

HB2471 HD1

Measure Title: RELATING TO CONSUMER PROTECTION.

Report Title: Hawaii Digital Gaming Commission; OCP;
Appropriation

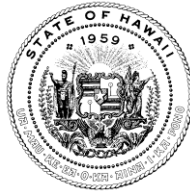
Description: Creates the Hawaii Digital Gaming Commission within the Office of Consumer Protection to oversee and monitor predatory and exploitative practices in digital games. Makes an appropriation. (HB2471 HD1)

Companion:

Package: None

Current Referral: CPH, WAM

Introducer(s): C. LEE, BROWER, LOWEN, TAKUMI



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TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Tuesday, March 20, 2018
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 2471, H.D. 1, PROPOSED S.D. 1, RELATING TO
CONSUMER PROTECTION.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 2471, H.D. 1, Proposed S.D. 1, Relating to Consumer Protection. My name is Iris Ikeda, and I am the Commissioner of Financial Institutions (“Commissioner”) for the Department’s Division of Financial Institutions (“DFI”). The Department supports this bill, which is substantively similar to S.B. 3008, S.D. 2, and provides suggested amendments.

The Department supports this bill, as it will allow for ongoing supervision of the small dollar loan industry through licensure by DFI. DFI understands a market exists for consumers who need small dollar loans in emergency situations. By allowing consumers access to these small dollar loans while capping their interest rates, providing disclosures, and allowing them to pay off these small dollar loans in a timely manner, this bill will provide consumers the ability to meet their financial needs while allowing an affordable loan with reasonable repayment terms. It will also allow companies the ability to make these loans with a reasonable rate of return.

The purpose of this bill is to encourage transparency and increase consumer protection in the payday lending industry by: (1) transitioning from lump sum deferred deposit transactions to installment-based small dollar loan transactions; (2) specifying various consumer protection requirements for small dollar loans; (3) beginning January 1, 2019, requiring licensure for small dollar lenders that offer small dollar loans to consumers (“small dollar lenders”); and (4) specifying licensing requirements for small dollar lenders. The bill would enact a new chapter of the Hawaii Revised Statutes (“HRS”), entitled “Small Dollar Installment Loans” (“new chapter”), for DFI to administer.

The bill describes a “small dollar loan” (“loan”) as a consumer loan subject to requirements. It must be documented by a written agreement. The maximum loan amount is \$1,000. There is no minimum or maximum loan term. The total monthly payment on a small dollar loan is the greater of 5% of the borrower’s verified gross monthly income or 6% of the verified net income. Total fees and charges may not exceed 50% of the principal loan amount. A monthly maintenance fee may not exceed \$25, with certain requirements. A small dollar lender may not charge any direct or indirect fees for a small dollar loan, other than authorized fees. Interest may be charged on the unpaid principal balance not to exceed 36% per year. The loan must be repayable in substantially equal monthly installments. A small dollar lender may finance no more than \$1,000 at any time for a consumer and may have only one outstanding loan with a consumer at a time. Loan renewal requirements are specified. On a renewed loan, the small dollar lender may assess an additional finance charge, provided the annual percentage rate on the renewed loan does not exceed 36%.

Small dollar lenders must be licensed with DFI by submitting a completed application and fee to DFI. The Commissioner investigates the applicant’s financial responsibility, character, and general fitness, and criminal background checks of the applicant’s key persons are reviewed for statutory disqualifiers. The applicant must meet all requirements of the new chapter, including bonding requirements and payment of fees.

The Commissioner issues a license to qualified applicants (“licensees”) through NMLS. A licensee must comply with all statutory requirements relating to business

operations, supervision, locations, branches, sale or change of control of the licensee, and others. It must have a principal place of business in the State. Licensees may make small dollar loans online.

DFI may examine and investigate a licensee at the licensee's expense. Generally, books and records must be maintained for at least six years. There are requirements for license surrender. A licensee must renew its license annually, submit an annual report and audited annual financial statement, disclose material changes in the business, and pay a license renewal fee.

The bill specifies powers of the Commissioner that include enforcement authority. Upon finding a specific violation, the Commissioner may deny an application for licensure, revoke or suspend a license, issue a cease and desist order, order the licensee to refund excess charges to consumers, impose penalties and fines, and take other disciplinary action. If a violation injures an elder, an additional civil penalty may be imposed.

Requested Amendments

1. Staffing Amendments

DFI is self-funded from fees paid by the licensees of its various programs. DFI requests two permanent full-time examiner positions that shall be appointed, without regard to HRS chapter 76, to carry out the purposes of this program. Each program is staffed with examiners who are trained to review the program parameters and to respond to questions from the industry and consumers. One examiner position would be required to immediately establish the program for the industry, and one examiner position would be required, in the following year, to conduct examinations and investigations. Each applicant and licensee pays for their respective programs through fees, and those funds are designed to pay for staffing in the program. In this small dollar loan program, the application fee and renewal fees are set without knowing how many applicants or licensees may apply for licensure and later renewal.

Consequently, in the first year of the small dollar loan program, DFI would need funds of \$214,542 to hire two positions to set up the program and to appropriately supervise, regulate, and examine licensees. These figures include employee benefits.

To maintain this new program, the program would need to generate revenues sufficient to cover the additional staff members.

2. New Chapter Amendments

The Department suggests amending the new chapter as follows:

A. Amend the definitions in new chapter section -1 as follows:

(1) Add a definition of "verified gross income" to read:

"Verified gross income" means evidence from a borrower of one or more paystubs or other written evidence of recurring income before taxes.

(2) Add a definition of "verified net income" to read:

"Verified net income" means evidence from a borrower of one or more paystubs or other written evidence of recurring income after taxes and deductions.

(3) Amend the definition of "NMLS" on page 6, lines 16-21 as follows, as the reference to the American Association of Residential Mortgage Regulators is outdated:

"NMLS" means a licensing system developed and maintained by the Conference of State Bank Supervisors [~~and the American Association of Residential Mortgage Regulators~~] for the state licensing and registration of state-licensed loan originators and other financial services providers, or any system provided by the Consumer Financial Protection Bureau.

B. Amend the small dollar loan requirements in new chapter section -2 as follows:

(1) Add to subsection (a) a new subpart limiting the loan term to twelve months as follows, as loans that are longer than necessary cause borrowers to pay additional monthly maintenance fees and interest:
(#) The maximum loan term shall be twelve months;

(2) Amend subsection (a)(5) on page 8, line 20 to page 9, line 6 as follows, as scaling the maintenance fee would make the loan more affordable for borrowers:

(5) A monthly maintenance fee [~~of no more than \$25~~] may be charged by the lender[;], not to exceed the following:

\$10 on a loan of an original loan principal amount up to \$300.00;
\$15 on a loan of an original principal amount between \$300.01 and \$600.00; and
\$25 on a loan of an original principal amount between \$600.01 and \$1,000.00;

provided that the monthly maintenance fee shall not be added to the loan balance on which the interest is charged; provided further that a small dollar lender shall not charge, collect, or receive a monthly maintenance fee if the borrower is a person on active duty in the armed forces of the United States or a dependent of that person.

(3) Amend subsection (a)(6) on page 9, lines 7-9 as follows:

(6) The written agreement required under section -3 may require multiple installment payments [~~or a single payment~~];

The new chapter prohibits prepayment penalties, and for early payoffs the lender must refund on a prorated basis interest and fees paid. As such, it is unnecessary to refer to "single payment" loans.

