

Honolulu, Hawaii

MAR 23 2018

RE: H.B. No. 2471
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health, to which was referred H.B. No. 2471, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CONSUMER PROTECTION,"

begs leave to report as follows:

The purpose and intent of this measure is to appropriate an unspecified amount to create the Hawaii Digital Gaming Commission within the Office of Consumer Protection to oversee and monitor predatory and exploitative practices in digital games.

Prior to a hearing on this measure, your Committee posted and made available for public review a proposed S.D. 1, which deletes the contents of this measure and inserts language to:

- (1) Transition from lump sum deferred deposit transactions to installment-based small dollar loan transactions;
- (2) Specify various consumer protection requirements for small dollar loans;
- (3) Beginning January 1, 2019, require licensure for small dollar lenders that offer small dollar loans to consumers; and
- (4) Specify licensing requirements for small dollar lenders.



Your Committee received testimony in support of the proposed S.D. 1 from the Department of Commerce and Consumer Affairs, Hawaiian Community Assets, Mental Health America of Hawai'i, Hawai'i Appleseed Center for Law & Economic Justice, Aloha United Way, Hawai'i Alliance for Community-Based Economic Development, Hawaii Habitat for Humanity Association, and The Pew Charitable Trusts. Your Committee received testimony in opposition to the proposed S.D. 1 from Maui Loan Inc.; and Money Service Centers of Hawaii, Inc. Your Committee received comments on the proposed S.D. 1 from the Department of Taxation and one individual.

Your Committee finds that deferred deposit agreements, commonly referred to as payday loans, are small, short term, unsecured loans that borrowers commit to repay from their next paycheck or a regular income payment. The majority of borrowers use deferred deposit agreements for recurring expenses, rather than unexpected expenses or emergencies, because they live paycheck to paycheck. Furthermore, according to a 2017 analysis by the Consumer Financial Protection Bureau, four out of five payday loans are rolled over or renewed, meaning that a borrower was not able to repay a loan by the agreed up on date and was left with no other recourse than another high interest payday loan, despite having already experienced the difficulties of repaying these loans. Because of this revolving door of debt, the average payday loan borrower remains in debt for more than six months.

Your Committee also finds that there has been a shift in the payday industry toward small dollar installment loans, which are repayable over time and secured by access to the borrower's checking account. However, in the absence of sensible regulatory safeguards, this type of payday lending, as well as the traditional deferred deposit payday lending market, can be harmful for consumers. Your Committee notes that without strong consumer protections in the payday loan industry, payday loan borrowers may find such debt overwhelming and may be unable to pay rent and basic living costs.

The proposed S.D. 1 therefore establishes a regulatory structure for small dollar loans that enables consumers to access these small dollar loans while also capping interest rates, requiring disclosures, and allowing consumers to pay off these small dollar loans in a timely manner. The proposed S.D. 1



therefore allows consumers continued access to affordable loans with reasonable repayment terms, while also allowing small dollar loan lenders the ability to make these types of loans with a reasonable rate of return.

Your Committee additionally finds that the proposed S.D. 1 has a tiered implementation date, with a six-month grace period between July 1, 2018, when the Division of Financial Institutions starts the program on NMLS, until January 1, 2019, when licensure for small dollar loan lenders will be required. This grace period will provide the Division with sufficient time to work with the small dollar loan industry, which will enable the industry to gain familiarity with the small dollar installment loan program and ensure a smooth transition to the new licensing requirements.

Your Committee also finds that, according to the Division of Financial Institutions, the Division requires one full-time examiner position to be appointed to immediately establish the small dollar loan program for the small dollar loan industry. Your Committee notes that the Division is entirely self-funded from fees paid by the licensees of its various program, and therefore, the establishment and appointment of such a position does not require a general fund appropriation, although it will require an increase in the position ceiling of the compliance resolution fund. The expected cost for one full-time equivalent position is \$107,271, which includes employee benefits.

Your Committee also notes that after continued discussions with interested stakeholders, additional amendments to the proposed S.D. 1 are necessary to ensure that the proposed S.D. 1 achieves its goals of balancing access to small dollar loans with robust consumer protections. Amendments to the proposed S.D. 1 are therefore necessary to incorporate these suggested revisions.

Your Committee has amended this measure by adopting the proposed S.D. 1 and further amending the measure by:

- (1) Adding definitions for "verified gross income" and "verified net income";
- (2) Clarifying the monthly maintenance fee to be charged by a lender shall be a tiered payment structure based on the size of the original principal loan amount, from a



minimum of \$10 to a maximum of \$25, rather than a flat fee of \$25;

- (3) Removing references to single payments, as the new chapter established by this measure pertains to affordable small dollar installment loans;
- (4) Removing language that would have authorized the Commissioner of Financial Institutions to biennially adjust for inflation the total amount of a small dollar loan and the total maintenance fee on the small dollar loan and would have required these updated fees to be posted on the Division of Financial Institutions' website;
- (5) Requiring a small dollar lender to disclose a payoff amount for a small dollar loan, when requested by a consumer or a consumer's agent;
- (6) Clarifying that the maximum authorized interest for a small dollar loan shall be subject to the cap on permitted fees and charges;
- (7) Clarifying the prohibitions against making multiple small dollar loans to a consumer at any one time;
- (8) Specifying certain notice requirements prior to sale or assignment of small dollar loan contracts held by a small dollar lender;
- (9) Clarifying that, when conducting an investigation of an applicant's financial responsibility, the Commissioner of Financial Institutions may consider whether an applicant has outstanding tax or other liens, subject to applicable disclosure laws and administrative rules;
- (10) Clarifying that a license shall not be issued to an applicant whose license to conduct business in the small dollar loan or payday loan industry has been revoked in another state or jurisdiction;
- (11) Clarifying the confidentiality provisions associated with the disclosure of confidential supervisory



information or other information or material disclosed to NMLS;

- (12) Clarifying the prohibited practices for small dollar lenders and associated parties, including:
 - (A) Clarifying the prohibition against offering credit insurance to consumers and changing any fees other than those explicitly authorized;
 - (B) Prohibiting the electronic withdrawal of funds from a consumer's account, without the written approval of the consumer;
 - (C) Prohibiting attempts to collect from a consumer's account after two failed consecutive attempts, without obtaining new written authorization from the consumer; and
 - (D) Specifying requirements for accelerating delinquent loans;
- (13) Appropriating sums from the compliance resolution fund to enable the Division of Financial Institutions to establish and hire one full-time equivalent permanent examiner to carry out the purposes of the Small Dollar Installment Loan Program, and specifying that this position may be added to the position count for the Division; and
- (14) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2471, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2471, H.D. 1, S.D. 1, and be referred to your Committee on Ways and Means.



Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,

Rosalyn H. Baker

ROSALYN H. BAKER, Chair



