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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

February 23, 2017
2:00 P.M.

TESTIMONY SUPPORTING H.B. 223, H.D.1, RELATING TO THE RESIDENTIAL
LANDLORD-TENANT CODE.

TO THE HONORABLE ANGUS L. K. MCKELVEY, CHAIR,
AND TO THE HONORABLE LINDA E. ICHIYAMA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs, Office of Consumer Protection (“OCP”) supports H.B. 223, 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. 223, H.D. 1 allows a landlord to charge an application screening fee for the actual cost of screening the applicant and requires a refund of any unused amount that is not used for that specific purpose.

H. B. 223, H.D. 1 is necessary because current law does not specifically regulate the nature and amount of application fees that landlords may charge prospective tenants.

Over the years the OCP has received allegations from prospective tenants claiming that the cost of their application fee does not correlate with the cost of background checks. The most troubling reports involve claims from prospective tenants that they have been asked to pay \$50 to \$100 for an application screening fee that actually costs \$10 to \$25.

Excessive application fees are particularly egregious in those circumstances when a landlord or their agent receive scores of applications for one apartment, most of which are not even seriously considered. Instead of engaging in a valid tenant screening process, the landlord or agent is abusing their bargaining position to create a supplemental source of income. This measure would deter such conduct by addressing this inequity head-on. If adopted, a landlord would only be allowed to charge a prospective tenant for the actual cost of using a screening or consumer credit reporting service and refund unspent monies. Landlords would still be compensated for the expense associated with credit checks and tenants would not be forced to pay for unnecessary screening fees.

Thank you for the opportunity to offer comments in support of H.B. 223, H.D. 1. I would be happy to answer any questions members of the Committee may have.



HB223 HD1
RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE
House Committee on Consumer Protection and Commerce

February 23, 2017

2:00 p.m.

Room 329

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB223 HD1, which provides much-needed consumer protection against the financial exploitation of those seeking rental housing.

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.

OHA notes that Native Hawaiian families are in particular need of relief targeted to low-income renters. Native Hawaiians, whose homeownership rate is significantly lower than the state average, must rely substantially on the rental housing market.¹ More than half of Native Hawaiian renters, many of whom already live in overcrowded situations, also live in homes they are struggling to afford. Despite the fact that Native Hawaiians participate in the labor force at higher rates than the state average² and have larger than average family sizes,³ Native Hawaiian median family income is also \$9,627 (or 12.2%) lower than the state median family income.⁴ Unfortunately, single-family rental units needed by such households are in short supply. **Accordingly, consumer protection mechanisms are necessary to prevent the undue exploitation of low-income Native Hawaiian and other families competing for what little housing opportunities may be available to them.**

¹ Out of 71,006 Native Hawaiian households, 37,562 households are owner-occupied. This figure is commonly used by most governmental agencies to represent the homeownership rate. Therefore, the homeownership rate for Native Hawaiians is 52.9% compared to the statewide average of 56.7% of households. See OFFICE OF HAWAIIAN AFFAIRS, OHA DATA BOOK HOUSING TENURE BY RACE-ETHNICITY IN HAWAII 2014, available at <http://www.ohadatabook.com/T02-131-15u.pdf>. This figure includes 8,329 DHHL residential lease "owner-occupied" property units. DHHL ANNUAL REPORT 2014, p. 48, available at <http://dhhl.hawaii.gov/wp-content/uploads/2011/11/DHHL-Annual-Report-2014-Web.pdf>. For non-DHHL properties, the Native Hawaiian homeownership rate is therefore 41.2%, 15.5 percentage points below the statewide rate.

² See American Community Survey, 2013, Civilian Labor Force Datapoint, U.S. Census Bureau.

³ In 2014, the average size of a Native Hawaiian family was 4.06, .45 larger than the state average. See OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN HOMEOWNERSHIP HO'OKAHUA WAIWAI FACT SHEET VOL.2016, NO. 1, page 3, available at <http://www.oha.org/wp-content/uploads/NH-Homeownership-Fact-Sheet-2016.pdf>.

⁴ In 2015, the median family income for Native Hawaiians was \$69,560 compared to the state median family income of \$79,187. See OFFICE OF HAWAIIAN AFFAIRS, 2010-2018 STRATEGIC RESULTS: MEDIAN FAMILY INCOME INDICATOR SHEET 2015 available at <http://www.oha.org/wp-content/uploads/Hookahua-Waiwai.-Indicator-Sheet.-MFI.-2015.pdf>.

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. Landlords would also be held accountable in actually carrying out any screenings they may charge for, by providing tenants with copies of reports obtained during the screening process. **This bill therefore helps to ensure that 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 therefore urges the Committee to **PASS** HB223 HD1. Mahalo nui for the opportunity to testify on this measure.



