
A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

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PART I

SECTION 1. The legislature finds that deferred deposit agreements, commonly referred to as payday loans, are small, short term, unsecured loans that borrowers commit to repay from their next paycheck or a regular income payment. According to the Federal Reserve System's Report on the Economic Well-Being of U.S. Households in 2017, forty per cent of Americans would not be able to cover an unexpected expense of \$400 without having to sell something or borrow money. Another study conducted by The Pew Charitable Trusts found that the majority of borrowers use deferred deposit agreements for recurring expenses, rather than unexpected expenses or emergencies, because they live paycheck to paycheck. Additional research shows that approximately twelve million Americans utilize payday loans annually. The Consumer Financial Protection Bureau has reported that seventy per cent of those payday borrowers will end up taking out a second payday loan, and some lenders allow



1 borrowers to roll the balance into a new larger loan with the
2 same predatory fee schedule.

3 The legislature further finds that there has been a shift
4 in the payday industry toward small dollar installment loans,
5 which are repayable over time and secured by access to the
6 borrower's checking account. According to the Pew Charitable
7 Trusts, national survey data indicates that seventy-nine per
8 cent of payday borrowers prefer small dollar loans that are due
9 in installments, which only take a small share of each paycheck.
10 However, in the absence of sensible regulatory safeguards, this
11 type of lending, as well as the traditional deferred deposit
12 lending market, can be harmful to consumers.

13 Unfortunately, due to the State's current deferred deposit
14 laws, the payday lending industry can engage in practices that
15 trap consumers in unsustainable cycles of debt. Payday lenders
16 structure loans with unrealistically short repayment terms,
17 unaffordable payments, and excessive fees, resulting in long-
18 term, high-cost debt and harm to the consumer. Lenders are also
19 granted access to the borrower's checking account to ensure that
20 the lender gets repaid, even if the borrower cannot cover rent,
21 utilities, and other basic living expenses. The Pew Charitable



1 Trusts has reported that the average Hawaii payday borrower
2 incurs \$529 in fees to borrow \$300 over five months. Research
3 also shows that this amount is nearly three times higher than
4 what the same lenders charge similarly situated consumers in
5 other states. Due to the high cost of living in the State,
6 these practices are likely to contribute to the current
7 homelessness crisis.

8 The legislature notes that there has been a growing trend
9 around the country to provide more consumer protections, which
10 benefit consumers and encourage responsible and transparent
11 lending, for deferred deposit transactions and small dollar
12 installment loans within the payday lending industry. Hawaii
13 has not yet joined in these reform efforts. In 2017, the
14 Consumer Financial Protection Bureau released new rules that,
15 among other things, target loans with a thirty-six per cent
16 yearly interest rate or higher and restrict payday lenders from
17 extracting money from the borrower's account, without explicit
18 consent, if they failed to repay twice in a row. However, the
19 current presidential administration has indicated that it will
20 modify the rules before they go into effect, indefinitely
21 rolling back many of the intended consumer protections. It is



1 critical that the State take action now to address these harmful
2 practices in light of this delay and the weakening of the
3 federal consumer protections for payday and similar loans.

4 The legislature acknowledges that there is a market for
5 small dollar installment loans. However, the legislature
6 concludes that if small dollar installment loans are going to be
7 offered to Hawaii consumers, there must be appropriate consumer
8 protections in place to ensure these loans contain reasonable
9 terms and fees, do not trap borrowers in a cycle of high-
10 interest debt, and do not further contribute to the homelessness
11 crisis.

12 Accordingly, the purpose of this part is to encourage
13 transparency, increase consumer protection in the payday lending
14 industry, and improve the well-being of Hawaii consumers by:

- 15 (1) Transitioning the payday lending industry from lump
16 sum deferred deposit transactions to installment-based
17 small dollar loan transactions;
- 18 (2) Specifying various consumer protection requirements
19 for small dollar loans;
- 20 (3) Beginning January 1, 2020, requiring licensure for
21 small dollar lenders that offer small dollar loans to



- 1 consumers, subject to the supervision of the division
2 of financial institutions of the department of
3 commerce and consumer affairs to protect against
4 illegal offshore lending;
- 5 (4) Specifying licensing requirements for small dollar
6 lenders;
- 7 (5) Capping interest at thirty-six per cent per annum and
8 one simple maximum monthly maintenance fee tiered up
9 to \$25;
- 10 (6) Limiting monthly payments to five per cent of the
11 borrower's gross monthly income or six per cent of the
12 borrower's verified net monthly income, whichever is
13 greater, shielding ninety-five per cent of a
14 borrower's income so that the borrower can more
15 realistically make rent payments, cover utility bills,
16 and buy groceries;
- 17 (7) Amortizing loans in full and renewing the loan while
18 also permitting borrowers to choose to repay the loan
19 without penalty;



- 1 (8) Capping maximum allowable costs at fifty per cent of
- 2 the principal loan amount, preventing a loan from
- 3 being either too short or too long in duration;
- 4 (9) Capping the maximum allowable loan size at \$1,000,
- 5 providing more flexibility for lenders and borrowers
- 6 than under the current law;
- 7 (10) Requiring lenders to provide clear disclosures of the
- 8 loan terms and total charges;
- 9 (11) Prohibiting a lender from making more than one loan at
- 10 a time to a consumer, preventing incentives for
- 11 lenders to "split" loans and charge higher fees; and
- 12 (12) Authorizing the division of financial institutions to
- 13 establish and hire two full-time equivalent permanent
- 14 examiners to carry out the purposes of the small
- 15 dollar installment loan program, funded via an
- 16 increase to the ceiling of the compliance resolution
- 17 fund.

18 SECTION 2. The Hawaii Revised Statutes is amended by
19 adding a new chapter to title 25A to be appropriately designated
20 and to read as follows:



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"CHAPTER

SMALL DOLLAR INSTALLMENT LOANS

PART I. GENERAL PROVISIONS

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

"Annual percentage rate" means an annual percentage rate as determined pursuant to section 107 of the Truth in Lending Act, title 15 United States Code section 1606. For the purposes of this definition, all fees and charges, including interest and monthly maintenance fees authorized by this chapter, shall be included in the calculation of the annual percentage rate.

"Arranger" means a provider of funds in the syndication of a debt.

"Branch office" means any location in this State that is identified by any means to the public or customers as a location at which the licensee holds itself out as a small dollar lender.

"Commissioner" means the commissioner of financial institutions.

"Consumer" means a natural person who is the buyer, lessee, or debtor to whom credit is granted in a transaction that is



1 primarily for that natural person's personal, family, or
2 household purposes.

3 "Control", in the context of control of an applicant or
4 licensee, means ownership of, or the power to vote, twenty-five
5 per cent or more of the outstanding voting securities of a
6 licensee or control person. For the purposes of determining the
7 percentage of an applicant or a licensee controlled by any
8 person, there shall be aggregated with the control person's
9 interest the interest of any other person controlled by the
10 person, or by any spouse, parent, or child of the person.

11 "Control person" means any person in control of a licensee
12 or applicant.

13 "Default" means a consumer's failure to repay a small
14 dollar loan in compliance with the terms contained in a small
15 dollar loan agreement.

16 "Department" means the department of commerce and consumer
17 affairs.

18 "Division" means the division of financial institutions of
19 the department of commerce and consumer affairs.

20 "Elder" means a person who is sixty-two years of age or
21 older.



1 "Finance charges" means the cost of credit or cost of
2 borrowing, including the interest, monthly maintenance fees, and
3 other fees authorized by this chapter.

4 "Financial institution" means any bank, savings bank,
5 savings and loan association, financial services loan company,
6 or credit union doing business in the State whose accounts are
7 insured by the Federal Deposit Insurance Corporation, the
8 National Credit Union Share Insurance Fund, or other similar or
9 successor program of federal insurance.

10 "Instrument" means a personal check signed by the consumer
11 and made payable to a person subject to this chapter. The term
12 "instrument" does not include an electronic fund transfer or
13 other electronic debit or credit to the consumer's checking
14 account.

15 "Licensee" means a person who is licensed or required to be
16 licensed under this chapter.

17 "Loan amount" means the amount financed, as that term is
18 defined in Truth in Lending (Regulation Z), title 12 Code of
19 Federal Regulations, chapter X, part 1026, as amended, or
20 supplemented by this chapter.



1 "Maintenance fee" means a monthly fee paid to a licensee to
2 maintain a small dollar loan.

3 "NMLS" means the Nationwide Multistate Licensing System,
4 which is a licensing system developed and maintained by the
5 Conference of State Bank Supervisors for the state licensing and
6 registration of state-licensed loan originators and other
7 financial services providers, or any system provided by the
8 Consumer Financial Protection Bureau.

