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# A BILL FOR AN ACT

RELATING TO CHECK CASHING.

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

1 SECTION 1. Chapter 480F, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By designating sections 480F-1 through 480F-7 as:

4 "PART I. GENERAL PROVISIONS"

5 2. By amending section 480F-4 to read:

6 "~~§480F-4~~ **Deferred deposits, when allowed.** (a) No check  
7 cashier may defer the deposit of a check except as provided in  
8 this section.

9 (b) No check cashier shall enter into an agreement for a  
10 deferred deposit transaction unless the check cashier is licensed  
11 as required by this chapter.

12 [~~(b)~~] (c) Each deferred deposit shall be made pursuant to  
13 a written agreement that has been signed by the customer and the  
14 check cashier or an authorized representative of the check  
15 cashier. The written agreement shall contain a statement of the  
16 total amount of any fees charged for the deferred deposit,  
17 expressed both in United States currency and as an annual



1 percentage rate. The written agreement shall authorize the  
2 check casher to defer deposit of the personal check until a  
3 specific date not later than thirty-two days from the date the  
4 written agreement was signed. The written agreement shall not  
5 permit the check casher to accept collateral.

6 ~~[-(e)]~~ (d) The face amount of the check shall not exceed  
7 \$600 and the deposit of a personal check written by a customer  
8 pursuant to a deferred deposit transaction may be deferred for  
9 no more than thirty-two days. A check casher may charge a fee  
10 for deferred deposit of a personal check ~~[in]~~ at an ~~[amount]~~  
11 annual percentage rate not to exceed ~~[fifteen]~~ thirty-six per  
12 cent ~~[of the face amount of the check.]~~ a year. Any fees  
13 charged for deferred deposit of a personal check in compliance  
14 with this section shall be exempt from chapter 478.

15 For the purposes of this subsection, "annual percentage  
16 rate" means an annual percentage rate as determined pursuant to  
17 section 107 of the federal Truth in Lending Act (15 U.S.C  
18 section 1606).

19 ~~[-(d)]~~ (e) A check casher shall not enter into an agreement  
20 for deferred deposit with a customer during the period of time  
21 that an earlier agreement for a deferred deposit for the same



1 customer is in effect. A deferred deposit transaction shall not  
2 be repaid, refinanced, or consolidated by or with the proceeds  
3 of another deferred deposit transaction.

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

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

15 3. By adding a new part, to be appropriately designated  
16 and to read:

17 "PART II. LICENSURE

18 §480F-A Definitions. As used in this part, unless the  
19 context otherwise requires:

20 "Commissioner" means the commissioner of financial  
21 institutions.



1 "Division" means the division of financial institutions of  
2 the department of commerce and consumer affairs.

3 "NMLS" means a licensing system developed and maintained by  
4 the Conference of State Bank Supervisors and the American  
5 Association of Residential Mortgage Regulators for the state  
6 licensing and registration of state-licensed loan originators  
7 and other financial services providers, or any system provided  
8 by the Consumer Financial Protection Bureau.

9 "Payday lender" means any check casher that enters into  
10 deferred deposit agreements with customers.

11 **§480F-B Registration with NMLS; license; application;**  
12 **issuance.** (a) The commissioner shall require all licensees to  
13 register with NMLS.

14 (b) Applicants for a license shall apply in a form as  
15 prescribed by NMLS or by the commissioner. The application  
16 shall contain, at a minimum, the following information:

17 (1) The legal name, trade names, and business address of  
18 the applicant and, if the applicant is a partnership,  
19 association, limited liability company, limited  
20 liability partnership, or corporation, of every  
21 member, officer, principal, or director thereof;



1 (2) The principal place of business;

2 (3) The complete address of any other branch offices at  
3 which the applicant currently proposes to engage in  
4 deferred deposit agreements; and

5 (4) Other data, financial statements, and pertinent  
6 information as the commissioner may require with  
7 respect to the applicant or, if an applicant is not an  
8 individual, each of the applicant's controlling  
9 persons, executive officers, directors, general  
10 partners, and managing members.

11 (c) To fulfill the purposes of this part, the commissioner  
12 may enter into agreements or contracts with NMLS or other  
13 entities to use NMLS to collect and maintain records and process  
14 transaction fees or other fees related to licensees or other  
15 persons subject to this chapter.

16 (d) For the purpose and to the extent necessary to  
17 participate in NMLS, the commissioner may waive or modify, in  
18 whole or in part, by rule or order, any or all of the  
19 requirements of this part and establish new requirements as  
20 reasonably necessary to participate in NMLS.



