

SB286

Measure Title:	RELATING TO CHECK CASHING.
Report Title:	Check Cashing; Deferred Deposit Agreements; Fees; Annual Percentage Rate; Right to Rescind; Installment Loan Plan; Collection Practices
Description:	Specifies a customer has the right to rescind a deferred deposit by returning the principal amount used to fund the deferred deposit within a specified time frame. Permits customers to convert a deferred deposit into an installment loan plan in certain circumstances and specifies requirements for the installment loan plan. Protects against harmful collection practices. Defines annual percentage rate. Requires a check casher to provide a written agreement to a customer that clearly discloses specific information relating to the cost and fees associated with the deferred deposit, among other things. Caps the annual percentage rate at thirty-six per cent for deferred deposit of a personal check. Permits prepayment of deferred deposit agreements with no additional fees.
Companion:	
Package:	None
Current Referral:	CPH
Introducer(s):	BAKER, ESPERO, IHARA, KEITH-AGARAN, K. RHOADS, TOKUDA, S. Chang, Dela Cruz, Gabbard, Harimoto, Wakai



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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CATHERINE P. AWAKUNI COLÓN
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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE,
CONSUMER PROTECTION & HEALTH

THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

FEBRUARY 27, 2017
9:30 A.M.

TESTIMONY ON SENATE BILL 286, RELATING TO CHECK CASHING

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE CLARENCE K. NISHIHARA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“DCCA”), Office of
Consumer Protection (“OCP”) supports Senate Bill No. 286, Relating to Check Cashing.

My name is Stephen Levins and I am the Executive Director of the OCP.

Senate Bill No. 286 offers several consumer protections for borrowers who take
out payday loans. These include:

- A right to rescind;
- A right to convert a payday loan to an installment loan;
- Protections against harmful collection practices;
- Improved loan disclosures;

- Prohibitions on prepayment penalties; and
- Capping the annual percentage rate of payday loans at no more than 36%.

OCP believes that this proposal is necessary and meritorious.

In particular, the OCP is in strong support of setting the APR cap at 36% per annum, as it would reduce the cost of credit for consumers who should not be paying interest on a loan that a relatively short time ago would have been considered exorbitantly usurious. Adopting a 36% cap would not be an aberration. On the contrary, limiting deferred deposit transactions for Hawaii consumers to 36% APR would be consistent with the growing trend around the country of providing more consumer protections for these loans. In the past few years alone, 18 jurisdictions have either banned payday loans outright or subjected them to a 36% APR or lower. These jurisdictions include: Arkansas; Arizona; Connecticut; the District of Columbia; Georgia; Maryland; Massachusetts; Montana; New Hampshire; New Jersey; New York; North Carolina; Ohio; Oregon; Pennsylvania; South Dakota; Vermont; and West Virginia.

According to an April 2013 report issued by the National Consumer Law Center, the 36% rate cap also works on a practical level for small loans. For a loan of the typical size and duration of a payday loan, a 36% rate results in payments that payday borrowers are more likely to be able to make while actually paying off the loan. A 36% rate also forces lenders to offer longer term loans with a more affordable structure and to more carefully consider their ability to pay in order to avoid write offs.

Thank you for the opportunity to testify in support of S.B. 286. I am available for any questions that you may have regarding this Bill.



SB286
RELATING TO CHECK CASHING

Senate Committee on Commerce, Consumer Protection and Health

February 27, 2017

9:30 a.m.

Room 227

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB286, which contains various provisions that increase protection for low-income families that utilize the deferred deposit loan program, commonly referred to as payday loans. Accordingly, SB286 aligns with OHA's strategic priority of improving the economic self-sufficiency of Native Hawaiians.

According to the Corporation for Enterprise Development (CFED) Assets and Opportunity Scorecard, while Hawai'i may rank high in some areas of household financial security, our state still lacks important regulations to assist low-income individuals in achieving economic self-sufficiency. This is particularly concerning given that Hawai'i ranks 29th in its percentage of underbanked households, or households that must use alternative and often costly financial services for their basic transaction and credit needs. Although our families may utilize alternative financial services at relatively high rates, Hawai'i is one of the minority states that do not cap the allowable interest on payday loans. Particularly troubling for OHA is recent Federal Deposit Insurance Corporation (FDIC) data that shows over 34% of Native Hawaiians and Pacific Islanders in Hawai'i are unbanked or underbanked, compared to the 23.5% state average.