9 "Person" means an individual, sole proprietorship,
10 partnership, corporation, limited liability company, limited
11 liability partnership, or other association of individuals,
12 however organized.

13 "Place of business" means a location where small dollar
14 loans are offered or made and includes each website through
15 which a consumer may apply for a small dollar loan from a small
16 dollar lender.

17 "Precomputed interest" means an interest method that uses
18 the original payment schedule to calculate interest.

19 "Small dollar lender" or "lender" means any person who is
20 in the business of offering or making a consumer loan, who
21 arranges a consumer loan for a third party, or who acts as an



1 agent for a third party, regardless of whether the third party
2 is exempt from licensure under this chapter or whether approval,
3 acceptance, or ratification by the third party is necessary to
4 create a legal obligation for the third party, through any
5 method including mail, telephone, the Internet, or any
6 electronic means.

7 "Small dollar loan" means a loan made pursuant to this
8 chapter.

9 "Truth in Lending Act" means the federal Truth in Lending
10 Act, title 15 United States Code section 1601 et seq., as may be
11 amended, and regulations adopted thereunder, as may be amended.

12 "Verified gross income" means evidence from a borrower of
13 one or more paystubs or other written evidence of recurring
14 income before taxes.

15 "Verified net income" means evidence from a borrower of one
16 or more paystubs or other written evidence of recurring income
17 after taxes and deductions.

18 **§ -2 Small dollar loans; requirements; payments. (a)**

19 Each small dollar loan transaction and renewal shall meet the
20 following requirements:



- 1 (1) Any transaction and renewal shall be documented in a
2 written agreement pursuant to section -3;
- 3 (2) The total amount of the small dollar loan shall not
4 exceed \$1,000 pursuant to section -5(a);
- 5 (3) The total monthly payment on the loan shall not exceed
6 an amount that is five per cent of the borrower's
7 verified gross monthly income or six per cent of the
8 borrower's verified net monthly income, whichever is
9 greater;
- 10 (4) The total amount of fees and charges a small dollar
11 lender may charge, collect, or receive in connection
12 with a small dollar loan shall not exceed fifty per
13 cent of the principal loan amount;
- 14 (5) A monthly maintenance fee may be charged by the
15 lender, not to exceed the following:
 - 16 (A) \$10 on a loan of an original principal loan
17 amount up to \$300.00;
 - 18 (B) \$15 on a loan of an original principal loan
19 amount of at least \$300.01 and up to \$600.00; and
 - 20 (C) \$25 on a loan of an original principal loan
21 amount of at least \$600.01 and up to \$1,000.00;



1 provided that the monthly maintenance fee shall not be
2 added to the loan balance on which the interest is
3 charged; and provided further that a small dollar
4 lender shall not charge, collect, or receive a monthly
5 maintenance fee if the borrower is a person on active
6 duty in the armed forces of the United States or a
7 dependent of that person;

8 (6) The written agreement required under section -3 may
9 require multiple installment payments;

10 (7) All repayment schedule due dates shall be dates on
11 which a small dollar lender is open for business to
12 the public at the place of business where the small
13 dollar loan was made;

14 (8) A small dollar lender shall accept prepayment in full
15 or in part from a consumer prior to the loan due date
16 and shall not charge the consumer a fee or penalty if
17 the consumer opts to prepay the loan;

18 (9) The loan amount shall be fully amortized over the term
19 of the loan, and maintenance fees shall be applied in
20 arrears on a monthly basis;



1 (10) A consumer's repayment obligations shall not be
2 secured by a lien on any real or personal property;

3 (11) A small dollar lender shall not charge a consumer any
4 direct or indirect fees for a small dollar loan, other
5 than the fees permitted by this chapter; and

6 (12) The written agreement required under section -3
7 shall not require a consumer to purchase add-on
8 products, such as credit insurance.

9 (b) In a multiple installment small dollar loan, a lender
10 may contract for a twice-monthly or monthly payment of the loan
11 balance due, including the applicable portion of the interest,
12 and earned monthly maintenance fee.

13 (c) For each payment made by a consumer, a lender shall
14 give the consumer a written receipt with the lender's name and
15 address, payment date, amount paid, consumer's name, and
16 sufficient information to identify the account to which the
17 payment is applied.

18 (d) Upon prepayment in full by the consumer, the lender
19 shall refund:

- 20 (1) Any unearned portion of the interest charged; and
- 21 (2) Any unearned monthly maintenance fees.



1 (e) Upon request from a consumer or a consumer's agent, a
2 small dollar lender shall provide confirmation of the amount
3 required to discharge the small dollar loan obligation in full.
4 When responding to a request under this subsection, the small
5 dollar lender, at a minimum, shall include a statement of the
6 amount required to discharge the consumer's obligation fully as
7 of the date the notice is provided and for each of the next
8 three business days following that date. The small dollar
9 lender shall make the information required under this subsection
10 available verbally and in writing and shall provide it in an
11 expeditious manner, but no later than two business days after
12 receiving the request.

13 § -3 **Written agreement; requirements; disclosure.** (a)

14 Each small dollar loan transaction and renewal shall be
15 documented by a written agreement signed by the small dollar
16 lender and consumer. The written agreement shall contain the
17 following information:

- 18 (1) The name and address of the consumer and the lender;
19 (2) The transaction date;
20 (3) The loan amount;
21 (4) The annual percentage rate charged;



- 1 (5) The authorized interest rate;
- 2 (6) A statement of the total amount of finance charges
- 3 charged, expressed as a dollar amount and an annual
- 4 percentage rate;
- 5 (7) The installment payment schedule setting out the
- 6 amount due on specific due dates;
- 7 (8) The name, address, and telephone number of any agent
- 8 or arranger involved in the small dollar loan
- 9 transaction;
- 10 (9) The right to rescind the small dollar loan before
- 11 5:00 p.m. on the next day of business at the location
- 12 where the loan was originated;
- 13 (10) A notice to the consumer that a returned instrument
- 14 may result in a dishonored instrument charge, not to
- 15 exceed \$25; and
- 16 (11) A description of the methods by which small dollar
- 17 loan payments may be made, which may include cash,
- 18 check, or any additional method of loan payment
- 19 authorized by this chapter or by rule adopted by the
- 20 commissioner pursuant to chapter 91.



1 (b) The written agreement shall also comply with the
2 disclosure requirements of the Truth in Lending Act and any
3 regulation adopted thereunder.

4 (c) The small dollar lender shall provide to the consumer
5 a printed written disclosure prior to signing the written
6 agreement that accurately discloses the types of information in
7 the chart below, presented in a format substantively similar to
8 the chart below, in at least twelve-point type:

**"MULTIPLE
INSTALLMENT
PAYMENT**

- 9
- 10
- 11
- 12
- 13 Amount Financed
- 14 Finance Charge
- 15 **Amount you will receive**
- 16 Term (months)
- 17
- 18 Authorized Interest Rate
- 19
- 20 Monthly Maintenance Fee
- 21
- 22 **Total of All Permitted Charges**
- 23
- 24 **Total You Will Pay for This Loan**
- 25 (Amount Financed,
- 26 Interest, and Monthly Maintenance Fee)
- 27
- 28 ANNUAL PERCENTAGE RATE
- 29
- 30 Payment Schedule"



1 (d) The consumer shall sign and date each of two copies of
2 the written disclosure required pursuant to subsection (c), one
3 of which shall be given to the consumer and the other of which
4 shall be retained by the lender as part of its records of the
5 small dollar loan. For purposes of preparing the written
6 disclosure, the small dollar loan shall be structured on a
7 precomputed basis (total of payments) with the assumption that
8 all payments will be made as scheduled.

9 (e) The written agreement may include a demand feature
10 that permits the lender or any other person, in the event the
11 consumer fails to meet the repayment terms for any outstanding
12 balance, to terminate the small dollar loan in advance of the
13 original maturity date, but no earlier than ten days after
14 repayment was due, and demand repayment of the entire
15 outstanding balance. If the written agreement includes a demand
16 feature and the demand feature is exercised, the lender shall be
17 entitled to collect only the outstanding balance and a prorated
18 portion of the unpaid interest and fees earned up to the date of
19 termination. For purposes of this subsection, the outstanding
20 balance and prorated portion of the unpaid interest and fees



1 shall be calculated as if the consumer had voluntarily prepaid
2 the loan in full on the date of termination.

