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OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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

**Office of Consumer Protection**

**Before the  
Senate Committee on Judiciary  
Friday, February 23, 2024  
9:30 AM  
Via Videoconference  
Conference Room 016**

**On the following measure:  
S.B. 2127, S.D. 1, RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE**

Chair Rhoads 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 (OCP). The Department supports this bill, which would reduce the amount of an application screening fee for a person applying to rent a dwelling unit in certain cases. The Department comments on the meaning of a "certified copy" of the applicant's criminal background check or credit report.

Existing law, effective May 1, 2024, authorizes a landlord to charge an application fee to cover the cost of obtaining information about an applicant and requires a landlord, upon request, to provide an applicant a receipt for the payment of an application screening fee and a breakdown of the costs covered by the application screening fee. It also requires a landlord to return to the applicant any amount of the

application screening fee that is not used for purposes authorized by law within thirty days after the landlord has submitted the screening request.

Prohibiting a landlord from charging an application screening fee when an applicant for a dwelling unit presents the landlord with a current criminal background check or credit report obtained from another landlord would help address the financial burden on applicants for residential rental housing. Absent this prohibition, each landlord could—and many already do—charge a prospective tenant a separate application screening fee to obtain identical or nearly identical information about a prospective tenant.

Certain tenant screening companies allow tenants to share their reports with as many landlords as they choose for 30 days at no additional cost. Requiring landlords and their agents to accept these reports would reduce the cost to the applicants. Companies that offer these reusable tenant screening reports securely transmit reports to landlords upon the applicant's request, protecting sensitive data, ensuring privacy for the applicant, and agreeing to bear the risk of failure to do so. The Department supports this provision because reusable tenant screening reports would reduce the financial burden on applicants who might have to submit multiple rental applications.

S.D. 1 removed the provisions requiring the Department to adopt rules to establish a certification process for the landlords to certify the criminal background checks and credit reports and establish penalties. This change made the definition of a "certified copy" of a criminal background check and credit report unclear. Clarity is needed for landlords to accept reliably and for applicants to offer a "certified copy" of these screening reports.

Thank you for the opportunity to testify on this bill.

February 23, 2024

**The Honorable Karl Rhoads, Chair**

Senate Committee on Judiciary

State Capitol, Conference Room 016 & Videoconference

**RE: Senate Bill 2127, SD1, Relating to the Residential Landlord-Tenant Code**

**HEARING: Friday, February 23, 2024, at 9:30 a.m.**

Aloha Chair Rhoads, Vice Chair Gabbard, 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 **opposes** Senate Bill 2127, SD1, which prohibits a landlord or the landlord's agent from charging an application fee for a criminal background check or credit report if an applicant provides a certified copy of a criminal background check or credit report or makes a comprehensive reusable tenant report available to the landlord or the landlord's agent. Requires a landlord or the landlord's agent to provide, upon request, a certified copy of an applicant's criminal background check or credit report. Takes effect 7/1/2040.

The tenant screening process typically begins when the prospective tenant completes a rental application. Property managers manually review information and can rely on a tenant screening company to help produce tenant screening reports to assist with the screening process. It is important to highlight that these screening reports are typically designated as confidential. The Fair Credit Reporting Act<sup>1</sup> strictly governs how the credit information/report is provided, stored, used, with whom it is shared, and how it is retained.

Moreover, we note that the screening process is not limited to just credit reports and criminal background checks. The entire screening process can also include reviewing eviction history, verifying employment, verifying personal references, and other records to properly vet tenants. Property managers are not just concerned about the ability for an applicant to pay rent, but also what kind of tenant the applicant will make. Therefore, this measure may not eliminate the need for an application fee.

Additionally, HAR would note that it is very easy to edit a PDF, so a property manager may be reluctant to accept a criminal background check or credit report from an applicant. It may not be possible for property managers to be able to verify that documentation has not been tampered with, leading property managers to decline these types of applications. This entire process would delay the application process which is ultimately detrimental to tenants who are seeking housing.

