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**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the**  
**House Committee on Housing**  
**Friday, February 10, 2023**  
**9:30 AM**  
**Conference Room 312 & Via Videoconference**

**On the following measure:**  
**H.B. 644, RELATING TO RESIDENTIAL LANDLORD-TENANT CODE**

Chair Hashimoto 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. The Department supports this bill.

The purposes of this bill are to: (1) allow a landlord or landlord's agent to charge an application screening fee at the time a rental application is processed for residential property; (2) cap the amount of an application screening fee at \$25; (3) prohibit fees to be charged for each member of a household; (4) require the landlord or landlord's agent to provide a receipt for payment of the application screening fee and copy of any report obtained, if requested by the applicant, and within ten days of the applicant's request; and (5) require the landlord or landlord's agent to return any unauthorized fee amounts to the applicant.

H.B. 644 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 who have been asked to pay \$50 to \$100 for an application screening fee that in actuality costs \$10 to \$25.

The Department appreciates the limit of charging one application screening fee per application in this measure because it will help reduce the abusive practice of charging families multiple application screening fees unnecessarily. 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 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.

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 or her bargaining position to create a supplemental source of income. This bill will deter that conduct by directly addressing this inequity. Subsection (c) on page 2, lines 3 to 7 requires an applicant to be given a copy of his or her credit report upon request, as well as a receipt to confirm that the application screening fee paid to the landlord or the landlord's agent was used for the purposes it was intended. Additionally, subsection (d) on page 2, lines 8 to 11 requires the landlord to return any amount of the application screening fee that was not used for the purposes authorized by this measure.

Thank you for the opportunity to testify on this bill.

February 10, 2023

**The Honorable Troy N. Hashimoto, Chair**

House Committee on Housing

State Capitol, Conference Room 312 & Videoconference

**RE: House Bill 644, Relating to the Residential Landlord-Tenant Code**

**HEARING: Friday, February 10, 2023, at 9:30 a.m.**

Aloha Chair Hashimoto, Vice Chair Aiu, and Members of the Joint Committees:

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 offers **comments** on House Bill 644, which allows a landlord or landlord's agent to charge an application screening fee at the time a rental application is processed for residential property. Caps the amount of an application screening fee at \$25 and prohibits fees to be charged for each member of a household. Requires the landlord or landlord's agent to provide a receipt for payment of the application screening fee and copy of any report obtained, if requested by the applicant, and within ten days of the applicant's request. Requires the landlord or landlord's agent to return any unauthorized fee amounts to the applicant.

The tenant screening process typically begins when the prospective tenant completes a rental application. 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.

Under this measure, it notes that only one member of a household can be charged an application screening fee. HAR has legal concerns with limiting screening to one member of a household. It is not uncommon for multiple adults over the age of 18 to live in a single household, such as spouses, adult children or roommates. As such, it is standard practice to screen every member of the household over the age of 18. Under federal Fair Housing law, housing providers may not discriminate against different applicants and must legally screen each potential adult tenant within a household. The housing provider is required to document that each and every applicant was treated the same and screened by the same standards.

Additionally, HAR respectfully opposes setting a specific dollar amount, and are willing to explore other mechanisms that may address this issue. The cost of screening reports like everything else has increased over time. The cost of screening reports varies and, in some cases, widely. If a property management company has bulk reports, it may be lower. However, for smaller mom-and-pop housing providers the costs to run the report can be well over \$25. Additionally, some of those mom-and-pop housing providers are retirees who rent out their place for supplemental income. These



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housing providers would have to bear the costs of anything above \$25 for each renter if this measure passes in its current form.

Finally, this measure allows an applicant to receive a copy of any report obtained within ten days of the applicant's request. These screening reports are marked confidential and are not allowed be shared by the housing provider or property manager. In the alternative, prospective applicants can request up to three free credit reports a year from credit report agencies, such as TransUnion, Experian or Equifax.

Thank you for your consideration of our comments. Mahalo for the opportunity to testify.



