NATIVE HAWAIIAN COMMUNITIES IN THE WAKE OF THE GREAT RECESSION: 2005 TO 2015, page 2, *available at* <http://www.oha.org/wp-content/uploads/2014/05/Income-Inequality-and-Native-Hawaiian-Communities-in-the-Wake-of-the-Great-Recession-2005-2013.pdf>

January 25, 2016

The Honorable Angus L.K. McKelvey, Chair

House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 33, H.D.1, Relating to the Residential Landlord-Tenant Code

HEARING: Monday, January 25, 2016 at 2:00 p.m.

Aloha Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its 8,800 members. HAR raises **concerns** on H.B. 33, H.D.1, which allows a landlord, when processing an application to rent residential property to charge an application screening fee for the actual costs of screening the applicant, plus an additional administrative fee. It also requires landlords to refund any unused amount of the application screening fee and provide a copy of any report obtained via the screening process to the applicant.

The tenant screening process typically begins when the prospective tenant completes a rental application and pays an application fee. Property managers can order various reports or rely on a tenant screening company to produce a tenant screening report. The screening report can include credit reports, criminal background checks, eviction history, and other public records to properly vet a tenant. It is general standard practice that any potential tenant over the age of 18 that will be on the rental agreement is required to undergo an application screening check. This is to ensure that potential tenants are capable of accepting the responsibilities of being a renter.

Various screening reports are important and impartial indicators for rental consideration. HAR believes it is unreasonable to require that the landlord provide the tenant a copy of the screening check information within ten (10) days of obtaining the reports.

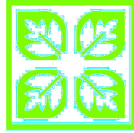
First, it does not specify in the form of delivery such as certified mail, in-person, or other. Because of the 10 day notice requirement and the tenant screening reports contain sensitive and confidential information, the HAR believes the reports should be mailed via Certified Mail, Return Receipt requested, Restricted to addressee only. This would limit access to the report and demonstrates proof that the document was mailed. The cost of this type of mailing is \$6.75 for certified mail with return receipt. There is a high likelihood that many experienced companies will be burdened with hundreds of Certified

Mail and we believe this direct cost associated with this measure should be included, separately from the administrative fee in an amount no greater than 50% of the application screening fee under subsection (c).

HAR would further add that the screening reports, unlike the credit report a consumer receives from the credit reporting agencies, are coded and geared to property managers. The Federal Fair Credit Reporting Act allows consumers to receive a free copy of their credit reports once a year from each of the three credit reporting agencies.

While there are instance in which uninformed landlords may misapply the landlord-tenant laws, it is important that our members abide to a strict Code of Ethics which ensures that mechanisms are in place to deter abuse. As regulated licensees, laws and enforcement agencies provide protection to the tenants, including but not limited to the Office of Consumer Protection (OCP), a division of the Department of Commerce and Consumer Affairs, that is charged with protecting the interests of consumers, and the Regulated Industries Complaint Office that enforces violations by licensed real estate practitioners, including illegal or deceptive practices.

Mahalo for the opportunity to testify.



TESTIMONY in SUPPORT of HB 33, HD1: RELATING TO THE LANDLORD-TENANT CODE

TO: Representative Angus L. K. McKelvey, Chair, Representative Justin H. Woodson, Vice-Chair, and Members, Committee on Consumer Protection and Commerce

FROM: Betty Lou Larson, Legislative Liaison, Catholic Charities Hawaii

Hearing: **Monday, January 25, 2:00 pm; CR 325**

Thank you for the opportunity to testify in support of HB 33,HD1, which allows landlords to collect the actual cost of application screening fees from prospective tenant while requiring a refund of the fee if it is not used. The bill also requires landlords to provide a copy of the report they attain with the collected fee.

Catholic Charities Hawai'i (CCH) is a tax exempt, non-profit agency that has been providing social services in Hawai'i for over 60 years. CCH has programs serving elders, children, developmentally disabled, homeless and immigrants. Our mission is to provide services and advocacy for the most vulnerable in Hawai'i. One of our areas of advocacy priority this year is affordable housing and homelessness. This bill will provide some relief and fairness to low-income renters searching for a rental unit.