LATE

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

February 23, 2017

TO: The Honorable Representative Angus L.K. McKelvey, Chair
House Committee on Water & Land

FROM: Scott Morishige, MSW, Governor's Coordinator on Homelessness

SUBJECT: HB 223 HD 1 – RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

Hearing: Thursday, February 23, 2017, 2:00 p.m.
Conference Room 329, State Capitol

POSITION: The Governor's Coordinator on Homelessness appreciates the intent of this measure, as it addresses potential barriers to permanent housing for persons experiencing homelessness, and offers the following comments. The Coordinator defers to the Office of Consumer Protection in regard to current regulations and statutory processes.



PURPOSE: The purpose of the bill is to allow a landlord or landlord's agent to charge an application screening fee as part of the applicant screening process for renting residential property. The bill sets limits on the amount of the application screening fee and requires the landlord or agent to return any unauthorized fees to the applicant. In addition, the bill allows the landlord or agent to charge an applicant an administrative fee or postage based on the actual expenses incurred in providing a copy of a report to the applicant.


The Coordinator notes that application screening fees may sometimes serve as a barrier to housing for low-income homeless individuals and families. Anecdotally, it has been reported that homeless individuals seeking housing often pay multiple application fees for potential units, with application screening fees ranging from \$15 to \$50. In addition, while some landlords charge a single screening fee per household, others may charge a fee per adult member of the household who will be added to the rental agreement.

On its surface, a \$25 fee may seem small, but this can be a large amount to an individual who is low-income and homeless, and these fees can add up substantially over time. By setting limits on the application screening fee, and by requiring the landlord to return unauthorized or unused fees, this bill increases the level of protection for homeless individuals seeking housing and ensures they will receive their money back if a credit or other background check is not conducted.

Thank you for the opportunity to testify on this bill.



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February 23, 2017

The Honorable Angus L.K. McKelvey, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 329
Honolulu, Hawaii 96813

RE: H.B. 223, H.D.1, Relating to the Residential Landlord-Tenant Code

HEARING: Thursday, February 23, 2017, at 2:00 p.m.

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

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,000 members. HAR **opposes** H.B. 223 which allows a landlord or landlord's agent to charge an application screening fee as part of the applicant screening process for renting residential property. It sets limits on the amount of the application screening fee and requires the landlord or agent to return any unauthorized fee amounts to the applicant. It allows the landlord or agent to charge an applicant an administrative fee and postage based on the actual expenses incurred in providing a copy of a report 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.

This bill makes no distinction between market rentals and rentals that fall into the affordable housing spectrum. This has the potential to adversely affect those at the lowest end of the income range as it's currently written. Some affordable housing programs require management companies to not charge any application fees at all, whereas some programs allow the management company to make their own call. For example, Locations property management absorbs these costs, however if they're being asked to additionally start paying for postage to send the reports to applicants,





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management companies may need to re-examine the feasibility of adding additional costs onto their clients without charging an application fee.

Further, this bill does not take into account the labor costs involved with processing these applications. Some labor-intensive tasks include multiple interactions with prior landlords, prior employers, references, etc. These calls, e-mails, and fax exchanges do have a time cost involved with them, and this bill doesn't allow us to quantify that, and limits us only to hard costs incurred.

In its current form, it does allow management companies to use a tenant screening service, which is normally more expensive than handling it in-house, because the third-party companies charge a markup to be profitable. If this bill was to pass in its current form, Locations would likely move to using a third-party tenant screening service, since those costs would be then passed on to the applicant rather than sticking their company with having to absorb their own labor costs. This would ultimately be more expensive for the applicants, which is counter to the intent of this bill.

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.**

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 in opposition to this measure.



TESTIMONY IN SUPPORT OF HB 223 –
RELATING TO RESIDENTIAL LANDLORD-TENANT CODE

House Committee on Consumer Protection and Commerce – Room 329

Representative Angus L.K. McKelvey, Chair
Representative Linda Ichiyama, Vice Chair

February 23, 2017 at 2:00 p.m.

The Legal Aid Society of Hawai'i (Legal Aid) submits testimony in support of HB 223 – Relating to Residential Landlord-Tenant Code (similar to SB 130). For Legal Aid, my name is Dan O'Meara and I am the Managing Attorney of Legal Aid's Asset Protection Unit, a unit that provides legal assistance in housing (landlord/tenant), foreclosure, fair housing, consumer, and tax issues.

