
A BILL FOR AN ACT

RELATING TO CHECK CASHING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that deferred deposit
2 agreements, commonly referred to as payday loans, are small,
3 short term, unsecured loans that borrowers commit to repay from
4 their next paycheck or a regular income payment. According to a
5 study by the Pew Charitable Trusts, the majority of borrowers
6 use deferred deposit agreements for recurring expenses, rather
7 than unexpected expenses or emergencies, because they live
8 paycheck to paycheck. Furthermore, deferred deposit agreements
9 often last well beyond a borrower's next paycheck. When fees
10 are included, a typical deferred deposit loan payment may take
11 one-third of a borrower's next paycheck, an amount that most
12 consumers who turn to deferred deposit lenders cannot afford.
13 According to Pew, the average deferred deposit loan borrower is
14 in debt for almost six months a year and pays an average of \$520
15 in fees for \$375 in credit.

16 The legislature further finds that existing state law
17 permits check cashers to charge a fee of fifteen per cent of the
18 face value of a check and lend up to a maximum of \$600. This



1 fee can amount to an annual percentage rate of four hundred
2 fifty-nine per cent, which can trap Hawaii borrowers in a cycle
3 of high interest loans. The legislature notes that there is a
4 growing trend around the country to provide more consumer
5 protections for deferred deposit loans. According to the
6 Consumer Federation of America, the nationwide trend is toward
7 an annual percentage rate cap at thirty-six per cent or less on
8 these types of small loans. The thirty-six per cent cap also
9 follows precedent established by the federal government, who in
10 2006 made it illegal to charge more than a thirty-six per cent
11 annual percentage rate on payday loans to active-duty service
12 members and their families.

13 The legislature additionally finds that deferred deposit
14 loans can be regulated to address certain problems within the
15 industry without denying customers access to these loans. The
16 legislature notes that Colorado and Washington have enacted
17 certain payday loan reform laws. For example, in Colorado,
18 borrowers now spend forty-two per cent less annually on deferred
19 deposit loans, while receiving more days of credit. Colorado
20 has also seen a decline in the number of defaults per borrower
21 and a decrease in the amount of fees for returned checks.



1 Accordingly, the purpose of this Act is to increase certain
2 consumer protection aspects of the deferred deposit loan
3 industry by:

- 4 (1) Specifying that a customer has the right to rescind a
5 deferred deposit by returning the principal amount
6 used to fund the deferred deposit within a specified
7 time frame;
- 8 (2) Permitting customers to convert a deferred deposit
9 into a loan installment plan in certain circumstances
10 and specifying requirements for the loan installment
11 plan;
- 12 (3) Protecting against harmful collection practices;
- 13 (4) Adding a definition for annual percentage rate;
- 14 (5) Requiring a check casher to provide a written
15 agreement to a customer that clearly discloses
16 specific information relating to the cost and fees
17 associated with the deferred deposit, among other
18 things;
- 19 (6) Capping the annual percentage rate at no more than
20 thirty-six per cent for deferred deposit of a personal
21 check; and



1 (7) Permitting prepayment of deferred deposit agreements
2 and loan installment plans with no additional fees.

3 SECTION 2. Chapter 480F, Hawaii Revised Statutes, is
4 amended by adding three new sections to be appropriately
5 designated and to read as follows:

6 "§480F-A Right of rescission. (a) A customer shall have
7 the right to rescind a deferred deposit, on or before the close
8 of business on the next day of business at the location where
9 the deferred deposit was originated, by returning the principal
10 in cash or the original check disbursed by the check cashier to
11 fund the deferred deposit. The check cashier may not charge the
12 customer for rescinding the loan and shall return to the
13 customer any postdated check taken as collateral for the
14 deferred deposit or any electronic equivalent.

15 (b) The check cashier shall conspicuously disclose the
16 right of rescission to the customer in the written agreement
17 made pursuant to section 480F-4(b).

18 §480F-B Deferred deposit loan installment plan; terms;
19 restrictions. (a) If a customer notifies a check cashier that
20 the customer will be or is unable to repay the deferred deposit
21 prior to the maturity of the loan term in writing, the check



1 casher shall inform the customer that the customer may convert
2 the customer's deferred deposit to a loan installment plan,
3 pursuant to subsection (d). The check casher shall convert the
4 deferred deposit to a loan installment plan if the customer
5 requests such conversion.

