



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
House Committee on Consumer Protection and Commerce
Tuesday, February 12, 2019
2:00 p.m.
State Capitol, Conference Room 329**

**On the following measure:
H.B. 332, H.D. 1, RELATING TO CHECK CASHING**

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 appreciates the intent of and offers comments on this bill.

The purposes of this bill are to: (1) require check cashers to be registered with the DCCA; (2) require the offering of a voluntary payment plan to customers at the time of origination of a third consecutive deferred deposit transaction and for any subsequent deferred deposit transaction; (3) require check cashers to take reasonable steps to ensure that the customer has no more than one deferred deposit transaction outstanding at a time; (4) amend notices to customers; (5) remove the exemption for persons engaged in the bona fide retail sale of goods or services; and (6) require the State Auditor to conduct a sunrise analysis of the regulation of payday lenders and deferred deposit agreements in the State.

The Department concurs that the current check cashing law, which deems violations as unfair or deceptive acts or practices within the meaning of Hawaii Revised Statutes section 480-2(a), may be more appropriately and comprehensively regulated in a manner more consistent with a number of other states. Operationally, this would mean that regulation would shift from the DCCA's Office of Consumer Protection to the DCCA's Division of Financial Institutions. In addition, the Department would request certain amendments to align the regulation to the DFI's other license types.

If the Department will be responsible for expanded oversight of this industry as this bill proposes, it recommends that regulation be consistent with the licensing of other industries that deal with consumer funds and are administered by the DFI. To that end, the DFI suggests including additional safeguards in this bill to address consumer protection concerns. Specifically, the DFI suggests regulation as follows:

1. If an installment loan scheme is preferred, repeal the deferred check statute to avoid confusion by consumers and by the industry;
2. Full licensure, not registration, to review the company's business model, control persons, and compliance with appropriate state and federal laws;
3. Identify the components of what constitutes an installment loan, including the amount of the loan, the term of the repayment, any fees, and a statement of any pre-payment penalties;
4. Authority to examine the licensees for compliance with state and federal laws;
5. Require renewal of license;
6. Require records and reports; and
7. Require consumer disclosures

Regarding the language of the bill that references a sunrise analysis, the Department notes that a sunrise analysis is not necessary because an analysis has already been conducted. See Sunrise Analysis: Check Cashing and Deferred Deposit Agreements (Payday Loans), Report No. 05-11.

Thank you for the opportunity to testify on this bill.



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

H.B. NO. 332, H.D. 1, RELATING TO CHECK CASHING

Hearing: Tuesday, February 12, 2019, 2:00 p.m.

The Office of the Auditor has no position regarding H.B. No. 332, H.D. 1, which proposes, among other things, registration of “check cashers” 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 agreements and its impact on consumer protection in the State.” **However, we offer the following comments.**

First, we note that the Hawai‘i Regulatory Reform Act, Chapter 26H, Hawai‘i 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.

H.B. No. 332, 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 Hawai‘i 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 H.B. No. 332, H.D. 1.

HB-332-HD-1

Submitted on: 2/10/2019 8:34:46 AM

Testimony for CPC on 2/12/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Gilbreath	Hawaiian Community Assets	Support	No

Comments:

To: Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair
The Committee on Consumer Protection and Commerce

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

February 9, 2019

In support of HB332 HD1

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.

We support HB332 HD1 which will bring long overdue reform to HRS 480F. The State Auditor completed a Sunrise Analysis* of the law over 15 years ago, but her recommendations have yet to be implemented. Thanks to the efforts of Representative Nakamura, who called together PayDayHawaii, Hawaii Appleseed and Hawaiian Community Assets, we have a bill that will require registration per the report's recommendation. HB332 HD1 will also make reforms the above parties agreed on, to make deferred deposit transactions more consumer friendly. The bill changes the law as follows:

- 1) Registration of check cashers by the DCCA to identify businesses governed by HRS 480F, including internet companies, to help ensure and enforce compliance.
- 2) Require a notice to the consumer that a payment plan option is available after three consecutive deferred deposit transactions. The payment plan option is designed to stop repeat borrowing and avoid the cycle of debt. The option is available anytime to consumers in financial hardship.
- 3) Limits deferred deposit transactions to one per consumer at a time from all sources including internet lenders. Though part of the current law, it needs clarification and enforcement.
- 4) Require posting and written notice of the Annual Percentage Rate (APR), along with the current requirement to post the fees.
- 5) Require posting of information on where to obtain financial education and credit counseling. Consumers must be informed in signage and on the printed contract that deferred deposit transactions are not suitable for long-term borrowing.
- 6) Require a written notice of a 24 hour right of rescission on deferred deposit transactions. This provision

gives consumers an opportunity to read the “fine print” without feeling rushed so they can completely understand the transaction.