While alternative financial services (AFS) can be important venues for providing credit to low-income individuals, National Consumer Law Center research has shown that regulation is necessary to ensure that households using AFS services for basic necessities are not further trapped in cycles of debt and poverty. For example, research by the Center for Responsible Lending shows that the average payday loan borrower remains in debt for double the length of time recommended by the FDIC. Regulatory measures on AFS interest and fees are one way to reduce the length of indebtedness of such borrowers, and facilitate their eventual economic self-sufficiency.

In addition to providing additional consumer protection, SB286 caps the interest that a check casher can charge for deferred deposit agreements. The proposed 36% per annum cap is a moderate cap, and brings Hawai'i closer to compliance with FDIC Small Dollar Loan Guidelines, which recommend setting maximum lending rates at less than 36%, with low or no fees. Adopting such protections may provide our low-income families with access to credit, while allowing AFS to remain profitable. OHA notes that 35 other jurisdictions already provide for similar regulations and place a maximum lending rate cap at 36% or less.

Accordingly, OHA urges the Committee to **PASS** SB286. Mahalo nui for the opportunity to testify on this important measure.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 24, 2017 9:01 AM
To: CPH Testimony
Cc: catgraham48@gmail.com
Subject: Submitted testimony for SB286 on Feb 27, 2017 09:30AM

SB286

Submitted on: 2/24/2017

Testimony for CPH on Feb 27, 2017 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Catherine Susan Graham	FACE Hawaii	Support	No

Comments: Aloha Senators, Thank you for hearing this bill. Payday Lending is such a scam and needs to be regulated. Our lower income brothers and sisters get pulled into taking out a loan when in need from these lenders, then end up often paying over 300% interest by the time they are finished paying it back. Please regulate these businesses and cap the interest at the same rate as credit card companies.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

To: Senator Rosalyn H Baker, Chair
Senator Clarence K. Nishihara, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health

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

February 21, 2017

In opposition to SB286 – Urging an updated study by the State Auditor.

Money Service Centers of Hawaii, Inc. is a locally owned and operated money service business headquartered in Kapaa, Kauai. We operate fee-based money service centers throughout the State under the trade name PayDayHawaii. We have served over 40,000 Hawaii residents in over 16 years in business with only a single complaint to the DCCA, and that complaint was dismissed.

The preamble of the bill cites a study by the Pew Charitable Trust. It should be noted that the Pew Charitable Trust has never studied check cashing businesses operating in Hawaii. Therefore the conclusions the study makes are not relevant to HRS480F, the State's check cashing law. SB286 should not be passed based on unsubstantiated anecdotal evidence and studies from other states which do not have the consumer protections we have in our check cashing law.

The only comprehensive study of HRS480F was conducted by the State Auditor in 2005. The Auditor found few complaints and little evidence of harm. The proper course of action would be to accept the conclusions of the State Auditor and incorporate her recommendations from the Sunrise Analysis into SB286. Or, given the fact that the study is now twelve years old, request an updated study.

Twelve years ago local Hawaii check cashers opened their doors and their books to the Hawaii State Auditor. After careful and thorough research, the State Auditor said, *"We conclude there is little evidence that payday lenders have harmed Hawaii consumers."**

The preamble in SB286 states that the high annual percentage rate can trap Hawaii borrowers in a cycle of high interest loans. The State Auditor said, *"We found no evidence of harm relating to rollovers or of borrowers falling into a debt trap in Hawai'i. Chapter 480F, HRS, currently prohibits payday lenders from entering into another agreement when an earlier one is in effect or allowing the earlier agreement to be repaid, refinanced, or consolidated with the proceeds from the earlier loan."**

The preamble in SB286 notes that: *"According to the Consumer Federation of America, the nationwide trend is toward an annual percentage rate cap at thirty-six per cent or less on these types of small loans."* What is not noted is that short-term deferred deposit credit is no longer available in states which have adopted an all-in APR of 36%. The preamble cites Colorado and Washington as examples of states which have enacted reforms without denying consumers access to short-term credit, however neither state adopted the 36% APR cap.