3 § -4 **Authorized interest rate.** (a) Subject to section
4 -2(a)(4), a small dollar lender may contract for, and receive
5 interest at, a rate not exceeding thirty-six per cent per year
6 on that portion of the unpaid principal balance of the loan. A
7 small dollar lender may contract for and receive interest at the
8 single annual rate that would earn the same total interest at
9 maturity of the small dollar loan, when the loan is paid
10 according to its agreed terms, as would be earned by the
11 application of the graduated rates set forth in this section.
12 Loans shall be precomputed.

13 (b) For the purposes of computing precomputed loans,
14 including but not limited to calculating interest, a month is
15 considered one-twelfth of a year and a day is considered one
16 three hundred sixty-fifth of a year when calculation is made for
17 a fraction of a month.

18 (c) Loans shall be repayable in substantially equal and
19 consecutive monthly installments of principal and interest
20 combined; provided that the first installment period may exceed
21 one month by not more than fifteen days and the first



1 installment payment amount may be larger than the remaining
2 payments by the amount of interest charged for the extra days;
3 and provided further that monthly installment payment dates may
4 be omitted to accommodate consumers with seasonal income.

5 (d) Payments may be applied to the combined total of
6 principal and precomputed interest until maturity of the loan.

7 (e) If a small dollar loan is prepaid in full or renewed
8 prior to the loan's maturity date, the lender shall refund to
9 the consumer a prorated portion of the interest and monthly
10 maintenance fees based on a ratio of the number of days the loan
11 was outstanding and the number of days for which the loan was
12 originally contracted. For the purposes of this section, the
13 monthly maintenance fee shall not be considered to be fully
14 earned at the beginning of a month.

15 (f) If the parties agree in writing, either in the written
16 agreement required under section -3 or in a subsequent
17 agreement, to a deferment of wholly unpaid installments, a
18 lender may grant one deferment; provided that:

19 (1) A deferment shall postpone the scheduled due date of
20 the earliest unpaid installment and all subsequent



1 installments as originally scheduled, or as previously
2 deferred, for a period equal to the deferment period;

3 (2) The deferment period shall be that period during which
4 no installment is scheduled to be paid by reason of
5 the deferment; and

6 (3) The lender shall not charge or collect a deferment
7 fee.

8 (g) Other than the interest and charges permitted under
9 this section, no further or other amount shall be charged or
10 required by the small dollar lender.

11 (h) A lender shall not charge or receive loan origination
12 fees.

13 (i) A lender shall not collect a default charge on any
14 installment not paid in full within ten days after its due date.
15 For this purpose, all installments are considered paid in the
16 order in which they become due.

17 **§ -5 Maximum loan amount; prohibition against multiple**
18 **loans.** (a) A lender shall not lend an amount greater than
19 \$1,000 nor shall the amount financed exceed \$1,000 by any one
20 lender at any time to a consumer.



1 (b) Except as otherwise provided in section -8, no
2 small dollar lender shall make a small dollar loan to a consumer
3 if there exists an outstanding loan between that consumer and
4 any of the following:

- 5 (1) The small dollar lender;
- 6 (2) A person related to the small dollar lender by common
7 ownership or control;
- 8 (3) A person in whom the small dollar lender has any
9 financial interest of ten per cent or more; or
- 10 (4) Any employee or agent of the small dollar lender.

11 (c) If a consumer obtains a small dollar loan voluntarily
12 and separately from the consumer's spouse and the consumer's
13 action is documented in writing, signed by the consumer, and
14 retained by the lender, the transaction shall not be considered
15 a violation of this section.

16 § -6 Right of rescission. (a) A consumer shall have
17 the right to rescind a small dollar loan, on or before 5:00 p.m.
18 on the next day of business at the location where the loan was
19 originated, by returning the principal in cash, the original
20 check or money order disbursed by the lender, or the other
21 disbursement of loan proceeds from the lender to fund the loan.



1 The lender shall not charge the consumer for rescinding the
2 loan.

3 (b) At the time of rescission, the lender shall refund any
4 loan fees and interest received and shall return to the consumer
5 the originally signed written agreement, clearly marked across
6 the face:

7 "RESCINDED BY [lender's name; license number],
8 [date]"

9 and below which the lender's authorized representative shall
10 sign.

11 § -7 Notice to consumers; general requirements; right to
12 prepay; loan limits; right to rescind. A small dollar lender
13 shall provide the following notice on each written agreement for
14 a small dollar loan. The notice shall be in a prominent place
15 and in at least twelve-point type:

16 "THIS SMALL DOLLAR LOAN IS NOT INTENDED TO MEET
17 LONG-TERM FINANCIAL NEEDS.

18 THIS SMALL DOLLAR LOAN SHOULD BE USED ONLY TO
19 MEET SHORT-TERM CASH NEEDS.

20 YOU HAVE THE RIGHT TO PREPAY THIS SMALL DOLLAR
21 LOAN IN FULL OR IN PART WITHOUT A PENALTY.



1 RENEWING THIS SMALL DOLLAR LOAN RATHER THAN
2 PAYING THE DEBT IN FULL MAY REQUIRE ADDITIONAL FEES OR
3 CHARGES.

4 STATE LAW PROHIBITS THIS SMALL DOLLAR LOAN FROM
5 EXCEEDING ONE THOUSAND DOLLARS (\$1,000) IN TOTAL DEBT.
6 EXCEEDING THIS AMOUNT MAY CREATE FINANCIAL HARDSHIPS
7 FOR YOU AND YOUR FAMILY.

8 YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY
9 5:00 P.M. [SPECIFY HERE THE CLOSE OF THE NEXT BUSINESS
10 DAY BY DAY OF WEEK AND DATE]."

11 § -8 **Renewal; new loan requirements; consecutive loans;**
12 **payment plan.** (a) A small dollar loan may be renewed only
13 once. After one renewal, the consumer shall pay the debt in
14 cash or its equivalent.

15 (b) Upon renewal of a small dollar loan, the lender may
16 renew up to \$1,000 of the remaining unpaid principal balance.
17 If the unpaid balance on renewal is more than \$1,000, the
18 consumer may be required to pay the remaining balance; provided
19 that the lender shall not finance any amount over \$1,000. The
20 total amount of fees and charges for the renewed loan shall meet
21 the requirements of section -2. If the small dollar loan is



1 renewed prior to the maturity date, the lender shall refund to
2 the consumer a prorated portion of the finance charge based upon
3 the ratio of time left before maturity to the loan term.

4 (c) Once the consumer has paid off the small dollar loan
5 transaction, the consumer may enter into a new small dollar loan
6 agreement with the lender; provided that the lender shall not
7 have more than one outstanding loan with a borrower at any one
8 time, pursuant to section -5.

9 § -9 **Form of loan proceeds.** A small dollar lender may
10 pay the proceeds from a small dollar loan to the consumer in the
11 form of a monetary instrument, money order, or cash. The lender
12 shall inform the consumer in writing that the lender shall cash
13 the monetary instrument or money order, upon request of the
14 consumer, at no cost to the consumer.

15 § -10 **Endorsement of instrument.** A small dollar lender
16 shall not negotiate or present an instrument for payment unless
17 the instrument is endorsed with the actual business name of the
18 lender.

19 § -11 **Redemption of instrument.** Prior to a small dollar
20 lender negotiating or presenting the instrument, a consumer
21 shall have the right to redeem any instrument held by the lender



1 as a result of a small dollar loan if the consumer pays the full
2 amount of the instrument to the lender.

3 § -12 Delinquent small dollar loans; restrictions on
4 collection by lender or third party. (a) A small dollar lender
5 shall comply with all applicable state and federal laws when
6 collecting a delinquent small dollar loan. A lender may take
7 civil action to collect principal, interest, fees, and costs
8 allowed under this chapter. A lender may not threaten criminal
9 prosecution as a method of collecting a delinquent small dollar
10 loan or threaten to take any legal action against the consumer
11 that is not otherwise permitted by law.

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

20 (c) A lender shall not communicate with a consumer in a
21 manner intended to harass, intimidate, abuse, or embarrass a



1 consumer, including but not limited to communication at an
2 unreasonable hour, with unreasonable frequency, by threats of
3 force or violence, or by use of offensive language. A
4 communication shall be presumed to have been made for the
5 purposes of harassment if it is initiated by the lender for the
6 purposes of collection and the communication is made:

- 7 (1) With the consumer's spouse or the consumer's domestic
8 partner in any form, manner, or place, more than once;
- 9 (2) With a consumer at the consumer's place of employment
10 more than once;
- 11 (3) With the consumer, the consumer's spouse, or the
12 consumer's domestic partner at the consumer's place of
13 residence between the hours of 9:00 p.m. and
14 8:00 a.m.; or
- 15 (4) To a party other than the consumer, the consumer's
16 attorney, the lender's attorney, or a consumer credit
17 reporting agency if otherwise permitted by law, except
18 for the purposes of acquiring location or contact
19 information about the consumer.
- 20 (d) A lender shall maintain an accurate and complete
21 communication log of all telephone and written communications



1 with a consumer initiated by the lender regarding any collection
2 efforts, including date, time, and the nature of each
3 communication.