CCH has several programs that help people find housing. These programs range in the type of assistance they provide from intensive housing case management to providing financial assistance for deposit or first month's rent. Some of the people seeking this type of assistance are homeless, others are at-risk of homelessness, others are seniors. All have very low-incomes. During a rental search we have found that landlords charge \$10 - \$25 or more as an application or screening fee, usually when people initially apply, NOT when they are processed for a unit. These fees become a barrier to finding housing for our clients because they cannot afford the multiple fees they must pay in order to successfully secure a rental. Our clients do not always have the ideal qualifications landlords are looking for and often apply to a number of apartments before they are accepted. We think there is value to holding landlords accountable for the use of the screening or application fee and could help clients avoid paying such fees when they are not finalists for a unit.

We support the language in line 7-10 of the bill which would allow the landlord to charge the applicant an application screening fee only **at the time the applicant will be processed for a unit**, to cover costs. This change in the code should mean that the prospective tenant would not have to pay the screening fee unless they are a finalist for the rental unit and are being seriously considered by the landlord. This would also make it easier on the landlord in that they would not have to reimburse people on a waitlist for whom they never actually do a credit check, etc.

Thank you very much for hearing and considering this bill that will help lower a barrier to housing for low-income renters. Please contact me at (808) 373-0356 or bettylou.larson@catholiccharitieshawaii.org if you have any questions.



CLARENCE T. C. CHING CAMPUS • 1822 Ke'eaumoku Street, Honolulu, HI 96822
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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 23, 2016 12:59 PM
To: CPCtestimony
Cc: dreamaloha@hawaii.rr.com
Subject: Submitted testimony for HB33 on Jan 25, 2016 14:00PM

HB33

Submitted on: 1/23/2016

Testimony for CPC on Jan 25, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Catherine Graham	FACE - Faith Action for Community Equity	Support	Yes

Comments: FACE - Faith Action for Community Equity and the Housing Now! Coalition support Bill 33. We support any and all measures that assist low income residents to secure housing. Barriers to housing drive up the numbers of our homeless population unnecessarily. We especially support the part of the bill that mandates that landlords only collect the application fee when an applicant is definitely being considered as a renter.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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January 21, 2016

Re: In support of HB 33

Dear Chair and Members of the Committee,

I'm in support of HB 33, and share with you, both my family concerns; as while as others citizens in the community, I met along while accommodating my sister, in her search for another rental unit, It's been difficult and hearing from other renters (tenants) frustration.

I experience my sister situation, after (27) twenty seven years in the same unit; she 54 lived in lower (Kalihi Kai), with husband 58; she raised all (3) her children until became adults; unfortunately she was evicted, due to her child's disability. (Yes, filed complaint w/HCRC and HUC/landlord has the right)

The cost of living been a struggle for lots of local family, especially for the ones that are home grown (born and raised). While in search of another rental unit/we notice landlords and realtors requesting fee in which I questioned, RESPONSE (i.e. processing, credit report and finder fee),

- 1) I felt it was unfair and unjust.
- 2) Fees range between \$10.00 and \$200.00
- 3) Each, adult that will be living in the home

My sister, applied for the unit in Kalihi and paid \$25.00 for each adult in her home/keep in mind; the day of the showing of the unit/estimate another 20 families shown up. Unfortunately my sister did not get the unit/another showing was schedule, (2) other weekends.

No response; from the landlord/realtor on the "reason for denied, a copy of renters credit report was not even furnish to the applicant" upon demand.

Background; we called the State of Hawaii, DCCA Landlord Tenant Code/and review the booklet; we found the booklet "Landlord Tenant Code" to be outdated/time had change the booklet needs to be revised; DCCA Landlord Tenant Code agreed and called it to be dinosaur (old).

I ask for your support to HB 33 please consider adding to the bill. The applicant should have the right and require to pulling a current credit report, when applying for a rental unit and provide a copy to the landlord or realtor at the time of showing and/or considering applying. (No prescreening if applicant is not interested in the unit at the time of showing should be welcome).

Please enforce a cap to the fees charge to the applicants, and maybe add special conditions and order an update to the current Landlord Tenant Code laws/booklet.

If you have any question please contact me at (808) 782-5777 or by email kkelli4u@aol.com

Mahalo, Kelli Keawe