- 7) Limits the fee incurred for a dishonored check to a fee no greater than the fee incurred by the check casher from its financial institution.
- 8) Removes the exemption (480F-5-1) to protect consumers from any entity, other than banks and financial institutions, cashing checks for a fee. Since the law was originally passed retailers who cash checks over \$1000.00, such as Wal-Mart, are required to register as a Money Service Business (MSB) with the U.S. Treasury Department under the Patriot Act.
- 9) Requires the State Auditor to conduct an updated sunrise analysis of the regulation of payday lenders and deferred deposit agreements and its impact on consumer protection in the State. In conducting the analysis, the state auditor shall examine the following:
 - a) The increased impact of out-of-state internet lenders who operate in the State;
 - b) Data regarding consumer complaints;
 - c) The impact of chapter HRS 480F on consumers within the State over the past fifteen years; and
 - d) Any further measures necessary for increased consumer protection in the State.
- 10) The auditor will submit a report of findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2020.

Most of the proposed reforms come from bills originally proposed by FSPoH, The Legal Aid Society and HACBED after the State Auditor’s Sunrise Analysis of 2005*. It should be noted that the 2005 Sunrise Analysis is the only study of short-term lending ever done in Hawaii. This bill authorizes another audit so that we will have more up-to-date data for Hawaii. It should be noted that HRS 480F has significant differences to short-term lending laws in other states. Although there have been many studies completed on this subject, none include data from Hawaii and therefore are not relevant.

** 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.

Maui Loan Inc.

50N. Market St.
Wailuku, HI 96793
808-242-5555

February 11th, 2019

TO: Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair
And The Members of The House Committee On Consumer Protection & Commerce

RE: Testimony in Opposition of HB 332

My name is Richard Dan. My wife and I have operated Maui Loan Inc., a company on Maui for decades. I oppose HB 332 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



LATE TESTIMONY

February 12, 2019

House Committee on
Consumer Protection & Commerce
Chairman Roy M. Takumi
Vice Chair Linda Ichiyama

Re: HB332 HD1- Support for Check Cashing Consumer Protections

Dear Chairman Takumi, Vice Chair Ichiyama, and Members of the House Committee on Consumer Protection & Commerce:

The Online Lenders Alliance (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.

OLA sets industry standards for our members, ensuring that customers 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.

We are writing to express our support for HB332 HD1, implementing various consumer protections for consumers relating to check cashing, including offering a voluntary payment plan to customers under certain circumstances, among other provisions. It would also require the Auditor to conduct a sunrise analysis of the regulation of payday lenders and deferred deposit agreements.

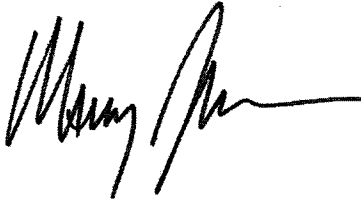
OLA believes HB332 HD1 improves consumer protection in a meaningful and substantial way. It is consistent with OLA's best practices and we are pleased to lend our support. Importantly, while protecting consumers from potentially harmful practices, the bill does not unreasonably restrict access to financial services that consumers need and demand.

Likewise, OLA supports the call for a sunrise analysis of payday lender and deferred deposit regulation. 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.

Advances in the online, financial technology (or FinTech) space have opened opportunities for creditworthy non-prime consumers who, until recently, have been unfairly shut out. 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.

On behalf of the Online Lenders Alliance, I am pleased to support passage of HB332 HD1.

Sincerely

A handwritten signature in black ink, appearing to read "Mary Jackson", with a long horizontal flourish extending to the right.

Mary Jackson
President and CEO