6 (b) Each agreement for a loan installment plan shall be in
7 writing and acknowledged by both the customer and the check
8 casher. The check casher shall not assess any other fee,
9 interest charge, or other charge on the customer as a result of
10 converting the deferred deposit into a loan installment plan.

11 (c) The loan installment plan agreement shall provide
12 payment terms for the total amount due on the deferred deposit
13 as follows:

14 (1) For a loan amount of \$400 or less, a period of at
15 least ninety days; and

16 (2) For a loan amount over \$400, a period of at least one
17 hundred eighty days;

18 provided that the loan term shall not be longer than six months.

19 (d) Payments for the loan installment plan shall not
20 exceed five per cent of a customer's monthly gross income,
21 calculated at the time of conversion from a deferred deposit to



1 a loan installment plan. The loan installment plan shall
2 provide for equal installment payments; provided that the final
3 loan installment payment may be a balance of the loan
4 installment plan.

5 (e) The customer shall provide proof of income at the time
6 of the conversion from a deferred deposit to a loan installment
7 plan; provided that if the customer fails to provide proof of
8 income or does not have income, the deferred deposit shall
9 become due and payable.

10 (f) All outstanding principal, costs, and fees allowed by
11 this chapter, associated with the deferred deposit loan
12 converted to a loan installment plan, shall be amortized over
13 the life of the loan installment plan.

14 (g) The customer may pay the balance of the loan
15 installment plan at any time. The check casher shall not charge
16 any penalty, fee, or charge to the customer for prepayment of
17 the loan installment plan by the customer. If the customer
18 prepays the loan installment prior to the maturity of the loan
19 installment term, the check casher shall refund to the customer
20 a prorated portion of the unearned cost and fees, based upon the
21 ratio of time left before maturity to the loan installment term.



1 (h) The check casher shall conspicuously disclose the
2 availability of a loan installment plan to the customer in the
3 written agreement made pursuant to section 480F-4 (b).

4 (i) A check casher's violation of any of the requirements
5 for loan installment plans shall be a violation of this chapter.

6 §480F-C Restrictions on collection by check casher or
7 third party. (a) A check casher may not threaten criminal
8 prosecution as a method of collecting a delinquent deferred
9 deposit or threaten to take any legal action against the
10 customer that is not otherwise permitted by law.

11 (b) Unless invited by the customer, a check casher shall
12 not visit a customer's residence or place of employment for the
13 purpose of collecting a delinquent deferred deposit. A check
14 casher shall not impersonate a law enforcement officer or make
15 any statements that might be construed as indicating an official
16 connection with any federal, state, or county law enforcement
17 agency or any other governmental agency while engaged in
18 collecting a deferred deposit.

19 (c) A check casher shall not communicate with a customer
20 in a manner intended to harass, intimidate, abuse, or embarrass
21 a customer, including but not limited to communication at an



1 unreasonable hour, with unreasonable frequency, by threats of
2 force or violence, or by use of offensive language. A
3 communication shall be presumed to have been made for the
4 purposes of harassment if it is initiated by the check casher
5 for the purposes of collection and the communication is made:

6 (1) With a customer or the customer's spouse in any form,
7 manner, or place, more than three times in a seven day
8 period;

9 (2) With a customer at the customer's place of employment
10 more than one time in a seven day period or made to a
11 customer after the check casher has been informed that
12 the customer's employer prohibits such communications;

13 (3) With the customer or the customer's spouse at the
14 customer's place of residence between the hours of
15 9:00 p.m. and 7:30 a.m.; or

16 (4) To a party other than the customer, the customer's
17 attorney, the check casher's attorney, or a consumer
18 reporting agency if otherwise permitted by law except
19 for purposes of acquiring location or contact
20 information about the customer.



1 (d) A check casher shall maintain a communication log of
2 all telephone and written communications with a customer
3 initiated by the check casher regarding any collection efforts,
4 including date, time, and the nature of each communication.

5 (e) This section shall apply to any employee, agent, or
6 third party assignee of a check casher, for purposes of
7 collection."

8 SECTION 3. Section 480F-1, Hawaii Revised Statutes, is
9 amended by adding a new definition to be appropriately inserted
10 and to read as follows:

11 "Annual percentage rate" means the rate charged for
12 borrowing, expressed as a single percentage number that
13 represents the actual yearly cost of funds over the term of a
14 loan and includes any fees or additional costs associated with
15 the transaction. The annual percentage rate shall be determined
16 in accordance with the federal Truth in Lending Act for closed-
17 end loans."

