

JAN 27 2016

A BILL FOR AN ACT

RELATING TO DEFERRED DEPOSITS.

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

1 SECTION 1. The legislature finds that chapter 480F, Hawaii
2 Revised Statutes, regulates check cashers doing business in the
3 State of Hawaii. The legislature has received testimony that
4 there may be a limited number of check cashers who are not
5 complying with the regulations and consumer protections
6 currently contained in chapter 480F. The legislature also finds
7 that the problem of rogue check cashers arises because there
8 currently is no effective mechanism for enforcing the
9 regulations contained in chapter 480F, Hawaii Revised Statutes.

10 The purpose of this Act is to strengthen the enforcement of
11 chapter 480F, Hawaii Revised Statutes, by requiring check
12 cashers:

- 13 (1) To be registered with the department of commerce and
14 consumer affairs;
- 15 (2) To post a bond or other security of \$25,000 per
16 location in the State; and



1 (3) To verify that customers who apply for a deferred
2 deposit agreement may have only one deferred deposit
3 agreement outstanding at any time, thereby giving
4 customers who are unable to repay a deferred deposit
5 agreement the right, through an extended payment plan,
6 to extend the payment once in any twelve-month period.

7 This Act also:

- 8 (1) Provides the department with investigatory and
9 enforcement powers;
- 10 (2) Increases penalties for violations of chapter 480F,
11 Hawaii Revised Statutes; and
- 12 (3) Provides that the cost of audits, investigations, and
13 other regulatory functions shall be paid by fees
14 assessed to check cashers.

15 SECTION 2. Chapter 480F, Hawaii Revised Statutes, is
16 amended by adding ten new sections as follows:

17 "§480F-A Registration required. (a) No check cashier
18 shall conduct business in this State, including deferred deposit
19 transactions, without first registering with the department.

20 (b) The director shall prescribe the form of the
21 application for registration. Each application shall be



1 accompanied by the appropriate fee as prescribed by the
2 director. The director shall issue a certificate of
3 registration to each check casher who meets the requirements for
4 registration under this chapter and submits:

- 5 (1) A completed application;
- 6 (2) The bond or other security required under section
7 480F-B; and
- 8 (3) The fees prescribed by this chapter.
- 9 (c) Check casher registration shall be updated annually

10 and shall include the following:

- 11 (1) The address of the principal office of the check
12 casher;
- 13 (2) The name and address of the check casher's agent for
14 service of process in the State;
- 15 (3) All offices located in the State; and
- 16 (4) Payment of the appropriate registration fees, as
17 established by the director.

18 §480F-B Bond or other security. (a) Each application for
19 registration shall be accompanied by a surety bond, an
20 irrevocable letter of credit, or other similar security
21 acceptable to the director in the amount of \$25,000 for each



1 location in the State from which the check casher does business,
2 which shall be maintained during the term of the registration.

3 (b) The bond or other security shall be in a form
4 acceptable to the director and shall run to the State to pay any
5 costs or expenses that a check casher is required to pay to the
6 State under this chapter, and also to the State for the benefit
7 of any claimants against the check casher to secure the faithful
8 performance of the obligations of the check casher relating to
9 the check cashing in the State. In the case of a bond, the
10 aggregate liability of the surety shall not exceed the principal
11 sum of the bond. Claimants against a check casher may bring
12 suit directly against the security, or the director may bring
13 suit on behalf of the State or on behalf of claimants, either in
14 one action or in successive actions. If any claims arise that
15 result in payment from the security, the check casher, within
16 thirty days, shall provide replacement security to maintain the
17 minimum amount required under subsection (a).

18 (c) To meet the requirement of a bond or security, or any
19 portion of the principal amount the bond or security, a licensee
20 may deposit with the director, or with banks in this State as
21 the licensee may designate and the director may approve, cash,



1 interest-bearing stocks and bonds, notes, debentures, or other
2 obligations:

3 (1) Of the United States or any agency or instrumentality
4 thereof or guaranteed by the United States; or

5 (2) Of the State, a county, or instrumentality of the
6 State, or guaranteed by the State in aggregate amount
7 based upon the principal amount of not less than the
8 amount of the security or portion thereof.

