

HB 2027



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
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: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
Regular Session 2010

Friday, March 5, 2010
9:30 a.m.

TESTIMONY ON HOUSE BILL NO. 2027, H.D. 1 -- RELATING TO DISHONORED CHECKS.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to comment on House Bill No. 2027, H.D. 1, 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

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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, H.D. 1. I will be happy to answer any questions that the Committee members may have.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:
GARY M. SLOVIN
ANNE T. HORIUCHI
MIHOKO E. ITO
CHRISTINA ZAHARA NOH

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880
info@goodsill.com • www.goodsill.com

INTERNET:
gslovin@goodsill.com
ahoriuchi@goodsill.com
meito@goodsill.com
cnoh@goodsill.com

MEMORANDUM

TO: Senator Rosalyn Baker
Chair, Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 231
Via e-mail: CPNTestimony@Capitol.hawaii.gov

FROM: Gary M. Slovin

DATE: March 4, 2010

RE: H.B. 2027, HD1 – Relating to Dishonored Checks
Hearing: Friday, March 5, 2010 at 9:30 a.m., Room 229

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

I am Gary Slovin, testifying on behalf of the Consumer Data Industry Association (“CDIA”). Founded in 1906, CDIA is an 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, HD1, 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 loss on the returned check and then attempts to collect on the check from the drawee bank and/or the person who wrote the bad check.

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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, which exists in only four other states, is the subject of a multistate class action in Texas. Essentially, the class action plaintiffs allege that a “reasonable service” charge means that, in every case of a bad check, an analysis has to be made as to what the collection costs actually are. The judge in the case has determined that the final judge of what the costs are is a jury. Common sense tells us that this situation is unreasonable and ridiculous.

It would be helpful to have clarity to avoid what has occurred in the Texas litigation. To this end, CDIA supports H.B. 2027, HD1, 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 a cost-of-collection analysis had to be done on every bad check, the cost to merchants would be prohibitive. Many merchants would have to stop accepting checks. Checks tend to be used by less affluent consumers, and the elderly; 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, HD1. 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.



Senator Rosalyn Baker, Chair
Senator David Ige, Vice Chair
Committee on Commerce and Consumer Protection

HEARING Friday, March 05, 2010
 9:30 am
 Conference Room 229
 State Capitol, Honolulu, Hawaii 96813

RE: HB2027, HD1, Relating to Dishonored Checks

Chair Baker, Vice Chair Ige, 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 supporting the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employers in the state, employing 23% of the labor force.

RMH supports HB2027, HD1, 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'.

Carol Pregill, President



LEGISLATIVE INFORMATION SERVICES OF HAWAII

1188 Bishop St., Ste. 608
Honolulu, HI 96813

PH: 533-6750 FAX: 599-2606
www.lish.info Email: lishawaii@aol.com

Friday, March 5, 2010

To: COMMITTEE ON Commerce & Consumer Protection

Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair

By: Richard C. Botti, President

Re: 2027 HD1 RELATING TO DISHONORED CHECKS

Chairs & Committee Members:

We support this measure. The cost of having a returned check has increased. While banks charge a fee to the person writing a check with insufficient funds, the bank now also charges the business or person accepting the check.

While this is not going to solve the total problem, we hope that it will help, while also being a deterrent.