Mahalo for the opportunity to provide testimony on this measure.

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<sup>1</sup> Federal Trade Commission. (May 2023). *Fair Credit Reporting Act*. [www.ftc.gov/legal-library/browse/statutes/fair-credit-reporting-act](http://www.ftc.gov/legal-library/browse/statutes/fair-credit-reporting-act)

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February 9, 2023

## COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair

RE: SB2127 - RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE.

Dear Senators,

I am an attorney and have practiced landlord-tenant law for the last 30 years. I support the intent of SB2127 in reducing costs for tenants in applying for rentals. However, the approach taken by this bill introduces more problems than it solves. I would like to offer a different, if only partial, solution.

The primary problem is that there is no standard for a “certified” copy of any document that may be provided by a prospective housing provider to a tenant for use with another prospective housing provider.

Unlike documents issued by the State of Hawaii or other governmental entities (such as the Bureau of Conveyances) who have verifiable processes and standards for issuing certified copies, there is no such standard for either professional or mom and pop housing providers to issue a “certified” copy. So, the term “certified copy” is too vague to be useful. With such vagueness, this statute will be unenforceable since any housing provider would be justified in rejecting any copy of a report offered up by a prospective tenant.

If the legislature really wants to reduce the costs to tenants for background checks, it can start by eliminating the costs for housing providers to utilize the State of Hawaii’s criminal background reporting system. The Hawaii Criminal Justice Data Center (“eCrim”) <https://ecrim.ehawaii.gov/ahewa/login.do?jsessionid=FCD98F1FEF1A287CB48511254B841E4C.hcjdapp> provides an excellent resource for the public – including housing providers – for checking criminal backgrounds of Hawaii residents. While it is not as comprehensive as national services, it provides good information regarding criminal activity in Hawaii.

The primary impediment to use of the eCrim system is cost. The legislature should consider waiving the charge for use of the eCrim system for housing providers. That way, there would be no cost for the housing provider to charge to the prospective tenant. A win-win for both housing provider and prospective tenant.

Very truly yours,  
/s/ David W. H. Chee  
David W. H. Chee



# MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

HEARING BEFORE THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION  
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 229  
Wednesday, February 14, 2024 AT 9:30 A.M.

To The Honorable Senator Jarrett Keohokalole, Chair  
The Honorable Senator Carol Fukunaga, Vice Chair  
Members of the committee on Commerce and Consumer Protection

## COMMENTS ON SB2127 SD1 RELATING TO RESIDENTIAL LANDLORD-TENANT CODE

The Maui Chamber of Commerce would like to offer **COMMENTS ON SB2127 SD1**.

The Chamber notes that there are numerous barriers to accessing affordable housing for low-income households and people experiencing homelessness. There is significant competition for rental units in the State, with landlords often receiving multiple applications per unit. Individuals and families often must apply to as many open rentals as possible, which can cost hundreds of dollars. While the Chamber recognizes that landlords and their agents need to collect application fees in order to vet all applicants, we believe that the costs of multiple applications for prospective tenants may result in economic hardship, especially in a tight housing market.

The State enacted Act 200, Session Laws of Hawaii 2023, which authorizes an application screening fee for rental applications to ensure that costs associated with vetting an application are used only for that purpose and any remaining fees are returned to the applicant. However, an applicant will still be required to submit multiple application fees to landlords or their agents who are using those fees to obtain similar information. Allowing an applicant to receive a certified copy of certain information to provide to another landlord or the landlord's agent will further reduce the financial burden of applying for rental units and reduce the work of landlords and their agents to obtain certain information.

The Chamber supported the initial version of this measure. However, after it was amended, the process for certifying a criminal background check or credit report was removed and no definition of "certified copy" was made. Thus, making the measure ineffective since someone could falsify these reports with no consequences.

Mahalo for the opportunity to offer **COMMENTS ON SB2127 SD1**.

Sincerely,

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.