

RELATING TO THE INCREASED ACCESS TO RESPONSIBLE SMALL DOLLAR
LOANS PILOT PROGRAM.

1 SECTION 1. Chapter 412, Hawaii Revised Statutes, is
2 amended by adding a new part to article 9 to be appropriately
3 designated and to read as follows:

6 §412:9-A Definitions. As used in this part:

10 "Finder" means a company that brings a licensee and a
11 prospective borrower together for the purpose of negotiating a
12 loan contract at the finder's physical location for business.

13 A finder shall not include a company whose sole means of
14 bringing a licensee and prospective borrower together at the
15 company's physical location for business is via an electronic



1 access point through which a prospective borrower may directly
2 access the internet website of a licensee.

3 "Licensee" means a company approved by the commissioner to
4 participate in the pilot program.

5 "Pilot program" means the increased access to responsible
6 small dollar loans pilot program established by this part.

7 "Prime rate" means the prime rate as posted in the Wall
8 Street Journal on the first business day of the month.

9 "Refinance" means the replacement or revision of an
10 existing loan contract between a licensee and a borrower that
11 results in an extension of additional principal to that
12 borrower.

13 §412:9-B Increased access to responsible small dollar
14 loans pilot program; established. There shall be established
15 within the division of financial institutions the increased
16 access to responsible small dollar loans pilot program. The
17 purpose of the pilot program shall be to increase the
18 availability of responsible small dollar investment loans of at
19 least \$300 and less than \$2,500.

20 §412:9-C Application required; fee; approval required.

21 (a) Any company licensed or chartered under this chapter and



1 who is in good standing may file an application with the
2 commissioner to participate in the pilot program. The
3 application shall be submitted in a form prescribed by the
4 commissioner and shall be accompanied by an application fee of
5 \$ or such greater amount as the commissioner shall
6 establish by rule pursuant to chapter 91. The application fee
7 shall not be refundable.

8 (b) No licensee may offer to make a loan or impose any
9 charges or fees pursuant to section 412:9-D or use a finder
10 pursuant to section 412:9-I without prior approval from the
11 commissioner to participate in the pilot program.

12 §412:9-D Loan requirements; interest rate; fees. (a) Any
13 loan made pursuant to this part shall meet the following
14 requirements:

- 15 (1) The loan shall be unsecured;
- 16 (2) The licensee shall underwrite the loan in accordance
17 with section 412:9-F;
- 18 (3) Interest on the loan shall accrue on a simple interest
19 basis, through the application of a daily periodic
20 rate to the actual unpaid principal balance each day;



(4) The disclosure statement required under section 412:9-
E shall be provided to the consumer; and

(5) The loan shall have a minimum principal amount upon
origination of \$300 and a term of not less than:

(A) Ninety days for loans whose principal balance
upon origination is at least \$300 but less than
\$500;

(B) One hundred twenty days for loans whose principal
balance upon origination is at least \$500 but
less than \$1,500; or

(C) One hundred eighty days for loans whose principal
balance upon origination is at least \$1,500 but
less than \$2,500.

(b) Notwithstanding any other law to the contrary, a
licensee approved by the commissioner to participate in the
pilot program may contract for and receive charges for a loan
made pursuant to this section at an annual simple interest rate
not to exceed the following:

(1) The lesser of thirty-six per cent or the prime rate,
as of the date of loan origination, plus 32.75 per
cent on that portion of the unpaid principal balance



1 of the loan up to and including, but not in excess of,
2 \$1,000; provided that the interest rate calculated as
3 of the date of loan origination shall be fixed for the
4 life of the loan; or

5 (2) The lesser of thirty-five per cent or the prime rate,
6 as of the date of loan origination, plus 28.75 per
7 cent, on that portion of the unpaid principal balance
8 of the loan in excess of \$1,000, but less than \$2,500;
9 provided that the interest rate calculated as of the
10 date of loan origination shall be fixed for the life
11 of the loan.

12 (c) A licensee may contract for and receive an
13 administrative fee, which shall be fully earned immediately upon
14 making the loan, in an amount not to exceed the following:

15 (1) Seven per cent of the principal amount, exclusive of
16 the administrative fee, or \$90, whichever is less, on
17 the first loan made to a borrower; or

18 (2) Six per cent of the principal amount, exclusive of the
19 administrative fee, or \$75, whichever is less, on the
20 second and subsequent loans made to that borrower;



1 provided that a licensee shall not charge the same borrower an
2 administrative fee more than once in any four month period.

