

JAN 20 2010

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# A BILL FOR AN ACT

RELATING TO NEGOTIABLE INSTRUMENTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 490:3-506.5, Hawaii Revised Statutes,  
2 is amended to read as follows:

3           "**§490:3-506.5 Charges for dishonored checks.** The payee or  
4 a holder in due course of any check, draft, or order for the  
5 payment of money that has been dishonored for lack of funds or  
6 credit to pay the check, draft, or order or because the maker  
7 has no account with the drawee shall be allowed to assess the  
8 maker a [~~reasonable~~] service charge of not more than \$30."

9           SECTION 2. Statutory material to be repealed is bracketed  
10 and stricken.

11           SECTION 3. This Act shall take effect upon its approval.  
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INTRODUCED BY:

Rosalyn H. Baker

David Y. Lee

Will Espino

Norman Sakamoto

Yvonne J. Lee

Jan 12



**Report Title:**

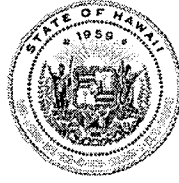
Negotiable Instruments; Dishonored Checks

**Description:**

Removes limitations pertaining to reasonableness for service charges relating to dishonored checks.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*





LINDA LINGLE  
GOVERNOR  
  
JAMES R. AIONA, JR.  
LT. GOVERNOR

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PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE  
Regular Session 2010

Wednesday, January 27, 2010  
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 2018 -- RELATING TO NEGOTIABLE  
INSTRUMENTS.**

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 Senate Bill No. 2018, Relating to Negotiable Instruments. 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

Testimony on S.B. No. 2018  
January 27, 2010  
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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 Senate Bill No. 2018. I will be happy to answer any questions that the Committee members may have.

# GOODSILL ANDERSON QUINN & STIFEL

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## MEMORANDUM

**TO:** Senator Rosalyn Baker  
Chair, Committee on Commerce and Consumer Protection  
Via CPNTestimony@Capitol.hawaii.gov

**FROM:** Gary M. Slovin

**DATE:** January 26, 2010

**RE:** S.B. 2018 – Relating to Negotiable Instruments  
Hearing: Wednesday, January 27, 2010 at 9:00 a.m., Room 229

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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 S.B. 2018, 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.

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.

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§ 490:3-506.5.<sup>1</sup> 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 S.B. 2018, 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 Hawaii<sup>2</sup> 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 S.B. 2018. Thank you very much for the opportunity to testify.

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

<sup>2</sup> 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 & Consumer Protection

HEARING      Wednesday, January 27, 2010  
                  9:00 am  
                  Conference Room 229  
                  State Capitol, Honolulu, Hawaii 96813

**RE:      SB 2018, 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 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 SB2018**, 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