4 (e) For purposes of collecting a dishonored check, this
5 section shall apply to any employee, agent, or third party
6 assignee of a lender.

7 (f) For the purposes of this section, "communication"
8 includes any contact with a consumer, initiated by a lender, in
9 person, by telephone, or in writing, including via electronic
10 mail, text message, or other electronic writing; provided that:

11 (1) The term "communication" shall include the time the
12 lender initiates contact with a consumer, regardless
13 of whether the communication is received or accessed
14 by the consumer; and

15 (2) The term "communication" shall not include:

16 (A) Verbal communication with the consumer while the
17 consumer is physically present in the lender's
18 place of business;

19 (B) An unanswered telephone call in which no message,
20 other than a caller identification, is left,



1 unless the telephone call is in violation of
2 subsection (c) (3); or

3 (C) An initial letter to the consumer that includes
4 disclosures under the federal Fair Debt
5 Collection Practices Act.

6 § -13 Authorized dishonored instrument charge. (a)

7 Regardless of the number of instruments that are returned
8 unpaid, a small dollar lender may contract for and collect one
9 returned instrument charge for each small dollar loan, not to
10 exceed \$25. The lender shall not collect any other fees as a
11 result of the dishonored presentment.

12 (b) If the loan proceeds instrument from the small dollar
13 lender is dishonored by the financial institution, the small
14 dollar lender shall cover any fees and charges incurred by the
15 consumer as a direct result of the dishonored loan proceeds
16 instrument.

17 § -14 Posting of license and fees and charges. Any

18 small dollar lender offering a small dollar loan shall
19 conspicuously and continuously post at any place of business
20 where small dollar loans are made, the license required pursuant



1 to this chapter and a notice of the fees and charges imposed for
2 small dollar loans.

3 **§ -15 Internet lending.** (a) A small dollar lender may
4 advertise and accept applications for small dollar loans by any
5 lawful medium, including but not limited to the Internet,
6 subject to subsection (b).

7 (b) Small dollar lenders shall be prohibited from
8 advertising or making small dollar loans via the Internet
9 without first having obtained a license pursuant to part II of
10 this chapter.

11 (c) The unique identifier of any small dollar lender
12 originating a small dollar loan, except a person who is exempt
13 from licensure under this chapter, shall be clearly shown on all
14 solicitations, including websites, and all other documents, as
15 established by rule or order of the commissioner.

16 **§ -16 Notice on assignment or sale of contract.** (a) No
17 licensee may pledge, negotiate, sell, or assign a small dollar
18 loan, except to another licensee or to a bank, savings bank,
19 trust company, savings and loan or building and loan
20 association, or credit union organized under the laws of Hawaii
21 or the laws of the United States.



1 (b) Prior to sale or assignment of a small dollar loan
2 contract held by the small dollar lender as a result of a small
3 dollar loan, the lender shall place a notice on the small dollar
4 loan contract in at least twelve-point type that reads:

5 "SMALL DOLLAR LOAN

6 No licensee may pledge, negotiate, sell, or
7 assign a small dollar loan, except to another licensee
8 or to a bank, savings bank, trust company, savings and
9 loan or building and loan association, or credit union
10 organized under the laws of Hawaii or the laws of the
11 United States."

12 § -17 Maintenance of books and records. (a) Every
13 small dollar lender shall keep in a safe and secure place those
14 books and records that directly relate to any small dollar loan
15 made within this State, and other books and records as may be
16 necessary for the commissioner to ensure full compliance with
17 the laws of this State.

18 (b) All books and records may be maintained as originals
19 or photocopies, on microfilm or microfiche, on computer disks or
20 tapes, or similar forms; provided that the books and records are
21 readily accessible and may be easily examined.



1 (c) All records, statements, and reports required or
2 authorized by this chapter shall be made in writing in the
3 English language.

4 (d) Every lender shall preserve all of its records for a
5 minimum of six years or for a greater or lesser period as the
6 commissioner may prescribe by rule adopted pursuant to chapter
7 91.

8 **PART II. LICENSING**

9 **§ -31 License required.** No person, unless exempt under
10 this chapter, shall act as a small dollar lender in this State
11 unless licensed to do so by the commissioner.

12 **§ -32 Exemptions.** This chapter shall not apply to the
13 following:

- 14 (1) A financial institution;
15 (2) A nondepository financial service loan company;
16 (3) An "open end credit plan", as defined in the Truth in
17 Lending Act, 15 United States Code section 1602(j); or
18 (4) A tax refund anticipation loan.

19 **§ -33 License; application; issuance.** (a) The
20 commissioner shall require all licensees to register with NMLS.



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

4 (1) The legal name, trade names, and business address of
5 the applicant and, if the applicant is a partnership,
6 association, limited liability company, limited
7 liability partnership, or corporation, of every
8 member, officer, principal, or director thereof;

9 (2) The principal place of business;

10 (3) The complete address of any other branch offices at
11 which the applicant currently proposes to engage in
12 making small dollar loans; and

13 (4) Other data, financial statements, and pertinent
14 information as the commissioner may require with
15 respect to the applicant or, if an applicant is not an
16 individual, each of the applicant's control persons,
17 executive officers, directors, general partners, and
18 managing members.

19 (c) To fulfill the purposes of this chapter, the
20 commissioner may enter into agreements or contracts with NMLS or
21 other entities to use NMLS to collect and maintain records and



1 process transaction fees or other fees related to licensees or
2 other persons subject to this chapter.

3 (d) For the purpose and to the extent necessary to
4 participate in NMLS, the commissioner may waive or modify, in
5 whole or in part, by rule or order, any or all of the
6 requirements of this chapter and establish new requirements as
7 reasonably necessary to participate in NMLS.

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

12 (1) Fingerprints of the applicant or, if an applicant is
13 not an individual, each of the applicant's control
14 persons, executive officers, directors, general
15 partners, and managing members for submission to the
16 Federal Bureau of Investigation and any governmental
17 agency or entity authorized to receive the
18 fingerprints for a state, national, and international
19 criminal history background check, accompanied by the
20 applicable fee charged by the entities conducting the
21 criminal history background check; and



1 (2) Personal history and experience of the applicant or,
2 if an applicant is not an individual, each of the
3 applicant's control persons, executive officers,
4 directors, general partners, and managing members in a
5 form prescribed by NMLS, including the submission of
6 authorization for NMLS and the commissioner to obtain:

7 (A) An independent credit report obtained from a
8 consumer reporting agency described in section
9 603(p) of the Fair Credit Reporting Act, title 15
10 United States Code section 1681a(p); and

11 (B) Information related to any administrative, civil,
12 or criminal findings by any governmental
13 jurisdiction;

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

18 (f) The commissioner may use NMLS as an agent for
19 requesting information from and distributing information to the
20 United States Department of Justice or any governmental agency.



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

4 (h) An applicant for a license as a small dollar lender
5 shall be registered with the business registration division of
6 the department to do business in this State before a license
7 pursuant to this chapter shall be granted.

8 § -34 Issuance of license; grounds for denial. (a) The
9 commissioner shall conduct an investigation of every applicant
10 to determine the financial responsibility, character, and
11 general fitness of the applicant. The commissioner shall issue
12 the applicant a license to engage in the business of making
13 small dollar loans if the commissioner determines that:

14 (1) The applicant or, in the case of an applicant that is
15 not an individual, each of the applicant's control
16 persons, executive officers, directors, general
17 partners, and managing members, has never had a small
18 dollar lender license revoked in any jurisdiction;
19 provided that a subsequent formal vacation of a
20 revocation shall not be deemed a revocation;



- 1 (2) The applicant or, in the case of an applicant that is
2 not an individual, each of the applicant's control
3 persons, executive officers, directors, general
4 partners, and managing members, has not been convicted
5 of, pled guilty or nolo contendere to, or been granted
6 a deferred acceptance of a guilty plea under federal
7 law or under chapter 853 to a felony in a domestic,
8 foreign, or military court:
- 9 (A) During the seven-year period preceding the date
10 of the application for licensing; or
- 11 (B) At any time preceding the date of application, if
12 the felony involved an act of fraud, dishonesty,
13 breach of trust, or money laundering;
- 14 provided that any pardon of a conviction shall not be
15 deemed a conviction for the purposes of this section;
- 16 (3) The applicant or, in the case of an applicant that is
17 not an individual, each of the applicant's control
18 persons, executive officers, directors, general
19 partners, and managing members, has demonstrated
20 financial responsibility, character, and general
21 fitness to command the confidence of the community and