3 (d) A licensee shall not refinance a loan made pursuant to
4 this section unless the following conditions have been met at
5 the time the borrower submits an application to refinance:

6 (1) The borrower has repaid at least sixty per cent of the
7 outstanding principal remaining on the loan;

8 (2) The borrower is not delinquent on the outstanding
9 loan;

10 (3) The licensee has underwritten the new loan in
11 accordance with section 412:9-F; and

12 (4) If the loan proceeds of the original loan and the
13 refinance loan are to be used for personal, family, or
14 household purposes, the borrower has not previously
15 refinanced the outstanding loan more than once.

16 (e) Notwithstanding subsection (d), an administrative fee
17 shall not be contracted for or received in connection with the
18 refinance of a loan unless at least eight months have elapsed
19 since the receipt of a previous administrative fee paid by a
20 borrower. With the exception of a refinance loan, only one



1 administrative fee may be contracted for or received until the
2 loan has been paid in full.

3 (f) A licensee may require reimbursement from a borrower
4 for the actual insufficient funds fees incurred by the licensee
5 due to the actions of the borrower and may contract for and
6 receive a delinquency fee in the following amounts:

7 (1) An amount not to exceed \$14, for a period of
8 delinquency not less than seven days; or

9 (2) An amount not to exceed \$20, for a period of
10 delinquency not less than fourteen days.

11 (g) Delinquency fees imposed pursuant to subsection (f)
12 shall be subject to the following requirements:

13 (1) No more than one delinquency fee may be imposed per
14 delinquent payment;

15 (2) No more than two delinquency fees may be imposed
16 during any period of thirty consecutive days;

17 (3) No delinquency fee may be imposed on a borrower who is
18 one hundred eighty days or more past due if that fee
19 would result in the sum of the borrower's remaining
20 unpaid principal balance, accrued interest, and
21 delinquency fees to exceed one hundred eighty per cent



1 of the original principal amount of the borrower's
2 loan; and

3 (4) The licensee or any of its wholly owned subsidiaries
4 shall attempt to collect a delinquent payment for a
5 period of at least thirty days following the start of
6 the delinquency before selling or assigning that
7 unpaid debt to an independent party for collection.

8 (h) The licensee shall notify each borrower, at least two
9 days prior to each payment due date, of the amount due and the
10 payment due date. Notification may be provided by any means
11 mutually acceptable to the borrower and the licensee. A
12 borrower shall have the right to opt out of this notification at
13 any time, upon electronic or written request to the licensee.
14 The licensee shall notify each borrower of this right prior to
15 disbursing loan proceeds.

16 (i) A licensee, finder, or any other person that
17 participates in loan origination under this part shall not
18 offer, sell, or require a borrower to contract for credit
19 insurance or insurance on tangible personal or real property, in
20 connection with or incidental to the making of any loan under
21 this part.



(j) A licensee, finder, or any other person that participates in loan origination under this part shall not refer a borrower to any other person for the purchase of credit insurance or insurance on tangible personal or real property, in connection with or incidental to the making of any loan under this part.

§412:9-E Disclosure required. (a) The licensee shall disclose in writing, in at least twelve-point font, the following information to each consumer at the time of application:

(1) The amount borrowed;

(2) The total dollar cost of the loan to the consumer if the loan is paid back on time, including the sum of the administrative fee, principal amount borrowed, and interest payments;

(3) The corresponding annual percentage rate, calculated in accordance with Regulation Z of the Board of Governors of the Federal Reserve System, title 12 Code of Federal Regulations part 226;

(4) The periodic payment amount;

(5) The delinquency fee schedule;



1 (6) The following statement:

2 "REPAYING YOUR LOAN EARLY WILL LOWER YOUR BORROWING
3 COSTS BY REDUCING THE AMOUNT OF INTEREST YOU WILL PAY.
4 THIS LOAN HAS NO PREPAYMENT PENALTY."; and

5 (7) A statement that the consumer has the right to rescind
6 the loan; provided that the consumer shall notify the
7 licensee of the consumer's intent to rescind the loan
8 and return the principal advanced by the end of the
9 business day following the date the loan is
10 consummated.