(4) Delete subsection (e) on page 11, lines 1-15, which allows the commissioner to biennially adjust for inflation the total amount permitted for a small dollar loan or maintenance fee. The Department believes it would be more beneficial to revisit these amounts and other provisions after the program has been operating for several years.

C. Amend page 14, lines 13-14 as follows, to clarify that the maximum permitted fees and charges are separate from the maximum authorized interest rate:

(a) [~~Notwithstanding any provision to the contrary~~] Subject to subsection -2(a)(4), a small dollar lender may contract for, and receive

interest at, a rate not exceeding thirty-six per cent per year on that portion of the unpaid principal balance of the loan.

- D. Amend page 17, lines 5-12 to allow a small dollar lender to make multiple concurrent loans to a borrower, under circumstances as follows:

§ -5 Maximum loan amount[; ~~prohibition against multiple loans~~]. (a) A lender shall not lend an amount greater than \$1,000 to a consumer at any time, nor shall the total outstanding amount of all small dollar loans financed [~~exceed \$1,000~~] by any one lender at any time to a consumer exceed \$1,000.

~~[(b) A small dollar lender shall only be permitted to enter into one small dollar loan with a borrower at a time. Multiple outstanding small dollar loans between a small dollar lender and a consumer shall be prohibited.]~~

This will help deter borrowers from borrowing from multiple lenders concurrently and possibly overextending themselves in the process.

- E. Delete reference to NMLS “registration” by amending the title on page 27, line 6 as follows:

~~“[Registration with NMLS; license;]~~ License; application; issuance.”

This would make the title more accurate, as DFI uses NMLS to facilitate licensure rather than registration of its licensees.

- F. Amend new chapter section -34(c)(2) as follows, to state that a license shall not be issued to an applicant:

(2) ~~[Who]~~ Whose license to conduct business in the small dollar loan or payday loan industry has been [banned from the industry] revoked by an administrative order issued by the commissioner or the commissioner's designee, or the licensing authority of another state or jurisdiction, for the period specified in the administrative order;

Consumers are protected by not licensing a business whose license has been revoked in another state.

- G. Amend page 33, lines 1-2 to clarify that in conducting an investigation of an applicant’s financial responsibility, the Commissioner may consider:

- (B) Current outstanding tax liens or other government liens and filings, subject to applicable disclosure laws and administrative rules;"

This would address the concern about releasing statutory lien information to the Commissioner, raised by the Department of Taxation in substantively similar S.B. 3008 testimony.

- H. Amend bill page 61, lines 1-5 as follows, to clarify the confidentiality provision:

(e) [~~Notwithstanding any~~] Any provision of Hawaii law to the contrary[;] relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with [subsection (a)] this section shall be superseded by the requirements of this section.

- I. Delete remaining new chapter references to single payment loans as follows, since the new chapter pertains to affordable small dollar installment loans, rather than single payment loans:

(a) On page 9, delete “, regardless of whether the loan is structured to be repaid in a single payment or in multiple installments” on lines 17-19; and

(b) On page 13, line 11, delete “SINGLE PAYMENT”.

- J. Add a new section to the new chapter pertaining to the sale or assignment of small dollar loan contracts as follows:

-xx Notice on assignment or sale of contract. (a) No licensee may pledge, negotiate, sell, or assign a small dollar loan, except to another licensee or to a bank, savings bank, trust company, savings and loan or building and loan association, or credit union organized under the laws of Hawaii or the laws of the United States.

(b) Prior to sale or assignment of a small dollar loan contract held by the small dollar lender as a result of a small dollar loan, the small dollar lender shall place a notice on the small dollar loan contract in at least twelve-point type that reads:

“SMALL DOLLAR LOAN

No licensee may pledge, negotiate, sell, or assign a small dollar loan, except to another licensee or to a bank, savings bank, trust company, savings and loan or building and loan association, or credit union organized under the laws of Hawaii or the laws of the United States.”

This would protect consumers in the event the small dollar lender sells their loan.

Thank you for the opportunity to testify in support of this bill with suggested amendments.



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Testimony on HB 2471 Proposed SD-1
Hawai`i Senate Commerce, Consumer Protection and Health Committee
Nick Bourke, Director of Consumer Finance, The Pew Charitable Trusts
March 20, 2018

Dear Chair Baker, Vice Chair Kidani and members of the Senate Commerce, Consumer Protection and Health Committee:

Thank you for inviting Pew to provide technical assistance to your committee as you work to protect consumers from the harms of payday loans while balancing the goal of ensuring access to safe, affordable credit for Hawai`i borrowers. Pew's analysis is informed by in-depth research conducted on the small-loan market since 2011. This research includes four nationally representative surveys of borrowers, 22 focus groups with borrowers of high-cost credit across the country, polls of the public, extensive analysis of market and regulatory data, and the laws of all 50 states. We have published reports, briefs, and fact sheets available at www.pewtrusts.org/small-loans. **With a number of technical amendments to the proposed SD-1 draft, which are appended in detail, Hawai`i's laws would enable the safest and lowest-cost market for small loans in the country.**

The payday loan market in Hawai`i today is broken. Companies that operate under Hawai`i's deferred deposit statute 480F-4 charge Hawai`i residents up to 3 times more for short-term loans than they charge elsewhere. The typical loan due back in a lump-sum consumes one third of the typical borrower's paycheck. Such unaffordable payments lead to long-term indebtedness with borrowers paying more in fees than they receive initially in credit.

To address these harms Colorado has implemented the most successful policy to date, passing a law that took effect in 2010. Today credit is widely available there, but loan costs are the lowest in the nation. Loans are repaid in affordable installments and borrowers are given months to repay. Since that law was passed, prices are three times lower, defaults and lender-charged bounced check fees have declined, borrowers are saving more than \$50 million annually, and payday lenders remain in business in rural, suburban, and urban areas.

HB 2471, HD-1, Proposed SD-1, is modeled after Colorado's successful 2010 reform and would include seven key improvements that benefit both lenders and consumers:

1. Affordable payments. This reform would require affordable installment payments limited to 5% of a borrower's paycheck vs. the one-third that is consumed today. Research shows that payments of 5% of income are viable for efficient lenders and affordable for borrowers.

2. Reasonable cost. An interest rate of 36 percent and a standard monthly fee of \$5 per \$100 loaned, not to exceed \$25 per month, provide enough revenue for efficient lenders to continue making credit available. (See critical technical change addressed below.) Compared to Colorado, this model would allow lenders to earn monthly fees on a daily basis, spreading the cost evenly for consumers and giving lenders more revenue in the early months of the loan compared to the Colorado model.

3. No front-loaded charges. Similar to Colorado, proposed SD-1 would remove incentives for lenders to refinance loans by prohibiting front-loaded charges like nonrefundable origination fees. This spreads costs evenly over the life of the loan and helps ensure that lending relationships are more transparent.

4. Enough time to repay. Proposed SD-1 would ensure that borrowers have a reasonable time to pay off their loans in small installments. It is more flexible than Colorado's six-month minimum term, with no fixed minimum or maximum duration.

5. Limits on long-term indebtedness. By limiting loan costs to no more than half of the loan principal it prevents loans with unreasonably long terms and excessive costs, without being too prescriptive about how loans are structured. (For example, total fees and interest on a \$500 loan could not exceed \$250, meaning lenders would not have an incentive to make the loan repayment period last too long.)

6. Larger, lower-cost loans. Colorado's model does not allow loans that are larger than \$500, and its fixed pricing model would fail for larger loans. SD-1 wisely allows somewhat larger loans (up to \$1,000) and uses a pricing model that works even for larger loans.

