



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

February 6, 2018

TO: The Honorable Representative Roy M. Takumi, Chair
House Committee on Consumer Protection & Commerce

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

SUBJECT: HB 1879 – RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

Hearing: Tuesday, February 6, 2018, 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.

PURPOSE: The purpose of the bill is to establish an application screening fee that a landlord may charge an applicant to obtain information about the applicant and establishes the applicant's right to review the credit report obtained by the landlord if the applicant paid the application screening fee. In addition, the bill prohibits a landlord or landlord's agent from charging an application screening fee when it is known that the rental unit is either unavailable or will not become available within a reasonable period of time. The bill further requires the landlord or landlord's agent to waive subsequent application screening fees for a period of up to three months at the request of the applicant if the applicant applies to rent other available residential properties owned or managed by the landlord or landlord's agent.

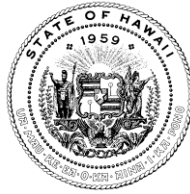
The Coordinator notes that application screening fees may sometimes serve as a barrier to housing for low-income homeless individuals and families. Anecdotally, it has been reported that homeless individuals seeking housing often pay multiple application fees for potential units, with application screening 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, prohibiting a fee from being charge if the rental unit is unavailable, and by requiring the tenant to waive subsequent application screening fees for a period of up to three months, this bill appears to increase the level of protection for homeless individuals seeking housing and minimizes the adverse financial impact of screening fees on this population.

The Coordinator defers to the Office of Consumer Protection in regard to current regulations and statutory processes.

Thank you for the opportunity to testify on this bill.



DAVID Y. IGE
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TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Tuesday, February 6, 2018
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 1879, RELATING TO THE RESIDENTIAL
LANDLORD-TENANT CODE.**

TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 1879, Relating to the Residential Landlord-Tenant Code. My name is Stephen Levins, and I am the Executive Director of the Department’s Office of Consumer Protection (“OCP”). The Department supports this bill, which is a companion to S.B. 2923, and offers the following comments.

This bill adds a new section to Hawaii Revised Statutes (“HRS”) chapter 521, the Residential Landlord-Tenant Code, that: (1) establishes an application screening fee of up to \$25.00 that a landlord may charge an applicant to obtain information about the applicant; and (2) allows the applicant the right to review the credit report obtained by the landlord if the applicant paid the application screening fee.

H. B. 1879 is desirable 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 fees does not correlate with the costs of background

and credit 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 in actuality costs \$10 to \$25.

The Department respectfully raises some concerns and offers the following suggestions:

First, in subsection (b) on page 1, lines 10-14, a landlord is prohibited from charging an applicant an application screening fee if the landlord knows or should have known the rental unit was “either unavailable at that time or will not become available within a reasonable amount of time.” The term “within a reasonable amount of time” is too ambiguous and could be interpreted in a manner unfavorable to the applicant. Often, a landlord will inform prospective applicants of the date a rental unit is available when a landlord markets the unit while it is being occupied or during repairs. This notice of availability helps the applicant determine whether to apply and pay the application screening fee. The Department suggests the following changes to subsection (b) to remove any ambiguity over when a landlord may not charge an application screening:

(b) A landlord or the landlord’s agent shall not charge an applicant an application screening fee when the landlord or landlord’s agent knows or should have known that the rental unit is either unavailable at that time or will not become available within [a reasonable period of time.] **the time stated in an advertisement or in a written notice provided to the applicant.**

Second, the Department recommends narrowing the definition of “applicant” on page 2, lines 18-21 to a person who makes the application with the intention of signing a rental agreement:

““Applicant” means any person who makes a request to a landlord or a landlord’s agent to rent a dwelling unit with the

intention of signing a rental agreement, or any person who agrees to act as a guarantor or cosignor for a person making a request to rent a dwelling unit on a rental agreement.”


An applicant is subject to the application screening fee in subsection (a) on page 1, lines 4-9. If, for example, a family of four adults that includes two college-aged children who do not contribute to the rent applies for a rental unit, that family could potentially be charged a \$100.00 application screening fee, even if the credit worthiness of the two college students is not considered in the family’s ability to pay the rent. In Hawaii’s tight housing market, this family may have to submit multiple applications and pay hundreds of dollars in application fees before signing a rental agreement.


Finally, excessive application fees are particularly egregious in circumstances when a landlord or his agent receives 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 his bargaining position to create a supplemental source of income. This bill would deter that conduct by addressing this inequity head-on. Subsection (d) on page 2, lines 1-6 allows an applicant to review his credit report and confirm the application screening fee he paid to the landlord or the landlord’s agent was used for the purposes it was intended.