11 (b) The disclosure statement required under this section
12 shall be provided in printed form unless the consumer indicates
13 in a separate writing the consumer's election to receive the
14 disclosure statement through means of a computer disc,
15 electronic mail, download from an internet site, thumb drive,
16 any other media that may require the use of a device or a
17 machine to be viewed or heard, or by any other means
18 contemplated by chapter 489E.

19 §412:9-F Loan underwriting required. (a) Prior to making
20 a loan pursuant to section 412:9-D, a licensee shall underwrite
21 the loan to determine a borrower's ability and willingness to



1 repay the loan pursuant to the loan terms. A licensee shall not
2 make a loan if the licensee determines through underwriting that
3 the borrower's total monthly debt service payments at the time
4 of origination, including the loan for which the borrower is
5 being considered and all outstanding forms of credit that can be
6 independently verified by the licensee, exceed fifty per cent of
7 the borrower's gross monthly income.

8 (b) A licensee shall seek information and documentation
9 pertaining to all of a borrower's outstanding debt obligations
10 during the loan application and underwriting process, including
11 loans that are self-reported by the borrower but not available
12 through independent verification. The licensee shall verify the
13 information using a credit report from at least one consumer
14 reporting agency or through other available electronic debt
15 verification services that provide reliable evidence of a
16 borrower's outstanding debt obligations.

17 (c) The licensee shall request from the borrower and
18 include all information obtained from the borrower regarding
19 outstanding deferred deposit transactions in the calculation of
20 the borrower's outstanding debt obligations.



1 (d) The licensee shall not be required to consider loans
2 to the borrower from friends or family for purposes of debt-to-
3 income ratio evaluation.

4 (e) The licensee shall verify the borrower's income that
5 the licensee relies upon to determine the borrower's debt-to-
6 income ratio using information from the following:

7 (1) Electronic means or services that provide reliable
8 evidence of the borrower's actual income; or

9 (2) W-2 forms, tax returns, payroll receipts, bank
10 statements, or other third-party documents that
11 provide reasonably reliable evidence of the borrower's
12 actual income.

13 §412:9-G Credit education; report to consumer reporting
14 agency; acceptance as data furnisher. (a) Prior to
15 disbursement of loan proceeds for a loan made pursuant to
16 section 412:9-D, a licensee shall:

17 (1) Offer a credit education program or seminar to the
18 borrower that has been previously reviewed and
19 approved by the commissioner for use in complying with
20 this section; or



1 (2) Invite the borrower to a credit education program or
2 seminar offered by an independent third party that has
3 been previously reviewed and approved by the
4 commissioner for use in complying with this section;
5 provided that any credit education program or seminar offered
6 under this subsection shall be provided at no cost to the
7 borrower.

8 (b) A borrower shall not be required to participate in a
9 credit education program or seminar under subsection (a) as a
10 condition of loan proceed disbursement.

11 (c) A licensee shall report each borrower's payment
12 performance to at least one consumer reporting agency upon
13 acceptance as a data furnisher by that consumer reporting
14 agency. Any licensee that is accepted as a data furnisher after
15 admittance into the pilot program shall report all borrower
16 payment performance occurring after the licensee's inception of
17 lending under the pilot program as soon as practicable after the
18 licensee's acceptance into the pilot program, but in no event
19 more than six months after the licensee's acceptance into the
20 pilot program.



1 (d) The commissioner may approve a licensee for the pilot
2 program before that licensee has been accepted as a data
3 furnisher by a consumer reporting agency if the commissioner has
4 a reasonable expectation, based on information supplied by the
5 licensee, of the following:

6 (1) The licensee will be accepted as a data furnisher once
7 the licensee achieves a lending volume required of
8 data furnishers of the licensee's type by a consumer
9 reporting agency; and

10 (2) The lending volume will be achieved within the first
11 six months of the licensee commencing lending under
12 the pilot program;

13 provided that the commissioner shall withdraw approval for pilot
14 program participation from any licensee that fails to become
15 accepted as a data furnisher by a consumer reporting agency
16 within six months of commencing lending under the pilot program.

17 (e) A licensee shall provide each borrower with the name
18 of the consumer reporting agency or agencies to which the
19 licensee will report the borrower's payment history. A licensee
20 that is accepted as a data furnisher after admittance into the
21 pilot program shall notify a borrower, as soon as practicable



1 following acceptance as a data furnisher, regarding the name of
2 the consumer reporting agency or agencies to which the licensee
3 will report that borrower's payment history.