- SD-1 is drafted so that as the loan sizes increase, so too does the amount of time the borrower has to pay, while the APRs decline. Borrowers who can afford it would gain access to larger loans, rather than resorting to borrowing from multiple lenders to meet their needs.
- Lenders are discouraged from making large loans to consumers who cannot afford it by provisions in the loan that require smaller monthly payments to lower-income borrowers and other provisions that require lenders to underwrite carefully when making larger loans.
- Allowing larger loans brings many benefits, including providing lenders with more revenue and borrowers with more flexibility while driving down the cost of borrowing overall. Depending on the committee's goals, it would be possible to allow for yet larger loans in concert with the clarifications that are recommended below.
- As noted in the Appendix, we support provisions in the bill that allow the maximum loan size (and commensurate monthly maintenance fee) to increase slowly with inflation so that safe and transparent credit remains available over time.

7. Efficient lenders—large and small—would provide access to credit across the state. In Colorado, some stores consolidated but the remaining stores each serve twice as many customers, including in rural areas. Access to credit is virtually unchanged throughout the state and tens of millions of dollars have been returned to local economies.

Colorado's reform has been praised by Republicans and Democrats. Borrowers are faring much better than in other states. Even the state's payday lenders' trade association recently wrote: "We have worked hard over the past 6 years to formulate a lending model that has been beneficial to both lenders and consumers. Colorado borrowers are currently paying dramatically less in fees and interest while still having the ability to walk into a reputable licensed lender's store. This was a direct result of the compromise that was struck in 2010 at the state capitol between the lending industry, legislators and consumer advocacy groups."

In sum, this bill is modeled on a fair law that has kept access to safe credit widely available for more than seven years. Moreover, it includes simplifications and improvements that make it even easier for lenders to make loans while giving borrowers more choice about the size and repayment terms of those loans.

Proposed SD-1 is tailored to achieve real reform. The proposed bill rightly seeks to reform existing payday loan laws, as opposed merely to adding a new type of loan possibility under state law. Research from Pew and elsewhere shows without doubt that the payday loans available in Hawai`i today harm typical borrowers, and as long as these loans exist on the market they will be a roadblock to a safe and transparent marketplace. Requiring *all small loans* to meet simple standards for safety and affordability is what Colorado did in its 2010 law, it is what this bill would do, and it is an indispensable part of any true attempt at payday loan reform.

Suggested Technical Amendments

After reviewing proposed SD-1, Pew notes a number of technical concerns that should be addressed to ensure that the committee achieves its goals of balancing access to credit with robust consumer protections, similar to the results achieved in Colorado. Those revisions, **provided in detail in the Appendix of this letter**, would:

- Ensure that the standard monthly maintenance fee is calculated as \$5 per \$100 loaned, not to exceed \$25 per month, rather than a flat \$25 fee which creates adverse incentives for lenders and allows prices for small loans that are far higher than necessary
- Define more clearly that costs are limited to 50% of the loan
- Provide minimum requirements for determining “verified” income
- Strike language about single-payment loans to limit the risk of confusing consumers or creating legal ambiguity.

Evidence shows that by adopting such a model Hawai`i consumers stand to save millions of dollars each year, with plenty of credit available in a marketplace that is safe, transparent, and efficient. Thank you for the opportunity to testify in support of strong payday loan reform and development of a safe and transparent small-installment loan market in Hawai`i.

Thank you,



Nick Bourke
Director, Consumer Finance
The Pew Charitable Trusts
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Suggested Amendments to HB 2471, HD-1, Proposed SD-1

We have rated our recommendations below according to the following scale of importance:

1. **CRITICAL:** The bill could fail or many people are likely to be harmed unless this is changed
2. **HIGH:** Some people are likely to be harmed unless this is changed
3. **MEDIUM:** Non-trivial complications could emerge unless this is changed
4. **LOW:** Ideally this is addressed but serious problems are unlikely if this is not changed
5. **OTHER:** Policy question

Section-by-section recommendations follow:

A. Section -2 (starting p.8)

1. We note that there is no **maximum loan term** provided. This is because the provision limiting loan fees and charges to 50 percent of the originally contracted loan amount effectively prevents lenders from making loans last longer than is appropriate. We note that if members decide to add a maximum loan term, it should be no less than 12 months. Otherwise, some creditworthy customers will be cut off from access to credit, and some lenders may find it difficult to succeed because their customer base will have been reduced.
2. **Amend -2 subsection (a)(3) at p.8 L11 (verify income for calculating allowable monthly payment):** *As written there are no minimum requirements given for determining “verified gross monthly income” or “verified net income.” This creates the possibility that lenders will use out-of-date bank statements or other faulty documents to claim that they have verified income. The integrity of “verified income” is important because it is used to set maximum allowable monthly payments to ensure affordability of the loan. It is important in our view to allow lenders to use bank statements as evidence of net income, but only if the statements are recent.*

Importance: HIGH

(3) The total monthly payment on the loan shall not exceed an amount that is five per cent of the borrower's verified gross monthly income or six per cent of the borrower's verified net monthly income, whichever is greater. Before making a small dollar loan to a borrower, a small dollar lender shall make a reasonable attempt to verify the borrower's income for purposes of subsection. At a minimum, the licensee shall obtain from the borrower one or more recent pay stubs or other written evidence of recurring income, such as a bank statement. The written evidence shall include at least one document that, when presented to the small dollar lender, is dated not earlier than forty-five days prior to the borrower's initiation of the small dollar loan transaction. If the borrower intends to provide a bank statement, the licensee shall permit the borrower to delete from the statement the information regarding to whom the debits listed on the statement are payable. The commissioner may adopt rules under this chapter that set forth any other

procedures the commissioner considers necessary to ensure accurate verification of borrower income;

3. **Amend -2 subsection (a)(5) at p.8 L20 (monthly maintenance fee):** *It is necessary to prevent the monthly maintenance fee from being too large on smaller loans. In the bill as proposed, a \$300 loan would have a fixed \$25 fee, which is too high. This keeps costs and APRs within appropriate ranges and allows larger fees for larger loans. Without this change, APRs on some small loans would exceed 400 percent.*

We suggest using a simple formula provided in the language below (lesser of 5% of the originally contracted loan amount or \$25) because it is easy to calculate or summarize for lenders; it scales smoothly as loan sizes increase; and it would not require amendments to the inflation adjustment section of the bill. If members decide instead to use a tiered fee structure, (1) it must be sufficiently granular, such as: \$5 for loan sizes under \$100; \$10 for loan sizes between \$100 and less than \$200; \$15 for loan sizes between \$200 and less than \$300; \$20 for loan sizes between \$300 and less than \$500; and \$25 for loan sizes of \$500 or more; and (2) the inflation adjustment language in -2(e) would need to be amended to clarify that the commissioner only has the authority to adjust the maximum \$25 fee and the minimum loan size of the highest tier (\$500) for inflation. The recommended language suggested below does not need tiered structures or adjustments to the inflation provision.

Importance: CRITICAL

- (5) A monthly maintenance fee that does not exceed **the lesser of five percent of the originally contracted loan amount or** ~~of no more than~~ \$25 may be charged by the lender; provided that the monthly maintenance fee shall not be added to the loan balance on which the interest is charged; provided further that a small dollar lender shall not charge, collect, or receive a monthly maintenance fee if the borrower is a person on active duty in the armed forces of the United States or a dependent of that person;

4. **Note about -2 subsection (e) at p.11 L1 (inflation adjustment):** We note that providing the commissioner with authority to adjust the permitted maximum loan size and permitted maximum monthly maintenance fee is a strong provision that helps ensure that credit will continue to be available in the future, and at terms that are safe and reasonable. Consumers will need slightly larger loans over time, and lenders will need the ability to charge slightly higher monthly maintenance fees in order to make those larger loans available.