9 (d) The securities or cash deposited pursuant to
10 subsection (c) shall secure the same obligations as would the
11 security, except that the depositor shall:

12 (1) Be entitled to receive all interest or dividends
13 thereon;

14 (2) Have the right, with the approval of the director, to
15 substitute other securities for those deposited; and

16 (3) Be required to substitute other securities for those
17 deposited upon a showing of good cause and written
18 order of the director.

19 (e) The bond or security shall remain in effect until
20 cancellation, which may occur only after thirty days of written



1 notice to the director. Cancellation shall not affect any
2 liability incurred or accrued during the period.

3 (f) If the director reasonably believes that there is a
4 substantial likelihood that liability was incurred or accrued
5 during the period that has not been satisfied by the licensee,
6 the director, upon notice to licensee, may retain the bond or
7 require security to remain in place for no longer than one year
8 after the check casher ceases check cashing operations in the
9 State. After one year, or shorter time as determined by the
10 director, the director shall release the bond or other security.

11 (g) The director may permit a licensee to substitute a
12 letter of credit or other form of security acceptable to the
13 director for the bond or security in place at the time the check
14 casher ceases check cashing operations in the State.

15 §480F-C Extended payment plan. (a) A customer who is
16 unable to repay a deferred deposit agreement when due to a check
17 casher may elect once in any twelve-month period to enter into
18 an extended payment plan, in which the customer agrees to repay
19 the check casher the amount due under the deferred deposit
20 agreement by means of installments.



1 (b) A customer shall not be eligible for an extended
2 payment plan more than once in any twelve month period,
3 beginning after twelve months have passed, measured from the
4 date that the previous extended payment plan was executed
5 between the check casher and the customer.

6 (c) To be eligible for an extended payment plan, a
7 customer shall submit a written request to the check casher to
8 enter into the plan before the due date of the outstanding
9 deferred deposit agreement. Upon submission of a written
10 request, the check casher and customer shall execute a written
11 agreement that modifies the terms of the outstanding deferred
12 deposit agreement and establishes the terms of the extended
13 payment plan.

14 (d) The terms of an extended payment plan shall:

15 (1) Allow the customer to repay the outstanding deferred
16 deposit agreement in no less than four equal
17 installments, including any fees due prior to entering
18 into the plan;

19 (2) Allow the customer to prepay sums due to an extended
20 payment plan in full at any time without penalty; and



1 (3) Prohibit the check casher from charging the customer
2 any interest or additional charges or fees during the
3 term of the plan, other than a one-time administrative
4 fee not to exceed the greater of ten per cent of the
5 total amount due or \$15.

6 (f) A check casher shall promptly provide the customer
7 receipts for any payments made in connection with the extended
8 payment plan. The receipts also shall state the balance due
9 under the extended payment plan after each payment and shall be
10 signed and dated by the check casher.

11 (g) If a customer fails to pay any extended payment plan
12 installment when due, the customer shall be in default of the
13 extended payment plan, and the check casher may immediately
14 accelerate payment on only the remaining balance of the extended
15 payment plan. Upon default, a check casher may not collect any
16 amount on an extended payment plan other than the amount owed by
17 the customer pursuant to the extended payment plan on the date
18 of default.

19 (h) If a customer enters into an extended payment plan,
20 the customer and check casher are prohibited from entering into



1 a subsequent deferred deposit agreement until repayment in full
2 of the original extended payment plan.

3 §480F-D Deferred deposit agreement database. (a) The
4 director may establish a database of outstanding deferred
5 deposit agreements that contains the following information with
6 respect to deferred deposit agreements and any extended payment
7 plans:

8 (1) Customer name;

9 (2) Check casher name;

10 (3) Term of deferred deposit agreement; and

11 (4) Other relevant information as may be required by the
12 director.

13 (b) The database may be operated directly by the
14 department or under contract with a third party; provided that
15 the database shall not be established prior to July 1, 2017.

16 (c) Upon notification by check casher that a deferred
17 deposit agreement has been satisfied, the director shall cause
18 the entry for that deferred deposit agreement to be closed from
19 the database within one business day.



1 (d) The database shall be accessible to check cashers via
2 a secure method of access, twenty-four hours per day, seven-days
3 per week, except for periods for routine maintenance.

4 (e) All information contained in the database shall be
5 deemed to be confidential personal information and shall not be
6 used or disclosed for any purpose other than verification
7 purposes as provided in section 480F-4(e)(2).

