

# **Review of Payday Loan Policies and their Impact on Communities**

## **Informational Briefing**

Senate Committee on Commerce, Consumer Protection, and Health &  
House Committee on Consumer Protection and Commerce

December 8, 2017

Hawaii State Capitol, Room 229

Presentation by

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Executive Director

# Origin of Hawaii's Payday Lending Law

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- 1) The check cashing industry had undergone significant growth over the 10 years prior to 1999.
- 2) As the popularity and success of the check cashing business grew, so did the amounts charged for their service.
- 3) Many states had enacted laws regulating the industry's business practices.
- 4) Check cashers in Hawaii were subject to the usury law in the absence of a law regulating deferred deposit loans.
- 5) Legislation was required to allow check cashers to operate legally in Hawaii.

***"The purpose of this bill [HB 460] is to protect the public through the regulation of business that cash checks for a fee"*** – Consumer Protection & Commerce Committee Report, February 19, 1999

***"This is a lucrative "license to steal" and keep a customer in perpetual debt as the interest doubles and redoubles as these loans get rolled over"*** – Ruth E. Dias, AARP State Legislative Committee Chair's testimony on HB 460 before the Committee on Finance on February 24, 1999

# Stated Purpose of HB 460 – Relating to Check Cashing

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**Establish stronger consumer protections regulations on the check cashing industry:**

- 1. Establish fee caps for check cashing**
- 2. Require posted and written notices of fees to consumers**
- 3. Specify other prohibited acts with regard to check cashing**
- 4. Make violation of the check cashing law an unfair or deceptive act or practice and willful violations punishable by a fine of up to \$500 and 30 days imprisonment**
- 5. Exempt fees for deferred deposit of personal checks from Chapter 478, HRS, which regulates usury**

# Legislative History of §480F, Hawaii Revised Statutes



- Act 146 (1999)** Check Cashing Act Enacted, Chapter 480F, HRS
- Act 20 (2001)** Amended. Removed Sunset Date from the Act
- Act 222 (2003)** Amended. Changed Loan Term to 32 days from 31 days & Increased Maximum Loan Amount to \$600 from \$300.

## **Bills amending §480F, HRS introduced at the Hawaii State Legislature recently**

**SB286 (2017) – Relating to Check Cashing.** Specifies a customer has the right to rescind a deferred deposit by returning the principal amount used to fund the deferred deposit. Permits conversion of deferred deposit into an installment loan. Caps the APR at thirty-six per cent for deferred deposit of a personal check.

**HB2608 (2016)– Relating to Deferred Deposits.** Requires registration of check cashers, requires bond, requires verification that customer has only one deferred deposit outstanding at any time, allows extended payment plan by customer, increases investigatory and enforcement powers, and increases penalties for violations.

**HB744 (2015) – Relating to Check Cashing.** Places a cap on the interest that a check casher can charge pursuant to a deferred deposit agreement at 36 per cent per annum.