1 (e) In connection with an application for a license under  
2 this chapter, the applicant, at a minimum, shall furnish to NMLS  
3 information or material concerning the applicant's identity,  
4 including:

5 (1) Fingerprints of the applicant or, if an applicant is  
6 not an individual, each of the applicant's controlling  
7 persons, executive officers, directors, general  
8 partners, and managing members for submission to the  
9 Federal Bureau of Investigation and any governmental  
10 agency or entity authorized to receive the  
11 fingerprints for a state, national, and international  
12 criminal history background check, accompanied by the  
13 applicable fee charged by the entities conducting the  
14 criminal history background check; and

15 (2) Personal history and experience of the applicant or,  
16 if an applicant is not an individual, each of the  
17 applicant's controlling persons, executive officers,  
18 directors, general partners, and managing members in a  
19 form prescribed by NMLS, including the submission of  
20 authorization for NMLS and the commissioner to obtain:



1           (A) An independent credit report obtained from a  
2                   consumer reporting agency described in section  
3                   603(p) of the Fair Credit Reporting Act, title 15  
4                   United States Code section 1681 et seq.; and

5           (B) Information related to any administrative, civil,  
6                   or criminal findings by any governmental  
7                   jurisdiction;

8 provided that the commissioner may use any information obtained  
9 pursuant to this subsection or through NMLS to determine an  
10 applicant's demonstrated financial responsibility, character,  
11 and general fitness for licensure.

12           (f) The commissioner may use NMLS as an agent for  
13 requesting information from and distributing information to the  
14 Department of Justice or any governmental agency.

15           (g) The commissioner may use NMLS as an agent for  
16 requesting and distributing information to and from any source  
17 directed by the commissioner.

18           (h) An applicant for a license as a payday lender shall be  
19 registered with the business registration division of the  
20 department to do business in this State before a license  
21 pursuant to this chapter shall be granted.



1           **§480F-C Issuance of license; grounds for denial.** (a) The  
2 commissioner shall conduct an investigation of every applicant  
3 to determine the financial responsibility, character, and  
4 general fitness of the applicant. The commissioner shall issue  
5 the applicant a license to engage in the business of entering  
6 into deferred deposit agreements if the commissioner determines  
7 that:

8           (1) The applicant, or in the case of an applicant that is  
9 not an individual, each of the applicant's controlling  
10 persons, executive officers, directors, general  
11 partners, and managing members, has never had a  
12 license revoked in any jurisdiction; provided that a  
13 subsequent formal vacating of a revocation shall not  
14 be deemed a revocation;

15           (2) The applicant, or in the case of an applicant that is  
16 not an individual, each of the applicant's controlling  
17 persons, executive officers, directors, general  
18 partners, and managing members, has not been convicted  
19 of, or pled guilty or nolo contendere, or been granted  
20 a deferred acceptance of a guilty or nolo contendere





1 plea to a felony under federal law or under chapter  
2 853, or in a domestic, foreign, or military court:

3 (A) During the seven-year period preceding the date  
4 of the application for licensing and  
5 registration; or

6 (B) At any time preceding the date of application, if  
7 the felony involved an act of fraud, dishonesty,  
8 breach of trust, or money laundering;

9 provided that any pardon of a conviction shall not be  
10 deemed a conviction for purposes of this section;

11 (3) The applicant, or in the case of an applicant that is  
12 not an individual, each of the applicant's controlling  
13 persons, executive officers, directors, general  
14 partners, and managing members, has demonstrated  
15 financial responsibility, character, and general  
16 fitness to command the confidence of the community and  
17 to warrant a determination that the applicant shall  
18 operate honestly, fairly, and efficiently pursuant to  
19 this chapter. For the purpose of this paragraph, a  
20 person is not financially responsible when the person  
21 has shown a disregard in the management of the



1 person's financial condition. A determination that a  
2 person has shown a disregard in the management of the  
3 person's financial condition may be based upon:

4 (A) Current outstanding judgments, except judgments  
5 solely as a result of medical expenses;

6 (B) Current outstanding tax liens or other government  
7 liens and filings;

8 (C) Foreclosures within the past three years; and

9 (D) A pattern of seriously delinquent accounts within  
10 the past three years;

11 (4) The applicant, or in the case of an applicant that is  
12 not an individual, each of the applicant's controlling  
13 persons, executive officers, directors, general  
14 partners, and managing members, has not been convicted  
15 of, pled guilty or nolo contendere to, or been granted  
16 a deferred acceptance of a guilty plea under federal  
17 law or chapter 853 to any misdemeanor involving an act  
18 of fraud, dishonesty, breach of trust, or money  
19 laundering;

20 (5) The applicant has satisfied the licensing requirements  
21 of this chapter; and



1 (6) The applicant has the bond required by section 480F-D.

