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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, February 9, 2021
9:30 a.m.
Via Videoconference

On the following measure:
S.B. 974, RELATING TO CONSUMER PROTECTION

Chair Baker and Members of the Committee:

My name is Iris Ikeda, and I am the Commissioner of the Department of Commerce and Consumer Affairs' (Department) Division of Financial Institutions (DFI). The Department supports this bill.

The purposes of this bill are to: (1) provide for installment-based small dollar loan transactions in addition to enhanced deferred deposit transactions; (2) specify various consumer protection requirements for small dollar loans; (3) beginning 1/1/23, require licensure for small dollar lenders that offer small dollar loans to consumers, subject to the oversight of the DFI to protect against illegal lending; (4) specify licensing requirements for small dollar lenders; (5) cap interest at 36% per annum and one simple maximum monthly maintenance fee tiered up to $50.00; (6) amortize loans in full and renew the loan while also permitting borrowers to choose to repay the loan without penalty; (7) cap maximum allowable costs at 60% of the principal loan amount, preventing a loan from being either too short or too long in duration; (8) cap the maximum allowable loan size at $1,500, providing more flexibility for lenders and borrowers than under the current law; (9) require lenders to provide clear disclosures of the loan terms and total charges; (10) prohibit a lender from making more than one loan at a time to a consumer, preventing incentives for lenders to “split” loans and charge higher fees; and (11) repeal Hawaii Revised Statutes (HRS) section 480F-4, relating to deferred deposits, to provide further protection to Hawaii's consumers from harmful lending practices. If enacted, this bill will take effect on July 1, 2022, to allow DFI to begin implementation of the program; provided that the licensing requirements established by Section 2 shall take effect on January 1, 2023.

The Department supports this bill because it will provide an alternative form of regulation to Hawaii’s check cashing law and includes greater oversight and additional protections for consumers.

The statutory scheme in this bill is similar to that for financial services loan companies[1], which the DFI regulates pursuant to HRS chapter 412, article 9. As such, the DFI is well-versed in the provisions of this bill and will oversee small dollar lenders in a manner similar to financial services loan companies. Small dollar lenders will be supervised as a financial institution and will be subject to applicable state and federal laws.

Thank you for the opportunity to testify on this bill.

[1] The DFI has chartered five nondepository financial services loan companies, and these companies have consumer loans totaling $110,849,836 as of June 30, 2020.

Maui Loan Inc

February 7th, 2021

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
And Members of the Senate Committee on
Commerce and Consumer Protection
Hawaii State Legislature
Honolulu, HI 96813

FROM: Maui loan Inc Richard Dan

SUBJECT: **SB 974 - RELATING TO CONSUMER PROTECTION**

Dear Chair Baker, Vice Chair Chang and Members of the Senate
Committee on Commerce and Consumer

Aloha,

I oppose SB 974 - RELATING TO CONSUMER PROTECTION.

We are a family-owned, community-based local business and over the past four decades

Versions of SB974 have been brought to the Hawaii Legislature for the past 10 years, and each year these have failed to find support. There are several reasons for this, but from my point of view the most important is that Hawaii already has the best deferred deposit regulations in the country. I can back this up by pointing out that very few consumer complaints are brought against operations running under Hawaii law.

I am painfully aware that there are complaints, but these are overwhelmingly against Internet and foreign and totally unregulated lenders. If the Legislature wishes to do something useful in this area, it should go where the problems are.

In Hawaii, borrowers are limited to one payday loan at a time. This helps keep them from becoming overextended, and it also helps protect lenders. We do not want to be lending to customers who have already taken on one or more deferred deposit loans. For one thing, customers who do that must have falsely completed their application. These forms clearly state to customers that they cannot have more than one deferred deposit loan at a time.

I also oppose forcing borrowers to take on larger loans than they want. This should be self-evident; it will be more efficient to keep debt as low as possible. If the minimum loan is made larger, then my business cannot give customers a break over bank late fee.

Let me give an example. If a customer needs $150 (typical for my Maui customers) and is, for whatever reason, in danger of paying a bill late and incurring a $30 or $35 late fee, he can come to me and get $150 for a total fee of about $20.

I do have one suggestion for improving the current regulation. I have proposed this year after year: Require a 3-day “cooling off” period between payday loans.

Since a payday loan must be paid off in cash before being renewed, a gap between ending one loan and obtaining another will encourage borrowers to manage their debt more carefully.

A final point. My business has had almost no complaints but if anyone does want to make one, they know where to find me. I have been on North Market Street for 40 years. If a customer of one of those unregulated Internet lenders has a problem, lots of luck to him even finding a place to start.

If I can be of assistance in crafting more equitable, accountable and safe legislation as it relates to the matter of small short-term loans and/or payday lending, please contact me at Tel: (808) 244-6666.

Sincerely,

Maui loan Inc

Richard Dan President

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To: Senate Committee on Commerce and Consumer Protection

From: Cheryl Kakazu Park, Director

Date: February 9, 2021, 9:30 a.m.
Via Videoconference

Re: Testimony on S.B. No. 974
Relating to Consumer Protection

Thank you for the opportunity to submit testimony on this bill, which would regulate small dollar loans. The Office of Information Practices (OIP) takes no position on the substance of this bill. OIP has commented on the confidentiality section in versions of this bill introduced in previous years. OIP has no concerns regarding the confidentiality section beginning at page 66 of this bill.

Thank you for the opportunity to testify.