1 to warrant a determination that the applicant shall
2 operate honestly, fairly, and efficiently, pursuant to
3 this chapter. For the purposes of this paragraph, a
4 person is not financially responsible when the person
5 has shown a disregard in the management of the
6 person's financial condition. A determination that a
7 person has shown a disregard in the management of the
8 person's financial condition may be based upon:

- 9 (A) Current outstanding judgments, except judgments
10 solely as a result of medical expenses;
11 (B) Current outstanding tax liens or other government
12 liens and filings, subject to applicable
13 disclosure laws and administrative rules;
14 (C) Foreclosures within the past three years; and
15 (D) A pattern of seriously delinquent accounts within
16 the past three years;

17 (4) The applicant or, in the case of an applicant that is
18 not an individual, each of the applicant's control
19 persons, executive officers, directors, general
20 partners, and managing members, has not been convicted
21 of, pled guilty or nolo contendere to, or been granted



1 a deferred acceptance of a guilty plea under federal
2 law or chapter 853 to any misdemeanor involving an act
3 of fraud, dishonesty, breach of trust, or money
4 laundering;

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

7 (6) The applicant has the bond required by section -35.

8 (b) The applicant or, in the case of an applicant that is
9 not an individual, each of the applicant's control persons,
10 executive officers, directors, general partners, and managing
11 members shall submit authorization to the commissioner for the
12 commissioner to conduct background checks to determine or verify
13 the information in subsection (a) in each state where the person
14 has conducted the lending of small dollar loans. Authorization
15 pursuant to this subsection shall include consent to provide
16 additional fingerprints, if necessary, to law enforcement or
17 regulatory bodies in other states.

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

19 (1) Whose license to conduct business under this chapter,
20 or any similar statute in any other jurisdiction, has



- 1 been suspended or revoked within five years of the
2 filing of the present application;
- 3 (2) Whose license to conduct business in the small dollar
4 loan or payday industry has been revoked by an
5 administrative order issued by the commissioner or the
6 commissioner's designee, or the licensing authority of
7 another state or jurisdiction, for the period
8 specified in the administrative order;
- 9 (3) Who has advertised or made internet loans in violation
10 of this chapter; or
- 11 (4) Who has failed to complete an application for
12 licensure.
- 13 (d) A license issued in accordance with this chapter
14 remains in force and effect until surrendered, suspended, or
15 revoked, or until the license expires as a result of nonpayment
16 of the annual license renewal fee as required by this chapter.
- 17 § -35 **Fees; bond.** (a) A small dollar lender shall pay
18 the following fees to the division to obtain and maintain a
19 valid license under this chapter:
- 20 (1) Initial application fee of \$900;
- 21 (2) Processing fee of \$35 for each control person;



- 1 (3) Annual license renewal fee of \$600;
- 2 (4) Applicable fee charged by the entities conducting the
3 criminal history background check of each of the
4 applicant's control persons, executive officers,
5 directors, general partners, and managing members for
6 submission to the Federal Bureau of Investigation and
7 any governmental agency or entity authorized to
8 receive the fingerprints for a state, national, and
9 international criminal history background check; and
- 10 (5) Applicable fee charged by the entities conducting an
11 independent credit report obtained from a consumer
12 reporting agency described in section 603(p) of the
13 Fair Credit Reporting Act, title 15 United States Code
14 section 1681a(p).
- 15 (b) Each branch office shall pay the following fees to the
16 division to obtain and maintain a valid license under this
17 chapter:
- 18 (1) Nonrefundable initial application fee of \$600; and
19 (2) Annual license renewal fee of \$450.
- 20 (c) The applicant shall file and maintain a surety bond,
21 approved by the commissioner, executed by the applicant as



1 obligor and by a surety company authorized to operate as a
2 surety in this State, whose liability as a surety does not
3 exceed, in the aggregate, the penal sum of the bond. The penal
4 sum of the bond shall be a minimum of \$30,000 and a maximum of
5 \$250,000, based upon the annual dollar amount of loans
6 originated.

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

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

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

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



1 § -36 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 -35.

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 small dollar lender's
16 activities in this State, including:
17 (A) The number of small dollar loans made;
18 (B) The number of small dollar loans the lender is
19 servicing;
20 (C) The type and characteristics of loans serviced in
21 this State;



- 1 (D) The number of small dollar serviced loans 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, or other enforcement action by any state
- 16 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 -33, -34, and -35,
- 20 filing a completed renewal statement on a form prescribed by



1 NMLS or by the commissioner, paying a renewal fee, and meeting
2 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 **§ -37 Enforcement authorities; violations; penalties.**

16 (a) To ensure the effective supervision and enforcement of this
17 chapter, the commissioner, pursuant to chapter 91, may 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, if an applicant or
19 licensee is not an individual, each of the applicant's
20 or licensee's control persons, executive officers,
21 directors, general partners, and managing members have



1 been convicted of or entered a plea of guilty or nolo
2 contendere to a crime involving fraud or deceit, or to
3 any similar crime under the jurisdiction of any
4 federal court or court of another state;

5 (8) The applicant or licensee has failed to make,
6 maintain, or produce records that comply with section
7 -17 or any rule adopted by the commissioner
8 pursuant to chapter 91;

9 (9) The applicant or licensee has been the subject of any
10 disciplinary action by any state or federal agency
11 that resulted in revocation of a license;

12 (10) A final judgment has been entered against the
13 applicant or licensee for violations of this chapter,
14 any state or federal law concerning small dollar
15 loans, deferred deposit loans, check cashing, payday
16 loans, banking, mortgage loan originators, money
17 transmitters, or any state or federal law prohibiting
18 deceptive or unfair trade or business practices; or

19 (11) The applicant or licensee has failed, in a timely
20 manner as specified by the commissioner, to take or
21 provide proof of the corrective action required by the



1 commissioner subsequent to an investigation or
2 examination pursuant to section -43.

3 (b) After a finding of one or more of the conditions under
4 subsection (a), the commissioner may take any or all of the
5 following actions:

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



1 licensee, applicant, or person is engaging, has engaged, or is
2 about to engage in an illegal, unauthorized, unsafe, or unsound
3 practice in violation of this chapter. Whenever the
4 commissioner denies a license application or takes disciplinary
5 action pursuant to this subsection, the commissioner shall enter
6 an order to that effect and notify the licensee, applicant, or
7 person of the denial or disciplinary action. The notification
8 required by this subsection shall be given by personal service
9 or by mail to the last known address of the licensee or
10 applicant as shown on the application, license, or as
11 subsequently furnished in writing to the commissioner.

12 (d) The revocation, suspension, expiration, or surrender
13 of a license shall not affect the licensee's liability for acts
14 previously committed or impair the commissioner's ability to
15 issue a final agency order or impose discipline against the
16 licensee.

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

20 (f) The commissioner may reinstate a license, terminate a
21 suspension, or grant a new license to a person whose license has



1 been revoked or suspended if no fact or condition then exists
2 that clearly would justify the commissioner in revoking,
3 suspending, or refusing to grant a license.

4 (g) The commissioner may impose an administrative fine on
5 a licensee or person subject to this chapter if the commissioner
6 finds on the record after notice and opportunity for hearing
7 that the licensee or person subject to this chapter has violated
8 or failed to comply with any requirement of this chapter or any
9 rule prescribed by the commissioner under this chapter or order
10 issued under the authority of this chapter.

11 (h) Each violation or failure to comply with any directive
12 or order of the commissioner shall be a separate and distinct
13 violation.

14 (i) Any violation of this chapter that is directed toward,
15 targets, or injures an elder may be subject to an additional
16 civil penalty not to exceed \$10,000 for each violation in
17 addition to any other fines or penalties assessed for the
18 violation.

19 § -38 Voluntary surrender of license. (a) A licensee
20 may voluntarily cease business and surrender its license by
21 giving written notice to the commissioner of its intent to



1 surrender its license. Prior to the surrender date of a
2 license, the licensee shall have either completed all pending
3 small dollar loan transactions or assigned each pending small
4 dollar loan transaction to another licensee.