2 (b) The applicant, or in the case of an applicant that is  
3 not an individual, each of the applicant's controlling persons,  
4 executive officers, directors, general partners, and managers,  
5 shall submit authorization to the commissioner for the  
6 commissioner to conduct background checks to determine or verify  
7 the information in subsection (a) in each state where the person  
8 has conducted deferred deposit agreements. Authorization  
9 pursuant to this subsection shall include consent to provide  
10 additional fingerprints, if necessary, to law enforcement or  
11 regulatory bodies in other states.

12 (c) A license shall not be issued to an applicant:

13 (1) Whose license to conduct business under this chapter,  
14 or any similar statute in any other jurisdiction, has  
15 been suspended or revoked within five years of the  
16 filing of the present application;

17 (2) Who has been banned from the industry by an  
18 administrative order issued by the commissioner or the  
19 commissioner's designee, for the period specified in  
20 the administrative order; or



1           (3) Who has failed to complete an application for  
2           licensure.

3           (d) A license issued in accordance with this chapter  
4 remains in force and effect until surrendered, suspended, or  
5 revoked, or until the license expires as a result of nonpayment  
6 of the annual license renewal fee as required by this chapter.

7           **§480F-D Fees; bond.** (a) A payday lender shall pay the  
8 following fees to the division to obtain and maintain a valid  
9 license under this chapter:

- 10           (1) Initial application fee of \$900;
- 11           (2) Processing fee of \$35 for each controlling person;
- 12           (3) Annual license renewal fee of \$600;
- 13           (4) Applicable fee charged by the entities conducting the  
14 criminal history background check of the applicant, or  
15 in the case of an applicant that is not an individual,  
16 each of the applicant's controlling persons, executive  
17 officers, directors, general partners, and managing  
18 members for submission to the Federal Bureau of  
19 Investigation and any governmental agency or entity  
20 authorized to receive the fingerprints for a state,



1 national, and international criminal history

2 background check;

3 (5) Applicable fee charged by the entities conducting an  
4 independent credit report obtained from a consumer  
5 reporting agency described in section 603(p) of the  
6 Fair Credit Reporting Act, title 15 United States Code  
7 section 1681 et seq.; and

8 (6) Information related to any administrative, civil, or  
9 criminal findings by any governmental jurisdiction;

10 provided that the commissioner may use any information obtained  
11 pursuant to this subsection or through NMLS to determine an  
12 applicant's demonstrated financial responsibility, character,  
13 and general fitness for licensure.

14 (b) Each branch office shall pay the following fees to the  
15 division to obtain and maintain a valid license under this  
16 chapter:

17 (1) Initial application fee of \$600; and

18 (2) Annual license renewal fee of \$450.

19 (c) The applicant shall file and maintain a surety bond,  
20 approved by the commissioner, executed by the applicant as  
21 obligor and by a surety company authorized to do a surety



1 business in this State as surety, whose liability as a surety  
2 does not exceed, in the aggregate, the penal sum of the bond.  
3 The penal sum of the bond shall be a minimum of \$30,000 and a  
4 maximum of \$250,000, based upon the annual dollar amount of  
5 deferred deposit agreements conducted.

6 (d) The bond required by subsection (c) shall run to the  
7 State of Hawaii as obligee for the use and benefit of the State  
8 and of any person or persons who may have a cause of action  
9 against the licensee as obligor under this chapter. The bond  
10 shall be conditioned that:

11 (1) The licensee as obligor will faithfully conform to and  
12 abide by this chapter and all the rules adopted under  
13 this chapter; and

14 (2) The bond shall pay to the State and any person or  
15 persons having a cause of action against the licensee  
16 as obligor all moneys that may become due and owing to  
17 the State and those persons under and by virtue of  
18 this chapter.

19 (e) Each payday lender shall pay a nonrefundable fee of  
20 \$ to the division for each office that is relocated.



1           **§480F-E Renewal of license; annual report.** (a) On or  
2 before December 31 of each year, each licensee shall pay a  
3 renewal fee pursuant to section 480F-D.

4           (b) The annual renewal fee shall be accompanied by a  
5 report, in a form prescribed by the commissioner, which shall  
6 include:

7           (1) A copy of the licensee's most recent audited annual  
8 financial statement, including balance sheets,  
9 statement of income or loss, statement of changes in  
10 shareholders' equity, and statement of cash flows or,  
11 if a licensee is a wholly owned subsidiary of another  
12 corporation, the consolidated audited annual financial  
13 statement of the parent corporation in lieu of the  
14 licensee's audited annual financial statement;

15           (2) A report detailing the payday lender's activities in  
16 this State, including:

17           (A) The number of deferred deposit agreements made;

18           (B) The number of deferred deposit agreements the  
19 payday lender is servicing;

20           (C) The type and characteristics of deferred deposit  
21 agreements serviced in this State;