Referring to the bill being considered when the Sunrise Analysis was conducted the State Auditor had this to say about the proposed 36% APR cap:

*“The lack of evidence of harm to consumers makes many provisions of Senate Bill No. 1413 unnecessarily restrictive. If enacted, Senate Bill No. 1413 would likely drive Hawai‘i payday lenders out of business by capping any fees or interest charges at 36 percent APR. Payday lenders say that they cannot operate with a 36 percent APR cap. Should the payday lending industry cease to operate in Hawai‘i, the alternatives for consumers are few and may be less desirable.”**

The State Auditor’s recommendation:

*“Payday lenders say that the charges for payday loans are reasonable in view of the high-risk nature of their loans. It is reasonable to expect that those who have poor credit have to pay more for their loans. However, indications are that the payday lenders could still profitably stay in business in Hawai‘i under a reduced rate cap somewhere between 309 percent and 390 percent APR. In addition to reducing the fee cap, the law should be amended to clarify that any fee charged must include any and all other charges. Some payday lenders are said to charge a general excise tax in addition to the fee.”**

I urge each of you to take the time to read the Auditor’s Sunrise Analysis: Check Cashing and Deferred Deposit Agreements in its entirety before making a decision. You will see that the bill being considered is not an accurate reflection of her conclusions.

The State Auditor concluded, *“We found little evidence that payday lenders are harming consumers in Hawai‘i. Complaints have been few, and little information has surfaced about payday lenders encouraging repeated borrowing or engaging in coercive practices. Demand for payday loans is strong, and borrowers who have an immediate need for cash have few better alternatives.”**

I would like to invite each of you to visit one of our PayDayHawaii offices. Talk to our experienced managers, our staff and our clients just as the State Auditor did. You will find that Hawaii’s responsible brick and mortar check cashers take the long view and cultivate a clientele that is sustainable, by building safeguards into their operation to avoid driving consumers into financial hardship. You will hear how our services, which are unavailable in most banks, help families in our community manage their finances in ways that meet their needs.

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

Sincerely,

R. Craig Schafer

President. Money Service Centers of Hawaii, Inc.

February 23 2017

TO: Chairman and members of the Senate Committee on Commerce, Consumer Protection and Health

FROM: Richard Dan, Maui Loan Inc.

RE: Opposition to SB 286, relating to check cashing

My name is Richard Dan and I have operated a check cashing and paycheck loan business for many years in Hawaii. I have testified on earlier bills to revise Hawaii's deferred deposit law, and this bill, SB 286, contains the objectionable features of the earlier bills and some new unworkable or unnecessary ideas.

First, does the Hawaii deferred deposit law need major revisions?

As happened last year, the justification for the bill refers to a study by the Pew Charitable Trust. But this study is irrelevant to Hawaii because it was based on states with weaker protections for borrowers than Hawaii already offers. This is proven by the repeated references to fees. Hawaii law already prevents me from charging any fees, other than a NSF check collection fee that is 25% LOWER than the fee allowed for all other businesses.

Second, proponents have not presented any Hawaii examples of customers who have been forced into a spiral of debt because of payday loans. The couple who got the most publicity last year had between them 7 payday loans. They could only have done this by misrepresenting their applications, because Hawaii law allows only one payday loan at a time.

The most important safeguard for consumers in our state is the requirement that each payday loan must be paid off, in full, before a customer can apply for another payday loan in Hawaii. If the customer does not like the deal he has gotten, he can walk away and never see that lender again.

If he cannot repay, all he faces is the collection process for any other person who utters a NSF check.

I cannot go after his car or his house or add late fees and penalties. If you want to protect small borrowers, you should be looking at credit card issuers, because those lenders can, and do, pyramid balances to the sky.

Let me repeat: a payday loan borrower can NEVER be obligated for more than the original loan amount plus the original interest agreed to.

For marginal borrowers, a payday loan is the safest loan he can take out.

Now consider practical matters:

No one can make small, unsecured loans at 36% apr and stay in business.

For a \$100 loan — which is the amount I limit my customers to on their original application — the interest total fee would be about \$1.50, less than a cup of coffee. I cannot qualify an applicant and pay my rent and my manager on \$1.50 per transaction.

What SB 286 will do is ether cut off borrowers who, for whatever reason, have no other source of small-dollar, short-term credit from obtaining any credit at all; or it will force them to the unregulated, corrupt and dangerous internet payday loan jungle, where — unlike in Hawaii — if they have a complaint, they have no place to take it.

I do not deny that there are abuses in the payday loan business, but they are not in Hawaii. They are on the internet or in other states. You are the Hawaii Legislature, you are not the Texas legislature or the Colorado legislature.

