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**LATE**

To: The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Senate Committee on Ways and Means

Date: Wednesday, February 21, 2018  
Time: 10:08 A.M.  
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: S.B. 3008 S.D. 1, Relating to Payday Lending

The Department of Taxation (Department) offers the following comments regarding S.B. 3008, S.D. 1, for your consideration.

Among other things, S.B. 3008, S.D. 1, specifies that 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 on 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.



DAVID Y. IGE  
GOVERNOR

DOUGLAS S. CHIN  
LIEUTENANT 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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JO ANN M. UCHIDA TAKEUCHI  
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TO THE SENATE COMMITTEE ON  
WAYS AND MEANS

TWENTY-NINTH LEGISLATURE  
Regular Session of 2018

Wednesday, February 21, 2018  
10:08 a.m.

**LATE**

**TESTIMONY ON SENATE BILL NO. 3008, S.D. 1, RELATING TO PAYDAY  
LENDING.**

TO THE HONORABLE DONOVAN M. DELA CRUZ, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on S.B. 3008 S.D. 1, Relating to Payday Lending. 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 with suggested amendments.

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; and (4) specifying licensing requirements for small dollar lenders. The bill would enact a new chapter of the Hawaii Revised Statutes (“HRS”), to be administered by DFI, entitled “Small Dollar Installment Loans” (“new chapter”).

The bill describes a “small dollar loan” (“loan”) as a consumer loan subject to requirements. Small dollar lenders must be licensed with DFI. 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, with a qualified individual physically present there to oversee and manage it. Licensees may make small dollar loans online.

DFI may examine and investigate a licensee at the licensee’s expense. Books and records must be maintained for at least six years. There are restrictions on assignment and sale of instruments, as well as 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 Amendment**

The Department suggests amending a provision of the new chapter as follows. “Interest” rate is addressed in new chapter section -4 on bill page 14. DFI suggests using a new term, “total fees,” to avoid confusion as interest rate is a defined term in the financial industry.<sup>1</sup>

Thank you for the opportunity to share the Department’s comments.

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<sup>1</sup> Interest rate is an amount of money due per period, as a proportion of the amount lent, deposited, or borrowed.

# Maui Loan Inc.

**LATE**

February 19, 2018

Senator Donovan M Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
And Members of the Senate Committee on Ways and Means  
Hawaii State Legislature  
Honolulu, HI 96813

FROM: Richard Dan, Operations Manager, Maui Loan Inc.

Dear Chair Dela Cruz, Vice Chair Keith-Agaran and Members of the Senate  
Committee on Ways and Means

**SUBJECT: SB 3008 SD1 – RELATING TO PAYDAY LENDING**

(Hearing Date: Wednesday, February 21, 2018; Room 211)

Thank you for letting me testify again on the small loan business in Hawaii. I have been a small loan lender statewide in Hawaii for three decades and for forty-two years in Maui County. My business is a small mom and pop operation, employing from ten to over a dozen employees at any given time. I **oppose** SB 3008 SD1 – Relating to Payday Lending.

Here we are once again, session after session trying to fix something that isn't broken, because so far no one has shown that there is a problem with the small loan business in Hawaii that needs fixing.

The introducers of these various bills have relied heavily on reports from a pressure group, the Pew Charitable Trusts, which looked at payday lending across the nation. I am the first to admit that in other states there are serious problems with some of these loans, and there is a superstrate problem with unregulated Internet lenders. Other states have different laws, for example allowing loans on auto titles.

However, there has been no testimony from Hawaii consumers along these lines. The closest came from a woman who with her husband had taken out seven payday loans. That is already illegal in Hawaii and always has been.

Nothing in SB 3008 SD1 changes that. In fact, and this stuns me, SB 3008 SD1 takes away the single most important provision that protects borrowers, which is that they cannot have more than one small loan at a time. Not one small loan per lender, one small loan period.