Thank you for the opportunity to testify on H.B. 1879. I would be happy to answer any questions the Committee may have



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February 6, 2018

The Honorable Roy M. Takumi, Chair

House Committee on Consumer Protection & Commerce
State Capitol, Room 329
Honolulu, Hawaii 96813

RE: House Bill 1879, Relating to the Landlord-Tenant Code

HEARING: Tuesday, February 6, 2018, at 2:00 p.m. in Room 329

Aloha Chair Takumi, Vice Chair Ichiyama, and Members of the Committee,

I am Ken Hiraki, 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 over 9,500 members. HAR **strongly supports House Bill 1879**, which establishes an application screening fee that a landlord may charge an applicant to obtain information about the applicant and establishes the applicant's right to review the credit report obtained by the landlord if the applicant paid the application screening fee.

When a prospective tenant begins the process in finding a rental property, it often starts with a rental application followed by tenant screening. The landlord or landlord's agent assesses an application screening fee to defray costs for credit reports, criminal background checks, eviction history information, personal reference checks, and other public records. In addition to the direct costs for these various reports, the process also involves a significant administrative time and expense.

For its part, HAR appreciates the challenges tenants face in seeking a rental in a tight market. This high demand situation means landlords and their property managers must work harder to properly vet applicants which results in hard costs related to the reports described above and the additional administrative work.

In addition to the obvious costs issues, we must also consider possible unintended consequences of additional regulation of the rental market. As such, HAR has worked to provide a balanced approach in ensuring that reasonable guidance is provided in the rental application screening fee process, while addressing the concerns of all parties in the rental application fee process.

Mahalo for the opportunity to testify in strong support of this measure.



HB-1879

Submitted on: 2/5/2018 12:41:50 PM

Testimony for CPC on 2/6/2018 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| cheryl | | Comments | No |

Comments:

As someone who rents on these islands, I would just like to comment that I understand that the landlord has fees in researching the possible tenant's financial stability for renting etc. Sadly, from our experience because of the limited amounts of reasonable rents, there might be 10 people looking at an apartment with you. How do we guarantee #1 that it is a valid listing and that the landlord looks at all of the people's reports. What do they do with the money they don't use? Just something to think about.



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LATE TESTIMONY

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TESTIMONY IN SUPPORT OF HB 1879 –
RELATING TO RESIDENTIAL LANDLORD-TENANT CODE

House Committee on Consumer Protection and Commerce – Room 329

Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair

February 6, 2018 at 2:00 p.m.

The Legal Aid Society of Hawai'i (Legal Aid) submits testimony in support of HB 1879 – Relating to Residential Landlord-Tenant Code (similar to SB 2923). For Legal Aid, my name is Dan O'Meara and I am the Managing Attorney of Legal Aid's Housing and Consumer Unit, a unit that provides legal assistance in housing (landlord/tenant), foreclosure, fair housing, consumer, and wage issues.

HB 1879 addresses an issue that impacts the low-income population served by Legal Aid and we believe it is a worthwhile bill, addressing a meaningful issue for anyone looking to rent a home. 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 1879 adds a useful layer of accountability and 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 1879 helps to assure that application fees are not completely wasted. HB 1879 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.

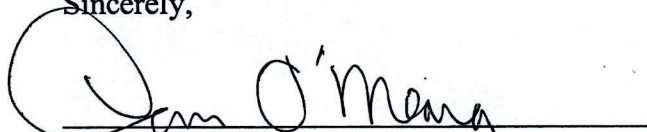
HB 1879 would allow a tenant to know the type of information being considered in the rental application process. To the extent a credit report is obtained by the landlord, the tenant will be able to review the positive or negative information being obtained.

Two suggestions to improve a good bill:

1. Section (d) of HB 1879 allows the applicant to inspect the credit report in person – we suggest an addition. We suggest a check box to allow the applicant to request an email or mailed copy of the credit report, which can be simply done on the application form and save the landlord the need to coordinate meeting at their office, which also may be simpler for landlords.
2. Last year, HB 223 was introduced regarding application fees. It had a provision that provided for the return of any unused application fees. We suggest the addition of such a provision – legitimate landlords should have no problem returning money they do not use. This would enhance accountability, transparency, and avoid collecting application fees as a scam.

Thank you for this opportunity to provide testimony.

Sincerely,



Daniel J. O'Meara, Esq.
Managing Attorney Housing and Consumer 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 2017 provided legal assistance to over 8,200 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.