

DAVID Y. IGE
GOVERNOR



EXECUTIVE CHAMBERS
HONOLULU

March 30, 2022

TO: The Honorable Representative Aaron Ling Johanson, Chair
House Committee on Consumer Protection and Commerce

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

SUBJECT: **SB2877 SD1 HD1 – RELATING TO THE RESIDENTIAL LANDLORD-TENANT
CODE.**

Hearing: Wednesday, March 30, 2022, 2:00 p.m.
VIA VIDEO CONFERENCE
Conference Room 329, State Capitol

POSITION: The Governor's Coordinator supports the intent of this measure and prefers the language in the SD1.

PURPOSE: The purpose of the bill is to allow a landlord or landlord's agent, when processing an application to rent residential property, to charge an application screening fee for the cost of requesting a tenant report or credit report for a potential tenant. The bill requires landlords to refund any unused amount of the application screening fee and, upon request, provide a receipt for payment of the application screening fee.

The Coordinator prefers language in the SD1 that established a cap for the amount that landlords could charge for an application screening fee and required that any unused amount of the application screening fee must be returned to the applicant within thirty days. Notably, the House Committee on Housing deleted this language, as well as language that limited the number of fees that could be charged per application and for each member of a household. The House Committee on Housing replaced the language from the SD1 with language from HB2139 HD1.

While the Coordinator is concerned about removing the maximum cap on fees, the HD1 still provides critical protections by requiring a refund of any fees that are not actually utilized

for application screening. If this measure proceeds, the Coordinator suggests the Legislature restore language from the SD1 that specified the landlord or the landlord's agent shall return to the applicant any amount of the application screening fee that is not used for the purposes authorized within thirty days after the landlord has submitted screening requests.

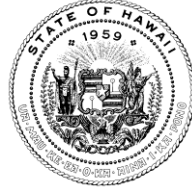
Unlike other aspects of a landlord-tenant relationship, the charging of application screening fees for a rental unit is currently unregulated. Not only is there no regulation regarding the amount of fees charged, but there is no regulation of what costs are covered by these fees. Application screening fee costs range widely, from as low as \$25 to as high as \$50-60 or more per adult member of a household. Potential tenants searching for housing often pay multiple application fees during a housing search, regardless of whether an applicant screening (e.g., credit check or criminal background check) is conducted. Although a single screening fee of \$25 to \$60 appears nominal, fees quickly add up when a potential tenant applies for multiple rental units. The impact of multiple unregulated screening fees is particularly challenging for potential tenants with limited income, including individuals transitioning out of homelessness. The Hawaii Interagency Council on Homelessness recently released a policy brief available at <http://homelessness.hawaii.gov/wp-content/uploads/2022/03/Policy-Brief-Application-Fees-FINAL.pdf> that outlines the challenges resulting from the lack of regulation of screening fees.

Requiring the refund of unused application screening fees will enable tenants to utilize the monies to pay for rent, utilities, and other basic housing costs. In addition, requiring a refund when no screening is conducted will disincentivize landlords from charging unnecessary fees to potential tenants who may not be seriously considered for a rental unit.

Addressing barriers to accessing rental housing, such as the lack of regulation for application screening fees, is especially critical given the ongoing COVID-19 pandemic and its impacts on low-income households. In January 2021, the Economic Roundtable released a report that projected the pandemic recession would increase chronic homelessness in the United States by 49% over the next four years. Similarly, historical data for the statewide homeless Point in Time (PIT) count also indicates that demand for homeless services is likely to increase in the wake of the current economic recession. Following the last significant downturn

in 2009, the statewide PIT count increased 37% between 2009 and 2016. Reducing barriers to housing access will assist in mitigating future upward trends in homelessness.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE
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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 Consumer Protection and Commerce
Wednesday, March 30, 2022
2:00 p.m.
Via Videoconference**

**On the following measure:
S.B. 2877, S.D. 1, H.D. 1, RELATING TO THE RESIDENTIAL
LANDLORD-TENANT CODE**

Chair Johanson and Members of the Committee:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department offers comments on this bill.

The purposes of this bill are to: (1) allow a landlord or landlord's agent to charge an application screening fee to cover the costs of obtaining a tenant report or credit report for a potential tenant; and (2) Require a landlord to refund any unused amount of the application screening fee and, upon request, provide a receipt for payment of the application screening fee.

While the Department appreciates the intent of H.D. 1, the Department prefers the original bill because it included certain provisions that enhanced consumer protection that H.D. 1 removed.

The intent of this measure 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. H.D. 1 deleted the provision limiting the application screening fee to a maximum of \$25.00. The Department respectfully requests that a maximum amount for an application fee to be set at \$25.00 to cover the cost of a tenant screening.

The Department also requests that the provision allowing landlords to charge only one application screening fee per application be reinstated. H.D. 1 deleted this provision which would have helped reduce the abusive practice of unnecessarily charging families multiple application screening fees. For example, a landlord could potentially charge a family of four adults that includes two college-aged a \$100 application screening fee, even if the landlord does not consider the creditworthiness of the two college students in the family's ability to pay the rent. This family may have to submit multiple applications in Hawaii's tight housing market and pay hundreds of dollars in application fees before signing a rental agreement.