We recommend keeping the inflation adjustment provision in -2(e) as-is. *But, as noted above in comment (A)(4), if members choose to make the monthly maintenance fee based on a tiered structure instead of the recommended scaled structure provided above, the inflation language here in -2(e) will need to be clarified so that the commissioner has authority to adjust the fee of the largest tier, and the minimum loan size of the largest tier.*

5. **Add a new provision to -2 requiring disclosure of a firm payoff amount.** *Prevents problems some consumers or their nonprofit relief society agents have encountered elsewhere, when they try to repay loans as part of a debt management plan or financial counseling.*

Importance: Low

- (#) Upon request from a borrower or a borrower's agent, a small dollar lender shall provide confirmation of the amount required to discharge the loan obligation in full. In responding to this request, the small dollar lender shall at a minimum include a statement of the amount required to discharge the borrower's obligation fully as of the date the notice is provided and for each of the next three business days following that date. The small dollar lender shall make the information required in this subsection available verbally and in writing, and shall provide it as expeditiously as reasonably possible but in no case later than two business days after receiving the request.

B. Section -4 (starting p.14)

6. **Amend -4 subsection (a) at p.14 L13 (authorized interest rate):** Needs technical correction to ensure the overall revenue limit of 50% found in -2(a)(4) controls. *The intent of that provision is to limit total fees and charges (including interest charges) to an amount not greater than 50% of the principal loan amount. But here it says "Notwithstanding any provision to the contrary," a small dollar lender may charge 36% interest. This needs to be fixed somehow. Otherwise, we could see e.g. \$300 loans lasting 12 months with borrowers paying more in interest and fees than they borrowed in the first place.*

Importance: HIGH

- (a) ~~Notwithstanding any provision to the contrary,~~ **Subject to subsection -2(a)(4), a** small dollar lender may contract for and receive interest at a rate not exceeding thirty-six per cent per year on that portion of the unpaid principal balance of the loan. A small dollar lender may contract for and receive interest at the single annual rate that would earn the same total interest at maturity of the small dollar loan, when the loan is paid according to its agreed terms, as would be earned by the application of the graduated rates set forth in this section. Loans shall be precomputed.

C. Section -5 (starting p.17)

7. **Amend -5 subsection (b) at p.17 L9 (clarify that lenders may only make one loan at a time to a given borrower):** *It is important to prevent lenders from making more than one loan at a time to a given borrower, as this has created risk of "loan splitting" in other states. "Loan splitting" is when lenders steer borrowers to take multiple small loans instead of one larger loan, as a way to avoid the law's intended limitations on monthly maintenance fees. For example, whereas the law would limit monthly maintenance fees to \$25 on a larger loan, a lender could split the loan into two smaller loans*

and charge \$40 in maintenance fees. Similarly, to recover the loan principal more quickly a lender could split loans so that two loans are structured with payments that take up 10 percent of a borrower's income, which violates the intended cap on affordable payments. As written there is some risk that lenders would attempt to make multiple loans or refinance existing loans by use of other entities that it controls control or agents. (We do not think the definition of small dollar lender in -1 solves this issue.) Lenders would comply with this rule by sharing a common database of customers with their subsidiaries or affiliates, but an industry-wide database is not needed and is strongly discouraged due to cost and complexity.

Importance: CRITICAL / MEDIUM While it is of critical importance to keep the existing language limiting lenders to one loan per borrower, it is only of medium importance to make this amendment.

§ -5 Maximum loan amount; prohibition against multiple loans. (a) A lender shall not lend an amount greater than \$1,000 nor shall the amount financed exceed \$1,000 by any one lender at any time to a consumer.

~~(b) A small dollar lender shall only be permitted to enter into one small dollar loan with a borrower at a time. Multiple outstanding small dollar loans between a small dollar lender and a consumer shall be prohibited. Except as otherwise provided in section __-[renewed loan -8], no small dollar lender shall make a small dollar loan to a borrower if there exists an outstanding loan between that borrower and any of the following:~~

- ~~(1) The small dollar lender;~~
- ~~(2) A person related to the small dollar lender by common ownership or control;~~
- ~~(3) A person in whom the small dollar lender has any financial interest of ten per cent or more; or~~
- ~~(4) Any employee or agent of the small dollar lender.~~

D. Section -45 (starting p.61)

8. Amend -45 subsections (a)(4), (a)(5), and (a)(6) starting at p.62 L4 (limit loophole risk):

- o *As worded (a)(4) suggests that add-on products such as credit insurance are appropriate as long as they are not "required." Installment lenders have a long history of adding on "voluntary" credit insurance to inappropriately boost loan revenue and avoid pricing policies. The intention is to prevent lenders from selling or adding any credit insurance in association with the loan.*
- o *The suggestion below would combine several provisions to prevent offering credit insurance and strengthen the overall prohibition on charging any fees other than those explicitly authorized in the chapter.*

Importance: MEDIUM

- ~~(4) Charge a prepayment fee to any consumer;~~
- ~~(5) Require a consumer to purchase add-on products, such as credit insurance;~~

~~(6) Charge any additional interest, fees, or charges, except those authorized by this chapter;~~

- (4) Charge, collect, or receive, directly or indirectly, credit insurance premiums, charges for negotiating forms of loan proceeds other than cash, charges for brokering or obtaining loans, prepayment fees, or any fees, interest, or charges in connection with a loan except those explicitly authorized in this chapter;

9. Add the following prohibitions within Section -45 (enhanced consumer protection; electronic payment plans)

[It shall be a violation to]

- (#) Draft funds electronically from any depository financial institution without written approval of the borrower; provided that nothing in this section shall prohibit the conversion of a negotiable instrument into an electronic form for processing through the automated clearing house or a similar system;

***Importance: MEDIUM;** Authorizes electronic payments while creating minimum consumer protection to ensure only authorized transactions occur. This would be a convenience to consumers; and would help keep costs down by helping lenders control risk.*

- (#) Attempt to collect from a borrower's account after two consecutive attempts have failed, unless the licensee obtains new written authorization from the borrower to transfer or withdraw funds from the account;

***Importance: HIGH;** Protects borrowers from harassment tactics in collection, limits borrower's exposure to non-sufficient funds or other penalty charges imposed by financial institutions. Online lenders have abused electronic transfers and driven many consumers out of the banking system b/c their accounts were closed as a result of repeated withdrawal attempts when sufficient funds were not present.*

- (#) Make a loan to a borrower that includes a demand feature that permits the lender or any other person, in the event the borrower fails to meet the repayment terms for any outstanding balance, to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, unless the demand feature is clearly disclosed in the written agreement required under subsection __-2(f), provided that the agreement states that the lender shall provide written notice to the borrower of the termination of the loan not earlier than ten days after the borrower's payment was due; and further provided that the lender shall be entitled to collect only the outstanding balance plus a prorated share of unpaid interest and fees earned up to the date of termination. For purposes of this section, the outstanding balance and prorated interest and fees shall be calculated as if the borrower had voluntarily prepaid the loan in full on the date of termination.

***Importance: MEDIUM;** Establishes orderly rules for accelerating delinquent loans to give lenders the legal right to collect the full principal amount, while*

also protecting consumers. If state law already allows for this in some other way, may not be needed.

