

STAND. COM. REP. NO.

2465

Honolulu, Hawaii

FEB 16 2018

RE: S.B. No. 3008
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 S.B. No. 3008 entitled:

"A BILL FOR AN ACT RELATING TO PAYDAY LENDING,"

begs leave to report as follows:

The purpose and intent of this measure is 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 this measure from the Department of Commerce and Consumer Affairs; Hawaiian Community Assets; Community Alliance on Prisons; Mental Health America of Hawai'i; Pono Hawai'i Initiative; Hawaii Habitat for Humanity Association, Inc.; Hawaii Appleseed Center for Law & Economic Justice; Catholic Charities Hawai'i; Hawai'i Alliance for Community-Based Economic Development; Na Kahua Hale O Ulu Wini;



and one individual. Your Committee received testimony in opposition to this measure from Maui Loan Inc. and Money Service Centers of Hawaii, Inc. Your Committee received comments on this measure from the Department of Taxation, Office of Information Practices, and Dollar Financial Group, Inc.

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. According to testimony received by your Committee, payday lending threatens the housing security of families by unfairly increasing their debt and placing them in a continuous cycle of financial distress.

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.

This measure therefore establishes a regulatory structure for small dollar loans. However, your Committee has heard the concerns that this measure may not adequately ensure that these types of small dollar installment loans remain affordable for borrowers. Accordingly, your Committee has engaged in discussions with the Department of Commerce and Consumer Affairs and



interested stakeholders, including the Pew Charitable Trusts and Hawaiian Community Assets, on suggested amendments to this measure that will ensure sufficient consumer safeguards are available for payday lending borrowers, while also providing a framework to enable existing payday lending establishments to remain in business. Amendments to this measure are therefore necessary to incorporate these suggested revisions.

Your Committee has amended this measure by:

- (1) Clarifying the definitions of "annual percentage rate", "financial institution", and "small dollar loan";
- (2) Inserting definitions for "elder", "finance charges", "maintenance fee", and "precomputed interest";
- (3) Clarifying the requirements that each small dollar loan transaction and renewal shall meet, including:
 - (A) Specifying that the total amount of the small dollar loan shall not exceed \$1,000;
 - (B) Deleting language that would have prohibited a minimum loan term and would have set a maximum loan term for small dollar loans;
 - (C) Specifying that the total monthly payment on a small dollar loan shall not exceed an amount that is five percent of the borrower's verified gross monthly income or six percent of the borrower's verified net income, whichever is greater;
 - (D) Specifying that the total amount of fees and charges a small dollar lender may charge, collect, or receive in connection with a small dollar loan shall not exceed fifty percent of the principal loan amount;
 - (E) Authorizing a monthly maintenance fee of no more than \$25, with certain requirements; and



- (F) Specifying that a small dollar lender shall not charge any direct or indirect fees for a small dollar loan, other than authorized fees;
- (4) Removing language that would have set the total amount of the instruments held by a small dollar lender at no more than the amount financed and the permitted finance charge;
- (5) Clarifying that a lender may contract for a twice-monthly or monthly payment in a multiple installment small dollar loan;
- (6) Removing language that would have specified certain requirements for a consumer who partially prepaid a single installment small dollar loan or made additional voluntary payments on a multiple installment small dollar loan;
- (7) Specifying what a lender must refund, upon prepayment of a small dollar loan in full by a consumer;
- (8) Authorizing the Commissioner of Financial Institutions to biennially adjust for inflation the total amount of the small dollar loan and the total maintenance fee on a small dollar loan and requiring these updated fees to be posted on the Division of Financial Institutions' website;
- (9) Clarifying the contents of the written agreement that must be signed by a small dollar lender and a consumer for each small dollar loan transaction and renewal;
- (10) Clarifying that a small dollar lender may receive interest at a rate not exceeding thirty-six percent per year on the unpaid principal balance of a small dollar loan;
- (11) Deleting language that would have allowed a small dollar lender to charge interest after the original or deferred maturity of a precomputed loan on all unpaid principal balances;