18 SECTION 4. Section 480F-4, Hawaii Revised Statutes, is
19 amended to read as follows:



1 "§480F-4 Deferred deposits, when allowed. (a) No check
2 cashier may defer the deposit of a check except as provided in
3 this section.

4 (b) Each deferred deposit shall be made pursuant to a
5 written agreement that has been signed by the customer and the
6 check cashier or an authorized representative of the check
7 cashier. The written agreement shall contain [a]:

8 (1) The name of the customer;

9 (2) The transaction date;

10 (3) The principal amount of the deferred deposit;

11 (4) The annual percentage rate charged for the deferred
12 deposit;

13 (5) A statement of the total amount of any fees charged
14 for the deferred deposit, expressed both in United
15 States currency and as an annual percentage rate[-];

16 (6) The dollar amount of each periodic payment that is due
17 over the life of the deferred deposit;

18 (7) The name, address, and telephone number of any agent
19 or third-party assignee involved in the deferred
20 deposit;



1 (8) A notice that the customer has the right to rescind a
2 deferred deposit pursuant to the requirements of
3 section 480F-A; and

4 (9) A notice that the customer has the ability to convert
5 a deferred deposit into a loan installment plan
6 pursuant to the requirements of section 480F-B.

7 The written agreement shall authorize the check casher to
8 defer deposit of the personal check until a specific date not
9 later than thirty-two days from the date the written agreement
10 was signed. The written agreement shall not permit the check
11 casher to accept collateral~~[...]~~, except for the customer's
12 postdated personal check in an amount permitted by this chapter.

13 (c) The face amount of the check shall not exceed \$600 and
14 the deposit of a personal check written by a customer pursuant
15 to a deferred deposit transaction may be deferred for no more
16 than thirty-two days. A check casher may charge ~~[a fee for]~~ an
17 annual percentage rate of no more than thirty-six per cent for
18 deferred deposit of a personal check [in an amount not to exceed
19 ~~fifteen per cent of the face amount of the check]~~. Any fees,
20 costs, and interest charged for deferred deposit of a personal



1 check in compliance with this [~~section~~] chapter shall be exempt
2 from chapter 478.

3 (d) The check casher shall not charge any penalty, fee, or
4 charge to the customer for prepayment of the deferred deposit by
5 the customer. If the customer prepays the deferred deposit
6 prior to the maturity of the loan term, the check casher shall
7 refund to the customer a prorated portion of any unearned cost
8 and fees, based upon the ratio of time left before maturity to
9 the loan term.

10 [~~d~~] (e) A check casher shall not enter into an agreement
11 for deferred deposit with a customer during the period of time
12 that an earlier agreement for a deferred deposit for the same
13 customer is in effect. A deferred deposit transaction shall not
14 be repaid, refinanced, or consolidated by or with the proceeds
15 of another deferred deposit transaction.

16 [~~e~~] (f) A check casher who enters into a deferred
17 deposit agreement and accepts a check passed on insufficient
18 funds, or any assignee of that check casher, shall not be
19 entitled to recover damages in any action brought pursuant to or
20 governed by chapter 490. Instead, the check casher may charge



1 and recover a fee for the return of a dishonored check in an
2 amount not greater than \$20.

3 [~~f~~] (g) No amount in excess of the amounts authorized by
4 this section and no collateral products such as insurance shall
5 be directly or indirectly charged by a check casher pursuant or
6 incident to a deferred deposit agreement."

7 SECTION 5. In codifying the new sections added by section
8 2 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

11 SECTION 6. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect upon its approval.
14



Report Title:

Check Cashing; Deferred Deposit Agreements; Fees; Annual Percentage Rate; Right to Rescind; Loan Installment Plan; Collection Practices

Description:

Specifies a customer has the right to rescind a deferred deposit by returning the principal amount used to fund the deferred deposit within a specified time frame. Permits customers to convert a deferred deposit into a loan installment plan in certain circumstances and specifies requirements for the loan installment plan. Protects against harmful collection practices. Defines annual percentage rate. Requires a check casher to provide a written agreement to a customer that clearly discloses specific information relating to the cost and fees associated with the deferred deposit, among other things. Caps the annual percentage rate at no more than thirty-six per cent for deferred deposit of a personal check. Permits prepayment of deferred deposit agreements and loan installment plans with no additional fees. (SD1)

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