E. OTHER. We note that the bill does not include the following recommended provisions:

10. Provision requiring a public report of data. *Allows researchers to assess the outcomes of the law.*

Importance: Depends on goal

[Section #] The commissioner shall publish annually and make available to the public an analysis of the reports provided by small dollar lenders under section **35(b)(2)**, but the individual reports shall not be public records and shall not be open to public inspection. The published analysis shall include all of the following:

- (1) The total number of borrowers and loans originated, the total dollar amount of originated loans, and the total amount of interest and fees collected;
- (2) The total number of loans that lenders charged off, and the total amount of unpaid loan principal that was charged off;
- (3) The average loan size, average contracted and average experienced duration, average contracted and average experienced annual percentage rate, average contracted loan charges, including interest and fees, and average loan charges actually paid, including interest and fees;
- (4) The total number of check collection charges and the total dollar value of those charges;
- (5) The total number of branch offices and the average number of borrowers per branch office;
- (6) Any other nonprivate information determined by the commissioner.

11. Finally, we note that some sections of the bill or existing law make distinctions between single-payment loans and multiple installment loans. Since the overall thrust of this bill is to ensure safe and affordable installment loans repaid over time, we would support eliminating references to single payment loans throughout.



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www.hawaiiancommunity.net

March 18, 2018

Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, March 20, 2018, 9:00am
Conference Room 229

HB2471, HD1, Proposed SD1 – Relating to Consumer Protection

Aloha Chair Baker, Vice-Chair Tokuda, and Committee Members:

I am submitting testimony on behalf of Hawaiian Community Assets (HCA), the State's largest HUD-approved housing counseling agency and its Department of Treasury certified nonprofit Community Development Financial Institution, Hawaii Community Lending, to **SUPPORT HB2471, HD1, Proposed SD1 with amendments**. The bill would close the loophole that created unaffordable payday loans in 1999 and establishes a regulatory structure for small dollar installment loans with the goal of ensuring affordable monthly payments for our residents, keeping more money in the pockets of our workers and families for rent and mortgage payments.

Closes Payday Loan Loophole

Currently, payday loans charge borrowers 459% APR. This means that \$105 of every \$600 borrowed goes toward interest and fees that often leave our State economy as profits for off-shore payday lenders. Less money in our economy leaves less funds for our homeless services, affordable housing, and critical public programs that have been instrumental in keeping our workers and families in permanent housing. With public programs forming a safety net to prevent homelessness, a statewide Coordinated Homeless Entry System providing emergency grants, a robust credit union network offering low-interest loans, and nonprofit loan funds combining financial education with small dollar loans, it is time to close the loophole on payday loans and save our economy and our people money for affordable housing.

Makes Loans Installment Loans Affordable for Your Constituents

The bill defines a regulatory structure for installment loans in Hawaii and caps the total monthly payment of a borrower at 5% of gross monthly income or 6% of net monthly income, whichever is greater. While it is an industry standard for banks, credit unions, and community development financial institutions to factor in a borrower's debt as well as their income when calculating the affordability of a loan, our organization feels the language will achieve the bill's intended goal of ensuring installment loans are affordable for your constituents.

Affordable installment loan payments will result in your constituents saving significant money on interest that can be used to go toward their rent and mortgage, providing more capital for all of us to address our homeless and affordable housing crises.

Amendment 1: Amend Monthly Maintenance Fee to Ensure Rates Under 400% APR

We recommend to amend the monthly maintenance fee in Subsection (a)(5) at p.9 L7 (monthly maintenance fee) as follows:

- (5) A monthly maintenance fee that does not exceed the lesser of five percent of the originally contracted loan amount or ~~of no more than \$25~~ may be charged by the lender; provided that the monthly maintenance fee shall not be added to the loan balance on which the interest is charged; provided further that a small dollar lender shall not charge, collect, or receive a monthly maintenance fee if the borrower is a person on active duty in the armed forces of the United States or a dependent of that person;

The proposed amendment keeps costs and APRs within appropriate ranges and scalable by allowing the State to prevent a monthly maintenance fee from being too large on smaller loans. Without this change, APRs on some small loans would exceed 400% and there could be incentive to make smaller loans while still charging \$25 – both actions would go against the intent of the bill and result in the small dollar loans being unaffordable for borrowers.

Amendment 2: Require Small Dollar Lenders to Offer a Variety of Loss Mitigation Options

As we witnessed during the mortgage crisis, borrowers must have a variety of loss mitigation options in the event of sudden financial hardship such as loss of a job, reduced work hours, or increased housing payments and living expenses. Loss mitigation options, including forbearance, repayment plans, interest rate reductions, loan term adjustments, and principal reduction helped save lenders, borrowers, and our entire economy billions of dollars in unnecessary foreclosures.

These same loss mitigation options should be available to our workers and families who borrow small dollar installment loans.

We recommend amending the bill to require small dollar lenders to offer a variety of loss mitigation options, including forbearance, repayment plans, interest rate reductions, loan term adjustments, and principal reduction for borrowers who are able to document a financial hardship. The bill currently allows for deferment as a loss mitigation option for borrowers, however, it is critical that we expand the options available for borrowers to maintain their repayment of their small collar loan even if in financial hardship.

HCA highlights the importance of providing borrowers with (1) affordable monthly payments and (2) a variety of loss mitigation options based on the performance of its loan fund administered by HCL over the last 3 years¹. As of September 30, 2017, the loan fund had made 184 small dollar loans totaling \$337,654 in capital across the state while maintaining a less than 0.5% default rate. Not only did our borrowers address their

¹ [Small Dollar Loan Pilot Results](#). Hawaiian Community Assets and Hawaii Community Lending. Dec 5, 2017

financial needs with our loan capital, but they went on to access an additional \$1.4 million in capital within the mainstream financial system to further assist with sustaining housing stability.

At a time when Hawaii reports the highest homeless rate per capita of any state in the nation and 57.6% of our renters pay more than 30% of their monthly income toward housing, we cannot afford any more money to go from the pockets of our workers and families to 459% APR payday loans or unaffordable long-term small dollar installment loans. Close the loophole that created unaffordable payday loans in 1999, establish a regulatory structure that ensures installment loans are affordable for our residents, and keep more money in the pockets of our workers and families for rent and mortgage payments.

Bottom-line: Payday loan reform is an affordable housing issue. Support affordable housing.

PASS HB2471, HD1, Proposed SD1 with amendments.

Mahalo for your time, leadership and consideration. Please contact me directly at 808.587.7653 or jeff@hawaiiancommunity.net should you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Jeff Gilbreath". The signature is written in a cursive, slightly slanted style.

Jeff Gilbreath
Executive Director

Helping Hawai'i Live Well

To: Senator Rosalyn Baker, Chair, Senator Stanley Chang, Vice Chair, Members, Senate Committee on Consumer Protection and Health

From: Trisha Kajimura, Executive Director

Re: TESTIMONY IN SUPPORT OF HB 2471 HD 1 RELATING TO PAYDAY LENDING, with amendments

Hearing: March 29, 2018, 9:00 AM, CR 229

Thank you for hearing our testimony **in support of House Bill 2471 HD 1 (with amendments)**, which closes the loophole that created unaffordable payday loans in 1999 and establishes a regulatory structure for small dollar installment loans with the goal of ensuring affordable monthly payments for our residents, keeping more money in the pockets of our workers and families for rent and mortgage payments.

