SB537

Measure Title:	RELATING TO CONSUMER PROTECTION..
Report Title:	Payday Lending; Small Dollar Loans; Small Dollar Lenders; Licensure; Requirements; Appropriation ($)
Description:	Transitions from lump sum deferred deposit transactions to installment-based small dollar loan transactions. Specifies various consumer protection requirements for small dollar loans. Beginning 1/1/2020, requires licensure for small dollar lenders that offer small dollar loans to consumers. Specifies licensing requirements for small dollar lenders. Authorizes the division of financial institutions to appoint 2.0 FTE examiner positions, funded via the compliance resolution fund, to carry out the purposes of the small dollar installment loan program
Companion:	HB79
Package:	None
Current Referral:	CPH, WAM
Introducer(s):	BAKER, S. CHANG, K. RHOADS, Inouye, J.Keohokalole, Moriwaki, Nishihara, Wakai

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, February 5, 2019
9:00 a.m.
State Capitol, Conference Room 229

On the following measure:
S.B. 537, RELATING TO CONSUMER PROTECTION

Chair Baker and Members of the Committee,

My name is Iris Ikeda, and I am the Commissioner of Financial Institutions (Commissioner) for the Department of Commerce and Consumer Affairs' (Department) Division of Financial Institutions (DFI). The Department supports this bill and suggests a few amendments to strengthen the small dollar installment loan program.

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. The bill would enact a new chapter of the Hawaii Revised Statutes, entitled “Small Dollar Installment Loans”, for the DFI to administer.

This bill defines “small dollar loan” (“loan”) as a loan made to a consumer. The loan must be documented by a written agreement. The maximum loan amount is $500, the maximum loan term is six months, and there is no minimum loan term. Interest may be charged on the unpaid principal balance at an annual rate not to exceed 36%. The loan must be repayable in substantially equal monthly installments. A lender that makes small dollar loans (“small dollar lender”) may finance no more than $500 at any time for a consumer, and a thirty-day waiting period is required between loans. On a renewed loan, the small dollar lender may assess an additional finance charge provided the annual percentage rate on the renewed loan does not exceed 36%.

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

The Commissioner issues a license to qualified applicants (“licensees”) through NMLS. A licensee must comply with all statutory requirements relating to business operations, supervision, locations, branches, sale or change of control of the licensee, and others. It must have a principal place of business in the State, 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.

To carry out the purposes of this program, the Department requests that section 11 of the bill be amended to appropriate $220,941 from the compliance resolution fund to establish the two permanent examiner positions, including employee benefits. 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 would be required to establish the program for the industry, and one examiner position would be required to conduct examinations and investigations.

The DFI is self-funded from fees paid by the licensees of its various programs. Those funds are designed to pay for staffing in the programs. Application and renewal fees are set without knowing how many applicants or licensees may apply for licensure and later renewal. To maintain this new program, the DFI would need to generate revenues sufficient to cover the additional staff members.

The Department would like to propose amendments to strengthen the program envisioned by the bill. The proposed amendments fall into three categories: (1) conforming the language to the terms used in the regulated industry; (2) clarifying the terms and intent of the program requirements; and (3) harmonizing the language to avoid conflicting provisions.

Thank you for the opportunity to testify on this bill.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Consumer Protection and Health

From: Cheryl Kakazu Park, Director

Date: February 5, 2019, 9:00 a.m.
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 537
Relating to Consumer Protection

Thank you for the opportunity to submit testimony on this bill, which would set out a regulatory scheme for payday lenders. The Office of Information Practices ("OIP") takes **no position on the substance of this bill, but seeks either clarification or deletion of a confusing subsection (e) of the confidentiality provision at bill pages 65-67.**

OIP does not have concerns with most of the proposed confidentiality provision. This bill proposes that Hawaii would share regulatory information about payday lenders with other states through the NMLS. As OIP understands it, subsection (a) would provide that information that was confidential or privileged in the state submitting it to the NMLS would remain confidential or privileged in the hands of the NMLS; subsection (b) would authorize Hawaii's participation in information sharing through the NMLS; subsection (c) would provide that the confidential or privileged information from (a) could not be disclosed either under another law or in litigation; subsection (d) would provide confidentiality for the Commissioner's examination of a regulated business's books under proposed section __-43; and subsection (f) would clarify that this payday lender confidentiality provision would not apply to the NMLS's information relating to mortgage servicers.

It is subsection (e) that OIP finds confusing. Subsection (e) provides that "Any provision of state law to the contrary relating to the disclosure of . . . information . . . described in subsection (a) shall be superseded by the requirements of this section." It appears that subsection (e) is essentially restating subsection (c)(1), which already provides that information confidential under subsection (a) is not subject to disclosure under any federal or state open record law. This could lead to confusion in the future as to whether subsection (e) is simply superfluous (and statutory language is presumed not to be superfluous), or whether subsection (e) has some other, less obvious meaning. To avoid confusion, **OIP therefore recommends that this Committee delete subsection (e), if indeed it serves no purpose other than to reiterate subsection (c)(1)** by providing that information confidential under subsection (a) is not required to be disclosed under the UIPA or other open record laws, or at least add the language into subsection (c) so it is clear they address the same thing. **Alternatively,** if subsection (e) was intended to have some other meaning, **OIP recommends that this Committee amend its language to make that other meaning clear.**

Thank you for the opportunity to testify.

