

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 Rosalyn H. Baker, Chair
Senate Committee on Commerce & Consumer Protection

FROM: Cathy Betts, Director

SUBJECT: **SB 3107 SD1 – RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE.**

Hearing: March 1, 2022, at 9:50 a.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this administration measure and defers to the Department of Commerce & Consumer Affairs.

PURPOSE: The purpose of the bill allows a landlord, when processing an application to rent residential property, to charge an application screening fee up to a maximum of \$25 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 of the fee and a copy of any report obtained via the screening process to the applicant. (SD1) The SD1 amended the measure with technical amendments.

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.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

Senate Committee on Commerce and Consumer Protection

Tuesday, March 1, 2022

9:50 a.m.

Via Videoconference

On the following measure:

S.B. 3107, S.D. 1, RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

Chair Baker 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, when processing an application to rent residential property, to charge an application screening fee up to a maximum of \$25 for the cost of requesting tenant report or credit report for a potential tenant; (2) require landlords to refund any unused amount of the application screening fee; and, (3) upon request, provide a receipt of the fee and a copy of any report obtained via the screening process to the applicant.

S.B. 3107, 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 3, lines 10 to 15 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 3, lines 16 to 18 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 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
March 01, 2022

The Honorable Representative Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
The Thirty-First Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Senator Baker and Committee Members:

SUBJECT: SB3107 SD1 Relating to Residential Landlord-Tenant Code

The Hawaii State Council on Developmental Disabilities **SUPPORTS SB3107 SD1** which allows a landlord, when processing an application to rent residential property, to charge an application screening fee up to a maximum of \$25 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 of the fee and a copy of any report obtained via the screening process to the applicant.

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 supports the policy priorities of the Hawaii Interagency Council on Homelessness (HICH) which includes adopting policies to address upfront barriers to accessing rental housing. The need for regulation of application screening fees and other

SB3107 SD1 Relating to Residential Landlord-Tenant Code

March 01, 2022

Page 2 of 2

upfront barriers to accessing rental housing is especially critical given the ongoing affects from the COVID-19 pandemic and its impacts on low-income households.

Thank you for the opportunity to submit testimony in **support of SB3107 SD1**

Sincerely,



Daintry Bartoldus

Executive Administrator



EXECUTIVE CHAMBERS
HONOLULU

March 1, 2022

TO: The Honorable Senator Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection

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

SUBJECT: **SB 3107 SD1 – RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE.**

Hearing: Tuesday, March 1, 2022, 9:50 a.m.
VIA VIDEO CONFERENCE

POSITION: The Governor's Coordinator supports this administration measure.

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

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

TESTIMONY IN SUPPORT OF SB 3107 SD1: RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

TO: Senate Committee on Commerce and Consumer Protection

FROM: Partners In Care (PIC)

Hearing: Tuesday, 3/1/22; 9:50AM; via videoconference

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

Thank you for the opportunity to provide testimony in **SUPPORT of SB 3107 SD1**, which would allow a landlord to charge an application screening fee at the time a rental application is processed for a rental unit, cap the fee at \$25 per household, and other provisions such as returning any unauthorized fee amounts to the applicant.

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 since it would reduce the burden on people desperately seeking housing, and help to prevent homelessness. However, it will also allow the landlord to charge a reasonable fee at the time they would actually be incurring costs for credit checks or other screenings.

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.

SB-3107-SD-1

Submitted on: 2/26/2022 7:20:49 AM

Testimony for CPN on 3/1/2022 9:50:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Connie Mitchell	Testifying for IHS, The Institute for Human Services	Support	No

Comments:

IHS is in full support of this measure as amended. So many potential tenants are discouraged by the heavy application fees that are required of them when applying for housing because they cut into already tight budgets due to our high cost of living in Hawaii. Housing cost burden is already one of the highest in our nation. These fees add to that burden.

A typical family seeking rental housing will apply for at least 3-4 units to access one for rental. The outlay of a security deposit equivalent to one months rent and the first month of rent already means a family will need to come up with at least \$3,500 to move in (on the low end). Families can easily become homeless if unprepared for such an emergency expense and forced to move due to landlords selling their properties or turning it over to family, or eviction. Added application fees are simply not helpful.



CATHOLIC CHARITIES HAWAII

TESTIMONY IN SUPPORT OF SB 3107 SD1: RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

TO: Senate Committee on Commerce and Consumer Protection
FROM: Rob Van Tassell, President and CEO, Catholic Charities Hawai'i
Hearing: Tuesday, 2/15/22; 1:00 pm; via videoconference

Chair Baker, Vice Chair Chang, and Members, Committee on Commerce and Consumer Protection:

Thank you for the opportunity to provide testimony **in support of SB 3107 SD1, with one critical amendment.** This bill would set a maximum application screening fee for a landlord to charge at the time the landlord initially receives an application, 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 strongly supports the Intent of this bill, but **respectfully suggests an amendment to clarify when the landlord may collect this fee. If the landlord collects this fee upfront when they first receive the application (as indicated by this bill), this remains a big barrier. We suggest language to clarify that: The Landlord may charge an application fee at the time that an application is being processed for a unit, will obtain personal reference checks, tenant reports, and credit reports, etc.** We strongly support the other provisions of this bill.

Some feel that no application fees should be charged since screening prospective tenants could be considered a usual business expense. However, we support a balanced approach, allowing the landlord to charge a fee to screen the applicant when they are actually being considered for a unit. Too many people apply for a housing unit and pay the application fee, never to hear back from the landlord. With the scarcity of rental units, the more applications submitted, the better chance to find a unit. Without some regulation of these fees, there may be a severe financial penalty for multiple applications. Landlords can still consider families with multiple incomes and collect credit reports, etc. on all members of the household. There would just be one reasonable fee, not a separate fee for each person with income. Multiple fees limit the number of units accessible to struggling families and decrease their savings for a deposit/first month's rent.

If Hawai'i is to end homelessness and support ALICE families seeking housing, it must create systems that support both tenants and landlords. This bill is a good step forward, with the suggested amendment. Please contact our Legislative Liaison, Betty Lou Larson at (808) 373-0356 or alohabettylou@hotmail.com if you have any questions.





March 1, 2022

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce and Consumer protection
Via Videoconference

RE: S.B. 3107, Relating to the Residential Landlord-Tenant Code

HEARING: Tuesday, March 1, 2022, at 9:50 a.m.

Aloha Chair Baker, Vice Chair Chang, 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. 3107, which allows a landlord, when processing an application to rent residential property, to charge an application screening fee up to a maximum of \$25 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 of the fee and a copy of any report obtained via the screening process to the applicant.

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.

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 or roommates, 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.



**Hawai'i
Association of
REALTORS®**



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

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.



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February 28, 2022

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair



RE: SB3107 SDI RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE

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

I oppose SB3107 SDI 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.

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 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.

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
February 28, 2022
Page 3
(SB3107 SDI)

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

LATE

SB-3107-SD-1

Submitted on: 2/28/2022 6:33:52 PM

Testimony for CPN on 3/1/2022 9:50:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
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.

LATE

SB-3107-SD-1

Submitted on: 2/28/2022 8:07:17 PM
Testimony for CPN on 3/1/2022 9:50:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Richard Sullivan	Individual	Support	No

Comments:

We desperately need new laws and guidelines such as proposed for SB3107. 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. Currently application fees are disappearing into a black hole, leaving applicants victims of the current unregulated model.