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GOVERNOR

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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION
TO THE HOUSE COMMITTEE ON FINANCE
TWENTY-FIFTH STATE LEGISLATURE
Regular Session 2009

Wednesday, March 4, 2009
11:30 a.m.

TESTIMONY ON HOUSE BILL NO. 447, HD1 -- RELATING TO PAYDAY LENDING.

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify in support of House Bill No. 447, HD 1, Relating to Payday Lending. My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

House Bill No. 447, HD1 proposes several amendments to Hawaii's Check Cashing law, Chapter 480F of the Hawaii Revised Statutes, many of which are in the interest of consumers. Of particular importance to the Department are the amendments relating to payment plans and posting and notice of fees charged. Both of which appear

Testimony on H.B. No. 447, HD1
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to be laudatory.

Since many payday loans are often not paid back within the stated loan period, providing an interest free payment plan to borrowers would facilitate the easing of consumer debt and help ensure that the loan is ultimately paid back to the lender in full.

The additional requirements related to the posting and notice of fees would also be beneficial to consumers. Full and complete disclosure of all material terms to a loan agreement is a fundamental tenet of consumer protection. This is the foundation of the Truth in Lending Act. Implementing the disclosure provisions of House Bill No. 447, HD1 will inevitably lead to a more meaningful understanding of the transaction by the consumer, without imposing any undue hardship on the payday lender.

Thank you for providing me with the opportunity to testify on House Bill No. 447, HD1. I will be happy to answer any questions that the Committee members may have.

Community Voice, Collective Action

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Managing Partner,
Commercial & Business
Lending

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Public Charter School

Kukui & Gary Maunakea-Forth
(*O'ahu*)
WCRC/Mala Ai`Opio (MA`O)

Tommy Otake (*at large*)
Attorney At Law

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Planning & Research Assistant

House Committee on Finance
Wednesday, March 4th, 2009 @ 11:30am
Conference Room 308

Testimony **supporting the intent** of **HB 447 HD1**
Related To Payday Lending

Dear Chair Oshiro, and Committee Members:

The Hawai'i Alliance for Community Based Economic Development (HACBED) is submitting testimony supporting the intent of HB 447 that would require check cashing institutions to register with the Department of Commerce and Consumer Affairs and further clarify disclosure requirements for fees and annual percentage rates.

Alternative financial services such as deferred deposit agreements, or payday loans, and check cashing can needlessly strip working families of hard earned income. Adopting regulations that insures the appropriate use of these financial services should be a state priority and is applauded.

For the purposes of this bill, it might be useful to define the differences between check cashing and payday lending. **Check Cashing** is the practice of charging a fee to a customer who brings in a check. Hawai'i Revised Statutes 480F-3 regulates the following fees for check cashing:

Except as provided in section 480F-4, no check casher shall charge fees in excess of the following amounts:

- (1) Five per cent of the face amount of the check or \$5, whichever is greater;
- (2) Three per cent of the face amount of the check or \$5, whichever is greater, if the check is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the check;
- (3) Ten per cent of the face amount of a personal check or money order, or \$5, whichever is greater; or
- (4) No more than \$10 to set up an initial account and issue an optional membership or identification card, and no more than \$5 for a replacement optional identification card.

Payday Lending involves payday loans that are short-term cash loans

based on the borrower's personal check held for future deposit or on electronic access to the borrower's bank account. Borrowers write a personal check for the amount borrowed plus the finance charge and receive cash. In some cases, borrowers sign over electronic access to their bank accounts to receive and repay payday loans. In Hawai'i, the equivalent **Annual Percentage Rate (APR) allowed for a payday loan is 459%**. Hawai'i Revised Statute 480F-4 regulates deferred deposits or payday loans in the following fashion:

- (a) No check casher may defer the deposit of a check except as provided in this section.
- (b) Each deferred deposit shall be made pursuant to a written agreement that has been signed by the customer and the check casher or an authorized representative of the check casher. The written agreement shall contain a statement of the total amount of any fees charged for the deferred deposit, expressed both in United States currency and as an annual percentage rate. The written agreement shall authorize the check casher to defer deposit of the personal check until a specific date not later than thirty-two days from the date the written agreement was signed. The written agreement shall not permit the check casher to accept collateral.
- (c) The face amount of the check shall not exceed \$600 and the deposit of a personal check written by a customer pursuant to a deferred deposit transaction may be deferred for no more than thirty-two days. A check casher may charge a fee for deferred deposit of a personal check in an amount not to exceed fifteen per cent of the face amount of the check. Any fees charged for deferred deposit of a personal check in compliance with this section shall be exempt from chapter 478.
- (d) A check casher shall not enter into an agreement for deferred deposit with a customer during the period of time that an earlier agreement for a deferred deposit for the same customer is in effect. A deferred deposit transaction shall not be repaid, refinanced, or consolidated by or with the proceeds of another deferred deposit transaction.
- (e) A check casher who enters into a deferred deposit agreement and accepts a check passed on insufficient funds, or any assignee of that check casher, shall not be entitled to recover damages in any action brought pursuant to or governed by chapter 490. Instead, the check casher may charge and recover a fee for the return of a dishonored check in an amount not greater than \$20.
- (f) No amount in excess of the amounts authorized by this section and no collateral products such as insurance shall be directly or indirectly charged by a check casher pursuant or incident to a deferred deposit agreement. [L 1999, c 146, pt of §1; am L 2001, c 20, §1; am L 2003, c 222, §1]

Currently, **Hawai'i is 1 of only 4 states that do not require a license to provide payday loans.** Requiring payday lenders to register and report annually information related to their business practices to the DCCA would be a prudent step that would align Hawai'i with other state practices in regulating payday loans.

HACBED supports the following policy options to regulate check cashing and payday lending:

1. ***Requiring check cashers and payday lenders to be registered, and more importantly, licensed with the state.*** We recognize that licensing would require additional resources devoted to DCCA in order to fulfill a robust licensing scheme.
2. ***Clarification that a customer can not receive a payday loan if they currently have an open loan from any source.*** Currently there is interpretation that as long as the customer does not have a loan from the place of establishment, it is acceptable to offer another loan. This can lead to customers having open loans from multiple sources.
3. ***Further disclosure of fees and annual percentage rates charged.*** In some cases, customers may not understand the long term impact of continual reliance on check cashing or payday lending. This should include information on financial education resources.
4. ***Review of annual rates charged on payday loans.*** Recently, the Department of Defense advocated for a maximum of 36% APR on any payday loan distributed to a service member. 11 states regulate payday loans through usuary laws or small loan regulations.

At this time, there has not been an agreement from all interested parties to the appropriate form of check cashing and payday lending regulation. We believe that increased opportunities for key stakeholders to collaboratively problem solve would help in this regard. We, therefore, welcome the opportunity to continue to provide information and perspective on these issues.

Thank you for your consideration.

Sincerely,

Brent Dillabaugh
Policy Coordinator
HACBED

Aloha United Way

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Aloha United Way

March 2, 2009

Committee on Finance
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice-Chair
Wednesday, March 04, 2009, 11:30 a.m.
Conference Room 308

HB 447 Relating to Payday Lending – Support

Dear Chair Oshiro, Vice-Chair Lee and Committee Members:

Aloha United Way encourages your favorable consideration of HB 447 which requires the Department of Commerce and Consumer Affairs to regulate the check cashing industry through licensing requirements.

Hawaii's low and moderate income residents face significant challenges in today's economy. Many require subsidies in order to achieve the basic necessities of life. Aloha United Way believes that we must assist low- and moderate-income community members move toward self-sufficiency; that is, a minimal standard of living sustained without government or other subsidies. We also believe that moving towards self-sufficiency for these families will require a comprehensive approach that increases income, builds savings, teaches financial management and prevents costly expenditures for interest on short term loans.

HB 447 addresses regulation of the check cashing industry - a source of short term loans through the practices collectively known as payday lending. If left unregulated, these payday lending practices can result in extremely high interest rates on loans and a cycle of borrowing and renewing of loans that can quickly place an unwary resident in serious financial difficulty.

Aloha United Way notes that the check cashing industry is supportive of the regulation created in HB 447.

Sincerely,

A handwritten signature in cursive script that reads "Susan Doyle".

Susan Doyle
President & Chief Professional Officer

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
House Committee on Finance

Hearing : Wednesday, March 4, 2009, 11:30 a.m.
State Capitol, Conference Room 308

IN SUPPORT OF HB 447 HD 1

Chair and Members of the Committees:

My name is Ryker Wada, representing the Legal Aid Society of Hawai'i ("LASH"). I am advocating for our clients who include the working poor, seniors, citizens with English as a second language, disabled and other low and moderate income families who are consumers. We are testifying in support of HB 447 HD 1.