5 (b) Notice pursuant to this section shall be provided at
6 least thirty days before the surrender of the license and shall
7 include:

- 8 (1) The date of surrender;
- 9 (2) The name, address, telephone number, facsimile number,
10 and electronic mail address of a contact individual
11 with knowledge and authority sufficient to communicate
12 with the commissioner regarding all matters relating
13 to the licensee during the period that it was licensed
14 pursuant to this chapter;
- 15 (3) The reason or reasons for surrender;
- 16 (4) Total dollar amount of the licensee's outstanding
17 small dollar loans sold in Hawaii and the individual
18 amounts of each outstanding small dollar loans, and
19 the name, address, and contact telephone number of the
20 licensee to which each outstanding small dollar loan
21 was assigned;



- 1 (5) A list of the licensee's Hawaii authorized branch
2 offices, if any, as of the date of surrender;
- 3 (6) Confirmation that the licensee has notified each of
4 its Hawaii authorized branch offices, if any, that the
5 branch offices may no longer make small dollar loans
6 on the licensee's behalf; and
- 7 (7) Confirmation that the licensee has notified each of
8 its small dollar loan consumers, if any, that the
9 small dollar loan is being transferred and the name,
10 address, telephone number, and any other contact
11 information of the licensee to whom the small dollar
12 loan was assigned.
- 13 (c) Voluntary surrender of a license shall be effective
14 upon the date of surrender specified on the written notice to
15 the commissioner as required by this section; provided that the
16 licensee has met all the requirements of voluntary surrender and
17 has returned the original license issued.
- 18 **§ -39 Sale or transfer of license; change of control.**
- 19 (a) No small dollar lender license shall be transferred, except
20 as provided in this section.



1 (b) A person or group of persons requesting approval of a
2 proposed change of control of a licensee shall submit to the
3 commissioner an application requesting approval of a proposed
4 change of control of the licensee, accompanied by a
5 nonrefundable application fee of \$500.

6 (c) After review of a request for approval under
7 subsection (b), the commissioner may require the licensee or
8 person or group of persons requesting approval of a proposed
9 change of control of the licensee, or both, to provide
10 additional information concerning the persons who shall assume
11 control of the licensee. The additional information shall be
12 limited to similar information required of the licensee or
13 persons in control of the licensee as part of its original
14 license or renewal application under sections -33 and -36.
15 The information shall include, for the five-year period prior to
16 the date of the application for change of control of the
17 licensee, a history of material litigation and criminal
18 convictions of each person who, upon approval of the application
19 for change of control, will be a principal of the licensee.
20 Authorization shall also be given to conduct criminal history



1 record checks of those persons, accompanied by the appropriate
2 payment of the applicable fee for each record check.

3 (d) The commissioner shall approve a request for change of
4 control under subsection (b) if, after investigation, the
5 commissioner determines that the person or group of persons
6 requesting approval has the competence, experience, character,
7 and general fitness to control the licensee or person in control
8 of the licensee in a lawful and proper manner, and that the
9 interests of the public will not be jeopardized by the change of
10 control.

11 (e) The following persons shall be exempt from the
12 requirements of subsection (b), but the licensee regardless
13 shall notify the commissioner when a change of control results
14 in the following:

15 (1) A person who acts as a proxy for the sole purpose of
16 voting at a designated meeting of the security holders
17 or holders of voting interests of a licensee or person
18 in control of a licensee;

19 (2) A person who acquires control of a licensee by devise
20 or descent;



1 (3) A person who acquires control as a personal
2 representative, custodian, guardian, conservator,
3 trustee, or as an officer appointed by a court of
4 competent jurisdiction or by operation of law; or

5 (4) A person whom the commissioner, by rule or order,
6 exempts in the public interest.

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

15 (g) Subsection (b) shall not apply to public offerings of
16 securities.

17 **§ -40 Authorized places of business; principal office;**
18 **branch offices; relocation; closure.** (a) Every small dollar
19 lender licensed under this chapter shall have and maintain a
20 principal place of business in the State, regardless of whether



1 the small dollar lender maintains its principal office outside
2 of the State.

3 (b) If a small dollar lender has more than one place of
4 business, each additional place of business in Hawaii shall be
5 licensed as a branch office with the commissioner. No business
6 shall be conducted at a branch office until the branch office
7 has been licensed by the commissioner.

8 (c) A small dollar lender shall not maintain any branch
9 offices in the State in addition to its principal place of
10 business without the prior written approval of the commissioner.
11 An application to establish a branch office shall be submitted
12 through NMLS with a nonrefundable application fee as required by
13 section -35.

14 (d) A small dollar lender shall not relocate any office in
15 this State without the prior written approval of the
16 commissioner. An application to relocate an office shall be
17 submitted to the commissioner at least thirty days prior to
18 relocating and shall set forth the reasons for the relocation,
19 the street address of the proposed relocated office, and other
20 information that may be required by the commissioner. An
21 application to relocate an office pursuant to this subsection



1 shall be submitted with a nonrefundable fee as required by
2 section -35.

3 (e) A small dollar lender shall give the commissioner
4 notice of its intent to close a branch office at least thirty
5 days prior to the closing. The notice shall:

6 (1) State the intended date of closing; and

7 (2) Specify the reasons for the closing.

8 (f) The principal place of business and each branch office
9 of the small dollar lender shall be identified in NMLS to
10 consumers as a location at which the licensee holds itself out
11 as a small dollar lender.

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

15 § -41 **Payment of fees.** All fees collected pursuant to
16 section -35, administrative fines, and other charges
17 collected pursuant to this chapter shall be deposited into the
18 compliance resolution fund established pursuant to section 26-
19 9(o) and shall be payable through NMLS, to the extent allowed by
20 NMLS. Fees not eligible for payment through NMLS shall be



1 deposited into a separate account within the compliance
2 resolution fund for use by the division.

3 **§ -42 Powers of commissioner.** (a) The commissioner may
4 adopt rules pursuant to chapter 91 as the commissioner deems
5 necessary for the administration of this chapter.

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

- 8 (1) Issue declaratory rulings or informal nonbinding
9 interpretations;
- 10 (2) Investigate and conduct hearings regarding any
11 violation of this chapter or any rule or order of, or
12 agreement with, the commissioner;
- 13 (3) Create fact-finding committees that may make
14 recommendations to the commissioner for the
15 commissioner's deliberations;
- 16 (4) Require an applicant or any of its control persons,
17 executive officers, directors, general partners, and
18 managing members to disclose their relevant criminal
19 history and request a criminal history record check in
20 accordance with chapter 846;



- 1 (5) Contract with or employ qualified persons, including
2 accountants, attorneys, investigators, examiners,
3 auditors, or other professionals who may be exempt
4 from chapter 76 and who shall assist the commissioner
5 in exercising the commissioner's powers and duties;
- 6 (6) Process and investigate complaints, subpoena witnesses
7 and documents, administer oaths, and receive
8 affidavits and oral testimony, including telephonic
9 communications, and do any and all things necessary or
10 incidental to the exercise of the commissioner's power
11 and duties, including the authority to conduct
12 contested case proceedings under chapter 91;
- 13 (7) Require a licensee to comply with any rule, guidance,
14 guideline, statement, supervisory policy or any
15 similar proclamation issued or adopted by the Federal
16 Deposit Insurance Corporation to the same extent and
17 in the same manner as a bank chartered by the State
18 or, in the alternative, any policy position of the
19 Conference of State Bank Supervisors;
- 20 (8) Enter into agreements or relationships with other
21 government officials or regulatory associations in



- 1 order to improve efficiencies and reduce regulatory
2 burden by sharing resources, standardized or uniform
3 methods or procedures, and documents, records,
4 information, or evidence obtained under this chapter;
- 5 (9) Use, hire, contract, or employ public or privately
6 available analytical systems, methods, or software to
7 investigate or examine a licensee or person subject to
8 this chapter;
- 9 (10) Accept and rely on investigation or examination
10 reports made by other government officials, within or
11 without this State; and
- 12 (11) Accept audit reports made by an independent certified
13 public accountant for the licensee or person subject
14 to this chapter in the course of that part of the
15 examination covering the same general subject matter
16 as the audit and may incorporate the audit report in
17 the report of the examination, report of
18 investigation, or other writing of the commissioner.
- 19 **§ -43 Investigation and examination authority.** (a) In
20 addition to the authority granted under section -42(b), the
21 commissioner shall have the authority to conduct investigations



1 and examinations in accordance with this section. The
2 commissioner may access, receive, and use any books, accounts,
3 records, files, documents, information, or evidence that the
4 commissioner deems relevant to the investigation or examination,
5 regardless of the location, possession, control, or custody of
6 the documents, information, or evidence.