Senator Donovan M Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Senate Committee on Ways and Means

**SB 3008 SD1 – RELATING TO PAYDAY LENDING**

February 19, 2018

Page 2

The law as it stands now, safeguards the consumer from being trapped in a cycle of debt to a payday lender, because at the end of the loan the borrower can walk away. If the borrower has not paid their balance, they still will owe it, but that's true of any unpaid balance with credit cards or any other type of loan. Nothing the payday lender can do can trap the consumer in a cycle of debt.

If you're concerned about people who choose to pay off one loan and then take out a new loan, I have proposed a simple solution: Impose a three-day waiting period between the end of one payday loan and taking out a new one.

That's it. None of the other burdensome provisions in this bill are required or warranted.

That is my testimony in general. But I have some objections to specific parts of the proposed legislation.

First, the background check does not address any problem that anyone has ever alleged in Hawaii, and it conflicts with State law and federal regulation. Both limit looking back at criminal records to the past 10 years.

Hawaii law provides protection for arrest and correct record for prospective and actual employees. Hawaii Revised Statutes section 378-2.5(c), says employers can inquire into an individual's criminal conviction record, provided that the "period shall not exceed the most recent 10 years, excluding periods of incarceration."

This time limit is also found in Rule 609(b) of the Federal Rules of Evidence.

If included at all, this requirement should apply to new as well as to existing lenders in Hawaii. However, this requirement will not do anything to reduce the cost to borrowers, which is supposed to be your goal. These background checks will be very costly. We are talking about small loans and therefore about small amounts of money. Local lenders — the kind you can effectively regulate — make small numbers of loans. These costly regulations will tend to eliminate locally owned and operated small lending businesses.

And that appears to be exactly the purpose of this legislation. The concept of this bill did not originate in Hawaii and the language as written does not benefit Hawaii's local consumers and small businesses. It was written for the benefit of a big national lending company, Dollar Financial, and while it may suit Dollar Financial's business model it does not do anything for island borrowers. Similar legislation has failed to pass in other states.

Senator Donovan M Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Senate Committee on Ways and Means

**SB 3008 SD1 – RELATING TO PAYDAY LENDING**

February 19, 2018

Page 3

Second, in section 34 there is a vague prohibition against licensing any business that has made an Internet loan in violation of this section. I don't know what this means. My business makes Internet loans. Maui County is a multi-island county; no one is going to spend \$400 for a plane tickets in order to secure a \$200 loan.

I suspect that this line is a gesture toward attempting to impose the State's authority on the totally unregulated Internet payday lending business. I wish you could do that. It would certainly be better if you could drive these unregulated internet lenders away. No other state has been able to do it, and you are not going to be able to do it.

I have no confidence that this Legislature will even attempt to find the kind of money and resources that it would take for financial regulators to do anything about the World Wide Web.

Do not fool yourselves. You are the Hawaii Legislature. You have helped prevent the worst *abuses in the small loan industry from establishing themselves in our islands, but you are not* going to fix the problems in Texas and you're not going to fix the problems in the Internet.

Last I note that Civil Beat, which has been running misleading stories about payday lenders in this state for at least three years now, has a new story. It is not as imbalanced and misleading as in past years. If you read all the way to the end you will see that a company called Dollar Financial has spent \$15,000 lobbying on its behalf.

This is special interest legislation masquerading as consumer protection legislation and you should reject it on that ground alone even if it didn't have all the additional flaws which I pointed out to you.

These are just a few comments leading to my **opposition** of this eighty-eight-page proposal. If I can be of assistance in crafting more equitable, accountable and safe legislation as it relates to the matter of small short-term loans and/or payday lending, please contact me at Tel: (808) 242-5555.

Sincerely,

*Richard Dan*

Richard Dan - Maui Loan Inc.



To: Senator Donavan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Committee on Ways and Means

**LATE**

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

February 20, 2018

In opposition to SB3008 SD1

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.

SB3008 SD1 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.

SB3008 SD1 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.

SB3008 SD1 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.

