



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2394, S.D. 1, H.D. 2, RELATING TO CONSUMER PROTECTION.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Friday, March 30, 2012

**TIME:** 5:00 p.m.

**LOCATION:** State Capitol, Room 308

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Colette L. Honda, Deputy Attorney General

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Chair Oshiro and Members of the Committee:

The Department of the Attorney General has several concerns regarding this bill as currently drafted.

This bill establishes a program administered by the Hawaii Housing Finance and Development Corporation (HHFDC) to purchase distressed residential mortgages.

This bill proposes to use public moneys to benefit distressed consumers and mortgage lenders without establishing the public purpose to be served. This violates article VII, section 4, of the Hawaii State Constitution, which provides:

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose.

This violation could be cured by a declaration of public purpose made by the Legislature.

The bill's statement that "[t]he corporation would extend the full faith and credit of the State of Hawaii to guaranty payment on the existing loan to the mortgage lender" (section 1, page 3, line 16-18) is inappropriate. The HHFDC is not authorized to encumber the full faith and credit of the State of the Hawaii and we recommend that this statement be deleted or amended.

On page 15, lines 20-22, and page 16, lines 1-3, the bill provides for "condemnation" of mortgage loans where the mortgage lender declines to contract for the purchase of the existing loan. "Condemnation" or "eminent domain" is an exercise of power by the government under the Fifth and Fourteenth Amendments to the United States Constitution and article 1, sections 5

and 20, of the Constitution of the State of Hawaii in which private property is taken for a public use. The use of government "condemnation" or "eminent domain" powers in relation to mortgages is inappropriate since our eminent domain statutes address only estates in real property. Mortgages are not estates in real property.

Section 9 of the bill transfers into the Special Fund, \$8,000,000 in funds received as part of the multi-state settlement agreement with mortgage lenders. The court order settling the litigation, however, specifically provides that the moneys:

...are to be held in trust for the benefit of homeowners and others in the State of Hawaii who are, have been, or may be affected by mortgage loan proceedings...  
The monies shall be deposited into an administrative trust account to be administered by the Attorney General of the State of Hawaii, who as custodian shall have sole discretion to make determinations as to the amounts and the purposes for which the monies are to be expended. (Emphases added).

We therefore recommend that section 9 be deleted.

We respectfully request that the committee make the recommended amendments.



**STATE OF HAWAII**

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
677 QUEEN STREET, SUITE 300  
Honolulu, Hawaii 96813  
FAX: (808) 587-0600

IN REPLY REFER TO:

**LATE TESTIMONY**

Statement of  
**Karen Seddon**  
Hawaii Housing Finance and Development Corporation  
Before the

**HOUSE COMMITTEE ON FINANCE**

March 30, 2012 at 5:00 p.m.  
Room 308, State Capitol

In consideration of  
**S.B. 2394, S.D. 1, H.D. 2,**  
**RELATING TO CONSUMER PROTECTION.**

S.B. 2394, S.D.1, H.D. 2, has the potential to assist distressed homeowners and stabilize communities. HHFDC's specific concerns with the proposed distressed residential properties program set forth in Part II of the H.D. 2 follow:

1. Any property subject to legislative approval of sale or gift of land in accordance with section 171-64.7, HRS, is not eligible to participate in the program. This proviso makes the program unworkable. Under the terms of the program, HHFDC would acquire the fee simple title to the property and re-sell it to the homeowner. However, except for lands "subject to resale restrictions as set forth in section 201H-47 and that were acquired by the Hawaii housing finance and development corporation either at a foreclosure sale or under a buyback as authorized in section 201H-47", lands to which the HHFDC in its corporate capacity holds title is subject to section 171-64.7.

To resolve this problem, we suggest amending the bill as follows:

- Page 10, delete the proviso on lines 13-15, such that section 201H-B(a) would read as follows:

§201H-B. Program eligibility. (a) A mortgagor who has been using the subject property as a primary residence for a continuous period of not less than two hundred days immediately prior to the date when the

housing counselor or budget and credit counselor. While every effort will be made to expedite the review, 60 days (instead of 45 days) would be a more reasonable time period to complete our due diligence. We suggest amending section 201H-B(b), starting on page 11, line 13, to read as follows:

(b) Within [~~forty-five~~] sixty days of receiving an application pursuant to subsection (a), the corporation shall review the application and determine whether the property shall be accepted for further evaluation.

If the corporation accepts the property for further evaluation, within the [~~forty-five~~] sixty day review period, the corporation shall conduct an appraisal of the property in accordance with rules adopted pursuant to chapter 91, and notify the mortgagee and its agents on record at the bureau of conveyances, including all affiliates that may be reported pursuant to any affiliate statement recorded pursuant to sections 454M-5(a)(4) and 667-58(a), and any entities purporting to represent the mortgagee, as reflected in the mortgage statements provided in the application. The notice shall describe the program and include details about the program's requirements, as set forth by rules adopted by the corporation in accordance with chapter 91. The corporation shall either file a copy of the notice in the office of the assistant registrar of the land court under chapter 501, or record it in the bureau of conveyances under chapter 502, or both, as appropriate.

If the corporation declines to accept the property for further evaluation, the corporation shall provide written notification to the applicant stating the reasons for that determination within the [~~forty-five~~] sixty day review period.

4. The distressed residential property loans may require considerably more collection follow-up with the homeowners. As such, the mortgage servicing fee of one-half of one percent may not be sufficient for HHFDC or commercial banks and other lending institutions to service the mortgage loans. We suggest amending section 201H-B(g), on page 17, line 11, by increasing the mortgage servicing fee to no more than one percent. Proposed language would read as follows:

(g) The mortgages, agreements of sale, and other instruments of indebtedness, at the direction of the corporation, may be assigned to and serviced by commercial banks and other lending institutions doing business in the

**Testimony in SUPPORT of SB2394 SD1 HD2**

On behalf of FACE, I would like to testify that this bill addresses several very important problems facing communities on all of the islands: predatory and abusive lending practices, and taking advantage of many mainland banks' willingness to negotiate mortgage purchase prices with state housing finance and development agencies.

Predatory and abusive lending practices. "Pay Day" loan businesses across the state are charging exorbitant interest rates, over 300% in some cases, for small loans to local families, including families of active military. While these sorts of interest rates are outrageous and illegal in some states, they are not currently illegal in Hawaii. There is a federal law that could stop this abuse of military families, but no one is specifically tasked with enforcing this federal law in Hawaii. This bill would authorize DCCA to enforce this important federal law and FACE supports that effort.

SB2394 SD1 HD2 has a Part II that I would also like to address. Here is an example of the opportunity for foreclosure prevention that Part II of this bill would create:

A family took a mortgage in 2005 for \$400,000 for a house. They have now paid that mortgage down to \$360,000. The house was recently appraised at \$300,000 and the family believes that their lender has failed to protect the proper chain of title. This means that the bank may not have legal standing to foreclose on this family.

Right now, without this bill becoming law, this family has two choices:

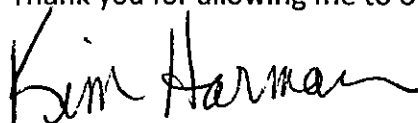
Choice #1 is to keep paying a mainland lender on a \$400,000 mortgage when the house is actually worth \$300,000 AND it is likely that the lender has failed to maintain clear title on the property.

Choice #2 is to allow a foreclosure or short sale to take place, leave behind the family home, the down payment and the equity that the family has built in the home over the last seven years.

SB2394 SD1 HD2 would give this family and other families in this situation a third option: This bill would allow HHFDC to attempt to negotiate with the lender (who, remember, may have forfeited legal standing to legally foreclose on this mortgage) to see if the lender would sell the house to the Corporation for \$100,000. If the lender is willing to make this sale and it has been determined through housing counseling that the family is likely able to make the new mortgage, then this would seem to be a win-win.

Several states have already assigned their State Housing Finance and Development Agencies to initiate these kinds of negotiations and banks are selling these mortgages for cents on the dollar.

Thank you for allowing me to offer this testimony today.



# DEFERRED DEPOSIT Loans

Typical Charges for a deferred deposit loan:

Loan Amount	Total Payment Due	Finance Charge	Annual Percentage Rate (APR)
\$100	\$117.50	\$17.50	456.3%
\$200	\$235.00	\$35.00	456.3%
\$300	\$352.50	\$52.50	456.3%
\$400	\$470.00	\$70.00	456.3%
\$500	\$587.50	\$87.50	456.3%

- ✓ Loans from \$50 to \$500.
- ✓ Term: 7 to 32 days.
- ✓ One easy payment.
- ✓ \$20 returned – item fee.

Money Mart's credit services are provided by Money Mart Financial Services, Inc. Money Mart Financial Services, Inc. is a member of the Credit Council of America, Inc. (CCA).



Call our main office at **808-822-5115!**

# MicroCredit

Our most popular service is our MicroCredit. PayDayHawaii will make a Micro-Credit Advance against your posted dated automatic debit payment draft on your payday. If you are sometimes caught short between paydays or have an unexpected expense, A Micro-Credit Advance is a good alternative to a traditional loan. Quick access to cash can help pay the rent, fix the car, handle a sudden out-of-pocket medical emergency, or pay an over due utility bill. If you need extra cash until payday, MicroCredit is the quickest and most secure way to get fast cash. Micro-Credit fee includes GET. Apply Now

## Microcredit Options

- **Micro-Credit 3:** A fee of 11% of the repayment amount is charged for the advance. Your advance will be due on any payday up to 3 days.
- **Micro-Credit 7:** A fee of 13% of the repayment amount is charged for the advance. Your advance will be due on any payday up to 7 days.
- **Micro-Credit 16:** A fee of 15% of the repayment amount is charged for the advance. Your advance will be due on any payday up to 16 days.
- **Micro-Credit Social Security:** A fee of 11-15% of the repayment amount is charged for the advance. Your advance will be due on your benefit payment date but no later than 31 days.

## Terms Conditions

- **Rescission Policy:** If you change your mind, you may rescind your Micro-Credit contract at no cost on or before the close of the following business day.
- **Extended Payment Option:** After four or more consecutive Micro-Credit contracts you may opt for a payment plan of up to 90 days with payments made every payday. A late charge will be added and you may not use your account again for 30 days following your final payment.
- **Advisory:** Deferred deposit transactions are not suitable for long-term borrowing. Only one deferred transaction can be opened from all sources.
- **Hawaii Residents Only:** PayDayHawaii's Micro-Credit Advance is only available to residents of the State of Hawaii.

PPL

M C C D L

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### 1 Membership Application

### 2 Virtual Check

### 3 Submit Forms

- Save some money before you're tempted to spend it. When you get cash for your birthday or from a job, automatically put a portion of it — at least 10 percent, but possibly more — into a savings or investment account. This strategy is what financial advisers call "paying yourself first." Making this a habit can gradually turn small sums of money into big amounts that can help pay for really important purchases in the future.

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## Credit.com's State-by-State Payday Loan Summary

State	Min/Max Term	Min/Max Loan	Fees and Finance Charges	Status of Laws
Alabama	10-31 days	\$500	17.5% of loan	After the initial loan period and one rollover with the same customer, full outstanding amount of the loan, is due and payable. If the borrower is unable to repay the outstanding balance in full, the payday lender may offer the customer an extended repayment option of four equal monthly installments of the remaining balance. If there are insufficient funds to pay a check on the date of presentment, the lender may charge an additional fee. (Alabama Deferred Presentment Services Act, Title 5, Chapter 18A)
Alaska	14 days min.	\$500	15% or the lesser of \$15 per \$100 loaned + \$5 fee	S.B. 272 Signed by governor 6/29/04, (Chapter 116) Gives the Department of Community and Economic Development additional licensing and regulatory authority over payday lenders; gives borrower the right to rescind the advance without cost before the end of the following business day; prohibits onerous collection practices by both payday lenders and payday third-party collectors, including the threat of criminal charges; prohibits the acceptance of collateral other than a check or other instrument; and defines the additional disclosures that lenders are required to make to clearly describe the advances and their uses for the borrowers.
Arizona	5 days min.	\$50-\$500	15% of amount loaned	A borrower may have only one outstanding payday loan at one time a the face amount, exclusive of any fees, cannot be more than five hundred dollars with three rollovers. Several bills introduced in the 20 Legislative Session amend requirements for payday lenders, and loan
Arkansas	6-31 days	\$400	10% of amount loaned + \$10 fee max.	Senate Bill 948 amended existing law protecting the military, and some licensing requirements.
California	31 days	\$300	15% of amount loaned	A.B. 207 introduced in 2005 prohibits the fee for some deferred deposit transactions from exceeding an effective annual rate greater than 10 percent; Requires a check from a customer for these deferred deposit transactions to be made payable to the actual name of the licensee; Prohibits a check that has been held by a licensee for more than 31 days from being presented to a bank for payment.
Colorado	40 days	\$500	20% first \$300; 7.5% of amount loaned in excess of \$300	Only one loan per borrower at a time.
Connecticut				The small loan laws of Connecticut permits payday lenders to operate and charge any interest rate or fees which the borrower agrees to pay. Lenders must comply with other provisions of the state's small loan act. This amounts to very large annual percentage rates.
Delaware	60 days	\$500	No limit	The small loan laws of Delaware permits payday lenders to operate and charge any interest rate or fees which the borrower agrees to pay. Lenders must comply with other provisions of the state's small loan act. This amounts to very large annual percentage rates. H.B. 152: enacted 7/12/05 sets fees/damages for bad checks and provides that damages or fees may not be obtained for pay-day loans, made by a bank or licensed payday lenders.



such posting; and

- Lenders may not contact any person in the military chain of command of a borrower in an attempt to make collection.

Kentucky	14-60 days	\$500	\$15 per \$100 on amount loaned	
Louisiana	60 days	\$350	16.75% max. of amount loaned: \$45 max fee	Louisiana requires payday lenders to be licensed. And prohibits them from attaching property when collecting on payday loans.
Maine				Maine permits payday lenders to operate and charge any interest rate fees which the borrower agrees to pay. Lawmakers in Maine are considering approving changes to existing laws that would allow significant expansion of the payday loan industry. One of the proposed changes would allow lenders to charge as much as 17.5%, which would amount to \$17.50 per \$100. In addition, payday lenders are permitted to use advertising methods that are currently prohibited, and have greater leeway, in collection methods in the event of default than other types of creditors.
Maryland				Maryland requires payday lenders to comply with the state's small loan or criminal usury laws. Basically, since the allowable interest rates and fees are much lower than what the payday industry usually charges, payday lenders in these states are probably operating illegally.
Massachusetts				Massachusetts requires payday lenders to comply with the state's small loan or criminal usury laws. Basically, since the allowable interest rates and fees are much lower than what the payday industry usually charges, payday lenders in these states are probably operating illegally.
Michigan	<31 days	\$600	15% or the first \$100; 14% of amounts \$100-200 13% of amounts \$200-300; 12% of \$300-400 the fourth \$100; 11% of amounts \$400-\$600 plus administrative fees	New legislation, the Deferred Presentment Service Transactions Act (H 4834) signed by Governor Granholm will regulate payday lending in Michigan by limiting loan amounts to 600 in a 31 day period and allow lenders to charge up to 15% depending on the size of the loan. Borrowers are allowed only one loan at a time. The law requires all payday lenders to be licensed by June 1, 2006, by the Office of Finance and Insurance Services. The law establishes a statewide database for lenders to determine if customers have other open transactions; and allows borrowers to file complaints with the state. The law permits payday lenders to charge service transaction and service fees for each transaction.
Minnesota	30 days	\$350	Ranges from \$5.50 for loans up to \$50 to 6% + \$5 for loans \$250 to \$350	(i) On any amount up to and including \$50, a charge of \$5.50 may be added; (ii) on amounts in excess of \$50, but not more than \$100, a charge may be added equal to ten percent of the loan proceeds plus \$5 administrative fee; (iii) on amounts in excess of \$100, but not more than \$250, a charge may be added equal to seven percent of the loan proceeds with a minimum of \$10 plus a \$5 administrative fee; (iv) for amounts in excess of \$250 and not greater than \$350, a charge may be added equal to six percent of the loan proceeds with a minimum of \$17.50 plus a \$5 administrative fee. After maturity, the contract rate must not exceed 2.75 percent per month of the remaining loan proceeds after the maturity date calculated at a rate of 1/30 of the monthly rate in the contract for each calendar day the balance is outstanding. (Minnesota Small Loans - Chapter 47.60)
Mississippi	30 days	\$400	18% loan amount	Mississippi passed statutes specifically authorizing payday lending. The fees and interest rates amount to very large annual percentage rates. The APR for a 14-day \$100 loan is 572%.
Missouri	14-31 days	\$500	75%	Missouri passed statutes specifically authorizing payday lending. Lenders may not charge interest and fees in excess of 75% of the initial loan amount on any single authorized loan for the entire loan term and all authorized renewals. Otherwise, interest is set pursuant to small loan laws which provides that parties may set rate by contract. The APR for a 14-day \$100 loan is 1980%.
Montana	31 days	\$50-\$300	25% of face value of the check	The maximum loan cannot exceed \$300 plus fees and the minimum amount is \$50 plus fees. A loan cannot exceed 25% of the borrower's

check or insufficient funds; prohibits recovery or statutory damages at attorney fees from consumers for dishonored checks; and grants rulemaking authority to Director of Department of Consumer and Business Services.

