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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-FIFTH STATE LEGISLATURE
Regular Session 2010

Monday, January 25, 2010
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 2027 -- RELATING TO DISHONORED CHECKS.

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

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to comment on House Bill No. 2027, Relating to Dishonored Checks.

My name is Stephen Levins, and I am the Executive Director of the Department's Office of Consumer Protection ("OCP").

The Department has concerns with deleting the word "reasonable" from section 490:3-506.5 of the Hawaii Revised Statutes. Current law only allows payees or holders in due course to charge the maker of a dishonored check up to \$30, if the amount is reasonable. Removing the reasonableness requirement will allow payees and holders to charge the maker \$30 even if their actual costs are only a few dollars. When the

statute was originally drafted the term reasonable was adopted because it was recognized that the fee should have some correlation with the actual costs incurred. Since removal of this requirement may cause makers to potentially incur substantially more costs, the Department has concerns with this proposal.

Thank you for this opportunity to testify on House Bill No. 2027. I will be happy to answer any questions that the Committee members may have.

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MEMORANDUM

TO: Representative Robert N. Herkes
Chair, House Committee on Consumer Protection & Commerce
Hawaii State Capitol, Room 320
Via e-mail: CPCtestimony@Capitol.hawaii.gov

FROM: Gary M. Slovin

DATE: January 23, 2010

RE: H.B. 2027 – Relating to Dishonored Checks
Hearing: Monday, January 25, 2010 at 2:00 p.m.
Room 325

Dear Chair Herkes and Members of the Committee on Consumer Protection & Commerce:

I am Gary Slovin, testifying on behalf of the Consumer Data Industry Association (“CDIA”). Founded in 1906, CDIA is the international trade association that represents more than 200 data companies. CDIA members represent the nation’s leading institutions in credit reporting, mortgage reporting, fraud prevention, risk management, employment reporting, tenant screening and collection services.

CDIA supports H.B. 2027, which clarifies that payees or holders in due course may assess a service charge of up to \$30 for a dishonored check.

Two of CDIA’s members are the largest check verification companies in the nation, Certegy (owned by Fidelity) and TeleCheck (owned by FirstData). These two companies have about 90% of the market share of check verification. Certegy and TeleCheck (and others like them) verify the checks taken by merchants, utilities, cell phone companies, financial institutions, etc., and assist those businesses in determining whether to accept or reject the check. If the check is later returned, the verification company absorbs the returned check and then attempts to collect on the check from the drawee bank and/or the maker.

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Under Hawaii law, the person collecting on a returned check may collect from the consumer “a reasonable service charge of not more than \$30.” Haw. Rev. Stat. § 490:3-506.5.¹ This type of provision is the subject of a multistate class action. Essentially, the class action plaintiffs allege that a “reasonable service” charge is less than \$30.

Although the litigation is currently pending, it will likely settle. Nevertheless, it would be helpful to have clarity in the appropriate section of law. To this end, CDIA supports H.B. 2027, which will remove the word “reasonable” from Section 490:3-506.5, to clarify that a person collecting on a returned check can collect up to \$30.

In practice, \$30 is a typical charge for collecting on a returned check. In enacting Section 490:3-506.5, the Legislature set the range of the service charge as \$30, which is consistent with what is charged in Hawaii² and the rest of the nation. Moreover, retailers need to use the services of businesses like Certegy and TeleCheck; if the charge for collecting on a returned check were assessed as to each individual check, the process would become very expensive, making it difficult for local retailers to accept checks. Checks tend to be used by less affluent consumers, so if merchants stopped accepting checks as a form of payment, then this population of consumers would have greater difficulty in purchasing goods.

For these reasons, CDIA respectfully requests that the Committee pass H.B. 2027. Thank you very much for the opportunity to testify.

¹ This statute is contained in Hawaii’s Uniform Commercial Code, within the article relating to negotiable instruments.

² It is our understanding that the Judiciary and at least one state agency charge \$25 for dishonored checks.



Representative Robert Herkes, Chair
Representative Glenn Wakai, Vice Chair
Committee on Consumer Protection & Commerce

HEARING Monday, January 25, 2010
 2:00 pm
 Conference Room 325
 State Capitol, Honolulu, Hawaii 96813

RE: HB2027, Relating to Dishonored Checks

Chair Herkes, Vice Chair Wakai, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employer in the state, employing 20% of the labor force.

RMH supports HB2027, which clarifies that payees or holders in due course may assess a service charge up to \$30 for a dishonored check.

Clear and concise definitions of regulations and/or requirements establish a balanced, unquestionable playing field both for business concerns and consumers. We urge you to pass this measure.

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

A handwritten signature in cursive script, appearing to read 'Carol Pregill', is positioned above the printed name.

Carol Pregill, President

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