- 1 (D) The number of deferred deposit agreements in  
2 default; and
- 3 (E) Any other information that the commissioner may  
4 require;
- 5 (3) Any material changes to any of the information  
6 submitted by the licensee on its original application  
7 that have not previously been reported to the  
8 commissioner on any other report required to be filed  
9 under this chapter;
- 10 (4) A list of the principal place of business and branch  
11 locations, if any, within this State where business  
12 regulated by this chapter is being conducted by the  
13 licensee;
- 14 (5) Disclosure of any pending or final suspension,  
15 revocation of a license, or other enforcement action  
16 by any state or governmental authority; and
- 17 (6) Any other information the commissioner may require.
- 18 (c) A license may be renewed by continuing to meet the  
19 licensing requirements of sections 480F-B, 480F-C, and 480F-D,  
20 and by filing a completed renewal statement on a form prescribed





1 by NMLS or by the commissioner, paying a renewal fee, and  
2 meeting the requirements of this section.

3 (d) A licensee that has not filed an annual report that  
4 has been deemed complete by the commissioner or paid its annual  
5 renewal fee by the renewal filing deadline, and has not been  
6 granted an extension of time to do so by the commissioner, shall  
7 have its license suspended on the renewal date. The licensee  
8 shall have thirty days after its license is suspended to file an  
9 annual report and pay the annual renewal fee, plus a late filing  
10 fee of \$250 for each business day after suspension that the  
11 commissioner does not receive the annual report and the annual  
12 renewal fee. The commissioner, for good cause, may grant an  
13 extension of the renewal date or reduce or suspend the \$250 per  
14 day late filing fee.

15 **§480F-F Enforcement authorities; violations; penalties.**

16 (a) To ensure the effective supervision and enforcement of this  
17 chapter, the commissioner may, pursuant to chapter 91, take any  
18 disciplinary action as specified in subsection (b) against an  
19 applicant or licensee if the commissioner finds that:



- 1           (1) The applicant or licensee has violated this chapter or  
2           any rule or order lawfully made pursuant to this  
3           chapter;
- 4           (2) Facts or conditions exist that would clearly have  
5           justified the commissioner in denying an application  
6           for licensure, had these facts or conditions been  
7           known to exist at the time the application was made;
- 8           (3) The applicant or licensee has failed to provide  
9           information required by the commissioner within a  
10          reasonable time, as specified by the commissioner;
- 11          (4) The applicant or licensee has failed to provide or  
12          maintain proof of financial responsibility;
- 13          (5) The applicant or licensee is insolvent;
- 14          (6) The applicant or licensee has made, in any document or  
15          statement filed with the commissioner, a false  
16          representation of a material fact or has omitted to  
17          state a material fact;
- 18          (7) The applicant, licensee, or any of its owners,  
19          members, managers, partners, officers, or directors  
20          have been convicted of or entered a plea of guilty or  
21          nolo contendere to a crime involving fraud or deceit,



1 or to any similar crime under the jurisdiction of any  
2 federal court or court of another state;

3 (8) The applicant or licensee has been the subject of any  
4 disciplinary action by any state or federal agency  
5 which resulted in revocation of a license;

6 (9) A final judgment has been entered against the  
7 applicant or licensee for violations of this chapter,  
8 any state or federal law concerning deferred deposit  
9 agreements, deferred deposit loans, check cashing,  
10 payday loans, banking, mortgage loan originators,  
11 money transmitters, or any state or federal law  
12 prohibiting deceptive or unfair trade or business  
13 practices; or

14 (10) The applicant or licensee has failed to, in a timely  
15 manner as specified by the commissioner, take or  
16 provide proof of the corrective action required by the  
17 commissioner subsequent to an investigation or  
18 examination pursuant to section 480F-L.

19 (b) After a finding of one or more of the conditions under  
20 subsection (a), the commissioner may take any or all of the  
21 following actions:



- 1           (1) Deny an application for licensure, including an  
2           application for a branch office license;
- 3           (2) Revoke the license;
- 4           (3) Suspend the license for a period of time;
- 5           (4) Issue an order to the licensee to cease and desist  
6           from engaging in any act specified under subsection  
7           (a);
- 8           (5) Order the licensee to make refunds to consumers of  
9           excess charges under this chapter;
- 10          (6) Impose penalties of up to a \$1,000 for each violation;  
11          or
- 12          (7) Bar a person from applying for or holding a license  
13          for a period of five years following revocation of the  
14          person's license.
- 15          (c) The commissioner may issue a temporary cease and  
16          desist order if the commissioner makes a finding that the  
17          licensee, applicant, or person is engaging, has engaged, or is  
18          about to engage in an illegal, unauthorized, unsafe, or unsound  
19          practice in violation of this chapter. Whenever the  
20          commissioner denies a license application or takes disciplinary  
21          action pursuant to this subsection, the commissioner shall enter



1 an order to that effect and notify the licensee, applicant, or  
2 person of the denial or disciplinary action. The notification  
3 required by this subsection shall be given by personal service  
4 or by mail to the last known address of the licensee or  
5 applicant as shown on the application, license, or as  
6 subsequently furnished in writing to the commissioner.

