

JAN 25 2017

A BILL FOR AN ACT

RELATING TO THE HAWAII CREDIT CREATION PILOT PROGRAM.

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

1 SECTION 1. The legislature finds that consumer demand for
2 responsible consumer loans in principal amounts of at least \$600
3 and up to \$5,000 exceeds the supply of these loans. The purpose
4 of this Act is to establish the Hawaii credit creation pilot
5 program to assist consumers in accessing loans of that size and
6 building their credit and to add consumer protections for these
7 loans that exceed current protections under existing law.

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

11 "PART . HAWAII CREDIT CREATION PILOT PROGRAM

12 §412:9-A Definitions. As used in this part:

13 "Consumer reporting agency" shall have the same meaning as
14 in the federal Fair Credit Reporting Act, title 15 United States
15 Code section 1681a(f).

16 "Licensee" means a company approved by the commissioner to
17 participate in the pilot program.



1 "Pilot program" means the Hawaii credit creation pilot
2 program established by this part.

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

5 "Referral partner" means an entity that brings a licensee
6 and a prospective borrower together, either at that referral
7 partner's physical location for business or via the licensee's
8 website, for the purpose of negotiating a loan contract.

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 Hawaii credit creation pilot program;**
14 **established.** There is established within the division of
15 financial institutions of the department of commerce and
16 consumer affairs the Hawaii credit creation pilot program. The
17 purpose of the pilot program shall be to increase the
18 availability of responsible small dollar consumer loans of at
19 least \$600 and up to \$5,000.

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 may
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 referral
10 partner pursuant to section 412:9-I without prior approval from
11 the 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 rate
20 to the actual unpaid principal balance each day;



S.B. NO. 869

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

3 (5) The loan shall have a minimum principal amount upon
4 origination of \$600 and a term of not less than one
5 hundred twenty days.

6 (b) Notwithstanding any other law to the contrary, a
7 licensee approved by the commissioner to participate in the
8 pilot program may contract for and receive interest for the loan
9 made pursuant to this section at an annual simple interest rate
10 not to exceed thirty-six per cent.

11 (c) A licensee may contract for and receive an
12 administrative fee, which shall be fully earned immediately upon
13 making the loan, in an amount not to exceed seven per cent of
14 the principal amount, exclusive of the administrative fee, or
15 \$90, whichever is less.

16 (d) An administrative fee shall not be contracted for or
17 received in connection with the refinance of a loan unless at
18 least four months have elapsed since the receipt of a previous
19 administrative fee paid by a borrower. With the exception of a
20 refinance loan, only one administrative fee may be contracted
21 for or received until the loan has been paid in full.



1 (e) A licensee may require reimbursement from a borrower
2 for the actual insufficient funds fees incurred by the licensee
3 due to the actions of the borrower and may contract for and
4 receive a delinquency fee in an amount not to exceed:

5 (1) \$14 for a period of delinquency not less than seven
6 days; or

7 (2) \$20 for a period of delinquency not less than fourteen
8 days.

9 (f) Delinquency fees imposed pursuant to subsection (e)
10 shall be subject to the following requirements:

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

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

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



S.B. NO. 869

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

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

14 **§412:9-E Disclosure required.** The licensee shall disclose
15 in writing, in at least twelve-point font, the following
16 information to each consumer at the time of application:

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



S.B. NO. 869

- 1 (3) The corresponding annual percentage rate, calculated
2 in accordance with Regulation Z of the Board of
3 Governors of the Federal Reserve System, title 12 Code
4 of Federal Regulations part 226;
- 5 (4) The periodic payment amount;
- 6 (5) The delinquency fee schedule;
- 7 (6) The following statement:
8 "REPAYING YOUR LOAN EARLY WILL LOWER YOUR BORROWING
9 COSTS BY REDUCING THE AMOUNT OF INTEREST YOU WILL PAY.
10 THIS LOAN HAS NO PREPAYMENT PENALTY."; and
- 11 (7) A statement that the consumer has the right to rescind
12 the loan; provided that the consumer shall notify the
13 licensee of the consumer's intent to rescind the loan
14 and return the principal advanced by the end of the
15 business day following the date the loan is
16 consummated.
- 17 **§412:9-F Loan underwriting required.** (a) Prior to making
18 a loan pursuant to section 412:9-D, a licensee shall underwrite
19 the loan to determine a borrower's ability and willingness to
20 repay the loan pursuant to the loan terms. A licensee shall not
21 make a loan if the licensee determines through underwriting that



1 the borrower's total monthly debt service payments at the time
2 of origination, including the loan for which the borrower is
3 being considered and all outstanding forms of credit that can be
4 independently verified by the licensee, exceed fifty per cent of
5 the borrower's gross monthly income.

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

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

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



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

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

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

10 §412:9-G Credit education; report to consumer reporting
11 agency; acceptance as data furnisher. (a) Prior to
12 disbursement of loan proceeds for a loan made pursuant to
13 section 412:9-D, a licensee shall:

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

18 (2) Invite the borrower to a credit education program or
19 seminar offered by an independent third party that has
20 been previously reviewed and approved by the
21 commissioner for use in complying with this section;



1 provided that any credit education program or seminar offered
2 under this subsection shall be provided at no cost to the
3 borrower.

4 (b) A borrower shall not be required to participate in a
5 credit education program or seminar under subsection (a) as a
6 condition of loan proceeds disbursement.

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

17 (d) The commissioner may approve a licensee for the pilot
18 program before that licensee has been accepted as a data
19 furnisher by a consumer reporting agency if the commissioner has
20 a reasonable expectation, based on information supplied by the
21 licensee, of the following:



1 (1) The licensee will be accepted as a data furnisher once
2 the licensee achieves a lending volume required of a
3 data furnisher of the licensee's type by the consumer
4 reporting agency; and

5 (2) The lending volume will be achieved within the first
6 six months of the licensee commencing lending under
7 the pilot program;

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

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



1 §412:9-H Waivers; when unlawful. (a) Any licensee shall
2 be prohibited from requiring, as a condition of providing a loan
3 under this part, a borrower to:

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

10 (2) Agree to resolve disputes in a jurisdiction outside
11 the State or through the application of laws other
12 than those of this State.

13 (b) Any waiver by a borrower shall be knowing, voluntary,
14 in writing, and expressly not made a condition of doing business
15 with the licensee under this part. Any waiver that is required
16 as a condition of doing business with a licensee under this part
17 shall be contrary to public policy and shall be void and
18 unenforceable. The licensee shall have the burden of proving
19 that a waiver of any right, penalty, remedy, forum, or procedure
20 was knowing, voluntary, and not made a condition of the loan
21 contract with the borrower.



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

12 (d) This section shall not apply to:

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

19 (2) Any loan with a principal amount over \$5,000.



1 §412:9-I Referral partners; services performed; prohibited
2 activities. (a) A licensee may use the services of one or more
3 referral partners as provided in this part.

4 (b) A referral partner may perform one or more of the
5 following services for a licensee at the referral partner's
6 physical location for business:

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

13 (2) Provide written factual information about loan terms,
14 conditions, or qualification requirements to a
15 prospective borrower that have been prepared by the
16 licensee or reviewed and approved in writing by the
17 licensee; provided that a referral partner may discuss
18 this written factual information with a prospective
19 borrower in general terms but shall not provide
20 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 referral partner shall not provide
4 counseling or 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 referral partner shall not provide counseling or
9 advice to a 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;
- 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;



- 1 (9) Disburse loan proceeds to borrowers, if borrowers
2 choose to receive their loan proceeds directly from
3 the referral partner rather than from the licensee;
- 4 (10) Accept loan payments from borrowers on behalf of
5 licensees, if borrowers choose to make their loan
6 payments directly to the referral partner; provided
7 that the referral partner may collect a payment
8 processing fee from the borrower not to exceed \$2 per
9 payment; and
- 10 (11) Provide borrowers with any notice or disclosure
11 required to be provided to the borrowers by the
12 licensee.
- 13 (c) A referral partner shall not:
- 14 (1) Provide counseling or advice to a borrower or
15 prospective borrower;
- 16 (2) Provide to a borrower or prospective borrower loan-
17 related marketing material that has not been
18 previously approved by the licensee; or
- 19 (3) Interpret or explain the relevance, significance, or
20 effect of any marketing materials or loan documents



1 that the referral partner provides to a borrower or
2 prospective borrower.

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

7 **§412:9-J Referral partners; disclosure required.** (a) At
8 the time the referral partner receives or processes an
9 application for a loan under the pilot program, the referral
10 partner shall provide a written disclosure statement to the
11 applicant on behalf of the licensee, which shall contain wording
12 substantially similar to the following and shall be printed in
13 not less than ten-point font:

14 >Your loan application has been referred to us by [Name of
15 Referral partner]. We may pay a fee to [Name of Referral
16 partner] for the successful referral of your loan application.
17 IF YOU ARE APPROVED FOR THE LOAN, [NAME OF LICENSEE] WILL BECOME
18 YOUR LENDER, AND YOU WILL BE BUILDING A RELATIONSHIP WITH [NAME
19 OF LICENSEE]. If you wish to report a complaint about [Name of
20 Referral partner] or [Name of Licensee] regarding this loan



1 transaction, you may contact the Department of Commerce and
2 Consumer Affairs Division of Financial Institutions."

3 (b) The statement required under subsection (a) shall
4 include the most recent contact information, including a
5 telephone number and internet website, for the division of
6 financial institutions.

7 (c) The applicant shall acknowledge receipt of the
8 disclosure statement in writing.

9 **§412:9-K Referral partners; compensation; written**
10 **agreement; requirements.** (a) All arrangements between a
11 licensee and a referral partner shall be set forth in written
12 agreement. The written agreement shall state that:

13 (1) The referral partner agrees to comply with all rules
14 established by the commissioner regarding the
15 activities of referral partners pursuant to this part;
16 and

17 (2) The commissioner shall have access to all the referral
18 partner's books and records that pertain to the
19 referral partner's operations under the written
20 agreement with the licensee.



1 (b) A referral partner may be compensated by the licensee
2 pursuant to the written agreement required under subsection (a).