# PARTNERS IN CARE

*Oahu's Continuum of Care*

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*Our mission is to eliminate homelessness through open and inclusive participation and the coordination of integrated responses.*

## **TESTIMONY IN SUPPORT OF HB 644: RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE**

TO: House Committee on Housing

FROM: Partners In Care (PIC)

**Hearing: Friday, 2/10/2023; 9:30am, Conference Room 312/videoconference**

Chair Hashimoto and Members of the House Committee on Housing:

Thank you for the opportunity to provide testimony in **SUPPORT of HB2139**, which limits a landlord to charging no more than \$25 for screening purposes. It also stipulates that a screening fee cannot be charged to multiple members of a household. Any screening fees that are not used, are to be returned to the tenant within 30 days.

Partners In Care (PIC), a coalition of more than 60 non-profit homelessness providers and concerned organizations, works on Oahu to end homelessness. Partners In Care supports this bill that will lessen the burden for low income residents and prevent possible discrimination by landlords. Individuals and families with limited income are often unable to apply for units based on application fees that are too high and even once an application fee is paid, there is no guarantee that the household will be chosen to lease the unit. Many programs that assist with housing rental payments do not have the ability to pay application fees. Due to lack of affordable housing in Hawaii, households have to apply for many units before they are approved meaning that they must also pay application fees at multiple units just to be considered. The burden of additional fees associated with rental applications creates more barriers to housing for many in our community.

Besides building new affordable rental housing, the State must remove barriers to people attempting to access the current stock of available rentals. We urge the State to provide a balance between the tenant and landlords in the application process. We urge your support for this bill as a step forward to removing the financial burden of multiple application fees which limit lower income persons' access to affordable housing.

Aloha.

**TESTIMONY IN SUPPORT OF HB 644 –**  
**RELATING TO RESIDENTIAL LANDLORD-TENANT CODE**

House Committee on HOUSING – Room 312 & Videoconference

Representative Troy Hashimoto, Chair  
Representative Micah P.K. Aiu , Vice Chair  
And Members of the Committee

Friday, February 10, 2023 at 9:30 a.m.

The Legal Aid Society of Hawai'i (Legal Aid) submits testimony in support of HB 644 – Relating to Residential Landlord-Tenant Code. Legal Aid previously submitted testimony on the companion bill, SB 930. For Legal Aid, this testimony is submitted by Dan O'Meara and I am the Managing Attorney of Legal Aid's Housing and Consumer Unit, a unit that provides legal assistance on landlord/tenant and housing matters, as well as consumer issues. Legal Aid's focus in rental housing is advocating for the interests of tenants. We have extensive experience with the challenges Hawaii's low-income population faces in finding, leasing, and maintaining their rental housing, more than any other law firm in the State. We will reiterate our testimony on SB 930 with respect to HB 644, but we will expand on some other areas of concern that have been raised.

HB 644 is intended to cap the screening fee for new tenants and assure that the application fee is used for its intended purpose. The bill may not seem dramatic, but in its simplicity, it will have a positive impact on making the process of finding a new rental home more transparent and less burdensome to those with limited income.

At Legal Aid we have many clients who struggle with the costs of finding a new home. In the tight rental market, we have many families with a Section 8 Housing Choice Voucher (Section 8 Voucher) who have to submit multiple rental applications because of the difficulty in finding a new rental home. There are various resources and organizations that can assist with payment of a security deposit, but the multiple application fees are rarely covered through the assistance

available to subsidized housing seekers. Credit analysis is a bit different for an applicant with a Section 8 Voucher. Such an applicant will necessarily not have credit to support the entire rental amount since their portion of the rent payment is based on a percentage of their income, with the balance paid through a federal housing subsidy. One implication is that a Section 8 Voucher holder may often have blemishes on their credit because of their low-income, but such blemishes may have no impact on their ability to pay their portion of the rent.

In addition, the experience of our clients with larger families is that they often have to apply at several properties, each with its own screening/application fee. Those fees often exceed the \$25 cap in SB 930 and tap into the already limited resources of families. SB 930 is mindful of the myriad challenges in the housing market in the State, while still allowing landlords to screen tenants with some compensation. This bill demonstrates an awareness of the many costs borne by working families in a continuing tight affordable housing market.