7 (d) The revocation, suspension, expiration, or surrender  
8 of a license shall not affect the licensee's liability for acts  
9 previously committed or impair the commissioner's ability to  
10 issue a final agency order or impose discipline against the  
11 licensee.

12 (e) No revocation, suspension, or surrender of a license  
13 shall impair or affect the obligation of any preexisting lawful  
14 contract between the licensee and any consumer.

15 (f) The commissioner may reinstate a license, terminate a  
16 suspension, or grant a new license to a person whose license has  
17 been revoked or suspended if no fact or condition then exists  
18 that clearly would justify the commissioner in revoking,  
19 suspending, or refusing to grant a license.

20 (g) The commissioner may impose an administrative fine on  
21 a licensee or person subject to this chapter if the commissioner



1 finds on the record after notice and opportunity for hearing  
2 that the licensee or person subject to this chapter has violated  
3 or failed to comply with any requirement of this chapter or any  
4 rule prescribed by the commissioner under this chapter or order  
5 issued under the authority of this chapter.

6 (h) Each violation or failure to comply with any directive  
7 or order of the commissioner shall be a separate and distinct  
8 violation.

9 (i) Any violation of this chapter that is directed toward,  
10 targets, or injures an elder may be subject to an additional  
11 civil penalty not to exceed \$10,000 for each violation in  
12 addition to any other fines or penalties assessed for the  
13 violation. For the purposes of this subsection, "elder" shall  
14 have the same meaning as in section 480-13.5.

15 **§480F-G Voluntary surrender of license.** (a) A licensee  
16 may voluntarily cease business and surrender its license by  
17 giving written notice to the commissioner of its intent to  
18 surrender its license. Prior to the surrender date of a  
19 license, the licensee shall have either completed all pending  
20 deferred deposit transactions or assigned each pending deferred  
21 deposit transaction to another licensee.



1 (b) Notice pursuant to this section shall be provided at  
2 least thirty days before the surrender of the license and shall  
3 include:

4 (1) The date of surrender;

5 (2) The name, address, telephone number, facsimile number,  
6 and electronic mail address of a contact individual  
7 with knowledge and authority sufficient to communicate  
8 with the commissioner regarding all matters relating  
9 to the licensee during the period that it was licensed  
10 pursuant to this chapter;

11 (3) The reason or reasons for surrender;

12 (4) Total dollar amount of the licensee's outstanding  
13 deferred deposit transactions in the State and the  
14 individual amounts of each outstanding deferred  
15 deposit transaction, and the name, address, and  
16 contact telephone number of the licensee to which each  
17 outstanding deferred deposit transaction was assigned;

18 (5) A list of the licensee's Hawaii authorized branch  
19 offices, if any, as of the date of surrender;

20 (6) Confirmation that the licensee has notified each of  
21 its authorized branch offices in the State, if any,



1           that the branch offices may no longer conduct deferred  
2           deposit transactions on the licensee's behalf; and  
3           (7) Confirmation that the licensee has notified each of  
4           its deferred deposit consumers, if any, that the  
5           deferred deposit transaction is being transferred and  
6           the name, address, telephone number, and any other  
7           contact information of the licensee to whom the  
8           deferred deposit transaction was assigned.

9           (c) Voluntary surrender of a license shall be effective  
10          upon the date of surrender specified on the written notice to  
11          the commissioner as required by this section; provided that the  
12          licensee has met all the requirements of voluntary surrender and  
13          has returned the original license issued.

14           **§480F-H Sale or transfer of license; change of control.**

15          (a) No license shall be transferred, except as provided in this  
16          section.

17          (b) A person or group of persons requesting approval of a  
18          proposed change of control of a licensee shall submit to the  
19          commissioner an application requesting approval of a proposed  
20          change of control of the licensee, accompanied by a  
21          nonrefundable application fee of \$500.





1           (c) After review of a request for approval under  
2 subsection (b), the commissioner may require the licensee or  
3 person or group of persons requesting approval of a proposed  
4 change of control of the licensee, or both, to provide  
5 additional information concerning the persons who shall assume  
6 control of the licensee. The additional information shall be  
7 limited to similar information required of the licensee or  
8 persons in control of the licensee as part of its original  
9 license or renewal application under sections 480F-C and 480F-E.  
10 The information shall include, for the five-year period prior to  
11 the date of the application for change of control of the  
12 licensee, a history of material litigation and criminal  
13 convictions of each person who upon approval of the application  
14 for change of control will be a principal of the licensee.  
15 Authorization shall also be given to conduct criminal history  
16 record checks of those persons, accompanied by the appropriate  
17 payment of the applicable fee for each record check.

18           (d) The commissioner shall approve a request for change of  
19 control under subsection (b) if, after investigation, the  
20 commissioner determines that the person or group of persons  
21 requesting approval has the competence, experience, character,



1 and general fitness to control the licensee or person in control  
2 of the licensee in a lawful and proper manner, and that the  
3 interests of the public will not be jeopardized by the change of  
4 control.

5 (e) The following persons shall be exempt from the  
6 requirements of subsection (b), but the licensee shall notify  
7 the commissioner when a change of control results in the  
8 following:

- 9 (1) A person who acts as a proxy for the sole purpose of  
10 voting at a designated meeting of the security holders  
11 or holders of voting interests of a licensee or person  
12 in control of a licensee;
- 13 (2) A person who acquires control of a licensee by devise  
14 or descent;
- 15 (3) A person who acquires control as a personal  
16 representative, custodian, guardian, conservator,  
17 trustee, or as an officer appointed by a court of  
18 competent jurisdiction or by operation of law; or
- 19 (4) A person who the commissioner, by rule or order,  
20 exempts in the public interest.



1 (f) Before filing a request for approval for a change of  
2 control, a person may request in writing a determination from  
3 the commissioner as to whether the person would be considered a  
4 person in control of a licensee upon consummation of a proposed  
5 transaction. If the commissioner determines that the person  
6 would not be a person in control of a licensee, the commissioner  
7 shall enter an order to that effect and the proposed person and  
8 transaction shall not be subject to subsections (b) through (d).

9 (g) Subsection (b) shall not apply to public offerings of  
10 securities.

11 **§480F-I Authorized places of business; principal office;**  
12 **branch offices; relocation; closure.** (a) Every payday lender  
13 licensed under this chapter shall have and maintain a principal  
14 place of business in the State, regardless of whether the payday  
15 lender maintains its principal office outside of the State.

16 (b) If a payday lender has more than one place of  
17 business, each additional place of business in Hawaii shall be  
18 licensed as a branch office with the commissioner. No business  
19 shall be conducted at a branch office until the branch office  
20 has been licensed by the commissioner.



1 (c) A payday lender shall not maintain any branch offices  
2 in the State in addition to its principal place of business  
3 without the prior written approval of the commissioner. An  
4 application to establish a branch office shall be submitted  
5 through NMLS with a nonrefundable application fee as required by  
6 section 480F-D.

7 (d) A payday shall not relocate any office in this State  
8 without the prior written approval of the commissioner. An  
9 application to relocate an office shall be submitted to the  
10 commissioner at least thirty days prior to relocating and shall  
11 set forth the reasons for the relocation, the street address of  
12 the proposed relocated office, and other information that may be  
13 required by the commissioner. An application to relocate an  
14 office pursuant to this subsection shall be submitted with a  
15 nonrefundable fee as required by section 480F-D.

16 (e) A payday lender shall give the commissioner notice of  
17 its intent to close a branch office at least thirty days prior  
18 to the closing. The notice shall:

- 19 (1) State the intended date of closing; and  
20 (2) Specify the reasons for the closing.



1           (f) The principal place of business and each branch office  
2 of the payday lender shall be identified in NMLS to consumers as  
3 a location at which the licensee holds itself out as a payday  
4 lender.

5           (g) A license issued under this chapter shall be  
6 prominently displayed in the principal place of business and  
7 each branch office.

8           **§480F-J Payment of fees.** All fees collected pursuant to  
9 section 480F-D, administrative fines, and other charges  
10 collected pursuant to this chapter shall be deposited into the  
11 compliance resolution fund established pursuant to section 26-  
12 9(o) and shall be payable through NMLS, to the extent allowed by  
13 NMLS. Fees not eligible for payment through NMLS shall be  
14 deposited into a separate account within the compliance  
15 resolution fund for use by the division.

16           **§480F-K Powers of commissioner.** (a) The commissioner may  
17 adopt rules pursuant to chapter 91 as the commissioner deems  
18 necessary for the administration of this chapter.