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

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

February 3, 2019

In opposition to SB537

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 19 years we have provided check cashing services to over 44,000 Hawaii residents. We provide safeguards not required by law to encourage the responsible use of our short-term credit product. We offer free financial education on our website and mobile devices, 24/7, to help Hawaii's working families in times of financial stress.

SB537 would 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 rational for this complete overhaul of the existing law relies on out-of-state data. This data draws unsupported conclusions and is not relevant to Hawaii.

SB537 is not just bad for our business. It is bad for consumers because it allows multiple loans by removing the one transaction per consumer provision. The bill encourages long term indebtedness which raises the fees charged to the vast majority of consumers who currently use deferred deposits responsibly.

We appreciate the bill's intent to provide affordable credit. We would support a well thought out credit building installment loan bill similar to California's Pilot Program for Increased Access to Responsible Small Dollar Loans as an alternative to HB480F, not as a replacement.

Last year DFI said it would need funds of over $200,000 to hire two positions to set up the program and to appropriately supervise, regulate, and examine licensees. In addition, the program would need to generate revenues sufficient to cover the additional staff members. The 35 storefronts operating in Hawaii will only generate a little over $47,000 in licensing fees. It is doubtful that out-of-state lenders will provide the balance.

SB537 favors out-of-state internet lenders and penalizes local storefront lenders having more than one location by charging higher licensing fees. The majority of out-of-state internet lenders currently operate in Hawaii with impunity, ignoring Hawaii law and accounting for all but one complaint to the DCCA. We have identified 30 (out of 35) internet lenders who are not registered to pay GET taxes. We find it is difficult to believe these lenders will bother to apply for a license.

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

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

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

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

HAWAIIAN COMMUNITY ASSETS

200 North Vineyard Boulevard, B140
Honolulu, HI 96817
Ph: 808-587-7886
Toll Free: 1-866-400-1116
www.hawaiiancommunity.net

February 4, 2019

Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, February 5, 2019
Conference Room 229

SB537 - SUPPORT

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 **STRONGLY SUPPORT SB537.**

SB537 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. **PASS SB537.**

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

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: Senator Rosalyn Baker, Chair, Senator Stanley Chang, Vice Chair, Members, Senate Committee on Consumer Protection and Health
From: Trisha Kajimura, Executive Director
Re: TESTIMONY IN SUPPORT OF SB 537 Relating to Consumer Protection
Hearing: TUESDAY February 5, 2019, 9:00 am, CR 229

Thank you for hearing our testimony **in support of Senate Bill 537**, 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 Hawaiʻi 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 support of SB 537.** Please contact me at trisha.kajimura@mentalhealthhawaii.org or (808)521-1846 if you have any questions.

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[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.

CATHOLIC CHARITIES HAWAI'I

LATE

TESTIMONY IN SUPPORT OF SB 537: RELATING TO CONSUMER PROTECTION

TO: Senator Rosalyn Baker, Chair, Senator Stanley Chang, Vice Chair; and Members, Committee on Commerce, Consumer Protection and Health
FROM: Betty Lou Larson, Legislative Liaison, Catholic Charities Hawaiʻi
Hearing: Tuesday, 2/5/19; 9:00 AM; CR 229

Chair Baker, Vice Chair Chang, and Members, Committee on Commerce, Consumer Protection and Health:

Thank you for the opportunity to provide testimony **in strong support** of SB 537, 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 help with that goal by 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!

Clearly it is the poor who are using this type of financial product and in Hawaiʻi many people are struggling with the high cost of living. 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 the 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 Hawaii's people be protected from unreasonable rates and fees that will accumulate to create a greater problem for them. The high interest on these loans (e.g 459% APR) threaten families' housing stability. This pathway INTO homelessness must stop. Our community must provide the safeguards in this bill.

We urge your support. We appreciate this opportunity to discuss one of the challenges faced by people living with low incomes. Please contact our Legislative Liaison, Betty Lou Larson, 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.

HAWAII APPLESEED
CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai‘i Appleseed Center for Law and Economic Justice
Supporting SB 537 -- Relating to Consumer Protection
Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, February 5, 2019, 9:00 AM, conference room 229

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

Thank you for the opportunity to provide testify in SUPPORT of **SB 537**, which would encourage transparency and increase consumer protection in the payday lending industry in Hawai‘i.

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

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.

The provisions contained in SB 537 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 Hawaii Appleseed is committed to a more socially just Hawai‘i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.

THE SENATE
THE THIRTIETH LEGISLATURE
REGULAR SESSION OF 2019

LATE

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair

Senator Stanley Chang, Vice Chair

POSITION: **SB 537 STRONG SUPPORT**

Having read the contents of Bill SB537 Relating to Consumer Protection I feel this bill is very important into looking at the issue of debt and or debt collection in a holistic manner. This bill addresses the predatory mater that lenders have structured loans which exacerbate the problem of the consumers ability toward repayment. In any case, imposing heavy fines on a person's inability to pay does not make it easier for them to remedy the situation nor does it make the overall goal of repayment within reach. Furthermore, the payments (lump sum or partial or monthly) are nowhere near affordable. This bill addresses some of those issues along with other areas of consumer protection. I stand behind this bill and hope to see this become law. The is not just a matter of being compassionate but when a person must choose between paying those debt(s) and housing or even sustenance there must be a better way.

Mahalo,

Ken Farm

Board Member, Member CAC, OMPO
Neighborhood Board 15
Kalihi-Palama