# Summary of §480F, Hawaii Revised Statutes, Check Cashing



## ***Loan Terms:***

**Maximum Loan Amount:** \$600 face amount of check

**Loan Term:** Maximum 32 days

**Maximum Finance Rate and Fees:**  
15% of check

**Finance Charge for a 14-day \$100 loan:** \$17.65

**APR for 14-day \$100 loan:** 459%

## ***Debt Limits:***

**Maximum Number of Outstanding Loans at One Time:** One

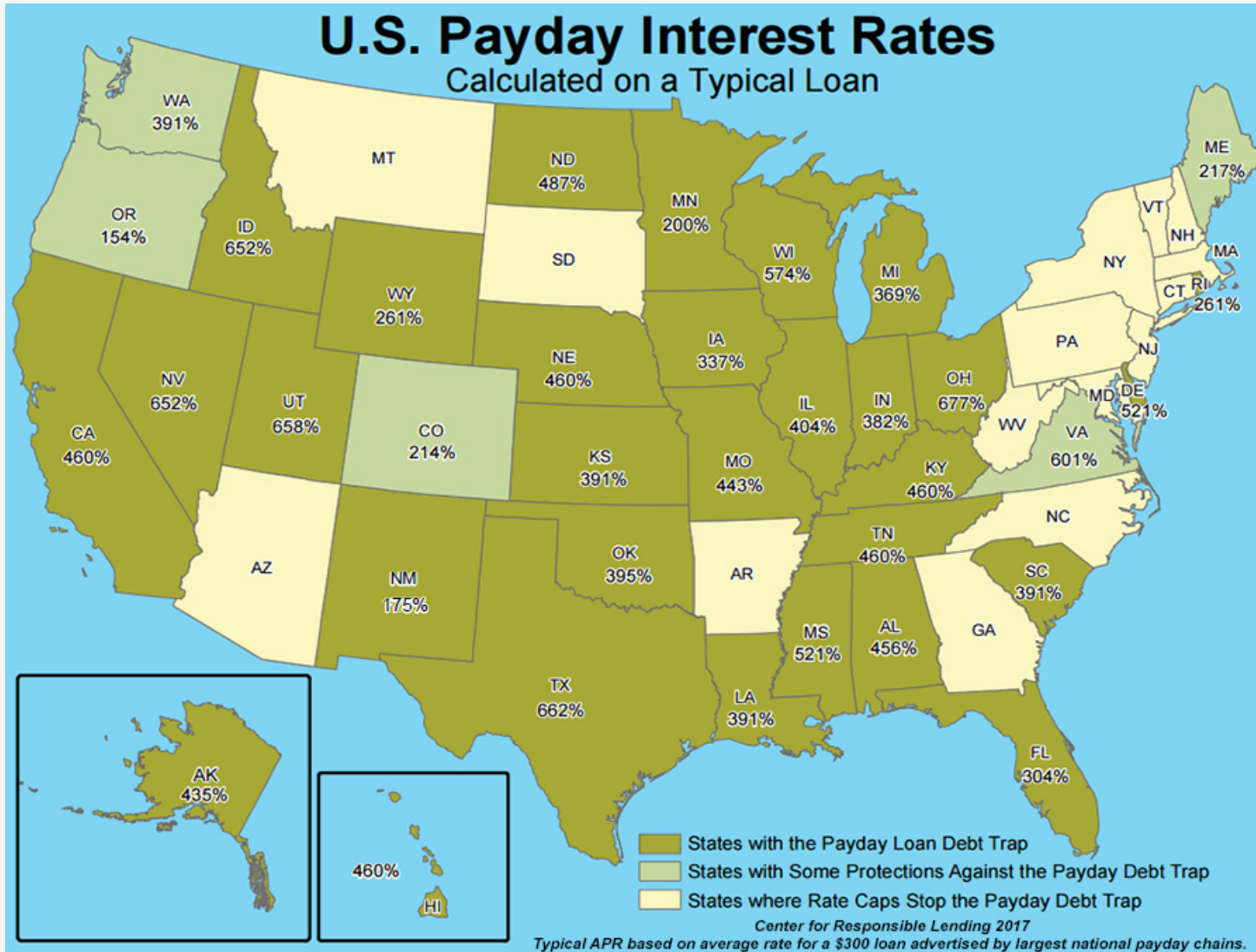
**Rollover permitted:**  
None (cannot refinance or consolidate)

## ***Collection Limits:***

**Collection Fees:** \$20 NSF fee; Check Cashier that accepts check passed on insufficient funds.

**Criminal Action:** Prohibited

# State Regulation of Payday Loans



### 32 States Authorize High-Cost Pay Day Lending

**Lending** Alabama, Alaska, California, Delaware, Florida, **Hawaii**, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming.