Sincerely,

Richard Dan

Richard Dan
Maui Loan Inc.



74 East Swedesford Road,
Suite 150
Malvern, PA 19355
(610) 296 - 3400

February 23, 2017

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health
Hawaii State Capitol, Room 229

Honolulu, HI 96813

RE: SB 286 Related to Check Cashing

Dear Senator Baker:

Thank you, Senator Baker, for the opportunity to submit testimony regarding the bill referenced above. I represent Dollar Financial Group, Inc. based in Malvern, Pennsylvania. Through a subsidiary, we operate nine Money Mart[®] stores in the State of Hawaii, where we employ 35 state residents who are drawn from the neighborhoods we serve. These stores offer deferred deposit transactions that would be affected by Senate Bill 286. We oppose the rate-cap provision of this bill because this provision sets a price ceiling well below our costs and would force us out of business in Hawaii.

Dollar Financial Group is a board member company of Community Financial Services Association of America (CFSA). CFSA is the deferred deposit industry's national trade association, which represents more than half of storefront locations nationally.

Our Product

Money Mart offers deferred deposit transactions, which are sometimes called payday loans, in accordance with HRS chapter 480F. These loans provide a convenient, reasonably-priced, well-regulated unsecured borrowing option for meeting small, short-term financial needs of up to \$600.

Borrowers must have a steady source of income and a personal checking account in order to qualify for a deferred deposit transaction. Our customers come from all walks of life and by and large are the segment of the population whose credit needs are ignored or deemed unprofitable to banks and credit unions. On a national level, payday customers represent 19 million American households, who choose deferred deposit loans as a cheaper alternative to bounced-check or overdraft protection fees or late bill payment penalties. These borrowers also find a deferred deposit transaction to be more desirable than asking family members for money or pledging collateral for a small-dollar loan or title loan. Deferred deposit loan customers are overwhelmingly satisfied with the service, a fact confirmed by state regulators and the Consumer Financial Protection Bureau (CFPB), both of whom report very few complaints from residents who use this service. Hawaii is among this group, as indicated by the State of Hawaii Auditor's Sunrise Analysis on Check Cashing and Payday Loan Agreements, Report No. 05-11 (December 2005), which found "few complaints in Hawai'i and little evidence of harm."

Our Interest in Senate Bill 286

Across the country, we have demonstrated our commitment to working with policymakers to achieve state regulations that benefit consumers. We support balanced regulation that appropriately protects consumers and enables reputable payday lenders to operate profitably. Not only would a 36 percent rate cap prohibit us from operating profitably, it would put payday lenders out of business completely in this State. We oppose legislation that would put us out of business and leave our customers in Hawaii only with less-desirable, riskier credit alternatives. You should oppose it because it takes away the only reliable source of credit and liquidity available to our customers and this segment of the people of Hawaii. We believe it is bad policy to eliminate a product as essential to everyday life as credit and liquidity without a viable alternative being implemented. There is particularly true when the customer segment being targeted with this elimination of credit and liquidity, has the least real market opportunities to replace it.

The Cost of a Deferred Deposit Advance and Why APR Calculations are Misleading

Our business serves working families who frequently must choose between a deferred deposit advance and costlier or less-desirable alternatives. Our customers generally look at the real dollar cost of their available credit options and make rational, informed decisions when choosing a payday loan.

By contrast, critics of our industry tend to disregard the relative true costs of short-term credit products. Overly-simplified APR comparisons in this context tend to be quite misleading. In Hawaii, the maximum fee allowed for a deferred deposit transaction is 15% of the face amount of the check. **For a \$100 advance, that means the maximum fee that may be charged is \$17.65. The fee remains \$17.65 whether the advance is paid back in 14 days, 30 days—or a year. There is no penalty for paying late or not paying at all. There is no accrual of interest. Current law caps the cost of our product in terms of fees, not interest, which makes sense because we charge a one-time fee for a loan. It makes no sense to express a limit on our fees in the context of an annual percentage rate.**

The Impact of Restrictive APR Caps: De Facto Ban

Many critics have called for capping rates at 36% or a similar APR level, and some states have obliged. The result has been elimination of the deferred deposit advance product in those states. With the exception of the Colorado Model which is, by definition a hybrid, payday lending DOES NOT EXIST in any state that regulates the service as an APR—the resulting fee does not work for lenders and thus, the product is unavailable. **That’s because a 36% APR means a lender can only charge about \$1.38 per \$100 borrowed.** For prime customers, that is acceptable given the risk and performance of the pool. For our typical customer, this rate is simply untenable and would yield catastrophic losses as the reduction in rate would equate to a 92.2% reduction in gross income—not profit or net income, but gross income—from which all expenses must be paid. Under existing law, gross income on a \$100 transaction is \$17.65. Under this proposal, it would be \$1.38. No business can survive a 92.2% decrease in gross income. It doesn’t leave enough revenue to pay the light bill, much less employee payroll and benefits.

