



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

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

**Before the  
Senate Committee on Judiciary  
Tuesday, March 1, 2022  
9:30 a.m.  
Via Videoconference**

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

Chair Rhoads 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 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.

S.B. 2877, S.D. 1 is desirable because current law does not specifically regulate the nature and amount of application fees that landlords may charge prospective

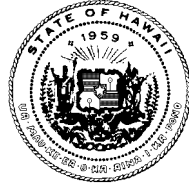
tenants. Over the years, the OCP has received allegations from prospective tenants claiming that the cost of their application fees does not correlate with the costs of background and credit checks. The most troubling reports involve claims from prospective tenants who have been asked to pay \$50 to \$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 10 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.

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

February 26, 2022

TO: The Honorable Senator Karl Rhoads, Chair  
Senate Committee on Judiciary

FROM: Cathy Betts, Director

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

Hearing: Month 1, 2022, 9:35 a.m.  
Via Videoconference, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports this measure as it is similar to administration measure SB3107 SD1 and defers to the Department of Commerce & Consumer Affairs.

**PURPOSE:** The purpose of the bill 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.

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, 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.



EXECUTIVE CHAMBERS  
HONOLULU

March 1, 2022

TO: The Honorable Senator Karl Rhoads, Chair  
Senate Committee on Judiciary

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

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

Hearing: Tuesday, March 1, 2022, 9:30 a.m.  
VIA VIDEO CONFERENCE

**POSITION:** The Governor's Coordinator supports this measure, which is similar to administration bills [SB3107/HB2139](#).

**PURPOSE:** The purpose of the bill is to allow a landlord or landlord's agent to charge an application screening fee at the time a rental application is processed for residential property. The bill also 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 application, within ten days of the applicant's request; and requires the landlord or landlord's agent to return any unauthorized fee amounts to the applicant.

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.

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.

As Chair of the Hawaii Interagency Council on Homelessness (HICH), the Coordinator recognizes that regulating application screening fees is just one piece of a more comprehensive effort to address homelessness and housing instability. In December 2021, the Hawaii Interagency Council on Homelessness (HICH) adopted policy priorities for the 2022 legislative session, including the reduction of upfront housing barriers, scaling the development of low-income housing units, and strengthening programs that assist key homeless sub-populations (e.g., unsheltered youth, adults with severe mental illness, etc.). For more information about the 2022 HICH policy priorities, visit <https://homelessness.hawaii.gov/advocacy>.

Thank you for the opportunity to testify on this measure.

# 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 ON SB 2877 RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

TO: Senate/House Committee on Judiciary,

FROM: Partners In Care (PIC)

Hearing: March 1, 2022, 9:30am

Position: **SUPPORT**

Chair Rhoads and Members of the Senate Committee on Judiciary:

Partner In Care, Oahu's Continuum of Care, stands in support on **SB RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE**. There are many barriers associated with moving from homelessness into housing, one being the high cost of rent, security deposit fee and utility fees. While landlords want to check backgrounds on folks who will be residing in their units, it puts a financial burden on the applicant if the fee is more \$25 and includes more than the head of household. Many housing assistance programs do not allow for the payment of the application fee, so there are times when folks can't even apply for a unit because of this fee that needs to be available at the time of applying to the unit.

Thank you for the opportunity to testifying on this measure. Please do not hesitate to contact us if you have any questions.

Aloha



## CATHOLIC CHARITIES HAWAI'I

### TESTIMONY IN SUPPORT OF SB 2877: RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

**TO:** Senate Committee on Judiciary  
**FROM:** Rob Van Tassell, President and CEO, Catholic Charities Hawai'i  
**Hearing:** **Tuesday, March 1, 2022; 9:30 am; via videoconference**

Chair Rhoads, Vice Chair Keohokalole, and Members, Committee on Judiciary:

Thank you for the opportunity to provide testimony **in Strong Support** of **SB 2877**, which allows a landlord to charge an application fee at the time a rental application is being processed for a rental unit, caps the fee at \$25, and other provisions. 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 supports this bill since application screening fees have a direct impact on the ability of lower income people to apply for available rental housing units. Some feel that no application fees should be charged since screening prospective tenants could be considered a usual business expense. However, we consider this bill a good compromise. It allows the landlord to charge a fee to screen the applicant but only 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 set 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.