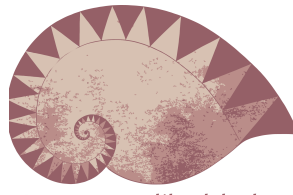
The preamble of the bill cites a study by the Pew Charitable Trust. The Pew Charitable Trust has never studied check cashing businesses operating in Hawaii. Their data and reports are based only on the 48 contiguous states. Often people will take a report from somewhere else. Oregon, North Carolina, and other states. They will try to impose that same situation on Hawaii. 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. SB3008 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.

*\* 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.



Pono Hawai'i Initiative

**LATE**

Josh Frost - President • Kau'i Pratt-Aquino - Secretary • Patrick Shea - Treasurer  
Kristin Hamada • Nelson Ho • Summer Starr

Wednesday, February 21, 2018

Relating to Senate Bill 3008 Senate Draft 1  
Testifying in Support

Aloha, Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members of the Senate Committee on Ways and Means,

The Pono Hawai'i Initiative (PHI) **supports SB3008 SD1 Relating to Payday Lending**, which transitions from lump sum deferred deposit transactions to installment-based small dollar loan transactions. This bill also specifies various consumer protection requirements for small dollar loans and, beginning January 1, 2019, requires and specifies requirements for licensure for small dollar lenders that offer small loans to consumers

This bill would close a 1999 loophole that created unaffordable payday loans and establishes a regulatory structure to ensure installment loans are affordable for working families by allowing them to keep more money in their pockets.

Currently, payday loans charge borrowers 459% APR. This means that \$105 of every \$600 borrowed goes toward interest and fees. Those interest payments are fees is money that often leaves our State economy as profits for off-shore payday lenders. That leaves less money in our economy for homeless services, affordable housing, and critical public programs that have been instrumental in keeping our workers and families in permanent housing.

It is time to close the loophole on payday loans, keep more money in our local economy, and allow working people to keep more of their money.

SB3008 SD1 defines a regulatory structure for installment loans in Hawai'i 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 actually affordable.

Affordable installment loan payments will result in significant savings on interest that borrowers can use to put toward their rent and mortgage, providing more capital for all of us to address our homeless and affordable housing crises.

At a time when Hawai'i reports the highest homeless rate per capita of any state in the nation, when nearly 60% of our renters pay more than 30% of their monthly income on housing, our working people and their families cannot afford to pay the 459% APR on payday loans or unaffordable long-term small dollar installment loans.

It is time to close the 1999 loophole that created unaffordable payday loans. It is time to establish a regulatory structure that ensures installment loans are affordable for locals. And it is time ensure more money remains our local economy and in the pockets of our workers and families.

For all these reasons, we urge you to move this bill forward.

Mahalo,  
Gary Hooser  
Executive Director  
Pono Hawai'i Initiative, an organization member of the Common Good Coalition



**LATE**

Board of Directors:

**Senate Committee on Ways & Means**

**Hawai'i Alliance for Progressive Action supports SB3008 SD1**

Gary L. Hooser

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Katie McMillan

Walter Ritte Jr.

Karen Shishido

Leslie Malu Shizue Miki

Kekaulike Prosper Tomich

Cade Watanabe

Dear Chair Dela Cuz, Vice Chair Keith-Agaran, and members of the Committees,

On behalf of the Hawaii Alliance for Progressive Action (HAPA), I am testifying in support of SB3008 SD1.

HAPA is a statewide environmental, social and economic justice organization. HAPA engages over 10,000 local residents annually through our work.

SB3008, SD1 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**

SB3008, SD1 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.

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 SB3008, SD1.**

Respectfully,

Anne Frederick, Executive Director  
Hawai'i Alliance for Progressive Action (H.A.P.A.)

**LATE**

**SB-3008-SD-1**

Submitted on: 2/20/2018 3:04:45 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Choon James	Testifying for CountryTalkStory.com	Support	Yes

Comments:

**STRONGLY SUPPORT SB 3008 to Limit Loan Sharks %**

Aloha Hawaii legislators:

- It's incredibly awful and egregious that there isn't a law that protects the most vulnerable in our society.
- Why is this so hard for any politician to understand that loan sharking is not a business. 456% Interest? Really? It's legalized gouging and exploitation of poor people. The poor people get poorer in these circumstances. The existing high interest rates are too outrageous!
- 36% is a good start.