Despite what industry critics say, **a 36% annual rate cap is not a reform approach, it is an outright ban.** Unfortunately, that point has been proven in some states, most often with unintended consequences.

- In July 2007 a new law in Oregon capped payday loans at 36% APR plus an origination fee that yielded an effective APR of 154%. Within a year, 75% of the stores closed, and those that remained open offered check cashing and other services to survive. The press reported that 800 jobs had been lost and that state officials were concerned because Oregonians were beginning to use unregulated payday lenders on the Internet.¹ Four years later the Portland Business Journal was still reporting that, “. . . the laws, which capped interest rates at 36%, forced cash-hungry borrowers to turn to the shady world of Internet Payday loans. . . .”²
- In 2008 New Hampshire passed a 36% APR cap on payday and car title loans; and before the law even took effect, most of the payday lending stores had closed.³ In 2011 a state representative estimated that 200 people had lost their jobs in the lending industry after the law passed. Another said that banning the loans hurt consumers.⁴
- Montana adopted a 36% APR cap by ballot initiative in 2010. A year later, in an editorial entitled “What were voters thinking?” the Daily Inter-Lake paper said, “. . . it didn’t just cripple the payday lending industry in Montana; it flat-out killed it along with an estimated 800 jobs.” The editorial went on to speculate there may have been a perception the rate cap would merely rein in payday lending, not kill it.⁵

These real-world examples are proof of the consequences of restrictive annual rate caps. Stores closed, employees lost their jobs and consumers were left to choose among more-expensive and less-desirable credit alternatives. As noted by a number of policymakers in these states, many payday lending customers turned to unregulated payday advance lenders operating below the radar screen and to offshore Internet payday lenders over which U.S. regulators have no control. Since these unregulated companies do not report to Hawaii’s Department of Commerce and Consumer Affairs, your state would not be able to measure or regulate consumer use of these products.

If the policy goal is to ban payday lending, this Bill is the exact vehicle for that ban. It will harm the least able among us from a credit availability standpoint and offers only an illusory hope of alternative affordable credit availability some day.

¹ [“Middle-class squeeze leads to a rush at local pawnshop”](#), *The Oregonian*, Sept. 27, 2008.

² [“Borrowers flock to online payday lenders,”](#) *Portland Business Journal*, Feb. 11, 2011.

³ [“Good riddance to pricey short-term loans”](#), *Concord Monitor*, Jan. 8, 2009.

⁴ [“Bill would lift rate cap on title loans,”](#) *Concord Monitor*, February 1, 2011.

⁵ [“What were voters thinking?”](#) *Daily Inter Lake*, November 14, 2011.

Consumers Suffer Under Payday Loan Ban

Academic and third party research has consistently found that consumers have suffered in states where payday advances are no longer available, as evidenced by these few examples.

- A staff report from the Federal Reserve Bank of New York notes that consumers in Georgia and North Carolina “. . . *bounced more checks, complained more about lenders and debt collectors, and have filed for Chapter 7 bankruptcy at a higher rate*” following the elimination of the payday lending industry in those two states.⁶
- A study by Dartmouth College by Professor Jonathan Zinman found that restricting access to payday loans “*caused deterioration in the overall financial condition of Oregon households.*”⁷
- In the study *The Case Against New Restrictions on Payday Lending*, Prof. Todd J. Zywicki of George Mason University reports that “[E]fforts by legislators to regulate the terms of small consumer loans (such as by imposing price caps on fees or limitations on repeated use “rollovers”) almost invariably produce negative unintended consequences that vastly exceed any social benefits gained from the legislation.”⁸

Closing

In closing, we would like to point out that Hawaii already has a consumer-friendly deferred deposit statute in place, with a cap on fees and the amount that may be borrowed, as well as a prohibition on rollovers. We support regulation that protects consumers and would like to work with this Committee on improvements it deems necessary in that regard. Most notably, we urge you to consider added enforcement provisions to ensure that consumers are protected from unscrupulous lenders that are not complying with the current law.