8 (f) The director may require check cashers to promptly
9 provide the department with the information required for the
10 operation of the database via a secure method of transmission.

11 (g) The director may establish fees per transaction for
12 check cashers to access the database. Fees shall be used to
13 fund the operational costs of the database. Fees shall be equal
14 to either the actual costs incurred by the department, if the
15 department operates the database, or the fees charged by a third
16 party, if the database is operated by a third party. A check
17 cashier may pass a database transaction fee on to a consumer
18 through the deferred deposit agreement; provided that it shall
19 be included in any applicable disclosure as a finance charge, as
20 that term is defined under the federal Truth in Lending Act, as
21 amended.



1 §480F-E Records and reports. Check cashers shall keep
2 records and make reports to the department, as required by rule.

3 §480F-F Examinations. (a) The director shall conduct:

4 (1) An initial examination and review of any applicant for
5 registration under this chapter; and

6 (2) Annual on-site examinations of a check cashier, with or
7 without prior notice.

8 More frequent on-site examinations may be conducted if the
9 director has a reasonable basis to believe that a check cashier
10 is not in compliance with this chapter. The director may
11 conduct inspections less frequently than annually if the
12 director determines that less frequent examinations are
13 appropriate. Examinations may be conducted by the director or
14 an independent investigator contracted by the director. As part
15 of the examination, the director or the investigator may request
16 relevant financial data from a check cashier in addition to the
17 records and reports required to be maintained under section
18 480F-E.

19 (b) The director shall charge a check cashier who is the
20 subject of an examination required by subsection (a):



1 (1) The cost of reasonable expenses incurred by the
2 director in connection with conducting the
3 examination, including travel expenses, mileage, and
4 per diem; and

5 (2) An examination fee of \$60 per hour, per examiner used
6 to conduct the examination.

7 §480F-G Confidentiality of records. (a) The director and
8 all employees, contractors, attorneys, agents, or third parties
9 contracted or employed by the State, and appointees of the
10 department shall not divulge or furnish any information in their
11 possession or obtained by them in the course of their official
12 duties to persons outside the department, or unless otherwise
13 permitted by this section or any other law regulating check
14 cashers.

15 (b) Any information identified in subsection (a) shall be
16 confidential and shall not be subject to subpoena or other legal
17 process.

18 (c) The director shall provide a copy of each report of
19 the examination to the check cashier that is the subject of the
20 report. The report and its contents shall remain the property
21 of the director and shall not be disclosed to any person who is



1 not an officer, director, employee, authorized auditor,
2 attorney, other consultant, or advisor of the check casher. Any
3 person who has received the report from the check casher shall
4 comply with the confidentiality provisions of this section. The
5 report and its contents shall not be subject to subpoena or
6 other legal process requiring disclosure.

7 (d) The director may provide reports of the examination
8 and other information relating to the examination of a check
9 cashier to:

10 (1) The governor, the attorney general, and heads of other
11 state governmental agencies with regulatory authority
12 over the check cashier;

13 (2) Federal, state, or foreign regulatory agencies;
14 provided that the requesting agency agrees to use the
15 information only for functions directly related to the
16 exercise of its appropriate supervisory authority; and

17 (3) Other agencies of the United States or a state if
18 requested in connection with an investigation of
19 regulatory, civil, or criminal charges against a check
20 cashier registered with the department.



1 §480F-H Suspension or revocation of registration. (a) A
2 check casher's registration may be suspended or revoked if the
3 director determines that the check casher:

4 (1) Knowingly violated any material provision of this
5 chapter or any rule adopted thereto;

6 (2) Is conducting business in an unsafe or unsound manner;

7 (3) Is insolvent;

8 (4) Has suspended payment of its obligations, has made an
9 assignment for the benefit of its creditors, or has
10 admitted, in writing, its inability to pay its debts
11 as they become due;

12 (5) Has filed for bankruptcy, reorganization, arrangement,
13 or other relief under any bankruptcy law; or

14 (6) Refuses to permit the director to make any examination
15 authorized by this chapter.

16 (b) The director may deny, suspend, revoke, or refuse to
17 renew a check casher's certificate of registration only after
18 proper notice and an opportunity for a hearing pursuant to
19 chapter 91.