Mental Health America of Hawaii is a 501(c)3 organization founded in Hawai'i 76 years ago, that serves the community by promoting mental health through advocacy, education and service. Payday loans under our current law prey on economically vulnerable workers in our state and trap them in cycles of unaffordable debt that cause enormous stress on individuals and families. Stress at these toxic levels can harm or worsen mental health. Since we have better options for small personal loans in our community, there is no reason to allow this practice to continue.

In alignment with our advocacy partner, Hawaiian Community Assets, we request that the bill is amended to:

1. change the monthly maintenance fee structure to be the lesser of 5% of the originally contracted loan amount or \$25, and
2. require small dollar lenders to offer a variety of loss mitigation options to borrowers who find themselves in sudden financial hardship.

Thank you for considering my **testimony in support of HB 2471 HD 1**. Please contact me at trisha.kajimura@mentalhealthhawaii.org or (808)521-1846 if you have any questions.



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai'i Appleseed Center for Law and Economic Justice
Supporting HB 2471 HD1 Proposed SD1 -- Relating to Consumer Protection
House Committee on Consumer Protection and Health
Scheduled for hearing on Tuesday, March 20, 2018, 9:00 AM, Conference Room 229

Dear Chair Baker, Vice Chair Tokuda, and members of the Committee:

Thank you for the opportunity to testify in SUPPORT of **HB2471 HD1 Proposed SD1**, which would establish a regulatory structure that would ensure small dollar installment loans are affordable to our residents.

We request that you amend the bill to (1) require these lenders to offer several loss mitigation options to borrowers when needed and (2) cap the monthly maintenance fee at 5 percent of the original loan amount or \$25.

Payday loans in Hawai'i were first allowed through a loophole in the law that was created in 1999. Most of the profits of from these small-dollar loans are flowing out of our state's economy to unregulated and uncertified out-of-state payday lenders.

This bill would close the payday loan loophole and establish a regulatory structure for small-dollar installment loans, ultimately giving our workers and families more money to make rent and mortgage payments as well as support the local economy.

Estimates are that payday loans in Hawai'i charge borrowers an astounding 459 percent interest rate. Research by the Consumer Financial Protection Bureau finds that "that more than four out of five payday loans are re-borrowed within a month... The majority of short-term loans are borrowed by consumers who take out a least 10 loans in a row, with the borrower paying far more in fees than they received in credit."

In other words, most people who take out paydays loans face repayment terms that set them up to fail. When they are faced with unaffordable payments, they are forced to choose between terrible options, such as taking out more unfair loans to pay off the first one, defaulting on their loan, falling behind on rent and other bills, or declaring bankruptcy. This is not good for them, nor for our overall economy.

We appreciate your consideration of this testimony.

Hawai'i Appleseed Center for Law and Economic Justice Hawaii Appleseed is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.

HB-2471-HD-1

Submitted on: 3/19/2018 6:51:01 AM

Testimony for CPH on 3/20/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
RICHARD DAN	Testifying for Maui Loan Inc	Oppose	No

Comments:

Aloha and thank you for allowing me to testify once again on this matter. The original submission of SB 3008 did not go forward for reasons that you legislators know better than I do. But I was pleased that it did not because it was a bad bill that will throw Hawaii credit consumers into the hands of a distant corporation, depriving them of the local control that they have today.

I consider the practice that in the State House apparently is called "gut and replace" to be more akin to what in business we call bait and switch. It does not seem to be an aboveboard practice. it is not something I would do to my customers in my business or they wouldn't come back.

My objections to 3008 remain, and my suggestions for tweaking the current deferred deposit law to make it even safer for consumers remain. I've been pushing this simple change for years, and I sincerely wish that you would take a thoughtful look at it.

My testimony I submitted earlier regarding SB 3008 is on the record.

Mahalo Richard Dan

Maui Loan Inc

50 N Market street

Wailuiku Hi 96793

8082425555

To: Senator Rosalyn H Baker, Chair
Senator Jill N. Tokuda, Vice Chair
Committee on Commerce, Consumer Protection, and Health

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

March 19, 2018 In opposition to HB2471

Money Service Centers of Hawaii, Inc. is a locally owned and operated money service business (MSB) headquartered in Kapaa, Kauai. We operate fee-based money service centers throughout the State under the trade name PayDayHawaii. Over the past 18 years we have provided check cashing services to over 44,000 Hawaii residents.

HB2471 attempts to replace deferred deposit transactions authorized under the check cashing law, HRS480F, with an unproven installment loan scheme that is expensive for the State to administer and enforce. The rationale for this complete overhaul of the existing law relies on out-of-state data.

HB2471 is not just bad for our business, but bad for consumers. **The bill allows multiple loans by removing the one transaction per consumer provision. The bill encourages long term indebtedness and raises the fees charged to low income and monthly fixed income consumers. While we appreciate the intent of the bill's proponents, this bill harms the very consumers it purports to protect.**

DFI states "Consequently, in the first year of the small dollar loan program, **DFI would need funds of \$214,542 to hire two positions to set up the program and to appropriately supervise, regulate, and examine licensees.** These figures include employee benefits. To maintain this new program, the program would need to generate revenues sufficient to cover the additional staff members."

Storefront small dollar lenders operating in Hawaii will generate an estimated \$27,000 in licensing fees. SB3008 SD2 favors out-of-state internet lenders and penalizes local storefront lenders having more than one location by charging higher licensing fees. Out-of-state Internet lenders currently operate in Hawaii with impunity, ignoring current Hawaii law and in most cases don't pay GET taxes. We find it is difficult to believe they will bother to apply for a license.

The preamble of the bill cites a study by the Pew Charitable Trust. The Pew Charitable Trust has never studied check cashing businesses operating in Hawaii. Their data and reports are based only on the 48 contiguous states. It's important to be specific to our State with a different law and different outcomes. We need to look at what is happening in our community from a provable standpoint and not jump to conclusions based on data from the mainland.

The only study on deferred deposit transactions based on Hawaii, was completed by the State Auditor in 2005* and found no evidence of harm to Hawaii consumers from local check cashers. Before considering any legislation that would substantially change HRS480F, the legislature should authorize another audit so that we have more up-to-date data for Hawaii. The Auditor should research the increasing impact of out-of-state internet lenders who operate unlawfully in Hawaii. Consideration should be given to a sensible update of HRS 480F based on the Auditor's findings.

* *Sunrise Analysis: Check Cashing and Deferred Deposit Agreements (Payday Loans). A Report to the Governor and the Legislature of the State of Hawaii, Report No. 05-11, December 2005.*

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



Aloha United Way

Aloha United Way
200 N. Vineyard Blvd., Suite 700
Honolulu, Hawaii 96817

Senator Rosalyn Baker, Chair
Senator Jill Tokuda, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health

Re: **HB 2471 HD1 Proposed SD1 Relating to Consumer Protection**
March 20, 2018; 9:00 AM; Conference Room 229

Aloha Chair Baker, Vice Chair Tokuda & Members of the Committee:

HB2471, HD1, Proposed SD1 – Relating to Consumer Protection. Transitions from lump sum deferred deposit transactions to installment-based small dollar loan transactions. Specifies various consumer protection requirements for small dollar loans. Beginning January 1, 2019, requires licensure for small dollar lenders that offer small dollar loans to consumers. Specifies licensing requirements for small dollar lenders. (SD1)

Aloha United Way **SUPPORTS HB2471, HD1, Proposed SD1.** The bill closes the loophole that created unaffordable payday loans in 1999, establishes a regulatory structure to ensure installment loans are affordable for our residents, and would keep more money in the pockets of our workers and families for rent and mortgage payments.