We respectfully submit that Senate Bill 286 in its current form—with any restrictive cap on the annual percentage rate—will not protect consumers. Instead, it would eliminate a regulated environment and take away the people of Hawaii’s’ access to a much-needed credit option at a time when families are finding their access to traditional forms of credit limited or cut-off entirely. Furthermore, if this bill is enacted with a rate cap, Dollar Financial Group will be forced to close its nine Hawaii stores and terminate our 35 employees.

We urge you to reject Senate Bill 286.

⁶“[*Payday Holiday: How Households Fare after Payday Credit Bans.*](#)” by Donald Morgan, Federal Reserve Bank of New York, November 2007.

⁷“[*Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap.*](#)” by Dartmouth College Prof. Jonathan Zinman. October 2008.

⁸[*The Case Against New Restrictions on Payday Lending*](#), Prof. Todd Zywicki, George Mason University, July 2009.

Thank you for your consideration. At the Committee's request, I would be pleased to provide additional information or make myself available to answer any follow-up questions you may have.

Respectfully submitted,

Lester Wm. Firstenberger,
Senior Vice President, Global Regulatory and Government Affairs



POLICY & ACTION FROM CONSUMER REPORTS

February 24, 2017

Hon. Rosalyn K. Baker
Hawai'i State Legislature
State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: SB 286 – Support

Hearing: Senate Committee on Commerce, Consumer Protection and Health, February 27, 2017

Dear Chairwoman Baker:

Consumers Union, the advocacy division of Consumer Reports, writes in support of SB 286, which would help protect working families from high-cost consumer loans. We advocate in states and at the federal level for safeguards that promote responsible underwriting and affordable loan terms. Without those safeguards, we have seen all too often how “access to credit” – particularly in payday and installment lending – can do more harm than good to consumers struggling to make ends meet.

In particular, we strongly support the bill’s proposed 36% APR cap on deferred deposit loans. We also support the proposed right of rescission and protections against harmful collection practices.

While we appreciate that SB 286 would provide consumers the right to request an installment plan if they are struggling to repay a deferred deposit loan, we do have concerns that the 36% APR cap does not apply to those installment plans. Capping loan payments at five percent of a person’s gross monthly income could still result in unaffordable loans if the lender does not consider the consumer’s outstanding debts or other financial obligations. We encourage the Committee to consider amending the bill to apply the 36% APR cap – or, in the alternative, at least cap payments based on a small percentage of the consumer’s net income, taking other obligations into account, to ensure that a prospective borrower has a reasonable ability to repay the loan.

Today, all too many families struggle to make ends meet. For households barely making it from paycheck to paycheck, the most immediate need they have is for a little help: a safety net. High-cost lenders may claim that they are providing a service or “safety net” to struggling families, but their business models rely on keeping people in debt, not helping them build assets. These lenders have made profits based on predatory business practices that endanger consumers’ economic security.

SB 286 would go a long way toward preventing the ongoing debt traps that consumers can experience when they take out expensive short-term loans. For these reasons, we support SB 286 and urge an AYE vote.

Sincerely,

A handwritten signature in black ink, appearing to read "Suzanne".

Suzanne Martindale
Staff Attorney



Community Voice, Collective Action

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

Kaipō Kukahiko
Executive Director,
KEY Project

Miwa Tamanaha
Deputy Director,
Kua'āina Ulu 'Auamo

HACBED Staff

Brent N. Kakesako
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Keoki Noji
Chief Operating Officer

Athena T. Esene
Bookkeeper & Office Manager

Malachi Krishok
Program Coordinator

Will Simmons
AmeriCorps VISTA

Avemaōe Galeai
Bookkeeping Intern

Foley Pfalzgraf
AmeriCorps VISTA

Date: February 25, 2017
To: Senator Rosalyn H. Baker, Chair, Senator Clarence K. Nishihara,
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: Strong Support for SB286

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

The Hawai'i Alliance for Community-Based Economic Development (HACBED) strongly supports SB286, which provides a number of critical protections for consumers who take out a payday loan, including specifying a right to rescind, offering the option for conversion into an installment loan, protecting against harmful collection practices, requiring a check casher to provide a written agreement to the customer, and capping the annual percentage rate at 36%.