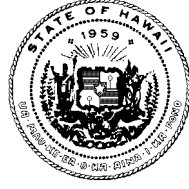
Excessive application fees are particularly egregious in circumstances when a landlord or his agent receives scores of applications for one apartment, most of which are not even seriously considered. Instead of engaging in a valid tenant screening process, the landlord or agent abuses their bargaining position to create a supplemental source of income. This bill will deter that conduct by directly addressing this inequity by requiring the landlord to provide a receipt to confirm that the application screening fee paid to the landlord was used for the purposes it was intended. Landlords are also required to return any amount of the application screening fee that was not used for the purposes authorized by this measure.

H.D. 1 removed another provision that would enhance consumer protection. The Department respectfully requests to restore the language in the original bill that required

landlords to provide a copy of any report obtained by the landlord when upon the applicant's request.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR



CATHY BETTS
DIRECTOR

JOSEPH CAMPOS II
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

March 29, 2022

TO: The Honorable Representative Aaron Ling Johanson, Chair
House Committee on Consumer Protection & Commerce

FROM: Cathy Betts, Director

SUBJECT: **SB 2877 SD1 HD1 – RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE.**

Hearing: March 30, 2022, 2:00 p.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this measure as previous drafts were similar to administration measure SB3107 SD1 and defers to the Department of Commerce & Consumer Affairs. Further, DHS prefers the SD1 as amendments to the HD1 create unnecessary burden and paperwork on renters to retrieve unused fees.

PURPOSE: The purpose of the bill allows a landlord or the landlord's agent to charge an application screening fee to cover the costs of obtaining a tenant report or credit report for a potential tenant. Requires landlords to refund any unused amount of the application screening fee and, upon request, provide a receipt for payment of the application screening fee. Effective 7/1/2050. (HD1)

The Department appreciates the SD1 that amended the measure by:

"specifying that the landlord or the landlord's agent shall return to the applicant any amount of the application screening fee that is not used for the purposes authorized within thirty days after the landlord has submitted screening requests."

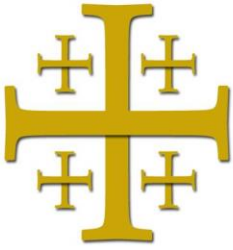
The HD1 amended the measure by:

- (1) Inserting a preamble;
- (2) Removing provisions that would have capped the amount that could be charged for an application screening fee and limited the number of fees that could be charged per application and per household;
- (3) Removing the requirement for the landlord or the landlord's agent to provide the applicant with a copy of any report obtained by the landlord or the agent, within ten days of the applicant's request;
- (4) Removing the thirty-day time frame in which the landlord or landlord's agent must return any unused amount of the application screening fee to the applicant;
- (5) Removing the savings clause;
- (6) Changing the effective date to July 1, 2050, to encourage further discussion; and
- (7) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

The Department prefers the SD1. While regulation in this area is better than having no regulation, the HD1 removes the capped amount, adds to the renter's burden to submit a written request for unused fees, and removes any timeframe when the landlord must return the fees. Requiring a written request is an additional burden and barrier for low-income renters who must then chase down a refund from landlords when their primary focus is on finding a suitable rental. As a business practice, the unused portion of the fee should be returned as soon as possible as it is unused. The SD1 allows landlords thirty days to return the unused fee upon request, which gives the landlord some impetus to return the unused funds.

In Hawaii's tight and expensive housing environment, fixed- and low-income residents do not have the financial wherewithal to pay multiple fees, especially if the landlord does not run a background check or take the application seriously. In Hawaii's large multigenerational households, the fees could be several hundred dollars. Therefore, requiring landlords to refund any unused screening fee, including any unused balance, within 30 days will give applicants the needed financial resources to apply for another rental or use it on necessities.

Thank you for the opportunity to provide comments on this measure.



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March 29, 2022

House Committee on Consumer Protection and Commerce

RE: SB2877, SD1, HD1 – RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE - **SUPPORT with
without HD1 amendments**

SB2877, SD1, HD1 seeks regulation of rental application screening fees. The current draft (HD1) requires the refund of any unused portion of the fee and allows applicant to request a receipt for payment of the fee. The current version does not include a limit on the dollar amount that can be charged and does not limit it to one fee per household. The SD1 version includes a \$25 per household cap. SB2877 SD1 would better protect low income applicants from paying large fees that they cannot afford.

High rental application fees are often not necessary especially if the landlord does not run a background check. High rental application fees only serve to limit rental opportunities for those who must apply to multiple listings before they are successful in finding housing for their families. Low income families are headed by single mothers, single mothers who have left domestic violent situations, person with disabilities and medical issues, and families working multiple jobs. If anyone needs consumer protection, it is these families.

Please vote yes on SB2877 without the HD1 amendments.