4 §412:9-H Waivers; when unlawful. (a) A licensee shall be
5 prohibited from requiring, as a condition of providing a loan
6 under this part, a borrower to:

7 (1) Waive any right, penalty, remedy, forum, or procedure
8 provided for in any law applicable to the loan,
9 including the right to file and pursue a civil action
10 or file a complaint with or otherwise communicate with
11 the commissioner or any court of appropriate
12 jurisdiction or other public entity; or

13 (2) Agree to resolve disputes in a jurisdiction outside
14 the State or to the application of laws other than
15 those of this State, as provided by law.

16 (b) Any waiver by a borrower shall be knowing, voluntary,
17 and in writing and expressly not made a condition of doing
18 business with the licensee under this part. Any waiver that is
19 required as a condition of doing business with a licensee under
20 this part shall be contrary to public policy and shall be void
21 and unenforceable. The licensee shall have the burden of



1 proving that a waiver of any right, penalty, remedy, forum, or
2 procedure was knowing, voluntary, and not made a condition of
3 the loan contract with the borrower.

4 (c) A licensee shall be prohibited from refusing to do
5 business with or discriminating against a borrower or an
6 applicant on the basis that the borrower or applicant refuses to
7 waive any right, penalty, remedy, forum, or procedure, including
8 the right to file and pursue a civil action or file a complaint
9 with or otherwise communicate with the commissioner or any court
10 of appropriate jurisdiction or other public entity. The
11 exercise of a borrower's or applicant's right to refuse to waive
12 any right, penalty, remedy, forum, or procedure, including a
13 rejection of a contract requiring a waiver, shall not affect any
14 otherwise legal terms of a contract or agreement.

15 (d) This section shall not apply to:

16 (1) Any agreement to waive any right, penalty, remedy,
17 forum, or procedure, including any agreement to
18 arbitrate a claim or dispute, after a claim or dispute
19 has arisen; provided that nothing in this section
20 shall affect the enforceability or validity or any
21 other provision of the contract; and



(2) Any loan with a principal amount of \$2,500 or more.

§412:9-I Finders; services performed; prohibited activities. (a) A licensee may use the services of one or more finders as provided in this part.

(b) A finder may perform one or more of the following services for a licensee at the finder's physical location for business:

(1) Distribute, circulate, use, or publish preprinted brochures, flyers, fact sheets, or other written materials relating to loans that the licensee may make or negotiate and that have been reviewed and approved in writing by the licensee prior to being distributed, circulated, or published;

(2) Provide written factual information about loan terms, conditions, or qualification requirements to a prospective borrower that have been prepared by the licensee or reviewed and approved in writing by the licensee; provided that a finder may discuss this written factual information with a prospective borrower in general terms but shall not provide counseling or advice to a prospective borrower;



- 1 (3) Notify a prospective borrower of the information
2 needed in order to complete a loan application;
3 provided that a finder shall not provide counseling or
4 advice to a prospective borrower;
- 5 (4) Enter information provided by the prospective borrower
6 on a preprinted or electronic application form or onto
7 a preformatted computer database; provided that a
8 finder shall not provide counseling or advice to a
9 prospective borrower;
- 10 (5) Assemble credit applications and other materials
11 obtained in the course of a credit application
12 transaction for submission to the licensee;
- 13 (6) Contact the licensee to determine the status of a loan
14 application;
- 15 (7) Communicate a response returned by the licensee's
16 automated underwriting system to a borrower or a
17 prospective borrower; or
- 18 (8) Obtain a borrower's signature on documents prepared by
19 the licensee and deliver final copies of the documents
20 to the borrower.



(c) A finder shall not engage in any of the following activities:

(1) Provide counseling or advice to a borrower or prospective borrower;

(2) Provide loan-related marketing material that has not been previously approved by the licensee to a borrower or a prospective borrower; or

(3) Interpret or explain the relevance, significance, or effect of any of the marketing materials or loan documents the finder provides to a borrower or prospective borrower.

(d) A finder shall comply with all laws applicable to the licensee that impose requirements upon the licensee for safeguards for information security, including compliance with chapters 487J, 487N, and 487R.

§412:9-J Finders; disclosure required. (a) At the time the finder receives or processes an application for a loan under the pilot program, the finder shall provide a written disclosure statement to the applicant on behalf of the licensee, which shall contain wording substantially similar to the following and shall be printed in not less than ten-point font:



1 "Your loan application has been referred to us by
2 [Name of Finder]. We may pay a fee to [Name of
3 Finder] for the successful referral of your loan
4 application. IF YOU ARE APPROVED FOR THE LOAN, [NAME
5 OF LICENSEE] WILL BECOME YOUR LENDER, AND YOU WILL BE
6 BUILDING A RELATIONSHIP WITH [NAME OF LICENSEE]. If
7 you wish to report a complaint about [Name of Finder]
8 or [Name of Licensee] regarding this loan transaction,
9 you may contact the Department of Commerce and
10 Consumer Affairs Division of Financial Institutions."

11 (b) The statement required under subsection (a) shall
12 include the most recent contact information, including a
13 telephone number and internet website, for the division.

14 (c) The applicant shall acknowledge receipt of the
15 disclosure statement in writing.

16 (d) If a loan pursuant to this part is consummated, the
17 licensee shall provide the borrower with a written copy of the
18 disclosure statement required by this section within fourteen
19 days following the date of loan consummation. A licensee may
20 include the disclosure within the licensee's loan contract or



1 may provide the disclosure as a separate document to the
2 borrower, via any means acceptable to the borrower.

3 §412:9-K Finders; compensation; written agreement;
4 requirements. (a) All arrangements between a licensee and a
5 finder shall be set forth in a written agreement. The written
6 agreement shall state that the finder agrees to comply with all
7 rules established by the commissioner regarding the activities
8 of finders pursuant to this part and the commissioner shall have
9 access to all the finder's books and records that pertain to the
10 finder's operations under the written agreement with the
11 licensee.

12 (b) A finder may be compensated by the licensee pursuant
13 to the written agreement required under subsection (a).

14 (c) Any compensation of a finder by a licensee shall be
15 subject to the following requirements:

16 (1) No fee shall be paid to a finder in connection with a
17 loan application until and unless that loan is
18 consummated;

19 (2) No fee shall be paid to a finder based upon the
20 principal amount of the loan;



(3) No fee paid to a finder shall exceed the following amounts:

(A) \$45 per loan for the first forty loans originated each month at the finder's location; and

(B) \$40 per loan for any subsequent loans originated during that month at the finder's location; and

(4) The finder's location for performing services permitted under this part and other information required by section 412:9-L have been reported to the commissioner, and the commissioner has not barred the finder from providing services at that location.

(d) No licensee shall directly or indirectly pass on to a borrower any fee or any portion of any fee that the licensee pays to a finder in connection with the borrower's loan or loan application.

§412:9-L Licensees; utilization of finders; requirements.

(a) A licensee that utilizes the services of a finder shall notify the commissioner within fifteen days of entering into a contract with a finder on a form prescribed by the commissioner, which contains the following information:



(1) The name and business address of the finder and all locations at which the finder will perform services permitted under this part;

(2) The name and contact information for an employee of the finder who is knowledgeable about, and has the authority to execute, the contract governing the business relationship between the finder and the licensee;

(3) The name and contact information for one or more employees of the finder who are responsible for the finder's finding activities on behalf of the licensee;

(4) A list of the activities the finder shall perform on behalf of the licensee; and

(5) Any other information that the commissioner may require.

(b) The commissioner shall charge an annual finder registration fee for each finder utilized by a licensee, to be established by rule pursuant to chapter 91.

(c) A licensee shall submit an annual report to the commissioner, which shall include any information pertaining to each finder utilized by the licensee and the licensee's



1 relationship and business arrangements with each finder, as the
2 commissioner may require by rule pursuant to chapter 91.

3 **§412:9-M Examination; violation; penalty.** (a) Every
4 licensee and every finder shall permit the commissioner to
5 examine the operations of the licensee or the finder to ensure
6 the licensee or the finder is in compliance with this part. The
7 licensee or finder shall pay the entire cost of the examination.

8 (b) Upon a determination that a finder has acted in
9 violation of this part or any rule adopted pursuant to this
10 chapter, the commissioner shall have the authority to:

11 (1) Disqualify a finder from performing services under
12 this part;

13 (2) Prohibit a finder from performing services at one or
14 more specific locations of the finder;

15 (3) Terminate a written agreement between a finder and
16 licensee; and

17 (4) Prohibit the use of a finder by all licensees, if that
18 action is in the public interest.

19 (c) In addition to any other penalty provided by law, the
20 commissioner may impose an administrative fine of up to \$2,500
21 for each violation of this part by a finder."



1 SECTION 2. (a) The commissioner of financial institutions
2 shall submit a preliminary report to the legislature no later
3 than twenty days prior to the convening of the regular session
4 of 2018 and a final report no later than twenty days prior to
5 the convening of the regular session of 2021 on the status of
6 the increased access to responsible small dollar loans pilot
7 program established by section 1 of this Act.

8 (b) The reports shall include but not be limited to the
9 following information:

10 (1) The number of entities that applied to participate in
11 the pilot program;

12 (2) The number of entities accepted to participate in the
13 pilot program;

14 (3) The number of pilot program loan applications received
15 by licensees participating in the pilot program, the
16 number of loans made pursuant to the pilot program,
17 the total amount loaned, the distribution of loan
18 lengths upon origination, and the distribution of
19 interest rates and principal amounts upon origination
20 among those loans;



- 1 (4) The number of borrowers who obtained more than one
2 pilot program loan and the distribution of the number
3 of loans per borrower;
- 4 (5) The number and percentage of borrowers who applied for
5 a refinance loan;
- 6 (6) The number and type of finders used by licensees and
7 the relative performance of loans consummated by
8 finders compared to the performance of loans
9 consummated without a finder;
- 10 (7) The number and percentage of borrowers who obtained
11 one or more pilot program loans on which late fees
12 were assessed; the total amount of late fees assessed;
13 and the average late fee assessed by dollar amount and
14 as a percentage of the principal amount loaned;
- 15 (8) Information relating to the number and percentage of
16 pilot program borrowers who experienced at least one
17 delinquency and the distribution of principal loan
18 amounts corresponding to those delinquencies;
- 19 (9) Information relating to the number and types of
20 violations of the new part of chapter 412, article 9,



1 Hawaii Revised Statutes, established by section 1 of
2 this Act, by licensees and finders;

3 (10) Recommendations for improving the program; and

4 (11) Any other information the commissioner of financial
5 institutions deems relevant.

6 (c) The final report shall also include a recommendation
7 from the commissioner of financial institutions regarding
8 whether the increased access to responsible small dollar loans
9 pilot program should be continued after June 30, 2021.

10 SECTION 3. In codifying the new sections added by section
11 1 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

14 SECTION 4. This Act shall take effect on July 1, 2016;
15 provided that this Act shall be repealed on June 30, 2021.

16
INTRODUCED BY: OK BR

JAN 26 2016



H.B. NO. 2547

Report Title:

Increased Access to Responsible Small Dollar Loans Pilot Program; Division of Financial Institutions; Financial Institutions; Finders

Description:

Establishes the increased access to responsible small dollar loans pilot program, within the department of commerce and consumer affairs division of financial institutions, to increase the availability of responsible small dollar investment loans of at least \$300 but less than \$2,500. Specifies requirements of the program, including application requirements, interest rates, use of finders, and fees. Requires a preliminary report to the legislature no later than twenty days prior to the convening of the regular session of 2018 and a final report no later than twenty days prior to the convening of the regular session of 2021. Pilot program repeals June 30, 2021.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





LATE

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**PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE HOUSE COMMITTEE ON
ECONOMIC DEVELOPMENT AND BUSINESS

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

TUESDAY, FEBRUARY 9, 2016
9:00 a.m.

**TESTIMONY ON H.B. No. 2547
RELATING TO THE INCREASED ACCESS
TO RESPONSIBLE SMALL DOLLAR LOANS PILOT PROGRAM**

TO THE HONORABLE DEREK S.K. KAWAKAMI, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner"),
testifying on behalf of the Department of Commerce and Consumer Affairs
("Department"). We appreciate the opportunity to provide comments on H.B. No. 2547.

H.B. No. 2547 proposes to amend the Code of Financial Institutions,
Chapter 412, Hawaii Revised Statutes ("HRS"), by adding a new part to Article 9
("Article 9") to be entitled, "The Increased Access to Responsible Small Dollar Loans
Pilot Program" (the "program").

The bill proposes a five-year pilot program beginning July 1, 2016. It is intended to increase the availability of “responsible small dollar investment loans of at least \$300 and less than \$2,500.” The program contemplates a “finder” and a licensee (“licensee” or “lender”) in a loan transaction with a borrower. Specifically, the finder finds loan applicants (“borrowers”). Finders act as an interface between the lender and borrower.