Please do something good for the people who need it most this session. Get rid of the outrageous loan sharking interests. Cap it at 36% with no other ties for this session.

Put them on notice that you will reduce it more the next session - this will allow the loan sharks to phase out of this business.

Lastly, if you can give the runaway Honolulu Rail a bailout of \$2.4 BILLION last session, you can set up a little fund to help desperate Hawaii's residents with mini loans at a much lower interest rate than these loan sharks are offering.

Mahalo,

Choon James

808 293 9111

ChoonJamesHawaii@gmail.com

**LATE**

**SB-3008-SD-1**

Submitted on: 2/20/2018 4:22:28 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patricia Blair	Individual	Support	No

Comments:

**LATE**

**SB-3008-SD-1**

Submitted on: 2/20/2018 5:10:18 PM  
Testimony for WAM on 2/21/2018 10:08:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Barry	Individual	Support	No

Comments:

Aloha,

I strongly support SB 3008. Raising the minimum wage to 15.00 as well.

## Study: Hawaii Residents Are The Deepest In Debt

Hawaii residents don't earn enough money to offset expensive rent, student loans and consumer debt.

By [Anita Hofschneider](#) / About 2 hours ago

Share [6](#)

In a recent study of household debt, Hawaii came in dead last.

Residents of the Aloha State are paying more debt relative to their incomes than residents of any other state, according to a [new analysis from Credible](#), a company that helps consumers compare loan terms.

The study found Hawaii residents on average spend more than 36 percent of their income on debt. Washington came next, with just over 32 percent.





Money Mart on Atkinson Drive offers cash-strapped consumers payday loans at 459 annual percent rate.

Cory Lum/Civil Beat

Hawaii residents generally spend \$238 per month on credit card debt, higher than the national average of \$207. Only Minnesota residents have higher monthly credit card debt at \$241 per month.

The average student loan payment is \$385 per month in Hawaii, just up from the national average of \$370. The average monthly housing payment in the Aloha State is \$1,091 — the fourth highest in the nation. The national average for housing costs was \$906.

Overall, the study found the average monthly debt in Hawaii is \$1,714, compared to the national average of \$1,500 per month for debt including credit card bills, student loans and housing.

The debt wouldn't be so burdensome if incomes were higher. But the study found the average income in Hawaii is \$56,889. That's a lot lower than other expensive states like New York, where the average income is nearly \$65,000 or California, where the average income exceeds \$71,000.

The results aren't surprising in Hawaii, where the [high cost of living](#) is a persistent problem and salaries are [unusually low](#). The state is largely dependent on the tourism and service industries and lacks the same number of high-paying jobs you can find in the Bay Area or New York.

Credible's findings are in line with previous similar studies. Last year, the state Department of Business, Economic Development and Tourism found Hawaii's [total consumer debt per capita](#) was the second highest in the nation.

A study from a local nonprofit in January found nearly half of Hawaii residents [struggle to make ends meet](#) and [another study by the real estate website Apartment List](#) last fall found that paying rent in Hawaii just keeps getting harder.

The high cost of living is part of the reason why lawmakers are considering raising the minimum wage and increasing regulations for [high-interest payday loans](#).

Mahalo,

Ms. Barbara Barry

**LATE**

**SB-3008-SD-1**

Submitted on: 2/21/2018 5:50:48 AM  
Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
DONNIE BECKER	Individual	Support	No

Comments:

"MOST PAY DAY LOANS ARE UN-AFFORDABLE".....

THUS TAKING ADVANTAGE OF THE UN-ADVANTAGED.....~!!

THIS IS PLAIN WRONG HAWAII.....

**LATE**

**SB-3008-SD-1**

Submitted on: 2/21/2018 11:05:03 AM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marion McHenry	Individual	Support	No

Comments:

I strongly support this measure to protect the vulnerable public using these services.

**LATE**

**SB-3008-SD-1**

Submitted on: 2/21/2018 2:32:52 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Samuel John	Individual	Support	No

Comments: