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Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Consumer Protection and Commerce
Tuesday, March 19, 2019
2:00 p.m.
State Capitol, Conference Room 329

On the following measure:
S.B. 537, S.D. 2, H.D. 1, RELATING TO CONSUMER PROTECTION

Chair Takumi and Members of the Committee,

My name is Iris Ikeda, and I am the Commissioner of Financial Institutions for the Department of Commerce and Consumer Affairs' (Department) Division of Financial Institutions (DFI). The Department supports sections 2 through 8 (pages 4-85) of H.D. 1, requests amendments to the appropriation amount and effective date, and offers comments on the remaining sections of the bill.

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, 2020, requiring licensure for small dollar lenders that offer small dollar loans to consumers; (4) specifying licensing requirements for small dollar lenders; and (5) authorizing the DFI to establish and hire two full-time equivalent permanent examiners to carry out the purposes of the small dollar installment loan program, funded via an increase to the ceiling of the Compliance Resolution Fund (CRF).

The Department supports sections 2 through 8 of H.D. 1, as it establishes a small dollar installment loan program that will enable the DFI to provide a level of protection that is not currently available to consumers. The Department also notes that H.D. 1 may treat in-state small dollar lenders differently than internet small dollar lenders by requiring in-state small dollar lenders to pay a higher licensing fee based on the number of branches in the State. In contrast, internet lenders do not have in-state branches.

Section 9 of H.D. 1 substantially revises Hawaii Revised Statutes (HRS) chapter 480F by, among other things, adding to the existing check cashing chapter a licensing law under the DFI's jurisdiction, while still providing that violations are within the jurisdiction of the Department's Office of Consumer Protection (OCP). In doing so, H.D. 1 creates two internally inconsistent forms of DFI regulation for the same activity (small dollar installment loans and check cashers), while maintaining the OCP's existing regulatory role. Therefore, the Department recommends that the Committee adopt one form of regulation by removing section 9.

Section 11 of H.D. 1 provides for appropriations but does not specify any CRF appropriation amount. As noted in the Department's prior testimony, two permanent examiner positions will be necessary to carry out the purposes of this program. Each DFI program is staffed with examiners who are trained to review the program parameters and to respond to questions from the industry and consumers. For this new program, one examiner position will be required to establish the program for the industry, and one examiner position will be required to conduct examinations and investigations. As such, the Department requests an appropriation of $220,941 from the CRF to establish the two permanent examiner positions, including employee benefits. This timing will allow the DFI to set up the program in fiscal year 2020 and open the application process on January 1, 2020. During this period, the DFI will reach out to the industry and provide education about Hawaii's laws. Meanwhile, the companies in the application process can continue to operate under the new laws while the DFI reviews the application.

Section 12 of H.D. 1 provides that the State Auditor shall conduct a sunrise analysis. The Department respectfully submits that a sunrise analysis is not necessary or required by HRS chapter 26H, whose purpose at enactment was to address the "growing concern over the rapid proliferation of licensing boards and commissions. . . ." (Act 70, Session Laws of Hawaii 1977). This proposal does not create new regulatory oversight that would subject unregulated professions and vocations to licensing or other regulatory controls.

Finally, the Department requests amending the effective date from July 1, 3000, to the following: "This Act shall take effect on July 1, 2019; provided that the licensing requirements for small dollar lenders established by section 2 of this Act shall take effect on January 1, 2020." This tiered effective date will allow the DFI to hire a staff person to establish the program and allow the industry time to create the required disclosures.

Thank you for the opportunity to testify on this bill.

STATE OF HAWAIʻI
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
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LESLIE H. KONDO
State Auditor

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HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair

S.B. NO. 537, S.D. 2, H.D. 1, RELATING TO CONSUMER PROTECTION

Hearing: Tuesday, March 19, 2019, 2:00 p.m.

The Office of the Auditor has **no position** regarding S.B. No. 537, S.D. 2, H.D. 1, which proposes, among other things, registration of "check cashers" and "small dollar lenders" who conduct business in the State and requires the Office of the Auditor conduct a "sunrise analysis of the regulation of payday lenders and deferred deposit transactions and its impact on consumer protection in the State." **However, we offer the following comments.**

First, we note that the Hawaiʻi Regulatory Reform Act, Chapter 26H, Hawaiʻi Revised Statutes (HRS), requires any new regulatory measure that would subject unregulated professions and vocations to licensing or other regulatory controls be referred to our office by concurrent resolution. *See* Section 26H-6, HRS. We assess the probable effects of the proposed regulatory measure and whether the proposed regulation is consistent with the policies in Section 26H-2, HRS.

S.B. No. 537, S.D. 2, H.D. 1, requires us to specifically examine the following areas:

1. The increasing impact of out-of-state internet lenders who operate in the State;
2. Data regarding consumer complaints;
3. The impact of Chapter 480F, HRS, on consumers within the State over the past fifteen years; and
4. Any further measures necessary for increased consumer protection in the State.

However, we note that, under the Hawaiʻi Regulatory Reform Act, our analysis of proposed regulatory measures is based on statutory criteria identified in Section 26H-2, HRS.

Lastly, for the committee's reference, our office conducted a sunrise analysis of proposed amendments to Hawaii's check cashing laws, Chapter 480F, HRS, and issued Report No. 05-11, *Sunrise Analysis: Check Cashing and Deferred Deposit Agreements (Payday Loans)*. That report is available here: http://files.hawaii.gov/auditor/Reports/2005/05-11.pdf.

Thank you for considering our testimony related to S.B. No. 537, S.D. 2, H.D. 1.

SB-537-HD-1
Submitted on: 3/17/2019 8:39:11 PM
Testimony for CPC on 3/19/2019 2:00:00 PM

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

Comments:

RE: Testimony in Opposition of SB 537 sd2 hd1

My name is Richard Dan. My wife and I have operated Maui Loan Inc., a company on Maui for decades. I oppose SB 537 sd2 hd1 because there is no problem that needs to be addressed. Since the sunrise report in 2005 there's been plenty of opportunity for any problems to be brought to the attention of the legislature and that hasn't happened.

Complaints about locally owned and operated deferred deposit institutions are insignificant, almost unknown.

The abuse of borrowers comes from the unregulated Internet lenders based outside the state of Hawaii and beyond the control of this legislature. Regulation of local lenders would only push local borrowers into the arms of the unscrupulous Internet lenders.

State legislative committees have looked at deferred deposit lending since the sunrise audit and over a dozen years have not felt the need to do anything. This was prudent.

Sincerely,

Richard Dan

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Ph: 808-587-7886
Toll Free: 1-866-400-1116
www.hawaiiancommunity.net

March 18, 2019

House Committee on Commerce and Consumer Protection
March 18, 2019, 2:00pm
Conference Room 329

SB537, SD2, HD1 - OPPOSE

Aloha Committee Chair, Vice-Chair, and Members:

I am submitting testimony in my capacity as Executive Director of Hawaiian Community Assets (HCA), a nonprofit community development corporation, HUD-approved housing counseling agency, and community development financial institution to **OPPOSE SB537, SD2, HD1 and recommend the committee to pass SB537, SD2 instead.**

SB537, SD2, HD1 includes that is in opposition to the original intent of the bill. The original bill was intended to close the loophole that created unaffordable payday loans in 1999, establish a regulatory structure to ensure installment loans are affordable for our residents, and keep more money in the pockets of our workers and families for rent and mortgage payments.

We recommend the committee pass SB537, SD2 instead of SB537, SD2, HD1 to maintain the intent of the original bill.

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
SB537, 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. **OPPOSE SB537, SD2, HD1 and pass SB537, SD2.**

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

Jeff Gilbreath
Executive Director

SB-537-HD-1
Submitted on: 3/18/2019 1:49:22 PM
Testimony for CPC on 3/19/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carl Bergquist	Drug Policy Forum of Hawaii	Oppose	No

Comments:

Chair Takumi, Vice Chair Ichiyama, Committee Members:

The HD1 version of this bill no longer comports with the stated purpose of the bill "to encourage transparency, increase consumer protection in the payday lending industry, and improve the well-being of Hawaii consumers."

The Committee Report (SSCR 371) from the Senate Commitee on Commerce, Consumer Protection and reads, in part:

> [C]urrent laws allow payday lenders to prey on economically vulnerable workers in the State and trap them in cycles of unaffordable debt. Your Committee notes that without strong consumer protections in the payday loan industry, payday loan borrowers may find such debt overwhelming and may be unable to pay rent and basic living expenses, thus further contributing to the State's homelessness crisis.

Further, in its report (SSCR 1068) the Senate Commitee on Ways & Mean reported that the:

> measure will encourage transparency and increase consumer protection in the payday lending industry

Conversely, the amendments made by the House Committee on Intrastate Commerce undermine the purpose of the bill as well as spirite of those two committee reports that highlighted amendments that actually improved the chances of achieving its purpse.

As currently writte, the bill does not protect consumers to the extent necessary and can help trap them in a debt spiral resulting in homelessness.

Accordingly, we ask that you revert to the SD2 version of this bill.

Mahalo for the opportunitu to testify.

CATHOLIC CHARITIES HAWAIʻI

TESTIMONY IN SUPPORT OF SB 537 SD1 HD1: Relating to Consumer Protection

TO: Representative Roy Takumi , Chair, Representative Linda Ichiyama, Vice Chair; and Members, Committee on Consumer Protection and Commerce
FROM: Betty Lou Larson, Legislative Liaison, Catholic Charities Hawaiʻi
Hearing: Tuesday, 3/19/19; 2:00 PM; CR 329

Chair Takumi, Vice Chair Ichiyama, and Members, Committee on Consumer Protectin and Commerce:

Thank you for the opportunity to provide testimony **in support** of **SB 537 SD1 HD1**, which provides various consumer protection requirements for small dollar loans. I am Betty Lou Larson, with Catholic Charities Hawaiʻi.

Catholic Charities Hawai`i (CCH) is a tax exempt, non-profit agency that has been providing social services in Hawai`i for over 70 years. Our mission is to provide services and advocacy for the most vulnerable in Hawai`i. CCH's advocacy priority is reducing poverty in Hawaiʻi. This bill would be a first step towards making payday loans more manageable for consumers, thereby helping them to avoid a debt trap.

In 2006 the U.S. Department of Defense made it illegal to make loans with interest rates greater than 36% APR to active-duty service members and their families. Currently, 17 other states have adopted this policy and protected their consumers while allowing affordable small loans. At this rate of interest, borrowers are more likely to be able to pay back their loans without rolling them over into another loan and accruing more debt. Our local people deserve the same protection!

In Hawaiʻi many people are struggling with the high cost of living and may resort to these loans. People living below the poverty line are especially hard hit in Hawaii, with the highest cost of shelter in the country. A family of four in Hawaii pays 68% more for food than families on the mainland[1]. The January 2018 "ALICE" report from Aloha United Way found **that nearly half of isle households are living on a survival budget**, with barely enough to cover basic needs, much less save for an emergency. This population is frequently teetering at the brink of homelessness. Any change to their financial situation like a decrease in wages or increase in rent might tip them over into homelessness. Some may use a payday loan to get by.

Yet, a 2017 analysis found that 4 out of 5 payday loans were rolled over, since the borrower was not able to repay the loan on time. It is critical that action be taken to resolve the debt trap often created by these loans. The high interest on these loans (e.g 459% APR) threaten families' housing stability. This pathway INTO homelessness must stop.

We urge your support. We appreciate this opportunity to discuss one of the challenges faced by people living with low wages and low incomes. Please contact me at 373-0356 or bettylou.larson@catholiccharitieshawaii.org, if you have any questions.

[1] Based on the U.S. Department of Agriculture's Thrifty Food Plan, which is used as the basis for Supplemental Nutrition Assistance Program benefits. See http://www.cnpp.usda.gov/usdafoodplanscostoffood.htm.

Mental Health America of Hawai`i

1136 Union Mall, Suite 510
Honolulu, Hawaii 96813
P 808.521.1846 |
mentalhealthhawaii.org

Helping Hawai'i Live Well

To: Representative Roy Takumi, Chair, Representative Linda Ichiyama, Vice Chair, Members, House Committee on Consumer Protection and Commerce

From: Trisha Kajimura, Executive Director

Re: TESTIMONY IN OPPOSITION TO SB 537 SD2 HD1 Relating to Consumer Protection
Hearing: March 19, 2019, 2:00 pm, CR 329

Thank you for hearing our testimony **in opposition to Senate Bill 537 SD2 HD1. We support the SD2 version of this bill,** 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 77 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.

Payday Loan Services allow for quick, short-term loans in times of need. However, these loan services often operate in predatory ways such as stipulating high interest rates, conducting business without a license or from outside of the U.S., and including hidden fees in term agreements. These often result in becoming stuck in a cycle of debt, vulnerable to scams, potentially losing money as well as being at risk for identity theft.[1] Most borrowers, about 69%, use payday loans to cover ordinary living expenses such as rent, food, bills, etc. as opposed to unexpected emergencies.[2] Taking into account a person who is living paycheck-to-paycheck, these payday loans only exacerbate the cycle of debt which can have some negative mental health implications. Research has shown that financial difficulties are associated with stress, anxiety, depression, mental illness and suicide.[3]

Thank you for considering my **testimony in opposition to SB 537 SD2 HD1**. ***Please bring back the SD2 version.***

[1] Huffington Post – 5 Ways to Protect Yourself from Payday Loan Scams (https://www.huffingtonpost.com/nextadvisorcom/5-ways-to-protect-yoursel_b_5638533.html)

[2] The PEW Charitable Trusts – Payday Lending in America (http://www.pewtrusts.org/en/multimedia/data-visualizations/2012/payday-lending-in-america)

[3] Moore, T. H. M., Kapur, N., Hawton, K., Richards, A., Metcalfe, C. & Gunnell, D. (2017). Interventions to reduce the impact of unemployment and economic hardship on mental health in the general population: A systematic review. *Psychological Medicine, 47*(6), 1062-1084.

SB-537-HD-1
Submitted on: 3/18/2019 2:00:22 PM
Testimony for CPC on 3/19/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dawn Morais Webster Ph.D.	Individual	Oppose	No

Comments:

Dear legislators: we are counting on your leadership and compassion. Please, please, let's not make a mockery of policy that purports to protect those desperate for financial assistance from being preyed upon by pay day lenders who have to date shown no evidence of common decency or fairness. 459% APR?? Is it any wonder Honolulu is the houseless capital of the nation? Shylock would hang his head in shame.Public policy should serve the public, not those who undermine the common good as this bill in its current form does. Please pass SB 537 SD 2 instead and give our struggling working families some real relief instead of fattening the bottom line of the pay day lenders who are more committed to gouging than to providing reasonable loans on which they can earn reasonable interest, not a pound of flesh. Thank you for protecting the poor from the rapacious greed of an industry without a conscience.Mahalo for defending the defenceless.

SB-537-HD-1
Submitted on: 3/18/2019 2:58:36 PM
Testimony for CPC on 3/19/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
R. Craig Schafer	Money Service Centers of Hawaii, Inc.	Support	No

Comments:

Testimony of Hawai‘i Appleseed Center for Law and Economic Justice
In Opposition to SB 537 SD2 HD1 -- Relating to Consumer Protection
House Committee on Consumer Protection & Commerce
Tuesday, March 19, 2019, 2 PM, conference room 329

Dear Chair Takumi, Vice Chair Ichiyama, and members of the Committee:

Thank you for the opportunity to provide testimony in **OPPOSITION** to **SB 537 SD2 HD1**.

SB 537 is the companion bill to HB 79, which was introduced by the chair and vice-chair of this consumer protection committee. These bills originally would have closed the loophole that created unaffordable payday loans in Hawai‘i and established a regulatory structure to make sure that installment loans are affordable for our residents.

Unfortunately, the HD1 version of SB 537 has stripped out the components that would have achieved the original goals of this bill. Instead, the HD1 version fails to close the payday loan loophole and creates a small dollar lending structure that favors payday lenders' interests over those of consumers.

It is estimated that payday loans in Hawai‘i charge borrowers an astounding 459 percent annual 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, people who take out paydays loans – most of whom are in low-income or working-class households – 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.

In order to restore the original intent of this bill – to protect consumers who take out payday loans – we urge the committee to restore SB 537 to its SD2 version. That would help keep more money in the pockets of our local workers, families, and businesses and, as a result, improve our local economy.

We appreciate your consideration of this testimony.

Hawai‘i Appleseed Center for Law and Economic Justice 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.

Hawaii Habitat for Humanity® Association

Building strength and stability through shelter

March 18, 2019

House Committee on Commerce and Consumer Protection
Tuesday, March 19, 2019, 2:00 pm
Conference Room 329

SB537, SD2, HD1 – Relating to Consumer Protection

Aloha Committee Chair, Vice-chair, and Committee Members:

I am submitting testimony on behalf of Hawaii Habitat for Humanity and five 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. Hawaii Habitat for Humanity is a Department of Treasury certified nonprofit Community Development Financial Institution (CDFI). I write to **OPPOSE SB537, SD2, HD1 and recommend the committee pass SB537, SD2 instead**.

SB537, SD2, HD1 includes language that is in opposition to the original intent of this bill. The original bill was intended to close the loophole that created unaffordable payday loans in 1999, establish a regulatory structure to ensure installment loans are affordable for our residents and keep more money in the pockets of our workers and families for rent and mortgage payments.

We recommend the committee pass SB537, SD2 instead of SB537, SD2, HD1 to maintain the intent of the original bill.

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. However, predatory lending has always undermined those efforts. Without strong lending standards, payday lending threatens the housing security of families by unfairly increasing their debt and placing them into a continuous cycle of financial distress. Habitat homebuyers and potential homebuyers are representative of the population that is inundated with payday lenders because they are low-income and have greater economic instability. Because outstanding payday loan debts are rarely reported and virtually invisible in credit reporting systems, some Habitat homeowners enter into their mortgages with outstanding payday loan debt. This debt undermines Habitat's family selection and underwriting process and threatens the homeowners' ability to repay their mortgages.

Makes Installment Loans Affordable for Workers and Families
SB537, 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 higher. This requirement will achieve the bill's intended goal of ensuring installment loans that are affordable for Hawaii's borrowers.

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. While these loans are not always an ideal option, they are options that struggling families will consider in order to get by.

Please protect Hawaii's low-income families and specifically provide options that will not jeopardize their ability to afford decent homes.

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,

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

Pono Hawai'i Initiative

Tuesday, March 19, 2019

Senate Bill 537 SD2 HD1
Testifying in Opposition

Aloha, Chair Takumi, Vice Chair Ichiyama, and Members of the Committee on Consumer Protection & Commerce,

The Pono Hawai'i Initiative (PHI) **opposes SB537 SD2 HD1 Relating to Consumer Protection**, which establishes installment-based small dollar loan transactions, specifies various consumer protection requirements for small dollar loans and requires licensure for small dollar lenders beginning 1/1/2020. Additionally, the bill establishes licensing and operational requirements for payday loans and requires that check cashers offer specified voluntary payment plans, establishes notice requirements, and establishes investigatory enforcement authority of the Commission of Financial Institutions.

The bill in its current form is antithetical to the bill's original intent, which was to close the 1999 loophole which created unaffordable payday loans. The House Draft 1 is a giveaway to payday lenders, while doing nothing to close the 1999 loophole.

Consider amending the bill to the Senate Draft 2 language.

As it stands now, payday lenders charge borrowers 459% interest, taking advantage of individuals and families in precarious financial situations and ensuring they can never climb out. What's more, many if not all of these lenders are based elsewhere, which means not only are payday lenders predatory, but the money they make leaves Hawaii forever.

While the legislature makes efforts to address Hawaii's high cost of living, housing shortage, and widening wealth gap, it should consider far stiffer oversight and restrictions on payday lenders.

For all these reasons, we urge you to either amend this bill to the Senate Draft 2 language, or hold the bill.

Mahalo for the opportunity to testify,
Gary Hooser
Executive Director
Pono Hawai'i Initiative

DFC GLOBAL CORP

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Malvern, PA 19355
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March 18, 2019

Honorable Roy M. Takumi, Chair
Honorable Linda Ichiyama, Vice Chair
Committee on Consumer Protection and Commerce
House of Representatives
415 S. Beretania Street
Honolulu, Hawaii 96813

Re: SENATE BILL NO. 537, HOUSE DRAFT 1 RELATING TO CONSUMER PROTECTION

Dear Chair Takumi, Vice Chair Ichiyama and Committee Members:

On behalf of Dollar Financial Group ("DFG"), we respectfully submit the following testimony in SUPPORT of Senate Bill No. 537, House Draft 1 (SB 537), which will be heard by your Committee on Consumer Protection and Commerce on March 19, 2019.

The purpose of SB 537, relating to consumer protection, is to establish licensing and operations requirements for check cashers that offer deferred deposit transactions (so-called "payday loans") and to authorize lower priced, longer term installment loan transactions.

Currently, deferred deposit transactions, which are authorized under chapter 480F, Hawaii Revised Statutes, represent the only available source of small dollar, short-term credit to the underserved credit market in Hawaii. These non-prime consumers, approximately 160 million in the US and Canada, now represent a larger customer segment than prime consumers but are not able to be serviced and underwritten with traditional prime lending products. Non-prime consumers, including thousands of residents of Hawaii, struggle with unexpected financial hardships daily—many of them are shut out of the traditional financial services market, unable to obtain credit from banks or credit unions.

- A recent Federal Reserve report found that nearly half of the people surveyed said they could not cover a hypothetical emergency expense of $400, and the CFPB's first national survey on financial well-being found that more than 40% of U.S. adults struggle to make ends meet. For years, millions of Americans have relied on small-dollar loans to weather unexpected expenses such as medical bills or car repairs.
- According to a recent survey by a strategic research firm, 94% of small-dollar loan borrowers consider obtaining such loans to be a rational decision when they are faced with these unexpected expenses or to avoid far more expensive alternatives, including

bank fees (including overdraft protection and bounced checks), cancellation or late charges (including penalties for late bill payments) and unregulated or illegal loans.

Because credit pricing is determined by repayment risk and this non-prime market segment has a substantially higher credit risk than that of prime consumers, the pricing of non-prime credit products necessarily must be higher than prime credit products in order to support a viable non-prime lending market. In addition, the credit products tailored for this non-prime consumer segment present unique risk underwriting, information technology, compliance, customer need and operational challenges and requirements that differ substantially from traditional credit products offered to prime consumers. As a result, other lower credit risk lenders (e.g., banks) have been unwilling, and, in many respects, unable, to service this non-prime market. DFG and most industry observers do not expect this to change. The alternative financial products available to this non-prime market segment, such as check overdrafts, unregulated internet lending or loan sharks, can be costlier and overall less desirable than appropriately structured deferred deposit and installment lending products. With the adjustments to SB 537 made by House Draft 1, non-prime consumers in Hawaii will have better options.

DFG currently is the largest non-prime, small-dollar lender in the State of Hawaii, with 8 places of business, employing 32 employees, with over 21,000 customers within the state. DFG is a leader in the US and Canada in the transition from payday loans to small dollar installment loans. Over the last three years, installment lending, as a percentage of DFG's overall loan portfolio, has increased from 25% to 81%. DFG has recent experience in other U.S. states, including California and Florida, and in nearly every province in Canada, with the introduction of new, small dollar installment loans similar to what is proposed in SB 537. DFG's subsidiary, Aspen Financial Direct, began operations in 2018 and offers installment loan products online in 13 states. Aspen is licensed and regulated in each state in which it does business. Non-prime consumers in Hawaii would greatly benefit from access to installment lending products such as those DFG has begun providing in these other jurisdictions.

Based on its recent experience, DFG strongly believes that the optimal regulatory framework is one that enables the delivery of appropriately priced products best suited to the needs of its non-prime customers. Depending on the customer's circumstances, a small dollar short term loan may be the best option and, in other cases, a larger, longer term installment loan may be more appropriate. Contrary to the views of many, non-prime customers are capable of making rational and informed loan product choices that suit their particular requirements. When access to small-dollar loans is restricted, consumers are harmed.

- Recognized and respected academic studies have shown that when small-dollar loans are removed as an option, consumers bounced more checks, complained more about lenders and debt collectors, and filed for Chapter 7 bankruptcy at higher rates.
- Recent interpretations by regulators of studies previously relied upon to justify stricter regulatory treatment of small dollar loans now indicate that there is not "a sufficiently

robust and reliable basis" to support the view that consumers fail to understand the risks and requirements of these loans or their ability to repay them.

DFG supports the implementation of a new small dollar installment loan program in Hawaii, such as that proposed by SB 537, House Draft 1. The changes made in House Draft 1 to SB 537 harmonize the installment lending terms with those DFG is complying with in other jurisdictions (in both its retail and online businesses) and, thereby, enable and support an economically viable non-prime lending market in Hawaii.

The economic reality is that there is greater risk associated with lending in this non-prime credit market segment and longer term credit products will introduce even greater degrees of credit risk. This is one of the reasons that other, prime-focused financial institutions are unwilling to extend credit to this market segment and would be even less willing to provide longer term installment loans. Without the adjustments to SB 537 made in House Draft 1, the credit risk associated with this market segment is likely to make the desired small dollar installment loan program economically unsustainable and cause current lenders to this non-prime customer base to substantially curtail lending operations or cease operating in Hawaii entirely. Based on DFG's modeling and its loan loss experience with the non-prime market in Hawaii, without the changes made by House Draft 1, for each dollar of installment loan debt, the interest and fee revenue permitted by SB 537 would barely cover the loan loss reserve that would be necessary for this customer credit class in Hawaii. After accounting for the lender's own cost of funds, its other operating costs and expenses and an expected level of early prepayments, the SB 537 installment loan product without the changes made in House Draft 1 becomes an unattractive product to any lender in Hawaii (even to a financial institution with extremely low funding costs).