7 (b) For the purposes of investigating violations or
8 complaints arising under this chapter, or for the purposes of
9 examination, the commissioner may review, investigate, or
10 examine any licensee or person subject to this chapter as often
11 as necessary to carry out the purposes of this chapter. The
12 commissioner may direct, subpoena, or order the attendance of,
13 and examine under oath, all persons whose testimony may be
14 required about loans or the business or subject matter of any
15 examination or investigation and may direct, subpoena, or order
16 the person to produce books, accounts, records, files, and any
17 other documents the commissioner deems relevant to the inquiry.

18 (c) Each licensee or person subject to this chapter shall
19 provide to the commissioner, upon request, the books and records
20 relating to the operations of the licensee or person subject to
21 this chapter. The commissioner shall have access to the books



1 and records and shall be permitted to interview the control
2 persons, executive officers, directors, general partners,
3 managing members, principals, managers, employees, independent
4 contractors, agents, and consumers of the licensee or person
5 subject to this chapter concerning their business.

6 (d) Each licensee or person subject to this chapter shall
7 make or compile reports or prepare other information, as
8 directed by the commissioner, to carry out the purposes of this
9 section, including:

10 (1) Accounting compilations;

11 (2) Information lists and data concerning loan
12 transactions in a format prescribed by the
13 commissioner; or

14 (3) Other information that the commissioner deems
15 necessary.

16 (e) In conducting any investigation or examination
17 authorized by this chapter, the commissioner may control access
18 to any documents and records of the licensee or person under
19 investigation or examination. The commissioner may take
20 possession of the documents and records or place a person in
21 exclusive charge of the documents and records. During the



1 period of control, no person shall remove or attempt to remove
2 any of the documents and records except pursuant to a court
3 order or with the consent of the commissioner. Unless the
4 commissioner has reasonable grounds to believe the documents or
5 records of the licensee or person under investigation or
6 examination have been, or are at risk of being, altered or
7 destroyed for the purposes of concealing a violation of this
8 chapter, the licensee or owner of the documents and records
9 shall have access to the documents or records as necessary to
10 conduct its ordinary business affairs.

11 (f) The authority of this section shall remain in effect,
12 whether a licensee or person subject to this chapter acts or
13 claims to act under any licensing or registration law of this
14 State, or claims to act without such authority.

15 (g) No licensee or person subject to investigation or
16 examination under this section may knowingly withhold, abstract,
17 remove, mutilate, destroy, or secrete any books, records,
18 computer records, or other information.

19 (h) The commissioner may charge an investigation or
20 examination fee, payable to the commissioner, based upon the
21 cost per hour per examiner for all licensees and persons subject



1 to this chapter investigated or examined by the commissioner or
2 the commissioner's staff. The hourly fee shall be \$60 or an
3 amount as the commissioner shall establish by rule pursuant to
4 chapter 91. In addition to the investigation or examination
5 fee, the commissioner may charge any person who is examined or
6 investigated by the commissioner or the commissioner's staff
7 pursuant to this section additional amounts for travel, per
8 diem, mileage, and other reasonable expenses incurred in
9 connection with the investigation or examination, payable to the
10 commissioner.

11 (i) Any person having reason to believe that this chapter
12 or the rules adopted under this chapter have been violated, or
13 that a license issued under this chapter should be suspended or
14 revoked, may file a written complaint with the commissioner,
15 setting forth the details of the alleged violation or grounds
16 for suspension or revocation.

17 § -44 Confidentiality. (a) Except as otherwise
18 provided in title 12 United States Code section 5111, the
19 requirements under any federal or state law regarding the
20 privacy or confidentiality of any information or material
21 provided to NMLS, and any privilege arising under federal or



1 state law, including the rules of any federal or state court,
2 with respect to the information or material shall continue to
3 apply to the information or material after the information or
4 material has been disclosed to NMLS. The information and
5 material may be shared with all state and federal regulatory
6 officials with oversight authority over transactions subject to
7 this chapter, without the loss of privilege or the loss of
8 confidentiality protections provided by federal or state law.

9 (b) For the purposes of this section, the commissioner is
10 authorized to enter into agreements or sharing arrangements with
11 other governmental agencies, the Conference of State Bank
12 Supervisors, or other associations representing governmental
13 agencies as established by rule or order of the commissioner.

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

16 (1) Disclosure under any federal or state law governing
17 the disclosure to the public of information held by an
18 officer or an agency of the federal government or a
19 state; or

20 (2) Subpoena or discovery, or admission into evidence, in
21 any private civil action or administrative process,



1 unless any privilege is determined by NMLS to be
 2 applicable to the information or material; provided
 3 that the person to whom the information or material
 4 pertains waives, in whole or in part, in the
 5 discretion of the person, that privilege.

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

10 (e) In the event of a conflict between this section and
 11 any other section of law relating to the disclosure of
 12 privileged or confidential information or material, this section
 13 shall control.

14 (f) This section shall not apply to information or
 15 material relating to the employment history of, and publicly
 16 adjudicated disciplinary and enforcement actions against, any
 17 persons that are included in NMLS for access by the public.

18 § -45 Prohibited practices. (a) It shall be a
 19 violation of this chapter for a licensee, its control persons,
 20 executive officers, directors, general partners, managing



1 members, employees, or independent contractors, or any other
2 person subject to this chapter to:

3 (1) Engage in any act that limits or restricts the
4 application of this chapter, including making a small
5 dollar loan disguised as a leaseback transaction or a
6 personal property, personal sales, or automobile title
7 loan, or by disguising loan proceeds as cash rebates
8 for the pretextual installment sale of goods and
9 services;

10 (2) Make a secured small dollar loan;

11 (3) Use a consumer's account number to prepare, issue, or
12 create a check on behalf of the consumer;

13 (4) Charge, collect, or receive, directly or indirectly,
14 credit insurance premiums, charges for negotiating
15 forms of loan proceeds other than cash, charges for
16 brokering or obtaining loans, prepayment fees, or any
17 fees, interest, or charges in connection with a small
18 dollar loan except those explicitly authorized in this
19 chapter;

20 (5) Fail to make disclosures as required by this chapter
21 and any other applicable state or federal law,



- 1 including rules or regulations adopted pursuant to
2 state or federal law;
- 3 (6) Directly or indirectly employ any scheme, device, or
4 artifice to defraud or mislead any consumer, any
5 lender, or any person;
- 6 (7) Directly or indirectly engage in unfair or deceptive
7 acts, practices, or advertising in connection with a
8 small dollar loan toward any person;
- 9 (8) Directly or indirectly obtain property by fraud or
10 misrepresentation;
- 11 (9) Make a small dollar loan to any person physically
12 located in the State through the use of the Internet,
13 facsimile, telephone, kiosk, or other means without
14 first obtaining a license under this chapter;
- 15 (10) Make, in any manner, any false or deceptive statement
16 or representation, including with regard to the rates,
17 fees, or other financing terms or conditions for a
18 small dollar loan, or engage in bait and switch
19 advertising;
- 20 (11) Make any false statement or knowingly and wilfully
21 make any omission of material fact in connection with



- 1 any reports filed with the division by a licensee or
2 in connection with any investigation conducted by the
3 division;
- 4 (12) Advertise any rate of interest without conspicuously
5 disclosing the annual percentage rate implied by that
6 rate of interest or otherwise fail to comply with any
7 requirement of the Truth in Lending Act, or any other
8 applicable state or federal laws or regulations;
- 9 (13) Make small dollar loans from any unlicensed location;
- 10 (14) Draft funds from any depository financial institution
11 without written approval of the consumer; provided
12 that nothing in this paragraph shall prohibit the
13 conversion of a negotiable instrument into an
14 electronic form for processing through the Automated
15 Clearing House or similar system;
- 16 (15) Attempt to collect from a consumer's account after two
17 consecutive attempts have failed, unless the licensee
18 obtains new written authorization from the consumer to
19 transfer or withdraw funds from the account;
- 20 (16) Make a loan to a consumer that includes a demand
21 feature that was not clearly disclosed in the written



1 agreement pursuant to section -3 or collect or
2 demand repayment of any outstanding balance or unpaid
3 interest or fees except as provided in section -3;

4 (17) Fail to comply with all applicable state and federal
5 laws relating to the activities governed by this
6 chapter; or

7 (18) Fail to pay any fee, assessment, or moneys due to the
8 department.

9 (b) In addition to any other penalties provided for under
10 this chapter, any small dollar loan transaction in violation of
11 subsection (a) shall be void and unenforceable."

12 SECTION 3. Section 478-4, Hawaii Revised Statutes, is
13 amended by amending subsection (d) to read as follows:

14 "(d) The rate limitations contained in subsections (a) and
15 (b) of this section and section 478-11.5 shall not apply to any
16 [credit]:

17 (1) Credit transaction authorized by, and entered into in
18 accordance with the provisions of, articles 9 and 10
19 of chapter 412 or chapter 476[-]; or

20 (2) Small dollar loan transaction authorized by, and
21 entered into in accordance with, chapter ."