The lender underwrites the loan file “to determine a borrower’s ability and willingness to repay the loan pursuant to the loan terms.” The proposal requires “finders” and “licensees” to be approved to participate in the pilot program by the Division of Financial Institutions (“DFI”) Commissioner (“Commissioner”). Lenders register their finders with the Commissioner. Lenders and finders are subject to examination by the Commissioner, and are subject to penalties.

While certain concepts in the bill may have merit, many are questionable. As an example, permissible interest rates and potential fees are high. Depending on the loan amount, the bill would allow the lender to charge a fixed interest rate of the lesser of 36% or the prime rate added to 32.75% of the unpaid principal balance for loans of a smaller dollar amount (less than \$1,000 in principal), or the lesser of 35% or the prime rate added to 28.75% of the unpaid principal balance for loans of a larger dollar amount under the program (between \$1,000 and \$2,500). Additionally, the lender would be allowed an administrative fee of up to \$90 on the first loan to the borrower, and \$75 on

most subsequent loans. Delinquency fees would be allowed of up to 180% of the original principal amount of the loan.

The finder would be paid by the lender based on the number of closed loans from the finder each month. Much is riding on the finder who maintains the direct contact with the borrower, gathers and inputs data for the borrower's loan application, prepares the loan file for lender underwriting, and closes the loan. Despite this obvious conflict of interest, the finder is not licensed under the bill, and there is a lack of finder qualifications.

Before codification under Article 9, these financial institutions were referred to as industrial loan companies. They were small, state-chartered institutions that made uncollateralized loans to low- and moderate-income workers who were unable to obtain such loans from banks. Under Article 9, these companies are called "financial services loan companies" ("FSLCs"). They are licensed, supervised and regulated like other financial institutions covered by Chapter 412, HRS. Article 9 deals with consumer loans, typically for furniture or appliances. It specifies interest computation methods, rate limitations, fee restrictions, repayment methodologies, unpaid principal balance calculations, and security provisions that are different than this measure, raising a question whether the program belongs in Article 9. While Article 9 focuses on consumer loans, the program's stated purpose is to increase the availability of responsible small dollar "investment loans", an undefined term. Finally, by placing the

program contemplated by H.B. No. 2547 under Chapter 412, the minimum capitalization for each licensee under the program will be \$500,000. This may be an obstacle for some lender/licensees.

In essence, H.B. No. 2547 appears to be developing regulation for loans that are in the vein of payday lending, deferred deposits, and check cashing loans. The Department submits that this proposal will not rein in certain key issues with the industry, including high interest rates and fees that too frequently lead to a “cycle of debt” for consumers. The federal Consumer Financial Protection Bureau (“CFPB”) has been studying the payday lending industry for several years and anticipates it will issue payday lending regulations sometime this year.

The Department points out that there is an ongoing discussion regarding payday lending within the Legislature that received significant attention during the 2015 legislative session, and continues this session with bills including H.B. No. 2608, Relating to Deferred Deposits. Given the issues under discussion raised by related legislation, a pilot program within Chapter 412, Article 9, HRS, may not be appropriate at this time.

It is not clear whether this program is intended to promote small dollar lending, or regulate it. DFI serves a regulatory capacity to promote safety and soundness of financial institutions for the public, rather than as a promoter of lending and capital distribution.

A more practical concern is the implementation date of this program of July 1, 2016. DFI will need staff to implement this program as this is significantly different than its current FSLC supervisory program, which includes the licensure and supervision as well as examination of the FSLCs. In addition, DFI does not have physical space to hire additional staff.

In view of the foregoing, DFI respectfully submits that it may be premature to proceed with this measure. Thank you for the opportunity to comment on H.B. No. 2547. I would be pleased to respond to any questions that you may have.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Economic Development & Business
Tuesday, February 9, 2016 at 9:00 A.M.
Conference Room 312, State Capitol**

LATE

**RE: HOUSE BILL 2547 RELATING TO THE INCREASED ACCESS TO
RESPONSIBLE SMALL DOLLAR LOANS PILOT PROGRAM**

Chair Kawakami, Vice Chair Kong, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 2547, which establishes the increased access to responsible small dollar loans pilot program, within the department of commerce and consumer affairs division of financial institutions, to increase the availability of responsible small dollar investment loans of at least \$300 but less than \$2,500. Specifies requirements of the program, including application requirements, interest rates, use of finders, and fees. Requires a preliminary report to the legislature no later than twenty days prior to the convening of the regular session of 2018 and a final report no later than twenty days prior to the convening of the regular session of 2021. Pilot program repeals June 30, 2021.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber is appreciate of any bill to help small business as the overall business climate requires improvement. However, the amount of \$2,500 may not be impactful enough to stimulate the economy or help small businesses. We suggest that the amount be increased to a level that would stimulate the economy and provide necessary support to small businesses.