Maximum Loan Amount and Affordability Requirements. With respect to the increased loan amount in House Draft 1, because SB 537 includes requirements limiting the amount of monthly payments to specified percentages of the borrower's income, borrowers will be protected against over-extending themselves (DFG's own underwriting controls are also designed to prevent against this). The change made in House Draft 1 also will provide greater flexibility for customers and will more closely align the SB 537 installment lending terms with those for suitable and viable lending products that we now, and are now required to, provide in other jurisdictions. Our recent experience has shown that only when a viable, new installment loan product can be provided to our non-prime customers, can the lending market provide those customers with suitable alternatives to, and facilitate a diversification away from, payday-type products. Based on our risk underwriting and loan loss experience with this particular borrower class, House Draft 1's increase of 1% to the two income affordability measures would not be unreasonable and would appropriately expand access to this needed credit product and provide greater depth to the local lending market.

Fees. As mentioned above, this type of credit product has substantial and extensive operational, compliance, IT and customer service requirements that would justify a moderately higher fee structure and render the product viable for a responsible lender at the authorized interest rate. DFG is a market leader in implementing operations and systems enhancements to make the delivery of credit products to its customers more efficient. Substantial investments in operational improvements, technology and proprietary risk analytics optimized for the non-prime market enable DFG to more effectively scale its lending operations and provide compliant lending products at the most competitive pricing in the industry. DFG believes that only the most operationally sophisticated and efficient lending organizations will be able to participate in this market in a compliant manner in the future and we are the most capable non-prime lender in Hawaii in this regard. However, without an increase to the authorized fees as made by House Draft 1, installment loan revenue will only cover expected loan losses and provide little, if any, additional margin to cover costs and expenses associated with the business.

DFG supports the changes made in House Draft 1 with respect to removing the repeal of deferred deposit agreements through check cashers, as DFG believes it would be inadvisable to completely remove deferred deposit transactions from the marketplace and inevitably force many non-prime consumers into a credit product that may not best suited for their immediate requirements. A regulatory regime that forces non-prime consumers to take loans in larger amounts, repayable over longer periods of time in those cases when a smaller, shorter-duration single payment loans may be most appropriate, will not be beneficial for consumers or the marketplace. The non-prime consumer has substantially higher needs for short term credit support than the typical prime consumer. With appropriate regulatory modifications, both short term single payment loans and longer term, installment loans can serve as suitable credit options for non-prime consumers. Numerous other jurisdictions, including California, Florida and many Canadian provinces, have successfully done just this and permit, and regulate, both non-prime installment loans (which provide longer term credit solutions) and the equivalent of deferred deposit transactions (which address immediate and short term financial stresses, emergencies and other immediate needs of non-prime consumers).

In summary, DFG strongly supports House Draft 1 of SB 537, as the changes made in House Draft 1 will allow responsible and operationally efficient non-prime installment lenders to support a viable non-prime lending market in Hawaii and more effectively serve the needs of the non-prime consumers in the state. In the long run, a more effective non-prime lending market can help these borrowers by providing better tailored credit products and enabling them to develop better credit histories, which ultimately will reduce their cost of credit when they are able to access lower credit risk products.

Thank you for your consideration of our testimony.

Very truly yours,

DOLLAR FINANCIAL GROUP

James Odell
Executive Vice President and General Counsel

SB-537-HD-1
Submitted on: 3/19/2019 7:00:39 AM
Testimony for CPC on 3/19/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dan Barry	Trade Association	Oppose	No

Comments:

March 19, 2019

House Committee on

Consumer Protection & Commerce

Chairman Roy M. Takumi

Vice Chair Linda Ichiyama

Re: SB 537 HD1 - Opposition to Restrictions on Small-Dollar Lending, Call for Study

Dear Chairman Takumi, Vice Chair Ichiyama, and Members of the House Committee on

Consumer Protection & Commerce:

The Online Lenders Alliance ("OLA")[1] would like to submit this letter to raise our serious concerns with the installment loan provisions of Hawaii Senate Bill 537 HD1 ("SB 537"). **OLA strongly urges the Hawaii legislature to undertake a thoughtful and comprehensive study of small dollar installment lending and engage stakeholders before setting lending parameters that can disproportionately harm Hawaiians that are already underserved when it comes to credit access.**

STUDY INSTALLEMENT LENDING

OLA believes the legislature must consider any structural changes to the lending marketplace in a deliberate fashion, only after careful and comprehensive study, to understand the potential impact on Hawaii's underserved consumers. For this reason, OLA has been supporting HB332 HD1, which would implement various consumer protections for consumers relating to check cashing. OLA strongly supports the sunrise analysis of payday lender and deferred deposit regulation called for in HB332. We believe the analysis can provide a sound factual foundation for ensuring Hawaii consumers enjoy the protection they deserve and have access to credit options they need.

Expanding the study to include installment lending - and in particular online lending - would be crucial given the rapid advances in the online financial technology (or FinTech) sector since the Hawaii legislature's last study in 2005.

Those FinTech advances have opened opportunities for creditworthy non-prime consumers who, until recently, have been unfairly shut out.

