To: Rep. Angus L.K. McKelvey, Chair
Rep. Derek S.K. Kawakami, Vice Chair
Committee on Consumer Protection and Commerce

From: R. Craig Schafer, President
Money Service Centers of Hawaii, Inc.

Date: February 8, 2014

Subject: In opposition to HB2447

Money Service Centers of Hawaii, Inc. is a locally owned and operated money service business headquartered in Kapaa, Kauai. We operate 10 fee-based money service centers throughout the State under the trade name PayDayHawaii.

We do not support HB2447 as introduced. We object to the following sentence added to section 5(c): **"_provided that all cumulative fees charged for a deferred deposit transaction shall be expressed as an annual percentage rate not to exceed thirty-six per cent."** We believe HB2447 should be amended to remove this provision.

Our objection is twofold:

First; the annual percentage rate or APR of 36% is inconsistent with the allowable fee of 15% of the face amount of the check.

A statement of APR is required for credit products under Regulation Z. The APR is designed to help consumers compare the cost of credit among different lenders. The APR is the annual cost of credit stated as a percentage. It is not an "interest" rate. Calculation of the APR is based on the amount financed, the finance charge and the payment schedule. The finance charge includes interest and other fees including one-time application fees or loan processing charges.

In the case of deferred deposit transactions no interest is allowed. The cost to the consumer is the fee of 15%. Under HRS 480F a deferred deposit transaction is limited to 32 days. The APR varies over time. It is not possible to charge the allowed fee and do a transaction for 32 days or less with an APR of no more than 36%.

Second; the current fee structure is a fair price to consumers while allowing for a reasonable profit for check cashers. A deferred deposit transaction is a short-term credit product. It began decades ago as nothing more than a check casher holding a personal check for a few extra days and charging a higher fee for doing so. Interest never entered into the transaction. The fee charged is based on the inherent risk of holding a personal check that both parties know is not backed by funds deposited in the maker's bank.

Currently, under HRS 480F, we are allowed to charge up to ten percent simply for cashing a personal check because of the risk involved. It is reasonable to charge 15% for the additional risk of a deferred deposit transaction.

The usual reason cited for an APR cap is to avoid the "cycle of debit". However repeat borrowing, not fees, is the true cause of the "cycle of debit. When a consumer borrows repeatedly they will spend hundreds of dollars over the course of a year. The excess use of short-term credit to solve long-term credit problems should rightly be

discouraged. This is not the intent of the product and these consumers should be encouraged to seek out a longer-term loan from a bank, credit union or finance company.

To address this issue, HB2447 requires a notice to the consumer on the contract that a payment plan option is available. For consumers in default, collection letters must inform the consumer of this option. The payment plan option is designed to stop repeat borrowing, what is often termed "rolling over". We are in favor of this change to HRS 480F.

Another contributor to the "cycle of debit" is pyramiding deferred deposit transactions from multiple check cashers. These consumers may end up owing thousands of dollars with no hope of repayment. This practice has the same effect as juggling balances on dozens credit cards. Fortunately, this does not happen often with responsible check cashers in this State.

To address this issue, HB2447 allows only one deferred deposit transaction per consumer at a time from all sources. In addition it requires a notice to consumers on signage, and on the contract, that deferred deposit transactions are not suitable for long-term borrowing. **We are in favor of this change to HRS 480F.**

We would like to see provisions added to HB2447 registering check cashers and other retailers who cash checks over $1000.00. Just like money transmitters, check cashers are required to register as a Money Service Business (MSB) with the U.S. Treasury Department under the Patriot Act and should be registered under Hawaii state law.

We would also be in favor of provisions addressing the ability to repay and requiring check cashers to do better underwriting by limiting the amount of credit to a percentage of the consumer's monthly income. This will limit the total fee charged to a reasonable level for low-income consumers.

HB2447 contains other consumer provisions followed by responsible businesses currently offering short-term credit and check cashing in Hawaii under HRS480F. **We are in favor of all of the following proposed changes to HRS 480F**:

HB2447 provides for a 24 hour right of rescission on deferred deposit transactions. This provision gives consumers an opportunity to read the "fine print" without feeling rushed so they can completely understand the transaction.

