DEPARTMENT OF THE ATTORNEY GENERAL

News Release

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ATTORNEY GENERAL DAVID LOUIE AND 40 OTHER ATTORNEYS GENERAL URGE CONGRESS TO REJECT BILL REDUCING OVERSIGHT OF PAYDAY LENDERS

Proposal could preempt state laws and undermine consumer safeguards

HONOLULU - Attorney General David Louie today joined 40 other attorneys general to urge Congress to oppose a bill preempting states' authority to crackdown on predatory high cost, short-term lending practices.

In a joint letter, initiated by Illinois Attorney General Lisa Madigan and Indiana Attorney General Greg Zoeller, state officials warned House Speaker John Boehner, House Minority Leader Nancy Pelosi, Senate Majority Leader Harry Reid and Senate Minority Leader Mitch McConnell about the negative effects of the Consumer Credit Access, Innovation and Modernization Act or H.R. 6139.

Many states have established their own framework of regulations to protect consumers from the risks associated with nonbank credit service providers. However, this legislation would allow these providers – including payday lenders, installment lenders, car title lenders, prepaid card issuers and check cashers – the ability to obtain a federal charter and sidestep these more stringent state laws.

The bill would allow lenders to extend credit to consumers if there is a reasonable basis for believing the consumers can repay the loans, but without putting specific standards in place. The legislation also exempts loans with terms of one year or less from the disclosure requirements of the Truth in Lending Act and substitutes a cost metric. By preempting state laws, the proposed legislation would impede state efforts to immediately and directly protect consumers from harm.

This bill was assigned to a congressional committee which will consider the legislation and determine whether to send it to the full House or Senate.

Also signing onto the letter were attorneys general from Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Georgia, Guam, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Vermont, Washington, West Virginia, Wisconsin and Wyoming.

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October 5, 2012

The Honorable John Boehner
House Majority Leader

The Honorable Nancy Pelosi
House Minority Leader

The Honorable Harry Reid
Senate Majority Leader

The Honorable Mitch McConnell
Senate Minority Leader

Via fax

We the undersigned state Attorneys General write to urge you to oppose H.R. 6139, a bill known as the Consumer Credit Access, Innovation, and Modernization Act. This proposal would preempt state laws governing consumer lending and undermine longstanding states' rights in the area of consumer protection.

Most states have enacted laws and rules to regulate short term lending, including payday loans. Many of these states have chosen to strike a regulatory balance that preserves access to alternative forms of credit while protecting consumers from repeated debt cycles and other pitfalls associated with such products. H.R. 6139 would turn back existing consumer protections and curtail all future efforts by the states to enhance their consumer safeguards.

H.R. 6139 would give nonbank financial services providers – including payday lenders, installment lenders, car-title lenders, prepaid-card issuers, check cashers, and others – access to a federal charter issued by the Office of the Comptroller of the Currency. The bill would totally preempt state licensing laws for nonbank financial services providers, and require state consumer protection laws to be evaluated under the preemption standard set forth by the U.S. Supreme Court in *Barnett v. Nelson.*[1]

In place of state safeguards, the bill would establish only minimal consumer protections. Although the bill would prohibit lenders from extending credit to consumers unless there is a reasonable basis for believing the consumer can repay the loan, the bill establishes no standards for determining a consumer's ability to repay. Moreover, the bill would exempt loans with terms of one year or less from the disclosure requirements of the Truth in Lending Act – the universal standard for measuring the true cost of credit – and substitute a cost metric that is confusing and misleading.

By preempting state laws, the proposed legislation would impede state efforts to protect consumers from harm and respond quickly to emergent problems in the marketplace. State attorneys general have a long history of acting both

[1] *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al*., 517 U.S. 25 (1996). Specifically, the bill would preempt state consumer laws that "significantly interfere with the exercise by a Credit Corporation of its powers. . . ."

independently and, when appropriate, cooperatively to protect consumers in our states against deceptive, abusive, or predatory lending practices. The recent settlement agreement signed by 49 state Attorneys General and the five largest mortgage loan servicers exemplifies the importance of our engagement in matters affecting the consumers we serve. Although H.R. 6139 does allow our offices to engage in enforcement actions should we find violations of federal law, the bill prohibits us from enforcing state laws that were carefully designed to address problems in the local marketplace and significantly impairs our ability to respond in a targeted fashion to new abuses as they emerge.

Even the Office of the Comptroller of the Currency (OCC) has expressed concerns about serving as the chartering authority for providers of short term loans and other high cost financial products. In a July 24 hearing before the House Subcommittee on Financial Institutions and Consumer Credit, Deputy Comptroller Grovetta Gardineer emphasized the OCC's concern that "H.R. 6139 would provide special status and federal benefits to companies and third-party vendors that would primarily engage in offering credit products and services that the OCC has previously found to be unsafe and unsound and unfair to consumers." In support of preserving states' ability to regulate potentially harmful consumer financial products, Deputy Comptroller Gardineer further stated that "where these services are offered, state officials . . . have adequate authority to regulate these products and services and the companies that provide them."

H.R. 6139 would supplant state laws without sufficiently providing tangible benefits to the consumers of our respective states. In our view, the bill would eliminate crucial consumer protections in many states and curtail our authority to enforce state laws governing the conduct of financial services companies operating within our borders.

We continue to urge you to resist federal preemption of state laws, particularly in the area of consumer financial protection.

Sincerely,

Lisa Madigan
Illinois Attorney General

Greg Zoeller
Indiana Attorney General

Michael Geraghty
Alaska Attorney General

Tom Horne
Arizona Attorney General

Dustin McDaniel
Arkansas Attorney General

Kamala Harris
California Attorney General

John W. Suthers
Colorado Attorney General

Joseph R. "Beau" Biden III
Delaware Attorney General

Sam Olens
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West Virginia Attorney General

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Wisconsin Attorney General

Greg Phillips
Wyoming Attorney General

Signature Unavailable
Bruce B. Kim[i]
Executive Director
Hawaii Office of Consumer Protection

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[i] The Office of Consumer Protection is an agency which is not part of the State of Hawaii's Attorney General's Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii.