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TO THE
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
THE TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION OF 2008

Wednesday, February 6, 2008
2:00 p.m.

TESTIMONY ON H.B. NO. 2409 - RELATING TO AUTOMATED TELLER MACHINES

THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nick Griffin, Commissioner of Financial Institutions, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). We appreciate the opportunity to testify on House Bill No. 2409. While the Department appreciates the legislative intent of this measure relating to automated teller machines, section 2 of this bill, which would amend the Code of Financial Institutions (the "Code"), Chapter 412, Hawaii Revised Statutes ("HRS"), by adding a new section to the Code, appears to be unnecessary in light of section 3 of this bill. Therefore, while the

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Department does not object to the bill, we would prefer that section 2 of the bill be deleted for the following reasons.

The purpose of the bill is to require that an agreement to operate or share an automated teller machine ("ATM") may not prohibit, limit, or restrict the right of the owner operator of the automated teller machine to charge a transaction fee to a person who uses an automated teller machine card or other access device for any account.

The Department first notes that the Code currently does not prohibit any Hawaii financial institution that is an owner or operator of an ATM in this State from assessing a transaction fee on any person who uses that machine. Consequently, the need for such a provision in the Code is uncertain. Moreover, the Code does not regulate many of the owners and operators of ATMs in Hawaii. The scope and application of the Code, as described at section 412:1-102, HRS, is limited to Hawaii financial institutions, certain other persons, including foreign financial institutions, who subject themselves to special provisions of the Code, or who, by violating any of the Code's provisions, become subject to the penalties of Chapter 412, HRS, and, to the extent permitted by federal law, all federal financial institutions transacting business in this State.

The net result of the foregoing limitations on the scope and application of the Code effectively is to exclude from regulation under the Code those owners and operators of ATMs that are not financial institutions of any kind. Such persons are commonly known as non-bank owner/operators. In addition, federal financial

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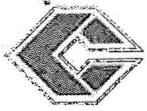
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institutions operating ATMs in this State would not be regulated under the Code, since the core banking activities of those institutions, including their right to set up, own, and operate ATMs in states where they have been authorized by their primary federal regulator to engage in banking activities, fall outside the scope and application of the Code and are therefore not subject to regulation by the State of Hawaii.

Consequently, while the proposed language in section 2 of this bill is not, strictly speaking, objectionable, it is significantly restricted in its application to a limited subset of the total number of owners and operators of ATMs that are located in Hawaii. That being the case, and given that identical language is proposed in section 3 of the bill, which would not be restricted to only those persons that are subject to regulation under the Code, but would appear to apply to all owners and operators of ATMs in Hawaii, including those ATM owners and operators that are subject to regulation as financial institutions under the Code, there would appear to be no need to enact duplicative legislation to be inserted in Chapter 412, HRS. We therefore regard section 2 of the bill as redundant and unnecessary and would prefer an amended bill that deletes the present section 2.

Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.

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CENTRAL PACIFIC BANK

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February 4, 2008

Representative Robert N. Herkes
Chairman
Committee on Consumer Protection & Commerce

RE: HB 2409 – Relating to Automated Teller Machines – (In Support)

Dear Chairman Herkes,

I am employed by Central Pacific Bank (CPB) as Senior Vice President & Manager of the Alternative and Future Delivery Channels Division. On behalf of CPB, I respectfully urge the passing of HB 2409, which will allow Automated Teller Machine (ATM) operators in the State of Hawaii to assess a customer transaction fee at the point-of-sale for ATM cash withdrawals made by international cardholders. We believe non-U.S. cardholders should not be exempt from ATM transaction fees that are currently paid by Hawaii residents and mainland U.S. cardholders for the same service. HB 2409 will override a restriction on assessing non-U.S. cardholders a transaction fee imposed by Visa (Plus) and MasterCard (Cirrus) in their ATM access fee rules.

- CPB provides ATM cash dispensing services with almost 100 ATM units throughout the State of Hawaii, including retail locations such as ABC Stores, Tesoro convenience stores, Fastop convenience stores, major shopping centers, and various commercial locations.
- Based on the 2006 First Data ATM Deployer Study, revenues for remote (not in a branch) ATM units increased by 6% from 2003 to 2006, however expenses have increased by 45%. In 2006, the average net income for a remote ATM unit was a negative \$260 per month, or a loss of \$3,120 per year per ATM. Transaction fees are the primary source of revenue for ATM units and are typically waived for the customers of the financial institution operating the ATM. Hawaii ATM operators face an additional challenge of generally higher occupancy costs at their ATM locations via rent or revenue-sharing agreements. Other major expenses include armored car service, equipment maintenance and depreciation, and currency carrying cost.
- Exempting non-U.S. cardholders from transaction fees may result in higher pricing for ATM transactions in heavy visitor traffic areas, in order to offset the reduced revenue sources at a cost to Hawaii residents and U.S. cardholders.
- More access to currency through ATM services promotes higher consumer spending and directly benefits retailers and other businesses, especially at visitor destinations. However, as the cost of operating ATM units continues to outpace revenue, the growth and expansion of ATM services are becoming prohibitive.