3 (c) Any compensation of a referral partner by a licensee
4 shall be subject to the following requirements:

5 (1) No fee shall be paid to a referral partner in
6 connection with a loan application until and unless
7 that loan is consummated;

8 (2) No fee shall be paid to a referral partner based upon
9 the principal amount of the loan;

10 (3) No fee paid to a referral partner shall exceed an
11 annual assessment of \$60 per loan whether paid at the
12 time of consummation of the loan, through
13 installments, or in any other manner agreed upon by
14 the licensee and the referral partner; and

15 (4) No fee shall be paid to a referral partner unless the
16 referral partner reports its location for performing
17 services authorized under this part; provided that the
18 commissioner has not barred the referral partner from
19 providing services at that location.

20 (d) No licensee shall directly or indirectly pass on to a
21 borrower any fee or any portion of any fee that the licensee



1 owes or pays to a referral partner in connection with the
2 borrower's loan or loan application.

3 **§412:9-L Licensees; utilization of referral partners,**
4 **requirements.** (a) A licensee that utilizes the services of a
5 referral partner shall notify the commissioner within fifteen
6 days of entering into a contract with a referral partner of that
7 fact via a form prescribed by the commissioner, which shall
8 contain the following information:

- 9 (1) The name and business address of the referral partner
10 and all locations at which the referral partner will
11 perform services permitted under this part;
- 12 (2) The name and contact information for any employee of
13 the referral partner who is knowledgeable about and
14 has the authority to execute the contract governing
15 the business relationship between the referral partner
16 and the licensee;
- 17 (3) The name and contact information for one or more
18 employees of the referral partner who are responsible
19 for the referral partner's finding activities on
20 behalf of the licensee;



1 (4) A list of the activities the referral partner shall
2 perform on behalf of the licensee; and

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

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

8 (c) A licensee shall submit an annual report to the
9 commissioner that shall include any information pertaining to
10 each referral partner utilized by the licensee and the
11 licensee's relationship and business arrangement with each
12 referral partner, as the commissioner may require by rule
13 pursuant to chapter 91.

14 **§412:9-M Examination; violation; penalty.** (a) Every
15 licensee and every referral partner shall permit the
16 commissioner to examine the operations of the licensee or the
17 referral partner to ensure the licensee or the referral partner
18 is in compliance with this part. The licensee or referral
19 partner shall pay the entire cost of the examination.



1 (b) Upon a determination that a referral partner has acted
2 in violation of this part or any rule adopted pursuant to this
3 part, the commissioner shall have the authority to:

- 4 (1) Disqualify the referral partner from performing
5 services under this part;
- 6 (2) Prohibit the referral partner from performing services
7 at one or more specific locations of business of the
8 referral partner;
- 9 (3) Terminate a written agreement between the referral
10 partner and licensee; and
- 11 (4) Prohibit the use of the referral partner by licensees,
12 if that action is in the public interest.

13 (c) In addition to any other penalty provided by law, the
14 commissioner may impose an administrative fine of up to \$5,000
15 for each violation of this part by a referral partner."

16 SECTION 3. (a) The commissioner of financial institutions
17 shall submit a report to the legislature no later than twenty
18 days prior to the convening of each regular session on the
19 status of the Hawaii credit creation pilot program established
20 by section 2 of this Act.

21 (b) The reports shall include:



- 1 (1) The number of entities that applied to participate in
2 the pilot program;
- 3 (2) The number of entities accepted to participate in the
4 pilot program;
- 5 (3) The number of pilot program loan applications received
6 by licensees participating in the pilot program, the
7 number of loans made pursuant to the pilot program,
8 and the total amount loaned;
- 9 (4) The number and type of referral partners used by
10 licensees and the relative performance of loans using
11 referral partners compared to the performance of the
12 loans consummated without a referral partner;
- 13 (5) The number and percentage of borrowers who obtained
14 one or more pilot program loans on which late fees
15 were assessed, and the total amount of late fees
16 assessed;
- 17 (6) The number and percentage of borrowers who achieved a
18 credit score increase;
- 19 (7) Information relating to the number and types of
20 violations of the new part of chapter 412, article 9,



S.B. NO. 869

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

3 (8) Recommendations for improving the pilot program; and

4 (9) 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 Hawaii credit creation pilot program should be
9 continued after June 30, 2022.

10 SECTION 4. In codifying the new sections added by section
11 2 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 5. This Act shall take effect on July 1, 2017, and
15 shall be repealed on June 30, 2022.

16

INTRODUCED BY: *[Signature]*

By Request



S.B. NO. 869

Report Title:

Hawaii Credit Creation Pilot Program; Division of Financial Institutions; Department of Commerce and Consumer Affairs; Financial Institutions; Referral Partners

Description:

Establishes the Hawaii credit creation pilot program, within the department of commerce and consumer affairs division of financial institutions, to increase the availability of responsible small dollar consumer loans of at least \$600 and up to \$5,000. Specifies requirements of the program, including application requirements, interest rates, use of referral partners, and fees. Requires annual status reports to the legislature and a recommendation regarding continuation of the pilot program. Repeals on June 30, 2022.

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