19           (b) In addition to any other powers provided by law, the  
20 commissioner shall have the authority to:



- 1           (1) Issue declaratory rulings or informal nonbinding  
2           interpretations;
- 3           (2) Investigate and conduct hearings regarding any  
4           violation of this chapter or any rule or order of, or  
5           agreement with, the commissioner;
- 6           (3) Create fact-finding committees that may make  
7           recommendations to the commissioner for the  
8           commissioner's deliberations;
- 9           (4) Require an applicant or any of its controlling  
10          persons, officers, directors, partners, members,  
11          managers, and agents to disclose their relevant  
12          criminal history and request a criminal history record  
13          check in accordance with chapter 846;
- 14          (5) Contract with or employ qualified persons, including  
15          accountants, attorneys, investigators, examiners,  
16          auditors, or other professionals who may be exempt  
17          from chapter 76 and who shall assist the commissioner  
18          in exercising the commissioner's powers and duties;
- 19          (6) Process and investigate complaints, subpoena witnesses  
20          and documents, administer oaths, and receive  
21          affidavits and oral testimony, including telephonic



1           communications, and do any and all things necessary or  
2           incidental to the exercise of the commissioner's power  
3           and duties, including the authority to conduct  
4           contested case proceedings under chapter 91;

5           (7) Enter into agreements or relationships with other  
6           government officials or regulatory associations in  
7           order to improve efficiencies and reduce regulatory  
8           burden by sharing resources, standardized or uniform  
9           methods or procedures, and documents, records,  
10          information, or evidence obtained under this chapter;

11          (8) Use, hire, contract, or employ public or privately  
12          available analytical systems, methods, or software to  
13          investigate or examine a licensee or person subject to  
14          this chapter;

15          (9) Accept and rely on investigation or examination  
16          reports made by other government officials, within or  
17          without this State; and

18          (10) Accept audit reports made by an independent certified  
19          public accountant for the licensee or person subject  
20          to this chapter in the course of that part of the  
21          examination covering the same general subject matter



1 as the audit and may incorporate the audit report in  
2 the report of the examination, report of  
3 investigation, or other writing of the commissioner.

4 **§480F-L Investigation and examination authority.** (a) In  
5 addition to section 480F-K(b), the commissioner shall have the  
6 authority to conduct investigations and examinations in  
7 accordance with this section. The commissioner may access,  
8 receive, and use any books, accounts, records, files, documents,  
9 information, or evidence that the commissioner deems relevant to  
10 the investigation or examination, regardless of the location,  
11 possession, control, or custody of the documents, information,  
12 or evidence.

13 (b) For the purposes of investigating violations or  
14 complaints arising under this part, or for the purposes of  
15 examination, the commissioner may review, investigate, or  
16 examine any licensee or person subject to this part as often as  
17 necessary to carry out the purposes of this part. The  
18 commissioner may direct, subpoena, or order the attendance of,  
19 and examine under oath, all persons whose testimony may be  
20 required about deferred deposit agreements or the business or  
21 subject matter of any examination or investigation and may





1 direct, subpoena, or order the person to produce books,  
2 accounts, records, files, and any other documents the  
3 commissioner deems relevant to the inquiry.

4 (c) Each licensee or person subject to this part shall  
5 provide to the commissioner upon request the books and records  
6 relating to the operations of the licensee or person subject to  
7 this chapter. The commissioner shall have access to the books  
8 and records and shall be permitted to interview the officers,  
9 principals, managers, employees, independent contractors,  
10 agents, and consumers of the licensee or person subject to this  
11 chapter concerning their business.

12 (d) Each licensee or person subject to this part shall  
13 make or compile reports or prepare other information as directed  
14 by the commissioner to carry out the purposes of this section,  
15 including:

- 16 (1) Accounting compilations;  
17 (2) Information lists and data concerning deferred deposit  
18 transactions in a format prescribed by the  
19 commissioner; or  
20 (3) Other information that the commissioner deems  
21 necessary.



1           (e) In conducting any investigation or examination  
2 authorized by this part, the commissioner may control access to  
3 any documents and records of the licensee or person under  
4 investigation or examination. The commissioner may take  
5 possession of the documents and records or place a person in  
6 exclusive charge of the documents and records. During the  
7 period of control, no person shall remove or attempt to remove  
8 any of the documents and records except pursuant to a court  
9 order or with the consent of the commissioner. Unless the  
10 commissioner has reasonable grounds to believe the documents or  
11 records of the licensee or person under investigation or  
12 examination have been, or are at risk of being, altered or  
13 destroyed for purposes of concealing a violation of this part,  
14 the licensee or owner of the documents and records shall have  
15 access to the documents or records as necessary to conduct its  
16 ordinary business affairs.

17           (f) The authority of this section shall remain in effect,  
18 whether a licensee or person subject to this part acts or claims  
19 to act under any licensing or registration law of this State, or  
20 claims to act without such authority.



1 (g) No licensee or person subject to investigation or  
2 examination under this section may knowingly withhold, abstract,  
3 remove, mutilate, destroy, or secrete any books, records,  
4 computer records, or other information.