Pennsylvania				Pennsylvania does not have specific payday lending legislation and permits payday lenders to operate and charge any interest rate or fee which the borrower agrees to pay.
Puerto Rico				Puerto Rico requires payday lenders to comply with the state's small loan or criminal usury laws. Basically, since the allowable interest rates and fees are much lower than what the payday industry usually charges, payday lenders in these states are probably operating illegally.
Rhode Island	13 days min.	\$500	15% of the face amount of the check	Rhode Island requires payday lenders to comply with the state's small loan or criminal usury laws. The APR for a 14-day \$100 loan is 390%
South Carolina	31 days	\$300	15% of the face amount of the check	South Carolina passed statutes authorizing payday lending. The fees and interest rates that payday lenders are permitted to charge amount to very large annual percentage rates. The APR for a 14-day \$100 loan is 459%.
South Dakota	NA	\$500	No limit	South Dakota permits payday lenders to operate and charge any interest rate or fees which the borrower agrees to pay. Lenders must comply with other provisions of the state's small loan act. This amounts to very large annual percentage rates.
Tennessee	31 days	\$500	15% of the face amount of the check	Tennessee passed statutes specifically authorizing payday lending. The fees and interest rates that payday lenders are permitted to charge amount to very large annual percentage rates. The effective APR for a 14-day \$100 loan is 459%.
Texas	7-31 days	None	10% per loan plus 48% annual interest + \$12 monthly fee	Texas does not have specific payday lending legislation and permits payday lenders to operate and charge any interest rate or fees which the borrower agrees to pay. The effective APR for a 14-day \$100 loan is 309%. <u>S.B. 1479 protects military members and their families from such actions by payday lenders, and requires lenders to make special disclosures to military borrowers.</u>
Utah	NA	None	No limit	Utah passed statutes authorizing payday lending. The fees that payday lenders may charge amount to very large annual percentage rates, although there is a limit on the interest that can be charged on judgments related to a payday loans.
Vermont				Vermont does not have specific payday lending legislation and permits payday lenders to operate and charge any interest rate or fees which the borrower agrees to pay.
Virgin Islands		\$7,500		The Virgin Islands requires payday lenders to comply with the state's small loan law which maintain interest rate caps of up to 26% per annum. Basically since the allowable interest rates and fees are lower than what the payday lenders usually charge, payday loans are not practical.
Virginia	7 days min.	\$500	15% plus a fee for 6% late payments	In Virginia payday lenders must be licensed when making loans to Virginia residents whether or not they have a business in Virginia. Payday lenders cannot: <ul style="list-style-type: none"> <li>• Make more than one loan to a borrower at any time;</li> <li>• Renew or extend any loan;</li> <li>• Lend to military personnel located in certain locations declared 'off limits' by a military base commander;</li> <li>• Garnish military wages or conduct collection activities when the borrower is deployed to a combat or a combat support post.</li> </ul>
Washington	45 days	\$700	15% up to \$500; 10% of the principal in excess	Lenders may loan up to \$700 at one time. In general the usury rate in Washington is 12% per year or 4% above the treasury bill rate. However Washington state-chartered Credit Unions may offer loans to

## **FINTestimony**

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**n:** mailinglist@capitol.hawaii.gov  
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**Subject:** Testimony for SB2394 on 3/30/2012 5:00:00 PM

Testimony for FIN 3/30/2012 5:00:00 PM SB2394

Conference room: 308  
Testifier position: Support  
Testifier will be present: No  
Submitted by: napua amina  
Organization: Face Maui  
E-mail: [napuaamina@yahoo.com](mailto:napuaamina@yahoo.com)  
Submitted on: 3/30/2012

Comments:

**LATE TESTIMONY**