According to the National Consumer Law Center's memo on predatory small loans, the State of Hawaii falls into category 3 of states that regulate "payday loans." These category 3 states have specifically passed statutes to allow payday lending. In recent years, the majority of mainstream lenders have left the small loan market, leaving a vacuum being filled by companies offering payday loans. These are extremely high interest loans that extend until the borrower's next pay check. The national finance companies, which were initially founded to meet precisely this credit need, have moved out of this type of small lending. As a result, the availability of small-sum, short-term credit has been severely curtailed.

Much of the market for small unsecured loans today has been replaced by checking account overdraft loans and credit cards, even for relatively lower income households. From 1993 to 1996, the proportion of households with incomes under \$20,000 who received credit card offers rose from 40% to 50%. This still leaves a large number of consumers without sufficient credit card limits or bank overdraft protection to meet their needs for relatively small unsecured loans, and who no longer have access to traditional sources of small loans. At the same time as traditional lenders were exiting the small loan market, the elimination of interest rate caps that began in the 1980's made this niche attractive to new entrants.

The abuses occur in the making and collection of payday loans in a variety of ways. Cash-strapped consumers rarely have the ability to repay the entire loan when their paydays arrive because that leaves little or nothing on which to live until the next pay check. The result is that the consumer pays another round of charges and fees and obtains no additional cash in return. For example, if a consumer is charged 10% on the face amount of the check of \$200, the consumer receives only \$180 in cash and the lender pockets a \$20 fee. The APY is 214% if this loan is repaid in 30 days. These loans are exorbitantly expensive and can drive consumers ever deeper into debt.

HB 447 HD 1 seeks to regulate the payday lending industry through the Department of Commerce and Consumer Affairs. Additionally HB 447 HD 1 attempts to allow varied payment plans for consumers who may or may not be in default. The payments plans may include interest free payment plans and extended repayment plans. These payment plans would have the effect of temporarily freezing interest being accrued on a payday loan thus allowing a consumer more time to actually pay off the loan rather than having to continue accruing interest on a loan they cannot afford. HB 447 HD 1 would also require that payday lenders to provide more detailed and more clearly understood disclosures regarding any payday loan taken out by a consumer, and notice that only one payday loan may be taken out from any source at one time. Lastly HB 447 HD 1 would allow a consumer to rescind a payday loan within 24 hours of the initial transaction.

Conclusion:

We appreciate this committees' recognition of the problems associated with payday lending in the State of Hawaii and your efforts to address them. We support regulation of the payday lending industry through HB 447 HD 1 and the much stronger consumer protections it provides. HB 447 HD 1 has the potential to strengthen protections for consumers by increasing the registration requirements for check cashing businesses, providing more and better notices to consumers, creating repayment plans and allowing the rescission of a payday loan within 24 hours of the initial transaction. We support HB 447 HD 1. Thank you for the opportunity to testify.

To: Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice-chair
Committee on Finance

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

Date: March 3, 2009

Subject: In support of HB447 HD1

Money Service Centers of Hawaii, Inc. is the largest locally owned money service business in Hawaii. Headquartered in Kapaa, Kauai, we operate 12 fee-based money service centers throughout the State under the trade name PayDayHawaii. We support legislation promoting the responsible use of short-term credit.

HB447 provides for 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.

HB447 requires posting of the Annual Percentage Rate (APR) along with the current requirement to post the fee. APR, which is sometimes misunderstood as interest, is a measure of the true cost of credit including all fees and finance charges. It was designed by the Federal Government as a universal way to allow consumers to make informed credit decisions. Deferred deposit transactions require the disclosure of APR under Regulation Z of the Truth in Lending Act.

HB447 requires a notice to the consumer on the contract that a payment plan option is available. For consumers in default, collection letters must inform the consumer of this option. The payment plan option is designed to stop repeat borrowing, what is often termed "rolling over". A consumer who gets into this "cycle of debt" will spend hundreds of dollars over the course of a year to (in effect) refinancing the original transaction.

HB447 allows only one deferred deposit transaction per consumer at a time discouraging pyramiding of multiple deferred deposit transactions. This practice has the same effect as juggling dozens of easily obtainable credit cards. Consumers must also be warned in signage and on the contract that deferred deposit transactions are not suitable for long-term borrowing.

HB447 removes the exemption (480F-5-1) to protect consumers from any entity, other than banks and financial institutions, cashing checks for a fee. Retailers who cash checks over \$1000, such as Wal-Mart, are required to register as a Money Service Business (MSB) with the U.S. Treasury Department because of the Patriot Act. They should not be exempt from registration under Hawaii state law.

HB447 HD1 as currently amended has no impact on State finances.

Sincerely,

R. Craig Schafer

President,
Money Service Centers of Hawaii, Inc.