5 (h) The commissioner may charge an investigation or  
6 examination fee, payable to the commissioner, based upon the  
7 cost per hour per examiner for all licensees and persons subject  
8 to this part investigated or examined by the commissioner or the  
9 commissioner's staff. The hourly fee shall be \$60 or an amount  
10 as the commissioner shall establish by rule pursuant to chapter  
11 91. In addition to the investigation or examination fee, the  
12 commissioner may charge any person who is examined or  
13 investigated by the commissioner or the commissioner's staff  
14 pursuant to this section additional amounts for travel, per  
15 diem, mileage, and other reasonable expenses incurred in  
16 connection with the investigation or examination, payable to the  
17 commissioner.

18 (i) Any person having reason to believe that this part or  
19 the rules adopted under this part have been violated, or that a  
20 license issued under this part should be suspended or revoked,  
21 may file a written complaint with the commissioner setting forth



1 the details of the alleged violation or grounds for suspension  
2 or revocation.

3       **§480F-M Confidentiality.** (a) Except as otherwise  
4 provided in Housing and Economic Recovery Act of 2008, P.L. 110-  
5 289, section 1512, the requirements under any federal or state  
6 law regarding the privacy or confidentiality of any information  
7 or material provided to NMLS, and any privilege arising under  
8 federal or state law, including the rules of any federal or  
9 state court, with respect to the information or material shall  
10 continue to apply to the information or material after the  
11 information or material has been disclosed to NMLS. The  
12 information and material may be shared with all state and  
13 federal regulatory officials with oversight authority over  
14 transactions subject to this part, without the loss of privilege  
15 or the loss of confidentiality protections provided by federal  
16 or state law.

17       (b) For the purposes of this section, the commissioner is  
18 authorized to enter into agreements or sharing arrangements with  
19 other governmental agencies, the Conference of State Bank  
20 Supervisors, or other associations representing governmental  
21 agencies as established by rule or order of the commissioner.



1 (c) Information or material that is subject to a privilege  
2 or confidentiality under subsection (a) shall not be subject to:

3 (1) Disclosure under any federal or state law governing  
4 the disclosure to the public of information held by an  
5 officer or an agency of the federal government or a  
6 state; or

7 (2) Subpoena or discovery, or admission into evidence, in  
8 any private civil action or administrative process,  
9 unless any privilege is determined by NMLS to be  
10 applicable to the information or material; provided  
11 that the person to whom the information or material  
12 pertains waives, in whole or in part, in the  
13 discretion of such person, that privilege.

14 (d) Notwithstanding chapter 92F, the examination process  
15 and related information and documents, including the reports of  
16 examination, shall be confidential and shall not be subject to  
17 discovery or disclosure in civil or criminal lawsuits.

18 (e) Notwithstanding any law to the contrary, the  
19 disclosure of confidential supervisory information or any  
20 information or material described in subsection (a) that is



1 inconsistent with subsection (a) shall be superseded by the  
2 requirements of this section.

3 (f) This section shall not apply to information or  
4 material relating to the employment history of, and publicly  
5 adjudicated disciplinary and enforcement actions against,  
6 mortgage servicers that are included in NMLS for access by the  
7 public."

8 SECTION 2. In codifying the new sections added by section  
9 1 of this Act, the revisor of statutes shall substitute  
10 appropriate section numbers for the letters used in designating  
11 the new sections in this Act.

12 SECTION 3. If any provision of this Act, or the  
13 application thereof to any circumstance, is held invalid, the  
14 invalidity does not affect other provisions or applications of  
15 the Act that can be given effect without the invalid provision  
16 or application, and to this end the provisions of this Act are  
17 severable.

18 SECTION 4. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

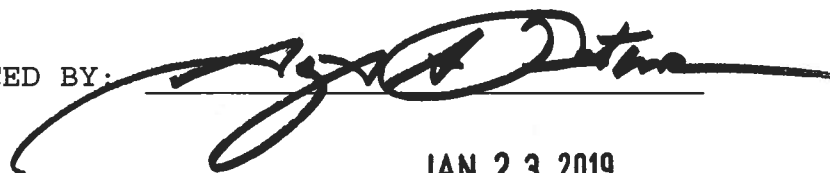


# H.B. NO. 1058

1 SECTION 5. This Act shall take effect on January 1, 2020.

2

INTRODUCED BY:

A handwritten signature in black ink, written over a horizontal line. The signature is stylized and appears to be "Agustín D. Torres".

JAN 23 2019



# H.B. NO. 1058

**Report Title:**

Payday Lending; Licensure

**Description:**

Restricts the fees a check casher may charge in connection with a deferred deposit agreement to an annual percentage rate not to exceed 36 percent per year. Establishes a licensing scheme for check cashers that enter into deferred deposit agreements.

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

