SB106

Measure Title:	RELATING TO DEFERRED DEPOSITS.
Report Title:	Deferred Deposits; Payday Loan; Fees
Description:	Reduces the maximum fee a check casher may charge under a payday loan agreement for deferring the deposit of a check from fifteen per cent to seven per cent of the face value of the check.
Companion:	
Package:	None
Current Referral:	CPH
Introducer(s):	K. RHOADS

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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce, Consumer Protection, and Health
Thursday, February 21, 2019
9:00 a.m.
State Capitol, Conference Room 229

On the following measure:
S.B. 106, RELATING TO DEFERRED DEPOSITS

Chair Baker 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 purpose of this bill is to reduce the maximum fee a check casher may charge under a payday loan agreement for deferring the deposit of a check from fifteen per cent to seven per cent of the face value of the check. Consumer loans, including payday loans, calculate the rate of interest as an annual percentage rate (APR). The APR on payday loans is high due to their short-term nature (i.e., pay day to pay day, or an average of 10-14 days). Even if the interest rate is lower, the APR will remain high. For instance, a $250 payday loan for 14 days with a $30 loan fee is 312.86%.

According to consumer studies on payday loans, it typically takes about six months for a consumer to pay off a payday loan. During that time, the loan is re-financed every two weeks, the loan fees and APR increase, and the consumer is stuck in a cycle of debt.

The Department acknowledges that this type of product is necessary for consumers who do not have bank accounts or decline to get a loan from a bank. The Department suggests that to help consumers get out of their cycle of debt, a small dollar consumer loan product be available and supervised by the DFI. 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.

For many of the companies supervised by the DFI, consumers do not file complaints against a licensee. However, when the DFI examines a licensee, it may find that the licensee has violated state or federal law; in this case, the DFI may order restitution to the consumer and order compliance with the laws. If the company is a nationwide company, the DFI will coordinate with other states to conduct a multi-state examination. This multi-state examination saves time and expense for the licensee and state examiners. Through this multi-state examination, states have issued enforcement orders benefiting consumers nationwide.

Thank you for the opportunity to testify on this bill.

SB-106
Submitted on: 2/19/2019 9:18:18 AM
Testimony for CPH on 2/21/2019 9:00:00 AM

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

Comments:

Our organization is the State's largest HUD-approved housing counseling agency and a community development financial institution that provides small-dollar emergency loans to Hawaii households experiencing or at-risk of homelessness. Our organization supports SB106 for its goal of reducing the cost of capital on payday loan borrowers, but encourages the committee to look at SB537 as a more comprehensive approach to regulating both payday and small dollar lending in Hawaii.

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 21, 2019

In opposition to SB106

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.

SB106 reduces the fee charged for a deferred deposit transaction from 15% to 7%. It notes that "In a sunrise analysis* on a proposal to expand regulation of payday lenders, the state auditor recommended that the maximum fee charged for payday loans be reduced."

What the Auditor said in full was "Payday lenders say that the charges for payday loans are reasonable in view of the high-risk nature of their loans. It is reasonable to expect that those who have poor credit have to pay more for their loans. However, indications are that the payday lenders could still profitably stay in business in Hawaiʻi under a reduced rate cap somewhere between 309 percent and 390 percent APR. Hawaiʻi currently allows payday lenders to charge a fee of 15 percent of the face value of the postdated check. This allows them to charge $17.65 or an APR of 459 percent for a cash advance of $100 for 14 days. Six states currently allow an APR of 459 percent; eight states allow a maximum APR of 390 percent. (See Exhibit 1.1.) To derive an APR of 390 percent, payday lenders would charge a fee of $15 per $100 (borrower writes a check for $115 and receives $100 in cash).

Why did the State Auditor reach this conclusion? She collected financial data including profit and loss statements from Hawaii check cashing businesses, including ours. There is no other study from any source that has collected data from Hawaii businesses operating under HRS 480F. In fact no Hawaii data was used in any other study of "payday loans" by the Pew Charitable Trust, the Consumer Financial Protection Bureau or anyone else. The 2005 Sunrise Analysis is the only source of valid data on deferred deposits in Hawaii.

SB106 states that “The legislature notes that data from the Pew Charitable Trusts' report Payday Lending in America: Who Borrows, Where They Borrow and Why shows that borrowers do not turn to online lenders in the absence of physical payday loan stores. Additionally, the legislature acknowledges that any payday lender making loans to individuals in Hawai'i is subject to Hawai'i laws regardless of where the lender is located.”

We have identified at least 35 internet lenders currently operating in Hawaii and only 11 companies operating storefronts. And there has been ample opportunity to enforce the law as 27 internet lenders have complaints with the DCCA. And yet, of the 35 internet lenders, only 5 are registered to pay GET taxes. Therefore we see little evidence that the new proposed rate of 7% would be effective as there is nothing in SB106 that would increase enforcement. So under SB106 local companies will need to double sales, raise additional capital and compete on an unfair playing field, despite the fact there is only a single complaint against a local storefront company in the DCCA database.

If SB106 is to be seriously considered, it should be amended to follow the State Auditor’s recommendations in full and in context. We note that the Auditors report is almost 15 years old. The legislature should authorize a follow-up Audit so that we have more up-to-date data for Hawaii, including the increased impact of out-of-state internet lenders, many of whom currently operate unlawfully in Hawaii.

** 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.

Mental Health America of Hawai`i

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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 106 Relating to Deferred Deposits
Hearing: February 21, 2019, 9:00 am, CR 229

Thank you for hearing our testimony **in support of Senate Bill 106**, which reduces the allowable maximum fee of a payday loan from fifteen percent to seven percent of the face amount of the deferred check.

We support what this bill does but prefer SB 537 because it provides stronger protection for economically vulnerable consumers by closing the loophole that created unaffordable payday loans in 1999 and establishing 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 106**. 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.

February 20, 2019

RE: Testimony in Opposition of SB 106

My name is Karen Moriwaki.
I have been a Manager at Hawaii Check Cashing for 32 years.
I have seen many changes in this business some good and some bad.

I oppose SB 106.
SB 106 will change the fee from 15% to 7%, that change will literally put all us small businesses,
Out of Business.

We do not have enough of a large volume to survive with the 7%. Banks and Credit Unions stay away from these types of loans simply for the fact that they cannot make money. It is not worth their time and costs.

Sincerely,
Karen Moriwaki
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