If Hawai'i is to end homelessness and help those like the ALICE households to obtain housing, it must create systems that support both tenants and landlords. This bill is a good step forward 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 your support for this bill. Please contact our Legislative Liaison, Betty Lou Larson at (808) 373-0356 or [alohabettylou@hotmail.com](mailto:alohabettylou@hotmail.com) if you have any questions.







 | 808-733-7060

 | 1259 A'ala Street, Suite 300  
Honolulu, HI 96817

 | 808-737-4977

March 1, 2022

**The Honorable Karl Rhoads, Chair**

Senate Committee on Judiciary

Via Videoconference

**RE: S.B. 2877, Relating to the Residential Landlord-Tenant Code**

**HEARING: Tuesday, March 1, 2022, at 9:30 a.m.**

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, 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 **opposes** S.B. 2877 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 completing 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. It is a 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. Under Fair Housing law, they are treating all applicants equally. Furthermore, it is not uncommon for multiple applicant's incomes in a household, such as spouses, to be used to qualify to rent a property.

Furthermore, there are administrative and labor costs that are a part of the application process, such as administrative staff time, calling references, amongst other costs to vet a tenant, and it is unclear if this would be covered under this measure. Additionally, HAR would also note that the costs of screening reports vary. If a property management company has bulk reports, it may be slightly cheaper. However, if not, costs to run the report can be well over \$25, which doesn't even take into account the administrative costs.



 | 808-733-7060

 | 808-737-4977

 | 1259 A'ala Street, Suite 300  
Honolulu, HI 96817

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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.

Mahalo for the opportunity to testify.



TO THE SENATE  
THE THIRTY-FIRST LEGISLATURE  
REGULAR SESSION OF 2022

COMMITTEE ON JUDICIARY  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

DATE: Tuesday, March 1, 2022

TIME: 9:30 a.m.

PLACE: Via Videoconference

TIMESLOT: JDC

**SB2877**

POSITION: **SUPPORT SB2877**

There are many barriers associated with moving from homelessness into housing, one being the high cost of rent, security deposit fee and utility fees. Landlords want to check backgrounds on folks who will be residing in their units. However, there are many cases where the application fee surpasses more \$25. Furthermore, it is not uncommon for land landlords to charge that amount mention or higher for every person who wish to reside on their property.

Though I cannot fault landlords from wanting to their due diligence on who they select to live on their properties. Yet, \$50 dollars per person where in my experience I have seen application fees at that amount and even higher at would mean for a three people, the application fees could be as much as \$150.00+. Many housing assistance programs do not allow for the payment of the application fee(s), so there are times when folks can't even apply for a unit because of this fee needs to be available at the time of applying to the unit. We as a society want to reduce the barriers to entry for safely house people and families yet, prudent in our public expenditures of resources.

There can be a balance between the needs of landlords and background checks whereas, cost is not a barrier. SB 2877 strikes this balance and is a prudent measure that will benefit all parties and reduce barriers to housing along with other efforts in health and human services to decrease the levels of person on the street by matter of circumstance. There is opportunity for future comprehensive legislative measures for example, a one-time fee system whereby once a person's report is generated, it should be in the "cloud", where a prospective tenant can give all the landlords they want to apply to access. Let us continue to be innovative in solving the housing crisis. Thank you for reading this testimony and allowing me the opportunity to testifying on this measure.

Mahalo,

Ken Farm

# DAVID W.H. CHEE

Attorney at Law  
1001 Bishop Street  
ASB Tower, Suite 585  
Honolulu, Hawaii 96813  
Facsimile No. 808-208-8689

David W.H. Chee  
Telephone: 808-539-1150  
mail: [dchee@dcheelaw.com](mailto:dchee@dcheelaw.com)

Christine S. Prepose-Ka  
Telephone: 808-784-4  
Email: [cprepose@dcheelaw.com](mailto:cprepose@dcheelaw.com)

February 28, 2022

COMMITTEE ON JUDICIARY  
Senator Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair

RE: SB2877 RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

I am an attorney and have practiced landlord-tenant law for the last 29 years.

I oppose SB 2877 because of the likely consequences of this legislation, if passed.

When a housing provider rents to a tenant, they are placing them into a community. Careful housing providers will consider, for example, whether the prospective tenant has a history of violence or criminal activity, including whether the individual is a sex offender. For many housing providers, concern for the safety of other residents and neighbors leads them to carefully screen prospective tenants.

Because of the potential risk of putting the wrong person in possession of a rental unit, housing providers want to know the background for each adult residing in the property.

The application screening process helps to insure not only that a tenant is financially suited to rent a property, but also allows a housing provider to check to make sure an applicant does not pose a threat to the community or to their property. For example, if an applicant was recently convicted of arson, that would be something a housing provider will want to know. Likewise, if a housing provider owns a rental community that provides housing to children, they will want to know if an applicant is on the sex offender registry. For these reasons, the application process is critical to housing providers.

This bill seeks to limit the amount a housing provider could collect for an application screening fee to \$25, requires a housing provider to provide an applicant a receipt for payment of the application screening fee and a copy of any report obtained within ten days of receiving a written request by the applicant, and limits the application screening fee to \$25 per household. The likely consequence is that fewer background checks will be done.

The bill should be revised to remove the "per household" cap and replace it with a "per person" number. Screening companies do not charge fees based on households; they charge per person. Additionally, the cap selected should be based on actual costs. The legislature should conduct a study to determine a reasonable number.

Senator Stanley Chang, Chair  
Senator Dru Mamo Kanuha, Vice Chair  
February 14, 2022  
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I understand that California instituted a screening application fee cap in 1998. The California law set the cap at \$30 and allowed the cap to automatically increase with inflation. As of December 2021, I understand the cap was \$55.58 after inflations was accounted for.

If the bill were to proceed in its current form, there are several additional problems the legislature should consider.

### **I. Ambiguity**

As drafted, there appears to be some ambiguity related to how charges can be applied. Currently, the legislation provides that:

A landlord or the landlord's agent may charge only one application screening fee per application and shall not charge an application screening fee for each member of a household.

For many of my clients, each adult will be required to fill out a **separate** application for rental, since the application generally asks for information specific to the individual-past and current employment information, rental history, criminal background etc. While the proposed legislation allows for a screening fee for each application, it also states that an application screening fee cannot be charged for each member of a household. Household, however, is not defined. If two couples currently residing in different households decide to apply for a rental together, they will likely be required to fill out a total of 4 applications- one for each adult. It is not clear, however, whether a screening fee could be charged for each application, a screening fee could be charged for each couple (as each couple are part of different households at the time of application), or if only one screening fee charge would be applicable to the entire group.

Similarly, if an existing tenant is seeking to add another roommate on to the lease, or have an individual take over his lease, it is not clear if the housing provider could charge these individuals a screening fee, as it is not clear whether they are considered part of the household under the proposed legislation.

### **II. Proposed Screening Fee Cap May Not Cover Actual Costs**

The proposed legislation would establish a screening fee cap of \$25 per household. I understand that many background and credit reporting agencies currently charge anywhere from \$25-\$75, or more, for a single report. This will likely mean that a housing provider will not be able to recover the actual cost to screen an applicant under the proposed legislation. To the extent that a household contains several adults, the costs expended by the housing provider to screen the applicants will be multiplied.

Under this bill, if a housing provider needs to screen a group made up of 4 adults, they could charge \$25, and would be out \$75+ for just one group of applicants. If ten groups of 4 adults

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applied for the same unit, that would be losses of \$750+. That could mean thousands of dollars of losses for larger housing provider who rent out numerous units.

I expect that housing providers will try to minimize their costs. One potential way they may do so is by limiting the number of adults that can apply together. If that were the case, renters that cannot meet income requirements on their own and need multiple roommates will have a much harder time finding housing, since the composition of their household may not meet income requirements.

For smaller, mom and pop housing providers, the out-of-pocket costs to screen applicants may become cost prohibitive. As a result, they may need to do away with application screenings, which will make them more likely to find themselves in a position of renting to dangerous tenants, or tenants that are unable to pay their rent.

For larger housing provider, the increase in costs will likely be past on to existing tenants in the form of higher rent.

### III. Access to Screening Reports

This bill also requires that a housing provider supply an applicant a copy of any screening report that was paid for with the application screening fees within ten days of a written request. Tenant screening reports often contain personal and private information. Mailing or emailing the report to an applicant may pose a threat of inadvertent disclosure if the mail or email is intercepted or opened by a person other than the applicant. To protect both the applicant and the housing provider, the legislature may wish to amend the proposed legislation to say a copy of the report shall be made available to a tenant for pick-up from the housing provider upon presentation of proper photo identification.

Please let me know if you have any questions.

Very truly yours,

/s/ David W. H. Chee

David W. H. Chee

**SB-2877**

Submitted on: 2/28/2022 6:34:45 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kristen Alice	Testifying for HOPE Services Hawai'i	Support	No

Comments:

Hope Services Hawai'i, a homeless services nonprofit organization on Hawai'i Island, strongly supports capping rental application fees at \$25, only allowing the fee to be charged for one member per household, and requiring that unused portions of the fee be refunded to the applicant. Enacting these policies would reduce the barriers our houseless neighbors face as they work to get into stable, permanent housing.

**SB-2877**

Submitted on: 2/28/2022 8:03:39 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Richard Sullivan	Individual	Support	No

Comments:

We desperately need new laws and guidelines such as proposed for SB2877. Currently, anyone can pretend to be a landlord, upload generic or stolen photos to craigslist, paint an attractive picture, such as setting a low rental price, amenities, allowing pets, smoking, etc., then collect eager or desperate applicants' fees, some as high as \$65, with no obligation whatsoever to follow up, contact or respond to the applicants.