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Representative Robert N. Herkes, Chairman
Committee on Consumer Protection & Commerce
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- ATM services have become universally accepted as a secure and convenient way for immediate access to currency, and ATM transaction fees are now common practice in countries throughout Asia and Europe. Non-U.S. cardholders will still maintain the choice of paying a transaction fee for the convenience of immediate cash access and the security of not having to physically carry large sums of currency during their stay in Hawaii.

HB 2409 will create parity for U.S. and non-U.S. cardholders, as well as a new source of revenue for ATM operators to continue providing, and possibly expanding their ATM services in visitor destinations throughout Hawaii. An expanded ATM infrastructure can generate more sales opportunities for retailers and other businesses in Hawaii, as well as a more enjoyable experience for our visitors.

Thank you very much for your consideration.

Sincerely,



Wayne Kirihara
SVP & Manager
Alternative & Future Delivery Channels Division
Central Pacific Bank

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HAWAII BANKERS ASSOCIATION

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February 4, 2008

The Honorable Robert N. Herkes
State House of Representatives
Chairman
Committee on Consumer Protection & Commerce

Sent via email: CPCTestimony@capitol.hawaii.gov

Re: HB 2409 Relating to Automated Teller Machines (**In Support**)

Dear Chair Herkes:

I am Roy Amemiya, employed by Central Pacific Bank, but testifying on behalf of the Hawaii Bankers Association (HBA) and its member banks.

The HBA supports HB 2409. The measure requires that an agreement may not prohibit, limit, or restrict the right of the owner or operator of the automated teller machine to charge a customer transaction fee.

This measure would override an international surcharge rule in the VISA International and Mastercard International agreements. Currently, a user of an ATM using a domestic card, either from a financial institution located in the mainland U.S. or in Hawaii can be assessed a fee. Therefore, the result of passing this law is that foreign visitors to the islands would be assessed an ATM withdrawal fee similar to domestic users.

The use of an exemption provided by state law is an approach being used by other jurisdictions and presently 17 states have such laws. These include: **Alabama, Arkansas, California, Colorado, Georgia, Idaho, Louisiana, Maine, Mississippi, Montana, Nevada, New York, Tennessee, Texas, Utah, Washington and Wyoming.**

Thank you for your consideration and for the opportunity to submit testimony.

Sincerely,

Roy K. Amemiya, Jr.

Phone: 535-2555

Email:

roy.amemiya@centralpacificbank.com

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HAWAII CREDIT UNION LEAGUE

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February 5, 2008

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, HI 96813

Chair Herkes and members of the Committee:

H.B. No. 2409, Relating to Automated Teller Machines

My name is Mike Leach, Legislative & Regulatory Manager for the Hawaii Credit Union League (HCUL). I am testifying on behalf of HCUL as the local trade association for Hawaii's 93 federally and state-chartered credit unions to support the general intent of H.B. No. 2409.

HCUL works with other members of Hawaii's financial services community to consider and support measures to improve economic conditions in the broader community. We have considered this measure in consultation with the Hawaii Bankers Association and believe this bill intends to do just that by removing a restriction imposed by VISA International and MasterCard International on assessing foreign cardholders the same transaction fee customarily paid by domestic (local) cardholders for using an ATM in Hawaii. Based on our discussions, we concur with what we believe will be comments submitted by Mr. Roy Amemiya on behalf of the Hawaii Bankers Association and Mr. Wayne Kiriara on behalf of Central Pacific Bank.

Thank you for the opportunity to ask for your favorable consideration of this measure.

Sincerely,

Michael Leach
Legislative & Regulatory Manager

cc: Dennis K. Tanimoto, President

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February 4, 2008

The Honorable Robert N. Herkes
State House of Representatives
Chairman
Committee on Consumer Protection & Commerce

Re: **(In Support)** HB 2409 Automated Teller Machines

Dear Chair Herkes

My name is Jason Barnhill; I am the Vice-President of ATM Unlimited and speaking on behalf of Hawaii's small business ATM owners and operators.

We support HB2409. In the State of Hawaii we have the opportunity to enjoy and profit from a strong tourism economy. According to the State of Hawaii, Department of Business, Economic Development & Tourism, approximately 35% of all Hawaii's visitors are foreign visitors. Hawaii's ATM owners and operators find it unfair that we are unable to receive a financial benefit from these visitors. Such restrictions place an unfair burden on independent ATM operators and owners, whose primary source of revenue on ATMs comes from surcharges. We argue that current restrictions on surcharges for international ATM users create a situation where domestic ATM users subsidize the costs for international users.

Please Support HB2409

Sincerely,

Jason Barnhill
ATM Unlimited, Inc.
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