



EXECUTIVE CHAMBERS
HONOLULU

February 16, 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: **HB 2139 HD1 – RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE.**

Hearing: Wednesday, February 16, 2022, 2:00 p.m.
VIA VIDEO CONFERENCE

POSITION: The Governor's Coordinator supports this measure with suggested amendments.

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 original bill that established a cap for the amount that landlords could charge for an application screening fee. 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.

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 amendments to specify a reasonable timeframe for the landlord to refund unused application screening fees, including any unused balance.

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 \$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.

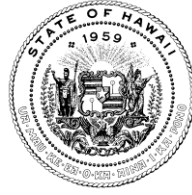
Requiring the refund of unused application screening fees will enable tenants to utilize the monies to pay for rent, utilities and other basic housing costs. In addition, requiring a refund when no screening is conducted will disincentivize landlords from charging unnecessary fees to potential tenants 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.



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

House Committee on Consumer Protection & Commerce

Wednesday, February 16, 2022

2:00 p.m.

Via Videoconference

On the following measure:

H.B. 2139, 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, when processing an application to rent residential property, to charge an application screening fee for the cost of requesting tenant report or credit report for a potential tenant; and (2) require landlords to refund any unused amount 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 intention 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.

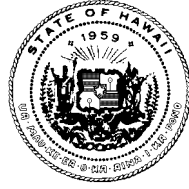
The Department also requests that the provision allowing landlords to charge only one application screening fee per application be reinstated. H.D. 1 deleted this provision which would have helped reduce the abusive practice of unnecessarily charging families multiple application screening fees. For 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

February 15, 2022

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

FROM: Cathy Betts, Director

SUBJECT: **HB 2139 HD1 – RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE.**

February 16, 2022, at 2:00 p.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this administration measure though prefers the consumer protections in the original version and provides comments. The Department defers to the Governor's Coordinator on Homelessness and the Department of Commerce & Consumer Affairs.

PURPOSE: The purpose of this measure is to allow a landlord or the 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. 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 HD1 amended the measure by:

- (1) Deleting language 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 for each member of a household;
- (2) Deleting the requirement that, upon written request by the applicant, the landlord or the landlord's agent must provide the applicant with a copy of any report obtained by the landlord or the landlord's agent;

(3) Changing the effective date to July 1, 2050, to encourage further discussion; and

(4) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

While DHS appreciates the House Committee on Housing's amendments, DHS is concerned that there is no limit to how much a landlord may charge applicants for screening fees or time-frame to refund unused portions of the screening fees. Fixed- and low-income residents are at a significant disadvantage when competing for rental housing. In Hawaii's tight and expensive housing environment, fixed- and low-income residents do not have the financial wherewithal or lack the access to credit 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. If the amounts charged remain at the landlord's discretion, this will continue to be a barrier for fixed- and low-income residents. Therefore, the Department respectfully requests the Committee impose an upper limit and set a time frame to return unused portions of the fees.

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

DAVID Y. IGE
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
PRINCESS VICTORIA KAMĀMALU BUILDING
1010 RICHARDS STREET, Room 122
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
February 16, 2022

The Honorable Representative Aaron Ling Johanson, Chair
House Committee on Consumer Protection & Commerce
The Thirty-First Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Representative Nakamura and Committee Members:

SUBJECT: HB2139 HD1 Relating to Residential Landlord-Tenant Code

The Hawaii State Council on Developmental Disabilities **SUPPORTS SB2139 HD1** which allows a landlord or the 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. 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.

Many individuals with intellectual/developmental disabilities (I/DD) are a part of our low-income community. Many individuals with I/DD benefit from Section 8 Housing Choice Voucher Program. For our individuals, the section 8 program is the only way many can live independently and helps integrate them into our communities. When looking for a home to rent, paying for rental applications is a roadblock for our I/DD community members. Some of our individuals often have to apply to over ten separate listings. If the application cost per listing is \$50 with no guarantee that they will be accepted, our individuals would have to pay \$500 in these application fees with no guarantee of finding a home. These costs are too high for our community members to pay and the cost creates a barrier to entry for low-income individuals looking for rental spaces within our state.

The Council specifically supports the original language of SB2139 not the HD1 version. We worry with no cap on the amount an application can cost the price could be inflated by "time and effort" charges. The entire cost including the labor of the realtor should not be put on the applicants shoulders to bare.