- (12) Requiring the lender to refund to the consumer a prorated portion of the interest and monthly maintenance fees when the consumer prepays in full or renews a small dollar loan;
- (13) Deleting language that would have authorized a lender to convert a small dollar loan to an interest-bearing loan if the maturity of a small dollar loan was accelerated for any reason;
- (14) Permitting a lender to grant one deferment, if the parties agree in writing, but prohibiting the lender from charging or collecting a deferment fee;
- (15) Clarifying that other than the permitted interest and charges, no further or other amounts shall be required by a small dollar lender and removing language that would have permitted a lender to charge fees to record, file, or release security interests on a loan or fees for credit reports and costs and disbursements associated with any suit to collect a loan or any lawful activity to realize on a security interest after default;
- (16) Prohibiting small dollar lenders from charging or receiving loan origination fees;
- (17) Removing language that would have permitted a lender to charge and receive check collection charges;
- (18) Specifying that a small dollar lender shall not collect a default charge on any installment not paid in full within ten days after its due date;
- (19) Clarifying that a lender shall not lend more than \$1,000, nor shall the amount financed exceed \$1,000 by any one lender at any time to a consumer;
- (20) Prohibiting multiple outstanding small dollar loans between a small dollar lender and a consumer at one time;



- (21) Clarifying the contents of the notice that must be provided in a prominent place on each small dollar loan agreement;
- (22) Clarifying the renewal requirements for small dollar loans, including limiting the total amount of the renewal to \$1,000, and specifying limits on the total amount of fees and charges for any renewed loan, rather than permitting a lender to assess an additional finance charge for the renewed loan;
- (23) Deleting language that would have specified requirements for when a small dollar transaction was considered completed;
- (24) Clarifying when communications by a lender shall be presumed to have been made for purposes of harassment;
- (25) Requiring a small dollar lender to cover any fees and charges incurred by a consumer as a direct result of a loan proceeds instrument dishonored by a financial institution;
- (26) Deleting language that would have specified certain notice requirements prior to sale or assignment of instruments held by a small dollar lender;
- (27) Specifying exemptions from licensure as a small dollar loan lender;
- (28) Clarifying the contents of the application that must be submitted by an applicant for licensure as a small dollar lender;
- (29) Specifying the fees that a small dollar lender must pay to the Division of Financial Institutions to obtain and maintain a valid small dollar lender license;
- (30) Clarifying the fees a branch office of a small dollar lender must pay to obtain and maintain a small dollar loan license;



- (31) Clarifying the contents of the annual report a small dollar lender is required to submit to the Commissioner of Financial Institutions;
- (32) Clarifying license renewal requirements for small dollar lenders;
- (33) Clarifying the contents of the notice that must be provided to the Commissioner of Financial Institutions when a small dollar lender voluntarily surrenders its license;
- (34) Deleting language that would have required a small dollar lender to designate a qualified individual to manage the principal place of business in the State;
- (35) Clarifying that limitations on usury recovery shall not apply to any small dollar loan;
- (36) Deleting language that would have removed an exemption from the requirements of chapter 480F, Hawaii Revised Statutes, from a bank, trust company, savings bank, savings and loan association, financial services loan company, or credit union; and
- (37) 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 S.B. No. 3008, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3008, 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,

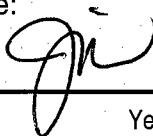


ROSALYN H. BAKER, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:* SB 3008	Committee Referral: CPH, WAM	Date: 2/13/18		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	/			
TOKUDA, Jill N. (VC)	/			
CHANG, Stanley	/			
ESPERO, Will				/
IHARA, Jr., Les	/			
NISHIHARA, Clarence K.				/
RUDERMAN, Russell E.	/			
TOTAL	5			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align: center; margin-top: 10px;">  </div>				
Distribution: Original: Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

***Only one measure per Record of Votes**