Thank you for the opportunity to testify.

To: Representative, Derek S.K. Kawakami, Chair
Representative, Sam Satoru Kong, Vice Chair
Committee on Economic Development & Business

LATE

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

February 8, 2016

In support of HB2547

HB2547, Increased Access to Responsible Small Dollar Loan Pilot Program is based on a California law designed to increase credit access to low income and credit challenged consumers. My company is in the business of serving this consumer group. It was introduced by Representative Kawakami at my request.

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. Next month is our 16th anniversary in business.

We provide many financial services to Hawaii's working families including bill payment, tax preparation and filing, payroll check cashing, postal services, Western Union and Micro-Credit Advance short-term loans.

Our customers are regular people who are unwilling or unable to utilize traditional banking services, or find it more convenient to take care of their financial needs in one place, with the same person. Many live paycheck to paycheck, and don't have the luxury of a 401-k, an understanding employer, or family members with money to loan.

Every year, thousands of Hawaii consumers use deferred deposit transactions, commonly called "payday loans" to meet their financial needs. And many more rely on subprime credit cards, checking account overdrafts, rent-to-own and other expensive forms of credit when they cannot qualify for traditional credit.

Money Service Centers of Hawaii offers our Micro-Credit Advance based on deferred deposit transactions authorized under HRS 480F. I have spoken to thousands of our clients over the years and have a deep understanding of why our clients use our services. I know they often rely on deferred deposit transactions to meet long-term credit needs, which is not the intended use of the product.

There is a market for consumer-focused high-quality financial services that meet this demand for short-term liquidity without the debit cycles and expensive fees associated with deferred deposit transactions. While there are legitimate uses for this credit product, too often it does not meet consumers' financial needs and can be harmful to their financial health.

The Center for Financial Services Innovation did an analysis of small-dollar credit borrowers' financial needs and identified four types of borrowers:

- *Unexpected expense borrowers.* These consumers need infrequent but accessible loans of both large and small amounts for expenses related to an unexpected or emergency event, like a car repair. They may benefit from amortized installment loans with extended terms that facilitate repayment within their monthly budget.

- *Misaligned cash flow borrowers.* Because of a misalignment of income and expenses, these borrowers frequently need access to small-dollar credit products to pay bills and meet regular household expenses. They may be better served through low-limit, open-ended credit lines that are both flexible and structured to support repayment.
- *Exceeding income borrowers.* These consumers are the most financially at-risk, with expenses regularly exceeding their income. They also tend to be among the most frequent users of credit, accessing small amounts for everyday expenses. They reveal an industry-wide need for better underwriting practices and more comprehensive non-credit solutions, such as income supports, savings and financial management.
- *Planned purchase borrowers.* These consumers rely on longer-term credit to finance larger loans for major purchases and asset building. They may benefit from products that support credit building and graduation to conventional credit sources.

Banks and Credit Unions are increasingly subject to new rules and regulation and are no longer in the business of taking risk and making loans. They cannot be relied on to deliver credit access and opportunity to Hawaii consumers who rely on short-term credit.

The specific benefits of HB2547 include increasing the supply of responsible small dollar loans in the financial services market. It will benefit the general economy by encouraging economic development in Hawaii through the expansion of a small-dollar loan market. HB2547 will make affordable small dollar loans more accessible and help consumers build or rebuild their credit. It will benefit the economic well-being of Hawaii consumers who over rely on expensive deferred deposit transactions.

I have reached out to the Department of Financial Institutions at the DCCA for their take on this bill. Since it is based on California law there are amendments that should to be made to align the bill with the framework of Hawaii financial services procedures and practices. It is my hope that the Department supports the objectives of the bill and sees the need to increase access to credit for low income and credit challenged Hawaii consumers.

We believe that access to affordable and fairly priced loans should not be limited to people with high incomes and FICO scores. All people deserve access to affordable loans based on more than their credit score and whether or not they have a banking relationship.

Thank you,

R. Craig Schafer

President
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