Humbly,

Shirley David
Pastoral Council Chair

ONE CATHOLIC OHANA

St. Michael the Archangel *Kailua-Kona* • St. Peter by the Sea *Kahaluu* • Immaculate Conception *Holualoa* • St. Paul *Kawanui* • Holy Rosary *Kalaoa*



CATHOLIC CHARITIES HAWAI'I

COMMENTS on SB 2877 SD1 HD1: RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

TO: House Committee on Consumer Protection and Commerce
FROM: Rob Van Tassell, President and CEO, Catholic Charities Hawai'i
Hearing: **Wednesday, March 30, 2022; 2:00 PM; via videoconference**

Chair Johanson, Vice Chair Kitagawa, and Members, Committee on Consumer Protection and Commerce:

Thank you for the opportunity to provide COMMENTS on **SB 2877 SD1, HD1**, which allows a landlord to charge an application screening fee at the time a rental application is received, allows applicants to request a receipt and requires that the landlord return any unused portion. I am Rob Van Tassell, with Catholic Charities Hawai'i. We are also a member of Partners In Care (PIC).

Catholic Charities Hawai'i (CCH) is a tax exempt, non-profit agency that has been providing social services in Hawai'i for over 75 years. CCH has programs serving elders, children, families, homeless, and immigrants. Our mission is to provide services and advocacy for the most vulnerable in Hawai'i. Catholic Charities Hawai'i has a long history of working in the areas of affordable housing and homelessness.

Catholic Charities Hawai'i is concerned that many of the important protections in the original bill have been deleted in the HD1, making this bill ineffective. These deletions allow financial hardships and barriers to finding housing, to remain in place. HD1 removed the cap on fees, as well as the limit on the number of fees per household that could be charged. The draft also removed the timeframe for returning any unused fees. Instead, the applicant may request, in writing, for a receipt of the application fee—this does not document, however, that the fee was actually used to check credit, etc. **We urge you to reinstate the provisions for a reasonable fee cap and a limit of one fee per household. We also urge you to specify that the fee is to be collected at the time an applicant is being processed, vs upfront for all applications received. The timeframes are also very crucial to reduce confusion and provide for accountability.**

Application screening fees have a direct impact on the ability of lower income people to apply for available rental housing units. The HD1 allows the landlord to charge a screening fee at the time of receipt of an application, versus when they are actually being processed for a unit. Too many people apply for a housing unit and pay the application fee, never to hear back from the landlord. Currently there is a severe financial penalty for multiple applications. This has an impact on the number of applications that lower income and even ALICE families can afford to submit. It also impacts on the savings of the applicant for the deposit and first month's rent.

We also support one reasonable fee per application. Landlords could still screen all members of the family so families with elderly incomes or multiple workers could also be screened and all income sources verified. There would just be one maximum fee charged. Since it would be a



reasonable fee, landlords should not incur the cost of returning this fee, unless they do not actually process the applicant for an available unit or charge a high fee.

If Hawai`i is to end homelessness and help those like ALICE households to obtain housing, it must create systems that support both tenants and landlords. A reasonable and straightforward bill is needed to help people who need housing, yet also to allow landlords to charge a fee when they will actually screen the applicant for credit, criminal checks, etc.

We urge you to amend this bill to remove significant barriers to applying for multiple units in Hawaii's tight housing market. Please contact our Legislative Liaison, Betty Lou Larson at (808) 373-0356 or alohabettylou@hotmail.com if you have any questions.

COMMENTS ON SB 2877, SD 1, HD 1

TO: Chair Johanson, Vice Chair Kitagawa, & Committee Members

FROM: Nikos Leverenz
Grants & Advancement Manager

DATE: March 30, 2022 (2:00 PM)

Hawai'i Health & Harm Reduction Center (HHRC) **supported prior incarnations of SB 2877 and offers the following comments on** SB 2877, SD 1, HD 1.

Prior versions of this bill allowed landlords to charge an application fee to screen an applicant up to \$25 and limited the fee to one per household, but only when the applicant is processed for an available unit. Further, there were timeframes that would have helped to reduce confusion on the part of the applicant and provide that a landlord has some level of accountability in terms of using those funds for state purposes. Please amend this bill to provide the level of consumer protections provided in prior versions.

Many prospective tenants apply for a housing unit and submit a fee but do not hear back as to why they were rejected or whether they were even processed. Many housing assistance programs do not allow for the payment of an application fee, further burdening those persons who are already have significant income constraints. This impairs the ability of those who have government sources of income to obtain safe and stable housing.

HHRC Executive Director Heather Lusk currently serves as Board Chair of [Partners in Care O'ahu](#), a planning, coordinating, and advocacy alliance that develops recommendations for programs and services to fill needs within O'ahu's continuum of care for homeless persons. HHRC provides homeless outreach and housing placement navigation services in urban Honolulu and the Upper Windward Coast, including North Shore.

HHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawai'i and the Pacific. We work with many individuals impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those related to substance use and mental health conditions. Many of our program clients and participants have also been deeply impacted by trauma, including histories of physical, sexual, and psychological abuse.