### 3 States Permit Lower-Cost Payday Lending

**Maine** caps interest at 30 per cent but permits tiered fees that result in up to 261 percent APR for a two-week \$250 loan. **Oregon** permits a one-month minimum term payday loan at 36 per cent plus a \$10 per \$100 borrowed initial loan fees. **Colorado** amended its payday loan law in 2010. A Colorado payday loan may include charges of 45 per cent per annum interest, a monthly maintenance fee of 7.5 per cent per month after the first month, and tiered system of finance charges.

### 18 States and the District of Columbia Prohibit Extremely High Cost Payday Lending

**Georgia** prohibits payday loans under racketeering laws. **New York** and **New Jersey** prohibit payday lending through criminal usury statutes, limiting loans to 25 and 30 per cent annual interest, respectively. **Arkansas's** constitution caps loan rates at 17 per cent annual interest. **New Hampshire**, **South Dakota**, and **Montana** cap payday loan rates at 36 per cent annual interest. **Arizona** and **North Carolina** laws authorizing payday loans have sunset. **Connecticut**, **Maryland**, **Massachusetts**, **Pennsylvania**, **Vermont**, and **West Virginia** never authorized payday loans.

**Hawaii and 15 other states have APR rates of approximately 460% or more**

# National Regulation of Payday Loans



**The Military Lending Act** (MLA), enacted in 2006 and implemented by the Department of Defense (DoD), protects active duty members of the military, their spouses, and their dependents from certain lending practices. **These practices could pose risks for service members and their families, and could pose a threat to military readiness and affect service member retention.**

For covered transactions, the MLA and the implementing regulation limit the amount a creditor may charge, including interest, fees, and charges imposed for credit insurance, debt cancellation, and suspension, and other credit related products sold in connection with the transaction. The total charge, as expressed through an annualized rate referred to as the **Military Annual Percentage Rate** **may not exceed 36 percent.**

*From the FDIC Compliance Examination Manual – September 2016*



# Changing Federal Landscape of Payday Loans



## October 2017 – CFPB finalizes rules on payday loans

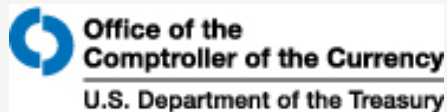
CFPB Issues Final Rule for Small Dollar Lending Market



10/5/2017 9:35:00 PM

The controversial rulemaking, which drew a record-breaking number of comments from both industry stakeholders and consumers opposed to the CFPB's proposals, imposes complex ability-to-repay requirements on payday and other loans, along with new debit disclosures and limitations.

## Less than one hour after CFPB finalizes rules - OCC rescinds guidelines regarding deposit advance products



WASHINGTON — The world of short-term lending was shaken up Thursday as one regulator issued a rule cracking down on payday loans while another made it easier for banks to offer an alternative product.

The Consumer Financial Protection Bureau finalized its long-awaited rule to rein in short-term, high-interest loans that are typically due in two to four weeks, requiring lenders to do an ability-to-repay test to ensure borrowers can afford such products.

Less than an hour later, the Office of the Comptroller of the Currency surprised the financial services world by making its own move—rescinding guidance that made it more difficult for banks to offer a payday-like product called deposit advance.

## December 2017 – House bill to kill new CFPB rules on payday loans and other short term loans

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## New House bill would kill consumer watchdog payday loan rule

- Bipartisan cosponsors of the House bill say the rule, which the Consumer Financial Protection Bureau finalized in October, limits consumer access to short-term loans.
- The CFPB's controversial rule would require lenders to make sure borrowers can afford to pay back their loans.
- The resolution comes about a month after Republicans voted to overturn another rule from the CFPB that would have banned mandatory arbitration in some consumer agreements.
- The move is the latest in a string of attacks against the CFPB, which critics say is overreaching and unaccountable.

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**Where do we go from here?**

**What are the consequences of repealing Chapter 480F, HRS or capping the interest rate at 36%?**

**Will the sky fall if the interest rate is capped at 36% or if payday lending is functionally prohibited in Hawaii?**

**What are the alternatives?**