HB 223 addresses an issue that impacts the low-income population served by Legal Aid. Many of our clients receive some sort of subsidy for their housing, which can require application fees (such as a holder of a Section 8 voucher), adding a burden and a barrier to finding housing. HB 223 adds a useful layer of transparency to the rental housing application process. Many tenants must submit multiple applications with either no response or a negative response, with the sense that they have wasted their money in their search for a new home. There are already many different expenses in finding a new rental property – moving expenses, security deposit, first month rent, and utility changes and HB 223 helps to assure that application fees are not completely wasted. HB 223 balances the tenant's need to submit application fees with the requirement that the landlord legitimately consider the application by actually using the application fee. It also allows an applicant to know when their credit report has been accessed to determine if the access of their credit report is impacting their credit score.

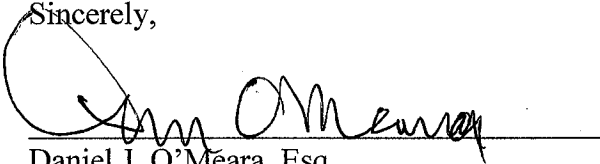
HB 223 would allow a tenant to know the type of information being considered in the rental application process. To the extent a credit report is obtained by the landlord, the tenant will be

able to review the positive or negative information being obtained and also allow the tenant to correct any errors in information the landlord does use.

Subsection (c) of HB 223 requires that the applicant request the receipt and copy of any report. Subsection (d) of HB 223 requires the return of any unused application fee. HB 223 imposes a duty on the landlord to return unused fees, but does not require a receipt or copy of the report be provided. If HB223 were modified to require a landlord to let the applicant know they are entitled to a receipt and/or report under subsection (c), then an applicant would have a way to know the fee was actually used (without relying on the good will of a landlord to provide a receipt), and further the transparency provided by this useful legislation.

Thank you for this opportunity to provide testimony.

Sincerely,



Daniel J. O'Meara, Esq.
Managing Attorney, Asset Protection Unit
Legal Aid Society of Hawai'i

The Legal Aid Society of Hawai'i is the only legal service provider with offices on every island in the state, and in 2016 provided legal assistance to over 8,500 Hawai'i residents in the areas of consumer fraud, public assistance, family law, the prevention of homelessness, employment, protection from domestic violence, and immigration. Our mission is to achieve fairness and justice through legal advocacy, outreach, and education for those in need.



LATE

CATHOLIC CHARITIES HAWAII

TESTIMONY IN SUPPORT OF HB 223 HD1: RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

TO: Rep. Angus L.K. McKelvey, Chair, Rep. Linda Ichiyama, Vice Chair, and Members, Committee on Consumer Protection and Commerce
FROM: Terrence L. Walsh, Jr., President and Chief Executive Officer
Hearing: **Thursday, 2/23/17; 2:00 PM; CR 329**

Chair McKelvey, Vice Chair Ichiyama, and Members, Committee on Consumer Protection and Commerce:

Thank you for the opportunity to provide testimony **in support** of HB 223 HD1, which allows a landlord/agent to charge an application screening fee as part of the screening process for renting a residential unit. I am Terry Walsh, with Catholic Charities Hawai'i.

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. This bill impacts many who face homelessness.

Catholic Charities Hawai'i daily serves clients who are homeless or are on the brink of homelessness. The rental application fees charged by some landlords are a severe burden on many of our most desperate clients: the elderly, families with kids, and chronic homeless. Our seniors who live on SSI income (under \$800/month) need to apply to as many housing units as possible in order to have a chance to find ONE. However, they may be severely burdened by the rental application fee, when it is charged at the time of application, vs. when they are actually being screened for a unit. In this tight rental market, a landlord offering an affordable rent may receive 10 or more applications for a unit. They usually choose 1-3 top applicants to actually process. Other agents may be putting applicants on a waitlist for openings. We do not object if landlords charge a screening fee to the applicant at the time they are being offered a possible unit. At that time the senior or family could gather resources for a \$25 or \$50 screening fee. However, a family with 2 adults who are struggling to pay living expenses cannot afford to pay \$100 or \$200 (for just 2 – 4 applications) for fees and never hear from the landlord again. They end up not being among the “top 3”. Currently, this fee is a significant barrier for many clients.

We support this bill since it provides guidelines for when and how much a landlord can charge a screening fee. Collecting this fee at the actual time of screening is also appropriate since the landlord could then confirm that the applicant still needs a unit before processing them.

We know we have a housing crisis. We need reasonable ways for struggling families, seniors, young workers, etc. to apply for rental units in our over-heated rental market.

We urge you to support this bill and remove a significant barrier for many to finding housing. Please contact our Legislative Liaison, Betty Lou Larson, at 373-0356, or at bettylou.larson@catholiccharitieshawaii.org, if you have any questions.



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HopeLine: (808) 524-4673 • www.CatholicCharitiesHawaii.org



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DATE: February 22, 2017

TO: Representative Angus McKelvey
Chair, Committee on Consumer Protection & Commerce
Submitted Via Capitol Website

RE: **HB 223, HD1 Relating to Residential Landlord-Tenant Code**
Hearing Date: February 23, 2017 at 2:00 p.m.
Conference Room: 329

Dear Chair McKelvey and Members of the Committee on Consumer Protection & Commerce:

We offer this testimony on behalf of the Consumer Data Industry Association (CDIA). Founded in 1906, CDIA is the international trade association that represents more than 200 data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, fraud prevention, risk management, employment reporting, tenant screening and collection services.

We submit this testimony with **comments** to H.B. 223, HD1, which allows landlords to collect the actual cost of an application screening fee from prospective tenants, requires them to refund the screening fees if no report is obtained, and requires the landlord to provide copies of reports to applicants. The bill also was amended in the HD1 to allow landlords to charge an applicant an administrative fee and postage based on the actual expenses incurred in providing the report.

Credit screening reports are specifically geared towards providing landlords information to ensure that tenants are financially capable of renting property. Allowing a consumer to receive a copy of his or her own credit report does not seem necessary because, under the Fair Credit Reporting Act, consumers can already obtain a free credit report each year. Providing tenant screening reports seems unwarranted because it would unnecessarily add a cost to the screening process for

Gary M. Slovin
Mihoko I. Ito
R. Brian Tsujimura
C. Mike Kido
Tiffany N. Yajima
Matthew W. Tsujimura

something that is readily available at no cost. Thank you for the opportunity to testify on this measure.

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 22, 2017 5:46 PM
To: CPCtestimony
Cc: pastordianem@gmail.com
Subject: Submitted testimony for HB223 on Feb 23, 2017 14:00PM

HB223

Submitted on: 2/22/2017

Testimony for CPC on Feb 23, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Diane S. Martinson	Housing Now!	Comments Only	No

Comments: Personally and as a pastor, I have firsthand experience with rental application fees charged on Oahu, usually by management companies. Not all companies/landlords charge the same fees, and with a tight housing market and many applying for the same unit, the collection of screening fees from every person turning in a rental application is ultimately not necessary. I support safeguards for renters, so that if the funds are not needed or completely used for the intended purpose, they are returned. These dollars do make a difference in the weekly budgets of many individuals and families who rent.

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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To: Hawaii State House Committee on Consumer Protection & Commerce
Hearing Date/Time: Thursday, February 23, 2017, 2 PM
Place: Hawaii State Capitol, Rm. 329

Position Statement in Support of House Bill HB223 HD1

YWCA O'ahu manages the Homebase Transitional Housing Program. The program was created for homeless, employed women making the difficult transition to become economically self-sufficient. The program includes housing and supportive services that help individuals regain stability as they move toward independent living and permanent housing.

Chair McKelvey, Vice Chair Ichiyama, and members of the Committee on Consumer Protection & Commerce,

Thank you for the opportunity to provide written testimony in **support of HB 223**, relating to the residential landlord-tenant code. This bill would limit the amount a landlord could charge a possible tenant for an application fee and require any unused portion be returned. For people transitioning into housing, especially those with limited financial means, this bill provides relief from the overwhelming costs associated with renting in Hawaii.

In Hawaii, almost half of all households are renters and the state is facing a rental housing shortage of thousands of units. This makes for a challenging rental market and often renters will apply to multiple places out of necessity. Renters are also required to have separate applications processed for every person over the age of 18 that will be living in the unit. Currently, there is no limit on what a landlord may charge for a rental application fee. Landlords are able to charge fees ranging from \$10-\$100 to process an application. This accrued cost creates an obstacle for individuals and families who may have to pay the application fee several times, for several members, even if they are not being seriously considered for the property. For many families they cannot endure this cost. House Bill 223 would limit the fee to the actual costs of screening the applicant **and** require a refund of any unused amount that is not used for that specific purpose. It allows the landlord the screening tool they need to make an informed decision and protects the renter from inflated costs.

House bill 223 helps Hawaii's families and individuals. It prevents the practice of charging higher application fees, regardless of whether the applicant is seriously considered for the unit or what the actual cost is. I urge your support of this bill.

Thank you for the opportunity to testify and for your consideration on this matter.
Kathleen Algire
Advocacy Coordinator

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 17, 2017 9:33 PM
To: CPCtestimony
Cc: jamesjtz@aol.com
Subject: *Submitted testimony for HB223 on Feb 23, 2017 14:00PM*

HB223

Submitted on: 2/17/2017

Testimony for CPC on Feb 23, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
James Gauer	Individual	Support	No

Comments:

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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