Thank you for the opportunity to submit testimony in **support of HB2139 HD1**

Sincerely,



Daintry Bartoldus
Executive Administrator



CATHOLIC CHARITIES HAWAII

COMMENTS on HB 2139 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, February 16, 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 **HB 2139, HD 1**, which would allow a landlord to charge a screening fee for the cost of requesting a tenant report or credit report. It requires the landlord to refund any unused amount of the fee and provide a receipt for payment of this fee. I am Rob Van Tassell, with Catholic Charities Hawai'i. We are also a member of Partners In Care.

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 the Intent of this bill, and **urges you to consider 3 amendments to relieve the financial burden placed on many renters as they seek housing:**

1. Clarify that the fee may be charged only at the time when the applicant will actually be screened and credit checks, etc. done. Charging a fee upfront, and returning the fee later, if these screenings are not done, is still a great financial hardship on applicants.
2. Reinstate the \$25 maximum fee from the original bill.
3. Reinstate the maximum of one fee per application.

With the scarcity of rental units, the more applications submitted, the better chance to find a unit. Without some regulation of these fees (e.g. \$25/household), there may be a severe financial penalty for multiple application fees. This not only limits the number of applications that lower income people can afford to submit, it decreases the savings of the applicant for the deposit and first month's rent. A landlord is still allowed to screen incomes and credit, etc. for all members of the household. Not all landlords even charge a fee for this business expense.

We consider the amended language to be a balanced approach, allowing the landlord to charge a fee to screen the applicant but only when they are actually being considered for a unit. Too many people apply for a housing unit and pay an application fee, never to hear back from the landlord. Regulating the amount of the fee would help struggling families and the elderly.

If Hawai'i is to end homelessness and keep our ALICE families in affordable housing, it must create systems that support both tenants and landlords. Please contact our Legislative Liaison, Betty Lou Larson at (808) 373-0356 or alohabettylou@hotmail.com if you have any questions.



CLARENCE T. C. CHING CAMPUS • 1822 Ke'eumoku Street, Honolulu, HI 96822
Phone (808) 373-0356 • bettylou.larson@CatholicCharitiesHawaii.org





 | 808-733-7060
 | 808-737-4977

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

February 16, 2022

The Honorable Aaron Ling Johanson, Chair

House Committee on Consumer Protection and Commerce

Via Videoconference

RE: H.B. 2139, HD1, Relating to the Residential Landlord-Tenant Code

HEARING: Wednesday, February 16, 2022, at 2:00 p.m.

Aloha Chair Johanson, Vice Chair Kitagawa, and Members of the Committee,

I am Amanda Han, Chair of the Housing and Property Management Subcommittee, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 10,800 members. HAR **opposes** H.B. 2139, HD1, which allows a housing provider or the housing provider'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. Requires housing providers to refund any unused amount of the application screening fee and, upon request, provide a receipt for payment of the application screening fee.

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.

Furthermore, there are administrative and labor costs that are a part of the application process, such as administrative staff time, calling references, and it is unclear if this would be covered under this measure.

Mahalo for the opportunity to testify.



PARTNERS IN CARE

Oahu's Continuum of Care

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

TESTIMONY IN SUPPORT OF HB 2139: RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

TO: House Committee on Consumer Protection & Commerce

FROM: Partners In Care (PIC)

LATE

Hearing: Tuesday, 2/16/22; 2:00 PM; via videoconference

Chair Johanson and Members of the Senate Committee on Consumer Protection & Commerce:

Thank you for the opportunity to provide testimony in **SUPPORT of HB2139**, which would allow a landlord to charge an application screening fee for the cost of requesting a tenant report or credit report and provide a receipt upon request and provide a refund of any unused fee.

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 since multiple application fees can be a severe burden on lower income people seeking housing. Assistance might be obtained for a fee when it is directly tied to the family being screened for an available unit. At that time, there is a chance for them to obtain housing. However, many times fees are paid upfront with the initial application, and are not returned even if screenings such as credit checks or criminal checks are not done. These multiple fees can dig into the person's savings and make it even harder for them to afford to move. The security deposit and first month's rent are already high. Adding hundreds of dollars of fees for the application process is a great burden.

We support this bill and would like to request that an application fee only be allowed if a tenant is actually screened as a possible applicant and the credit check is conducted. We would also request that a maximum fee of \$25 be set within this measure. 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.