PLACE OF BUSINESS

OLA supports a modern, well-regulated, and enforceable regulatory structure. However, SB 537's requirement that lenders maintain a principal place of business in Hawaii serves as an impediment to the online lending and competition that would benefit Hawaiian consumers. Mandating a principal place of business does not materially enhance consumer protection, supervision or enforcement and is unnecessary in the modern marketplace.

INCOME

In current form, SB 537 would reorder Hawaii's small dollar lending market. Significantly, it would create a marketplace where unsecured, small dollar installment credit is available only to consumers at the preferred end of the credit spectrum. Meanwhile thousands of Hawaiians who are creditworthy, but nonetheless have lower credit ratings, will effectively be shut off from access that many others take for granted.

OLA is very concerned about SB 537's arbitrary 6% gross monthly income (GMI) limit for borrowers. The goal of all lenders is for their customers to repay their loans by minimizing defaults. Lenders review a borrower's payment-to-income ratio along with a variety of other measures that help manage risk and predict the likelihood of repayment, particularly for non-prime applicants. Living costs and other debt payments, for example, will bear heavily on a borrower's ability to repay. Limiting access to loans that meet the 6% GMI ratio without any consideration of a borrower's expenses and debt expenses is fundamentally flawed and may be more harmful to consumers than helpful.

These concerns are borne out by a study that reviewed over 900,000 unsecured installment loans. ***If a 5% payment-to-income cap to those loans were applied to those loans, eighty-six per cent would have been denied.*** SB 537 calls for a six to seven percent cap, but the marginal increase would still leave far more than half of otherwise approved borrowers cut off from deserved access, as the study demonstrates (see attachment).

An arbitrary payment-to-income cap without regard to other considerations does not protect consumers, as the study demonstrates. Instead, it merely serves as another barrier to credit access for the underserved and undermines credit inclusiveness.

RATE CAP

SB 537 would impose a 36% annual percentage rate (APR) on small dollar, short term consumer loans. While on its face a 36% APR may sound reasonable, a closer look at how a cap like that would function with short-term, small dollar unsecured loans demonstrates why lenders are unable to create a sustainable credit market to serve nonprime consumers at essentially just 3% per month. Most economists agree that using a 36% APR for these short-term, small-dollar consumer loans really does not make economic sense, especially since many of these loans have terms of only 4 to 6 weeks. An annual rate on a 4-week loan has little to no relevance for consumers in comparing actual costs of loans with a longer term.[2] Many proponents of a 36% APR cap hold that higher charges are predatory, even though these fees are not deceptive and the payment terms are clearly understood by consumers. In contrast, even sophisticated borrowers might not be able to calculate the actual cost of credit for a 4-week, $300 loan based on a 36% APR.

While smaller dollar installment loans are generally for longer periods, the same economics bear out. Instead, restrictive rate caps, such as SB 537's 36% APR limit, pose a serious impediment for nonprime borrowers seeking credit. The costs and risks of providing small-dollar, short-term credit to nonprime borrowers are not warranted under a 3% per month rate cap regime. To illustrate, a decade ago the Federal Deposit Insurance Corporation (FDIC) oversaw a Small Dollar Loan Pilot Program that sought to keep rates below 36% APR. The program ran its course, but lenders have not continued to make these loan products generally available to nonprime borrowers because they were simply not profitable for the financial institutions.

It is also important to understand the cost associated with providing credit to nonprime consumers. Based on studies, short-term consumer lenders must make at least $12-$15 per $100 of principal loaned just to cover its basic costs of doing business, even before lenders make any profit. To put this into perspective, a 36% APR cap would equal $1.38 per $100 for a 2-week loan. The industry opponents know that lenders cannot offer a loan product to consumers using a 36% APR, and it is our belief that their true goal is not to meet the consumers' financial needs but to simply put these lenders out of business.

A good example of what it takes to serve this market is a new loan product offered by U.S. Bank. In 2018, federal banking regulators approved a small-dollar, short-term loan offered by U.S. Bank. ***In order for the loan program to be sustainable, U.S. Bank is charging interest rates between 71% and 88% APR, more than double the 36% APR proposed by SB 537.*** Moreover, U.S. Bank is only able to offer the loans at that rate because it enjoys pricing advantages and risk mitigation generally not available to non-bank lenders, including lower cost of capital; no marketing costs (product is only offered to pre-existing customers); and fully automated underwriting (U.S. Bank would reportedly lose money if a loan officer spent any time on the loan). In sum, U.S. Bank's small-dollar loan offering demonstrates that even under the most favorable circumstances, lenders would be unable to provide small-dollar, short-term credit access to Hawaii's nonprime population. Rather than considering these loans "predatory," we expect that U.S. Bank will find its customers clearly understand the fees associated with these loans and are simply making an economic decision that the cost of these loans is cheaper than any alternative solution that is actually available to them. That has been the experience that has driven strong growth in the online lending sector.

1. have been several government agencies that have honestly considered the economics associated with providing small-dollar loans to consumers before passing similar legislation. In the United Kingdom, the Financial Conduct Authority (UK's chief regulator of payday loans) conducted an in-depth review of

payday lending operations, and they concluded that a reasonable fee would be 0.8% per day (i.e., 24% per month) of the amount borrowed, plus an additional default charge, with the total amount charged not to exceed 100% of the amount originally borrowed. The United States has not engaged in any similar unbiased research in an attempt to address this type of consumer lending, which has an ever-growing consumer demand for the product.

