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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection and Commerce
Tuesday, March 28, 2023
2:00 PM
Conference Room 329 & Via Videoconference**

**On the following measure:
S.B. 930, S.D. 1, H.D. 1, RELATING TO RESIDENTIAL LANDLORD-TENANT CODE**

Chair Nakashima 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 with requested amendments.

The purposes of this bill are to: (1) allow a landlord or landlord's agent to charge an application screening fee for certain applicants at the time a rental application is processed for residential property; (2) require the landlord to provide a receipt for payment of the application screening fee and a breakdown of the fee; (3) require the landlord or landlord's agent to return any unauthorized fee amounts to the applicant; and (4) require, beginning on 5/1/2024, the Office of Consumer Protection to produce and make available informational materials and publicize requirements regarding application fees and related rights and obligations.

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. This bill would help prevent landlords from taking unfair advantage of prospective tenants by leveraging their position to obtain additional income at the expense of the prospective tenants.

OCP supports this bill with the following requested amendments:

- (1) Re-insert the provision which establishes a \$25 cap for application screening fees. Caps (and prohibitions) on application screening fees have been adopted in a number of jurisdictions across the United States.
- (2) Clarify that the landlord shall refund any application screening fees that exceed the landlord's actual out-of-pocket costs for screening requests that are actually submitted.
- (3) Do not allow a landlord to charge an applicant costs for obtaining personal reference checks. A bright line rule will prevent disputes about the costs of a personal reference check.
- (4) Delete references to the "landlord's agent." These references are redundant because under common law principles of agency law, a landlord is liable for its agent's conduct. The references may also create undesirable ambiguity in an action to enforce the provisions of the law.
- (5) Insert a provision allowing recovery of reasonable attorneys' fees in an action to enforce the provisions of the proposed law. This provision would raise the stakes for landlords who fail to come into compliance with the proposed law.

Thank you for the opportunity to testify on this bill.



CATHOLIC CHARITIES HAWAII

TESTIMONY IN SUPPORT OF SB 930 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: **Tuesday, 3/28/23; 2:00 PM; CR 329 & via videoconference**

Chair Nakashima, Vice Chair Sayama, and Members, Committee on Consumer Protection and Commerce:

We sincerely thank you for allowing us to provide testimony **in support of SB 930 SD1 HD1**, which allows landlords/landlords' agents to charge an application screening fee at the time a rental application is processed for a rental, requires a receipt for payment of fees, with a breakdown of fees, and the return of any unused portion of the application fee.. I am Rob Van Tassell, with Catholic Charities Hawai'i.

Catholic Charities Hawai'i (CCH) is a tax-exempt, non-profit agency that has been serving people in need in the State of Hawai'i since 1947.

Catholic Charities Hawai'i has found that rental application fees can become a great barrier to local people who are trying to find housing. We support this bill that would allow a fee only at the time an application is actually being processed, i.e. outside fees are incurred by the landlord, such as credit checks. We also urge you to include a **cap on fees of \$25, and limit fees to one per household.**

These fees are not standard for all landlords. We work with affordable housing projects that charge NO fees. However, too many of our clients have applied for housing, paying an upfront fee, but never heard from the landlord about the opening. There is great competition for rental units now and landlords often receive multiple applications. Yet to find housing, it is essential to apply to as many open rentals as possible. Even at a cap of \$25, one person would need to shell out \$100 for just 4 unit possibilities—and \$200 for 8 applications. You can see how this adds up. It is not just low income people who may find this onerous. ALICE families are also in competition for units and have to pay these fees, which might run into hundreds of dollars before they obtain a rental unit. Families are stretched to save for a deposit and probably pay double rent until they can move from one unit to the next. Multiple and high fees are of high concern.

Limiting the landlord from collecting only one fee would not prevent landlords from doing credit checks or criminal checks on ALL adults in the family. They just could only collect ONE fee. If they feel more confident making a decision with more information they have the right to do further checks within the limits of the Fair Housing Laws.

We urge your support to ease this economic hardship on renters. Please contact our Legislative Liaison, Betty Lou Larson at (808) 527-4813 if you have any questions.



March 28, 2023

The Honorable Mark Nakashima, Chair

House Committee on Consumer Protection & Commerce
State Capitol, Conference Room 329 & Videoconference

RE: Senate Bill 930, SD1, HD1, Relating to the Residential Landlord-Tenant Code

HEARING: Tuesday, March 28, 2023, at 2:00 p.m.

Aloha Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

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 with amendments** on Senate Bill 930, SD1, HD1, which allows a landlord or landlord's agent to charge an application screening fee for certain applicants at the time a rental application is processed for residential property. Requires the landlord or landlord's agent to provide a receipt for payment of the application screening fee and a breakdown of the fee. Requires the landlord or landlord's agent to return any unauthorized fee amounts to the applicant. Requires, beginning on 5/1/2024, the office of consumer protection to produce and make available informational materials and publicize requirements regarding application fees and related rights and obligations. Effective 6/30/3000.

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 tenants. Criminal background checks can also help ensure the safety of the housing provider or other tenants that live in the same unit. Moreover, 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. Under federal Fair Housing law, housing providers may not discriminate against different applicants. The housing provider is required to document that each applicant was treated the same and screened by the same standards. An application consists of all prospective tenants in a household who all have an impact on the space they are renting. All tenants are subject to the terms of the lease; therefore, all adult applicants must be screened. This is not just a matter of fairness, but also of safety.

Furthermore, this measure provides that a housing provider must furnish a breakdown of costs covered by the application screening fee. Since screening companies do not all bill their services right away, it might be challenging for the housing provider to provide a cost breakdown.

We appreciate the intent of this bill and should this measure move forward, we suggest the following amendments to Section 1 of the bill to address the concerns we noted above:

"§521- Application screening fee. (a) When a landlord or the landlord's agent receives a request from an applicant to rent residential property, the landlord or the landlord's agent may charge the applicant an application screening fee at the time the application is processed for the residential property to cover the costs of obtaining information about the applicant; provided that a landlord or the landlord's agent shall only charge an application screening fee for an applicant who is eighteen years of age or older ~~or an emancipated minor [and whose income is being used to meet financial qualifications for the rental application process]~~. Information sought by the landlord or the landlord's agent charging the fee may include personal reference checks, tenant reports, ~~criminal background checks,~~ and credit reports produced by any consumer credit reporting agency.

~~(b) Upon request by the applicant, a landlord or the landlord's agents shall provide to the applicant a:~~

~~(1) Receipt for payment of the application screening fee; and~~

~~(2) Breakdown of costs covered by the application screening fee.~~

~~([e]b) A landlord or the landlord's agent shall return to the applicant any amount of the application screening~~



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fee that is not used for the purposes authorized by this section within thirty days after the landlord has submitted screening requests.

([REDACTED]) For the purposes of this section, the terms "consumer credit reporting agency" and "credit report" shall have the same meanings as in section 489P-2."

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