LATE

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To: Chair Rosalyn Baker and members of the Hawaii Senate Committee on Commerce and Consumer Protection

From: Nick Bourke, The Pew Charitable Trusts

Delivered Electronically

February 8, 2021

RE: SB 974

Dear Chair Baker and members of the committee:

Thank you for your ongoing attention and efforts to address the harms of high-cost payday lending in Hawaii. We have appreciated the opportunity to provide your committee with research and technical assistance on this issue over the years. Pew continues to support the goal of reforming Hawaii's consumer credit market by repealing deferred deposits and authorizing new forms of safe and affordable small installment loans.

The goals outlined in SB 974 include repealing short-term deferred deposit transactions and authorizing new forms of safe and affordable small installment loans. These goals broadly conform to Pew's research-based recommendations for reform of payday and installment loan markets. **We write today to offer one key recommendation to help ensure that the bill meets its stated goals: Establish a minimum loan duration of four months, and a maximum loan duration of 24 months, so that all loans have a reasonable repayment term and affordable periodic payments.**

Our analysis follows and we would welcome the opportunity to discuss this with you.

Market Analysis

Pew has conducted in-depth research on small-dollar loans over the past nine years. This research includes unique, nationally representative telephone surveys of payday loan borrowers, 22 focus groups with borrowers of high-cost credit products across the country, and extensive analysis of market and regulatory data. We have published reports, briefs, and fact sheets available at www.pewtrusts.org/small-loans.

Empirical research has found that it is possible for states to effectively align the interests of borrowers and lenders to foster a transparent small-dollar loan market. Of states that allow payday lending, Colorado, Ohio, and Virginia have implemented the most successful policies, passing comprehensive reform that took effect in 2010, 2018, and 2021 respectively. Credit remained widely available in those states, with lenders charging prices three times lower than they charge in Hawaii today, and they provide borrowers a reasonable amount of time to repay in affordable installment payments. Since Colorado passed reform in

2010, borrowers have saved $50 million annually.[1] In Ohio, borrowers are saving more than $75 million each year.[2] Most recently, the Virginia legislature passed comprehensive, bipartisan reform that took effect on January 1st and is already fostering a transparent market with affordable payments, prices that are mutually sustainable for borrowers and lenders, and lower-cost options expanding in the state.[3]

Analysis of SB 974

The goals outlined in SB 974 align with these effective approaches from Colorado, Ohio and Virginia. However, we note that one critical factor is missing in practice—provisions to ensure that all loans have a reasonable amount of time to repay.

As proposed, the bill would allow lenders to offer loans with very short terms, such as a $1,500 loan with a repayment of $1,595 due back in only one month (see example loan terms below). Without explicitly ensuring that borrowers have more time to repay, or providing an affordability requirement, SB 974 is likely to lead to continued high levels of reborrowing. Despite the proposal's stated intentions, short-term balloon-payment loans would still be allowed to dominate the market. Borrowers would continue to struggle to afford payments, frequently renew loans, and potentially pay more in fees than the contracted loan amount.[4]

SB 974 Loan Terms

Risks remain without minimum duration provision

Loan	Term	Fees	Interest (36%)	Total repayment amount (max 60% cap applies)	Monthly payments	APR
$300.01	3	$45	$18	$363	$121	122%
$400.00	3	$45	$24	$469	$156	101%
$500.00	4	$60	$38	$598	$150	91%
$600.01	6	$150	$65	$815	$136	114%
$1,500.00	1	$50	$45	$1,595	$1,595	76%
$1,500.00	12	$600	$308	$2,400	$200	97%

(Continued on the next page)

[1] Colorado Administrator of the Uniform Consumer Credit Code: Annual Report Composites, Deferred Deposit/Payday Lenders, https://coag.gov/office-sections/consumer-protection/consumer-credit-unit/uniform-consumer-credit-code/general-information/.

[2] The Pew Charitable Trusts, "Ohio Law Offers Balanced Model for Payday Loan Reform," 2018, https://www.pewtrusts.org/en/about/events/2018/ohio-law-offers-balanced-model-for-payday-loan-reform.

[3] The Pew Charitable Trusts, "How Virginia's 2020 Fairness in Lending Act Reforms Small-Dollar Loans" 2020, https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2020/10/how-virginias-2020-fairness-in-lending-act-reforms-small-dollar-loans

[4] The Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* (2012), http://www.pewstates.org/ uploadedFiles/PCS_Assets/2012/Pew_Payday_Lending_Report.pdf

It is possible to set terms to ensure that the vast majority of customers who need more time to repay would get a suitable and transparent loan up front, automatically[5] At the same time, these strong protections still allow the small minority of borrowers who can afford to repay after just one month to do so without penalty—because the bill as proposed requires that.

Pew's recommendation

To achieve the stated purpose of "preventing a loan from being either too short or too long in duration" Pew would recommend the following revisions to the proposal:

1. Add a minimum loan term of four months.

2. Add a maximum loan term of 24 months.

Of these, the minimum loan term is most critical under this proposal. For context, Virginia's 2021 reform added a four-month minimum, while Ohio's 2018 law required a three-month minimum and Colorado's 2010 reform required a six-month minimum.

We are available to discuss this with you at your convenience or provide technical assistance as you consider changes to your state lending laws.

Sincerely,

Nick Bourke
Director, Consumer Finance
The Pew Charitable Trusts
nbourke@pewtrusts.org | 202.552.2123

[5] When Colorado required all payday loans to be amortizing 6-month installment loans in 2010, credit continued to flow but the stated loans terms and pricing became transparent. Before the law change, balloon payment payday loans (similar to those in Hawaii today) advertised two-week terms but typical borrowers were actually in debt for about five months before they could afford the balloon payment on the loan. Before reform, advertised prices represented only 13% of what the typical borrower actually paid in total; after reform, the number was 87% (source: Pew analysis of regulatory data from the Colorado Administrator of the Uniform Consumer Credit Code).