GENERALLY

Over the last 10 years or more, there has been a consistent demand from consumers for short-term, small-dollar loans. As the legislature noted in this bill, in May of 2018, the Federal Reserve System issued its *Report on the Economic Well-Being of U.S. Households in 2017* noted that four in 10 of adults in the U.S. would not be able to cover the cost of an unexpected expense of $400 without selling something or borrowing money to cover the expense. Unfortunately, traditional financial institutions do not commonly offer $300 loans to consumers with poor credit history and no savings. Therefore, these consumers are left with few options.

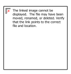
For example, a consumer in Hawaii who might have an unexpected $300 car repair would have few options, which might include (1) enter into a deferred deposit transaction (cost of approximately $52 under HI Stat. §480F-1 *et seq.*), (2) bounce a few checks that would incur overdraft fees (cost of approximately $60 for two returned checks), (3) obtain a cash advance on a credit card (if available), or (4) obtain a loan from a family member or non-profit organization. Based on these real-world choices, many consumers would choose a $52 fee related to a deferred deposit transaction instead of a $60 bank overdraft fee and the associated embarrassment with the payee. Most consumers prefer to avoid asking a family member or a charity for a loan. The reality is that most consumers do not have the option of going to their local bank to take out a $300 loan. In addition, consumers in Hawaii are well aware of the least expensive alternatives that are available to meet their cash needs.

CONCLUSION

We encourage the legislature to more closely analyze the possible effects of the installment lending aspects of this legislation before moving forward with the bill or any similar legislation. Due to the potential consumer harm and other unintended consequences of this legislation, we encourage the legislature to consult with unbiased research sources to fully understand the affects to the consumer lending industry before passing restrictions that could possibly constrict the consumer lending options for hardworking Hawaiians. OLA is committed to working with you as your committee and the legislature look to ensure Hawaiians have access to safe and reliable credit opportunities.

We appreciate the opportunity to provide input on this legislation. If you have questions or need additional information, please feel free to contact me at mjackson@oladc.org.

Very Truly Yours,



Mary Jackson
President and CEO

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[1] OLA is the first trade association for lending, technology and innovation, representing the growing industry of companies offering loans online and companies which provide services to online lenders. OLA members abide by a rigorous set of Best Practices to ensure their customers are fully informed and treated fairly. ¬OLA represents some of the most innovative financial technology companies committed to the highest standards of conduct, offering online consumer loan products and services with transparent terms that are fully compliant with all federal and state laws.

OLA sets industry standards for our members, ensuring that consumers have access to the most responsible, innovative products in the market. We also monitor and police the web for violations of our Best Practices to members and non-members alike. OLA also serves as a resource to federal and state policymakers on issues related to access to credit. Beyond our role in serving our members, OLA provides resources including a consumer hotline, which is a portal to report fraud, and consumer tips.

[2] For instance, the Financial Conduct Authority (UK's regulator of payday loans), in establishing rules and guidance for payday lending in the UK, concluded that APRs on short-term loans were not useful: "We decided not to specify our proposed cap in terms of APR (the annual percentage rate of charge) as, while it is useful for comparing the basic cost of loans of the same size and duration that are paid back on time, it is not easy to compare loans of different size and length – for example, a shorter loan that

costs the same as a longer one would have a much larger APR." (*Proposals for a Price Cap on High-Cost Short-Term Credit*, Consultation Paper CP14/10, Financial Conduct Authority (July 2014)).

SB-537-HD-1
Submitted on: 3/18/2019 4:46:38 PM
Testimony for CPC on 3/19/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan J. Wurtzburg	Individual	Oppose	No

Comments:

Aloha Members of the House Committee on Consumer Protection & Commerce,

I am so disappointed that the protections for low-income residents of Hawaii State have been removed from the bill. Pay Day lenders prey on the impoverished here, and most states have restricted them severely in order to protect residents. Protection is even more key in Hawaii, where the cost of living is horrendous, meaning that many resort to payday loans.

Lenders do NOT have to make a fortune off the impoverished, although I am sure that legislators have been importuned by many owners of lender businesses. Please listen to those of us who care about people in Hawaii, rather than business owners, who have been doing far too well over the past few years.

Please remove the HD1 additions to the bill, which make it worthless for the people of Hawaii, while benefiting payday loan owners, who NEED TO BE REGULATED. That was the whole point of this bill!

Mahalo,

Susan J. Wurtzburg, Ph.D.

SB-537-HD-1
Submitted on: 3/18/2019 8:38:37 PM
Testimony for CPC on 3/19/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kathy Jaycox	Individual	Oppose	No

Comments:

In the process of amendment, this bill has been transformed so that it no longer accomplishes its intended purpose.

SB-537-HD-1
Submitted on: 3/18/2019 9:18:40 PM
Testimony for CPC on 3/19/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
RiSean Tinsley	Individual	Oppose	No

Comments:

SB-537-HD-1
Submitted on: 3/19/2019 10:44:19 AM
Testimony for CPC on 3/19/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Lacques	Individual	Oppose	No

Comments:

Please pass SB537, SD2 instead of SB537, SD2, HD1 to maintain the intent of the original bill.