HB2447 requires posting of the Annual Percentage Rate (APR), along with the current requirement to post the fee. APR was designed by the Federal Government as a universal way to allow consumers to make informed credit decisions. Deferred deposit transactions require the disclosure of APR under Regulation Z of the Truth in Lending Act.

HB2447 removes the exemption (480F-5-1) to protect consumers from any entity, other than banks and financial institutions, cashing checks for a fee.

In conclusion we believe that HB2447 is, for the most part, a well written bill that promotes consumer protection. Money Service Centers of Hawaii, Inc. will happily support it with our recommended amendment of section 5(c).

Sincerely,

R. Craig Schafer

President,

Money Service Centers of Hawaii, Inc.

Testimony of Robert Leiferman

HB 2447

To the Committee:

My name is Robert Leiferman and I manage Maui Loan, which provides check cashing and paycheck loans on Maui and, via fax, to a limited number of customers on other islands. I have worked in the banking business for many years before coming to Maui Loan.

I am opposed to this legislation.

I am as aware as you are of the complaints against payday lenders operating on the Mainland and over the Internet. But we do not experience those complaints in Hawaii, and additional local legislation is not required. If it ain't broke, don't fix it.

This is a business that has migrated to the Internet, where up to 90% of transactions occur. I wish you well in regulating that segment; it needs it. But adding additional costs to local Hawaii lenders will do nothing at all to mitigate those problems.

In fact, it will tend to remove an option that the payday loan customer now has to avoid the predatory payday lenders backed by some of the biggest banks in the country. Borrowers can get their money just as fast from these Internet lenders; our business exists as an accommodation to our Kamaaina Loan pawn customers.

At the very least, additional local regulation will make it harder for us to meet the customer's requests. By existing law, these are all working people. They have to have a job; we do not lend against, for example, Social Security checks.

If our costs go up, it follows that the amount we can risk to lend must go down.

Working people have income; they are not turning to Maui Loan except when unusual claims on their flow of income occur. We agree that payday loans are not appropriate for long-term financing and we are scrupulous about not lending to anyone who already has a payday loan.

Ask yourself, if you manage to dismantle the paycheck loan business in Hawaii, what do you think will replace it? Nothing? Difficult to track and hard to complain against Internet firms operating internationally?

Our customers know us and we know them. It's a face-to-face business.

Anthony L. Ranken
Attorney at Law
222 N. Church St.
Wailuku, Hawaii 96793
tel.: (808) 244-7011

February 9, 2014

Testimony of Anthony L. Ranken, attorney for Kamaaina Loan
Regarding: House Bill No. 2447, Relating to Check Cashing

Dear Chair and Members of the CPC and Judiciary Committees:

This testimony is submitted on behalf of Kama'aina Loan of Maui. Its principal Richard Dan will also be testifying individually at the committee's hearing on this bill. We oppose this bill for the reasons stated below.

HB 2447 is virtually identical to SB 598 which was introduced, and tabled, in the 2013 session, SB 1305 which was introduced, and tabled, in the 2010 session, and HB 483 which met the same fate back in the 2007 legislative session. None of the problems which led to the non-passage of those bills have been addressed in HB 2447. Here is a list of five glaring problems with HB 2447 (all of which we pointed out in opposition to the prior identical legislation). We respectfully suggest that HB 2447 be tabled and that it not be reintroduced in subsequent sessions of the legislature until its authors make an attempt to deal with the below issues:

(1) The term "extended repayment plan" is not defined at all in the bill. What does "extended repayment plan" mean? How long is "extended"? Is it completely up to the lender to interpret that term? There is no prescribed timetable or duration of the required repayment plan -- no guidelines whatsoever in the bill. The original loan term for these transactions is 30 days, so can the "extended" repayment plan timetable be, say, 40 days? Can the lender require regular payments every day or week during the duration of the repayment plan, or does he have to wait until the last day of the period and collect it all then? Can the lender charge interest on the repayment plan? At what interest rate?