20 §480F-I Fees and expenses. No applicant or registrant
21 shall be issued a certificate of registration unless the



1 appropriate fees have been paid. Unless otherwise provided by
2 law, the director shall establish the amount of all fees and
3 expenses by rule. Fees shall be deposited with the director to
4 the credit of the compliance resolution fund established
5 pursuant to section 26-9(o).

6 §480F-J Rules. The director shall adopt rules, pursuant
7 to chapter 91, necessary to implement this chapter, including
8 rules that establish fees and reporting requirements for check
9 cashers."

10 SECTION 3. Section 480F-1, Hawaii Revised Statutes, is
11 amended by adding two new definitions to be appropriately
12 inserted and to read as follows:

13 "Department" means the department of commerce and consumer
14 affairs.

15 "Director" means the director of commerce and consumer
16 affairs."

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

19 "§480F-4 Deferred deposits, when allowed. (a) No check
20 cashier may defer the deposit of a check for more than three
21 business days from the date of the check, or the business day



1 following the date that the customer deposited the check with
2 the check casher, except as provided in this section.

3 (b) Each deferred deposit shall be made pursuant to a
4 written agreement that has been signed by the customer and the
5 check casher or an authorized representative of the check
6 casher. The written agreement shall contain a statement of the
7 total amount of any fees charged for the deferred deposit,
8 expressed both in United States currency and as an annual
9 percentage rate. The written agreement shall authorize the
10 check casher to defer deposit of the personal check until a
11 specific date not later than thirty-two days from the date the
12 written agreement was signed. The written agreement shall not
13 permit the check casher to accept collateral. Any rights that a
14 check casher may have as a holder in due course under the
15 Uniform Commercial Code or otherwise shall not be deemed to
16 constitute collateral for the purposes of this section.

17 (c) The face amount of the check shall not exceed \$600 and
18 the deposit of a personal check written by a customer pursuant
19 to a deferred deposit transaction may be deferred for no more
20 than thirty-two days. A check casher may charge a fee for
21 deferred deposit of a personal check in an amount not to exceed



1 fifteen per cent of the face amount of the check. Any fees
2 charged for deferred deposit of a personal check in compliance
3 with this section shall be exempt from chapter 478.

4 (d) A check casher shall not enter into an agreement for
5 deferred deposit with a customer during the period of time that
6 an earlier agreement for a deferred deposit for the same
7 customer is in effect [-] between the customer and the check
8 casher or any other check casher registered with the department.
9 A deferred deposit transaction shall not be repaid, refinanced,
10 or consolidated by or with the proceeds of another deferred
11 deposit transaction.

12 (e) The check casher shall verify that a customer does not
13 have an outstanding deferred deposit agreement as follows:

14 (1) The check casher and any affiliates shall maintain a
15 common database and shall verify whether the check
16 casher or an affiliate has an outstanding deferred
17 deposit agreement with the customer; and

18 (2) If the director has established a database pursuant to
19 section 480F-D, the check casher shall access the
20 database and verify whether any other check casher



1 registered with the department has an outstanding
2 deferred deposit agreement with the customer.
3 If the director has not established a database or the database
4 is inoperable or inaccessible at the time that the customer
5 requests to enter into a deferred deposit agreement, the check
6 casher may rely upon the written verification of the customer.

7 [~~(e)~~] (f) A check casher who enters into a deferred
8 deposit agreement and accepts a check passed on insufficient
9 funds, or any assignee of that check casher, shall not be
10 entitled to recover damages in any action brought pursuant to or
11 governed by chapter 490. Instead, the check casher may charge
12 and recover a fee for the return of a dishonored check in an
13 amount not greater than \$20.

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

18 SECTION 5. Section 480F-6, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) A wilful violation of this chapter shall be
21 punishable by a fine of up to [~~\$500 and up to thirty days~~]



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1 ~~imprisonment.]~~ \$1,000 per occurrence, or revocation of
2 registration, or both."

3 SECTION 6. In codifying the new sections added by section
4 2 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 7. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 8. This Act shall take effect on January 1, 2017.

10

INTRODUCED BY:

Michelle Sidani

MMS



S.B. NO. 2784

Report Title:

Deferred Deposits; Registration

Description:

Requires registration of check cashers, requires bond, requires verification that customer has only one deferred deposit agreement outstanding at any time, allows extended payment plan by customer, increases investigatory and enforcement powers, and increases penalties for violations.

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