Currently, payday loans charge borrowers 459% APR. This means that \$105 of every \$600 borrowed goes toward interest and fees that often leave our State economy as profits for off-shore payday lenders

The bill defines a regulatory structure for installment loans in Hawaii and caps the total monthly loan payments at 5% of gross monthly income or 6% of net income, whichever is greater. This requirement will achieve the bill's intended goal of ensuring installment loans are affordable for your constituents.

Amendment 1: Amend Monthly Maintenance Fee to Ensure Rates Under 400% APR

We recommend to amend the monthly maintenance fee be the lesser of five percent of the originally contracted loan amount or \$25. The proposed amendment keeps costs and APRs affordable, especially on smaller loan amounts. Without this change, APRs on some small loans would exceed 400% making them unaffordable for borrowers.


Amendment 2: Require Small Dollar Lenders to Offer a Variety of Loss Mitigation Options

We recommend amending the bill to require small dollar lenders to offer a variety of loss mitigation options, including forbearance, repayment plans, interest rate reductions, loan term adjustments, and principal reduction for borrowers who are able to document a financial hardship. The bill currently allows for deferment as a loss mitigation option for borrowers, however, it is critical that we expand the options available for borrowers to maintain their repayment of their small collar loan even if in financial hardship.

At a time when Hawaii reports the highest homeless rate per capita of any state in the nation and 57.6% of our renters pay more than 30% of their monthly income toward housing, we cannot afford any more money to go from the pockets of our workers and families to 459% APR payday loans or unaffordable long-term small dollar installment loans. Close the loophole that created unaffordable payday loans in 1999, establish a regulatory structure that ensures installment loans are affordable for our residents, and keep more money in the pockets of our workers and families for rent and mortgage payments.

Bottom-line: Payday loan reform is an affordable housing issue. Support affordable housing. **PASS HB2471, HD1, Proposed SD1.**

Sincerely,


for, Cindy Adams
President & CEO



Board Members

President
Jason Okuhama
Managing Partner,
Commercial & Business Lending

Secretary
Marcus Kawatachi
Deputy Director,
Hawai'i Civil Rights Commission

Trina Orimoto
Clinical & Research Psychologist

Kaipo Kukahiko
Executive Director,
KEY Project

Miwa Tamanaha
Deputy Director,
Kua'āina Ulu 'Auamo

HACBED Staff

Brent N. Kakesako
Executive Director

Keoki Noji
Chief Operating Officer

Athena T. Esene
Bookkeeper & Office Manager

Will Simmons
Food Systems Specialist

Foley Pfalzgraf
AmeriCorps VISTA

Alex Narrajos
AmeriCorps VISTA

Date: March 19, 2018

To: Senator Rosalyn H. Baker, Chair, Senator Jill N. Tokuda, Vice-Chair, and members of the Committee on Commerce, Consumer Protection and Health

From: Brent Kakesako, Hawai'i Alliance for Community-Based Economic Development (HACBED)

Re: Support for HB2471 HD1, Proposed SD1 with Amendments

Aloha Chair Baker, Vice-Chair Tokuda, and Committee Members,

The Hawai'i Alliance for Community-Based Economic Development (HACBED) supports HB2471 HD1, Proposed SD1 with amendments. HB2471 HD1, Proposed SD1 closes the payday loan loophole and establishes a regulatory structure for these loans, but needs to further be amended to ensure small dollar installment loans are affordable for everyday local families by requiring lenders to amend monthly maintenance fee to ensure rates under 400% and require lenders to offer loss mitigation options in the event of financial hardship.

HACBED was established in 1992 as a nonprofit statewide intermediary to address social, economic, and environmental justice concerns through community-based economic development and asset building strategies. It advances its mission with core competencies in the areas of community and organizational capacity building, community and economic development planning, and asset policy development and advocacy. HACBED played a facilitating role in the State Asset Policy Task Force and was a key contributor to the State Asset Policy Road Map. HACBED also facilitated the Family & Individual Self-Sufficiency Program (FISSP), which administers the Internal Revenues Services' Volunteer Income Tax Assistance (VITA) program as a part of its larger asset building and financial education initiatives for needy families. As such, HACBED supports the proposed bill if amended, that would provide a number of critical consumer protections for those who take out payday or small dollar installment loans.

Through HACBED's efforts with providing VITA services, we have heard countless stories of the negative effects that payday lending has on families, in many cases acting as a debt trap from which they cannot escape. These stories are corroborated by statistical findings at both the state and national level. In fact, the Consumer Financial Protection Bureau in a 2017 analysis found that four out of five payday loans are rolled over or renewed, meaning that the borrower was not able to repay the loan by the agreed upon date and was left with no other recourse than another high interest payday loan, despite having already experienced the difficulties of repaying these loans. It is due to this revolving door of debt that the average payday loan borrower remains in debt for more than six months, which is twice the length of indebtedness recommended by the FDIC. Due to high rates and frequent rollovers, three out of five payday loans are made to borrowers whose fees exceed the amount that they have actually borrowed. HB2471 HD1, Proposed SD1 if

amended would provide a number of critical protections to make short-term loans affordable for the everyday local family:

- *Amend monthly maintenance fees to ensure rates below 400% APR* – by requiring the monthly maintenance to be the lesser of 5% of the originally contracted loan or \$25 in order to keep costs affordable and help working families to avoid cycles of debt.
- *Require lenders to offer a variety of loss mitigation options* – loss mitigation options such as forbearance, repayment plans, interest rate reductions, loan term adjustments, and principal reduction to prevent unnecessary foreclosures.

All recent statistics indicate that changes must be made to the payday lending industry in order to provide Hawai'i's families with choice and control over their financial lives. There are a number of safe, regulated, lower-cost alternatives to payday loans that can be found throughout Hawai'i and these should also be better promoted and marketed. As such, we support the passage of HB2471 HD1, Proposed SD1 with amendments.

Mahalo for this opportunity to testify,

Brent N. Kakesako
Executive Director
Hawai'i Alliance for Community-Based Economic Development



Building strength and stability through shelter

March 19, 2018

Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, March 20, 2018, 9:00am
Conference Room 229

HB2471, HD1, Proposed SD1 – Relating to Consumer Protection

Aloha Chair Baker, Vice-Chair Tokuda, and Committee Members:

I am submitting testimony on behalf of Hawaii Habitat for Humanity and six locally-based Habitat organizations across the state. Habitat for Humanity is only one of very few nonprofit organizations that offer homeownership opportunities to low-income residents in Hawaii. I write in **SUPPORT of HB2471, HD1, PROPOSED SD1.**

Habitat organizations are 501 (c)(3) nonprofit charitable organizations that provide first-time homeownership opportunities to low income families who earn 30-to-80 percent of the area median income to ensure that they have the stability, strength and self-reliance to thrive.

Hawaii's low income families are struggling more than ever. As one of the highest cost of living states in the Country, housing, health care and education are taking its toll on families who are unable to stabilize their financial situation. Housing and homeownership can help families by leveraging their asset to improve both their health and education. Homeownership provide equal monthly payments for housing, causing less stress and permanent homes to raise their families.