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 Hawai'i VITA and Financial Empowerment Program for seven years, 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 strongly supports the proposed bill that would provide a number of critical consumer protections for those who take out a deferred deposit agreement, more commonly known as a payday loan.

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, through the intensive analysis of data from 2012 and 2013, the Consumer Financial Protection Bureau 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. SB286 provides a number of critical protections for consumers who are forced to take out a payday loan:

- *Providing Choice & Control* – specifying that a customer has the right to rescind a payday loan by returning the principal amount and permitting a customer to convert a payday loan into an installment loan plan in certain circumstances with specific requirements.
- *Protecting Families* – ensuring those who take out a payday loan are not subject to harmful collection practices, permitting prepayment of payday loans with no additional fees, and requiring a check casher to provide a clear written agreement – all of which are something more mainstream loan products take for granted.
- *Ensuring Transparency and Fairness* – defining the annual percentage rate and capping it at 36%, which follows the precedent set by the U.S. Dept. of Defense and respects the findings of the FDIC, which indicate that small dollar lenders can safely and profitably lend to consumers at this rate.

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 strongly support the passage of SB286.

Mahalo for this opportunity to testify,

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



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai'i Appleseed Center for Law and Economic Justice
Supporting SB 286 Relating to Check Cashing
Senate Committee on Commerce, Consumer Protection and Health
Scheduled for Hearing Monday, February 27, 2017, 9:30 AM, Conference Room 229

Hawai'i Appleseed Center for Law and Economic Justice Hawai'i 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.

Dear Chair Baker, Vice Chair Nishihara, and Members of the Committee on Commerce, Consumer Protection and Health:

Thank you for the opportunity to testify in support of SB 286, which would enact a number of important consumer protections for deferred deposit agreements, commonly referred to as payday loans. As advocates for economic justice and low-income families and individuals throughout Hawai'i, we firmly support greater protections for low-income workers from predatory lending practices.

Some of the protections that would be adopted by SB 286 include the following:

- granting a right to rescind the loan agreement by returning the full amount of the loan within one business day of the origination date;
- allowing customers to convert a payday loan into an installment loan plan if the customer will be unable to timely repay the loan prior to the loan's maturity;
- protecting against harmful and harassing collection practices; and
- capping the annual percentage rate (APR) on payday loans at 36%.

These protections are important because they help payday loan customers avoid the "debt trap" that is so often associated with these types of loans. While payday lending is indicative of broader issues of financial insecurity facing low-income people, these kinds of high interest loans only make a borrower's financial situation even more precarious. According to the Center for Responsible Lending, only two percent of borrowers can afford to pay off the loan the first time. As a result, four out of five payday loan borrowers either default or renew a payday loan over the course of a year. The average payday loan borrower remains in debt for more than six months.

The protections of SB 286 will help consumers avoid severe financial consequences that so many face as a result of payday loans. The 36% APR cap is particularly important, as it is the only proven,

meaningful way to protect borrowers from high-cost lending. The current fee cap of 15% amounts to a 459% APR that is the primary cause of the payday loan debt trap. Hawai'i has the opportunity to end this exploitative interest rate by imposing a reasonable cap of 36% APR.

The APR takes into account the amount of the loan, any fees or interest, and the length of the loan. It allows borrowers to make an apples-to-apples comparison between lenders and loan options and assess their risk and ability to repay the loans. For these reasons, the federal Truth in Lending Act requires payday lenders to disclose **both** the fees as well as the equivalent APR. This law, passed in 1968, demonstrates the longstanding recognition of the APR as a consumer protection tool that helps put borrowers on a fair playing field with lenders. In 2000, the Federal Reserve Board formally clarified that this requirement does apply to payday lenders, reaffirming the importance the APR for consumers.

Sixteen states have already taken action and implemented an APR cap of 36% or below while still allowing affordable small loans. The federal government has also recognized the dangers of payday loans and imposed a 36% APR cap for loans made to active duty military members and their families.

We recognize that residents, including low-income workers, may sometimes need small dollar loans. But there are a number of safe, regulated small dollar loans with interest rates far below payday loans. Small dollar lenders can indeed safely lend at an APR of 36% or less, according to recent research from FDIC.

By adopting the protections proposed by SB 286, Hawai'i consumers will be better able to avoid the harmful consequences so many currently face as a result of exploitive payday loans. Thank you very much for hearing and considering this important bill.