(2) Why should "any person who cashes checks for a fee" have to post a notice about deferred deposit transactions, or, for that matter, "information on where to obtain financial education and credit counseling"? This provision confuses normal everyday check cashing with deferred deposit transactions or "payday loans." The latter is not really the cashing of a check but is actually a form of loan. Check cashers and payday lenders are really two completely separate types of businesses. They have been lumped together in H.R.S. Chapter 480F, but payday lending only comprises one section of that chapter, Section 480F-4. Check cashing means someone brings in a negotiable check written to that person by a third party, and exchanges it for cash. Small fees are allowed, as prescribed by Section 480F-3. Deferred deposit or payday lending, on the other hand, is when a person comes into the shop and applies for a

loan; about a third of the time there is not even any "check" involved, but instead a form authorizing the business to debit the amount due out of the customer's savings account on a certain date. They are really very different kinds of transactions and the legislature should not attempt to regulate them together. The current law separates them effectively enough even though they are in the same HRS chapter, but HB 2447 in its current form would muddle the two kinds of businesses together.

(3) The putative "right to rescind a deferred deposit transaction" is required to be placed on a notice given to the customer. The problem is that nowhere in the bill (or in existing law) does it say that the customer actually has any such right, nor does the bill define the extent of that right and whether any fees can be attached in case a customer rescinds. (Amending the bill to specifically grant customers a right to rescind a loan without paying a fee is not a reasonable solution: it would invite people to obtain a loan so as to have 24 hours' free use of cash for gambling purposes and then return the loan if they win their bet. Customers should not be allowed to use the check casher's money free of charge in order to place a football bet or join a poker game.)

(4) The provision that a customer may not get a payday loan if he or she has an outstanding loan with another lender, is well-intentioned but completely unenforceable. This is why DCCA several years ago advocated the creation of a statewide database as other states have done, so that the lenders can check for any other outstanding loans, before giving a potential customer a loan. Without such a database, HB 2447 imposes an impossible duty on the payday lender, exposing him or her to civil and criminal liability if the customer conceals from the lender the fact that the customer has already taken out a loan with another lender.

(5) The requirement that the posted notice be in 38-point type is overkill.

38-point type is THIS SIZE.

At that size, the posted notice would fill at least five 8½ x 11 pages, probably six or seven of them. More appropriate would be to have the captions only in 38-point type.

Thank you for your consideration of our input on the above matters.

Anthony L. Ranken

Richard I. Dan

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February 9, 2014

To: Angus L. K. McKelvey, Chair
And Members of the House Committee on Consumer Protection and Commerce

FROM: Richard I. Dan

Re: **Testimony in Opposition of HB2447**

My name is Richard I. Dan and I operate Maui Loan. Some of you may know I also operate Kamaaina Loan on Maui; Maui Loan is a separate enterprise.

I am opposed to this legislation.

I have heard the horror stories from the Mainland about payday lenders and abusive check cashing operations. Too many of them are true. But you are not hearing similar stories from Maui and the State of Hawaii, because our situation is different.

Payday lending has moved to the Internet, probably 90% of it, and it is not being policed. But Maui Loan at 50 North Market Street in Wailuku is a brick-and-mortar store. Our customers (with the exception of a very few on Molokai) come into the store and deal with us face-to-face. They know us and we know them.

If they were to have a complaint, they would know where to go.

If you add regulations to our business, two things will happen, both of them bad for our customers and for Maui Loan.

First, if our expenses go up, the amount we can safely lend must go down. All our customers are working people; they have to be employed even to apply. They have income. They are not coming to us except when they face unusual financial stresses that require a little extra help.

Second, you are already regulating my business. I don't believe you have any serious issues with it, but if you ever did, you could reach out and touch me. If my shop closes (or becomes less able to help), then you will have helped drive Hawaii workers under stress into the arms of predatory lenders far beyond your reach to supervise, regulate or sanction.

I really do not think you want to do that to our island working people.

52 North Market Street · Wailuku, Maui, Hawai`i 96793 · Tel: 808.242.5555