I **SUPPORT HB2471, HD1, Proposed SD1.** The bill closes the loophole that created unaffordable payday loans in 1999, establishes a regulatory structure to ensure installment loans are affordable for our residents, and would keep more money in the pockets of our workers and families for rent and mortgage payments. Currently, payday loans charge borrowers 459% APR. This means that \$105 of every \$600 borrowed goes toward interest and fees that often leave our State economy as profits for off-shore payday lenders. Less money in our economy leaves less funds for our homeless services, affordable housing, and critical public programs that have been instrumental in keeping our workers and families in permanent housing. With public programs forming a safety net to prevent homelessness, a statewide Coordinated Homeless Entry System providing emergency grants, a robust credit union network

offering low-interest loans, and nonprofit loan funds combining financial education with small dollar loans, it is time to close the loophole on payday loans and save our economy and our people money for affordable housing.

Makes Installment Loans Affordable for Workers and Families

The bill defines a regulatory structure for installment loans in Hawaii and caps the total monthly loan payments at 5% of gross monthly income or 6% of net income, whichever is greater. This requirement will achieve the bill's intended goal of ensuring installment loans are affordable for your constituents.

Affordable installment loan payments will result in your constituents saving significant money on interest that can be used to go toward their rent and mortgage, providing more capital for all of us to address our homeless and affordable housing crises.

Amendment 1: Amend Monthly Maintenance Fee to Ensure Rates Under 400% APR

We recommend to amend the monthly maintenance fee be the lesser of five percent of the originally contracted loan amount or \$25. The proposed amendment keeps costs and APRs affordable, especially on smaller loan amounts. Without this change, APRs on some small loans would exceed 400% making them unaffordable for borrowers.

Amendment 2: Require Small Dollar Lenders to Offer a Variety of Loss Mitigation Options

As we witnessed during the mortgage crisis, borrowers must have a variety of loss mitigation options in the event of sudden financial hardship such as loss of a job, reduced work hours, or increased housing payments and living expenses. Loss mitigation options, including forbearance, repayment plans, interest rate reductions, loan term adjustments, and principal reduction helped save lenders, borrowers, and our entire economy billions of dollars in unnecessary foreclosures.

These same loss mitigation options should be available to our workers and families who borrow small dollar installment loans.

We recommend amending the bill to require small dollar lenders to offer a variety of loss mitigation options, including forbearance, repayment plans, interest rate reductions, loan term adjustments, and principal reduction for borrowers who are able to document a financial hardship. The bill currently allows for deferment as a loss mitigation option for borrowers, however, it is critical that we expand the options available for borrowers to maintain their repayment of their small collar loan even if in financial hardship.

At a time when Hawaii reports the highest homeless rate per capita of any state in the nation and 57.6% of our renters pay more than 30% of their monthly income toward housing, we cannot afford any more money to go from the pockets of our workers and

families to 459% APR payday loans or unaffordable long-term small dollar installment loans. Close the loophole that created unaffordable payday loans in 1999, establish a regulatory structure that ensures installment loans are affordable for our residents, and keep more money in the pockets of our workers and families for rent and mortgage payments.

Bottom-line: Payday loan reform is an affordable housing issue. Support affordable housing. **PASS HB2471, HD1, Proposed SD1.**

Mahalo for your time, leadership and consideration. Please contact me at 808-847-7676 or jean@hawaiihabitat.org should you have any questions or need additional information.

Sincerely,

A small, square image containing a handwritten signature in blue ink. The signature appears to read "Jean Lilley".

Jean Lilley
Executive Director

Habitat for Humanity Hawaii Island
Habitat for Humanity Leeward Oahu
Habitat for Humanity Maui
Honolulu Habitat for Humanity
Kauai Habitat for Humanity
Molokai Habitat for Humanity

HB-2471-HD-1

Submitted on: 3/19/2018 8:55:20 AM

Testimony for CPH on 3/20/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Annie AuHoon	Individual	Support	No

Comments:

Aloha, STONGLY SUPPORT!

[SB2424 – Relating to Housing for Native Hawaiians](#). Establishes a revolving Small Home Loan Fund and Nonprofit Developer Capacity Program to increase development of affordable housing on Hawaiian Home Lands.

I **STRONGLY SUPPORT SB2424, SD2**, which would establish a public-private partnership to leverage \$5 million in State funding to create a \$20 million loan fund for the development of affordable tiny homes on Hawaiian Home Lands. The tiny home loan fund would support the building of up to 10,000 tiny homes on Hawaiian Home Lands lots with existing infrastructure by 2026. In addition, the legislation would build the capacity of nonprofit developers to increase the affordable housing stock on Hawaiian Home Lands.

According to the Department of Housing and Urban Development, 22,000 native Hawaiians are on a waitlist for a home on Hawaiian Home Lands. Since the Hawaiian Home Lands Trust was established in 1920, approximately 8,000 residential leases have been awarded while thousands of families wait for their turn residing on the beach, in overcrowding housing, and in high-priced rentals. At a time when Hawaii reports the highest homeless rate per capita of any state in the nation and 42% of all homeless persons identifying as Native Hawaiian or Pacific Islander, SB2424 gives us the unique opportunity to address both our homeless and affordable housing crises by supporting the development of affordable, tiny homes priced below \$125,000.

We cannot wait any longer for affordable housing in Hawaii. The Hawaiian Home Lands Trust was established to provide these type of opportunities to its beneficiaries and for the well-being of all of Hawaii. We need to invest in affordable housing for native Hawaiians and non-native Hawaiians residing on Hawaiian Home Lands NOW. **PASS SB2424, SD2.**

DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF TAXATION**

830 PUNCHBOWL STREET, ROOM 221
HONOLULU, HAWAII 96813

<http://tax.hawaii.gov/>
Phone: (808) 587-1540 / Fax: (808) 587-1560
Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Rosalyn H. Baker, Chair
and Members of the Senate Committee on Commerce, Consumer Protection, and
Health

Date: Tuesday, March 20, 2018
Time: 9:00 A.M.
Place: Conference Room 229, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: Proposed H.B. 2471, S.D. 1, Relating to Consumer Protection

The Department of Taxation (Department) offers the following comments regarding H.B. 2471, H.D.1, Proposed S.D. 1, for your consideration.

Among other things, Proposed S.D. 1 provides that beginning on January 1, 2019, a person engaging in the business of a small dollar lender must be licensed by the Commissioner of Financial Institutions (Commissioner). Prior to approving licensure, the Commissioner must find that the person is "financially responsible". Among the factors that the Commissioner may consider is whether or not the person has any current outstanding tax liens. The measure is effective on July 1, 2018, with licensing being required beginning January 1, 2019.

The Department notes that there are two types of tax liens: the statutory lien and the notice lien. The statutory lien arises automatically whenever a tax debt is owed to the State by virtue of Hawaii Revised Statutes (HRS) section 231-33(b) which provides in relevant part:

Any state tax which is due and unpaid is a debt due the State and constitutes a lien in favor of the State upon all property and rights to property, whether real or personal, belonging to any person liable for the tax.

This lien is sometimes referred to as a secret lien, because it is known only to the taxpayer and the Department. If the taxpayer transfers property to a good faith third party purchaser for fair value, the statutory lien does not encumber the transferred property.

A notice lien occurs when the Department files a notice of State tax lien in the Bureau of Conveyances in Honolulu, or if the lien is to encumber a motor vehicle, with the county director of finance where the taxpayer resides. Once filed, the tax lien then becomes public knowledge, and it cannot be defeated by a good faith third party purchaser for fair value. This type of tax

lien is normally picked up and reported by a credit reporting agency.

If the intent is to include statutory liens, the Department requests authority to release such information to the Commissioner. Otherwise, such information is considered confidential taxpayer information, and disclosure of any such information is strictly prohibited under HRS section 235-116.

Thank you for the opportunity to provide comments.