Further, it has been suggested that landlords/property managers screen for credit, criminal background, eviction history, and other public records to vet a tenant – very sensible. However, without access to that information, a rejected tenant cannot know what data is being looked at in order to be able to address any issues with other potential landlords. The experience of our clients at Legal Aid is that some of that screening information can be incorrect or misinterpreted, to the detriment of the applicant. By the time the information is able to be obtained from the property manager, the housing opportunity is gone. As a public policy, fair credit reporting laws require transparency and access to the information by the applicant. Without that access, a person can suffer greatly by inaccurate credit information. The data may be marked confidential but that does not mean the data is confidential to the person to whom the information applies. Confidentiality deals with how the property manager should be handling and disseminating the information to those other than the applicant and confidentiality also governs how information may or may not need to be sealed or redacted in court proceedings.

The notion that a free annual credit report is sufficient protection misapprehends the process. It has already been noted that property managers use more than a credit report in their evaluation.

The free credit reports do not provide the credit score and are available only once every 12 months (the free credit reports were available more often during the pandemic, but the once every 12 months is back in effect). For a tenant applicant who has been rejected, the information that HB 644 would allow them to receive can be invaluable in addressing their circumstances in attempting to successfully seek rental housing. If the property manager obtained the screening information, such report should be readily available to email or mail to the applicant.

As to Fair Housing law, fair housing does not address or direct a property manager to do, or not do, extensive screening or no screening of rental applicants. Legal Aid has had a grant from HUD for over 20 years to advocate around Fair Housing issues – Fair Housing laws allow members of a protected class, e.g., national origin, familial status, disability, sex, etc., to be protected from denial of housing based on their membership in a protected class. Proper use of screening information, whether for 1 or multiple applicants on a rental, is just not a Fair Housing issue.

HB 644 is consistent with trying to expand affordable housing opportunities such as HRS Chapter 368F – RENTAL DISCRIMINATION BASED ON SOURCE OF INCOME, effective May 1, 2023. At almost all levels of government, an overarching public policy is to provide better access to affordable housing. Limiting the out-of-pocket expense in rental applications is a step in that direction, just as providing more opportunities to tenants with a housing subsidy. HB 644 is a piece of the complex puzzle to help tenants access affordable housing – it may seem Manini, but helping tenants with the overall costs of finding a rental home and all of the related costs does matter.

A suggestion regarding only one screening fee per application does lead to a potential sensible modification to HB 644 - allow a screening fee for each applicant who will be obligated to pay rent under a lease so that a property manager/landlord can have recompense for evaluating the entire credit package. That also means that a cap on the fee is still meaningful to curb some of the abuses that have been noted.



The property manager groups or associations could also mitigate the perceived impact of HB 644 if the property managers had a central screening entity that would allow all member property managers to access the same information on an applicant and avoid the need for multiple fees for multiple applications, i.e., all a tenant to pay a single fee to a centralized screening service for which a report can be access by multiple property managers.

HB 644 is a consumer driven piece of legislation that is a piece of what can be done in the effort to make affordable housing just that little bit less costly.

Thank you for this opportunity to provide testimony. Legal Aid supports HB 644 and the companion SB 930. We will be available to testify at the Friday, February 10, 2023 hearing, in person, if permitted, or virtually.

Sincerely,

/s/ Daniel J. O'Meara  
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 2022 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. Legal Aid further had over 3,400 cases that addressed stabilizing families and preserving housing. Our mission is to achieve fairness and justice through legal advocacy, outreach, and education for those in need.*

**LATE**

**HB-644**

Submitted on: 2/9/2023 3:28:50 PM

Testimony for HSG on 2/10/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Kevin Carney	Affordable Housing Connections LLC, dba AHC Hawaii	Comments	Written Testimony Only

Comments:

Aloha Members of the House Committee on Housing, thank you for the opportunity to submit comments on HB644 concerning screening applications fees. Limiting the fee to \$25 on only one person of the household will have a detrimental affect on affordable multifamily housing. In my more than 25 years experience in the multifamily rental housing industry application fees are charged for all adult members of the household to enable the owner/management company to perform a thorough background check. The cost for a background check varies depending on the vendor and can range from \$25 to \$30+/per person.

As currently written HB644 will add additional expense to already very tight affordable multifamily rental housing budgets. I suggest to either (1) increase the fee to \$28.50/per adult household member or (2) provide an exemption to HB644 for affordable multifamily rental housing that serve families, seniors, disabled, etc. at 80% and below of the AMI and have regulatory restrictions which limit rent increases.

Mahalo,

Kevin R. Carney

President & Principal Broker

RB-16444