1 SECTION 4. Section 478-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§478-5 Usury not recoverable. If a greater rate of
4 interest than that permitted by law is contracted for with
5 respect to any consumer credit transaction, any home business
6 loan or any credit card agreement, the contract shall not, by
7 reason thereof, be void. But if in any action on the contract
8 proof is made that a greater rate of interest than that
9 permitted by law has been directly or indirectly contracted for,
10 the creditor shall only recover the principal and the debtor
11 shall recover costs. If interest has been paid, judgment shall
12 be for the principal less the amount of interest paid. This
13 section shall not be held to apply[~~, to loans~~] to:

- 14 (1) Loans made by financial services loan companies and
15 credit unions at the rates authorized under and
16 pursuant to articles 9 and 10 of chapter 412[~~-~~]; or
- 17 (2) Any small dollar loan regulated under chapter ."

18 SECTION 5. Section 478-6, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§478-6 Usury; penalty. Any person who directly or
21 indirectly receives any interest or finance charge at a rate



1 greater than that permitted by law or who, by any method or
2 device whatsoever, receives or arranges for the receipt of
3 interest or finance charge at a greater rate than that permitted
4 by law on any credit transaction shall be guilty of usury and
5 shall be fined not more than \$250, unless a greater amount is
6 allowed by law, or imprisoned not more than one year, or both."

7 SECTION 6. Section 480F-1, Hawaii Revised Statutes, is
8 amended by deleting the definition of "deferred deposit".

9 [~~"Deferred deposit" means a transaction in which a check~~
10 ~~casher refrains from depositing a personal check written by a~~
11 ~~customer until a date after the transaction date, pursuant to a~~
12 ~~written agreement."~~]

13 SECTION 7. Section 480F-3, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+] §480F-3 [+] **Authorized fees.** [~~Except as provided in~~
16 ~~section 480F-4, no]~~ No check casher shall charge fees in excess
17 of the following amounts:

- 18 (1) Five per cent of the face amount of the check or \$5,
19 whichever is greater;
- 20 (2) Three per cent of the face amount of the check or \$5,
21 whichever is greater, if the check is the payment of



1 any kind of state public assistance or federal social
2 security benefit payable to the bearer of the check;

3 (3) Ten per cent of the face amount of a personal check or
4 money order, or \$5, whichever is greater; or

5 (4) No more than \$10 to set up an initial account and
6 issue an optional membership or identification card,
7 and no more than \$5 for a replacement optional
8 identification card.

9 The fees allowed in this section shall not be assessed in any
10 transaction or agreement in which the check casher defers
11 deposit of the check."

12 SECTION 8. Section 480F-6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§480F-6 Penalties.** (a) Any person who violates this
15 chapter shall be deemed to have engaged in an unfair or
16 deceptive act or practice in the conduct of any trade or
17 commerce within the meaning of section 480-2(a). Aggrieved
18 consumers may seek those remedies set forth in section
19 480-13(b).

20 (b) Any person who is not a consumer and is injured by a
21 wilful violation of this chapter may bring an action for the



1 recovery of damages, a proceeding to restrain and enjoin those
2 violations, or both. If judgment is for the plaintiff, the
3 plaintiff shall be awarded a sum not less than \$1,000 or
4 threefold damages, whichever sum is greater, and reasonable
5 attorneys' fees together with the costs of suit.

6 (c) A wilful violation of this chapter shall be punishable
7 by a fine of up to \$500 and up to thirty days imprisonment.

8 ~~[(d) A customer who enters into a written deferred deposit
9 agreement and offers a personal check to a check-casher pursuant
10 to that agreement shall not be subject to any criminal penalty
11 for failure to comply with the terms of that agreement unless
12 the check is dishonored because the customer closed the account
13 or stopped payment on the check.] "~~

14 SECTION 9. Section 846-2.7, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Criminal history record checks may be conducted by:

17 (1) The department of health or its designee on operators
18 of adult foster homes for individuals with
19 developmental disabilities or developmental
20 disabilities domiciliary homes and their employees, as
21 provided by section 321-15.2;



- 1 (2) The department of health or its designee on
2 prospective employees, persons seeking to serve as
3 providers, or subcontractors in positions that place
4 them in direct contact with clients when providing
5 non-witnessed direct mental health or health care
6 services as provided by section 321-171.5;
- 7 (3) The department of health or its designee on all
8 applicants for licensure or certification for,
9 operators for, prospective employees, adult
10 volunteers, and all adults, except adults in care, at
11 healthcare facilities as defined in section 321-15.2;
- 12 (4) The department of education on employees, prospective
13 employees, and teacher trainees in any public school
14 in positions that necessitate close proximity to
15 children as provided by section 302A-601.5;
- 16 (5) The counties on employees and prospective employees
17 who may be in positions that place them in close
18 proximity to children in recreation or child care
19 programs and services;
- 20 (6) The county liquor commissions on applicants for liquor
21 licenses as provided by section 281-53.5;



- 1 (7) The county liquor commissions on employees and
2 prospective employees involved in liquor
3 administration, law enforcement, and liquor control
4 investigations;
- 5 (8) The department of human services on operators and
6 employees of child caring institutions, child placing
7 organizations, and foster boarding homes as provided
8 by section 346-17;
- 9 (9) The department of human services on prospective
10 adoptive parents as established under section
11 346-19.7;
- 12 (10) The department of human services or its designee on
13 applicants to operate child care facilities, household
14 members of the applicant, prospective employees of the
15 applicant, and new employees and household members of
16 the provider after registration or licensure as
17 provided by section 346-154, and persons subject to
18 section 346-152.5;
- 19 (11) The department of human services on persons exempt
20 pursuant to section 346-152 to be eligible to provide



- 1 child care and receive child care subsidies as
2 provided by section 346-152.5;
- 3 (12) The department of health on operators and employees of
4 home and community-based case management agencies and
5 operators and other adults, except for adults in care,
6 residing in community care foster family homes as
7 provided by section 321-15.2;
- 8 (13) The department of human services on staff members of
9 the Hawaii youth correctional facility as provided by
10 section 352-5.5;
- 11 (14) The department of human services on employees,
12 prospective employees, and volunteers of contracted
13 providers and subcontractors in positions that place
14 them in close proximity to youth when providing
15 services on behalf of the office or the Hawaii youth
16 correctional facility as provided by section 352D-4.3;
- 17 (15) The judiciary on employees and applicants at detention
18 and shelter facilities as provided by section 571-34;
- 19 (16) The department of public safety on employees and
20 prospective employees who are directly involved with
21 the treatment and care of persons committed to a



- 1 correctional facility or who possess police powers
2 including the power of arrest as provided by section
3 353C-5;
- 4 (17) The board of private detectives and guards on
5 applicants for private detective or private guard
6 licensure as provided by section 463-9;
- 7 (18) Private schools and designated organizations on
8 employees and prospective employees who may be in
9 positions that necessitate close proximity to
10 children; provided that private schools and designated
11 organizations receive only indications of the states
12 from which the national criminal history record
13 information was provided pursuant to section 302C-1;
- 14 (19) The public library system on employees and prospective
15 employees whose positions place them in close
16 proximity to children as provided by section
17 302A-601.5;
- 18 (20) The State or any of its branches, political
19 subdivisions, or agencies on applicants and employees
20 holding a position that has the same type of contact
21 with children, vulnerable adults, or persons committed



1 to a correctional facility as other public employees
2 who hold positions that are authorized by law to
3 require criminal history record checks as a condition
4 of employment as provided by section 78-2.7;

5 (21) The department of health on licensed adult day care
6 center operators, employees, new employees,
7 subcontracted service providers and their employees,
8 and adult volunteers as provided by section 321-15.2;

9 (22) The department of human services on purchase of
10 service contracted and subcontracted service providers
11 and their employees serving clients of the adult
12 protective and community services branch, as provided
13 by section 346-97;

14 (23) The department of human services on foster grandparent
15 program, senior companion program, and respite
16 companion program participants as provided by section
17 346-97;

18 (24) The department of human services on contracted and
19 subcontracted service providers and their current and
20 prospective employees that provide home and community-
21 based services under section 1915(c) of the Social



1 Security Act, title 42 United States Code section
2 1396n(c), or under any other applicable section or
3 sections of the Social Security Act for the purposes
4 of providing home and community-based services, as
5 provided by section 346-97;

6 (25) The department of commerce and consumer affairs on
7 proposed directors and executive officers of a bank,
8 savings bank, savings and loan association, trust
9 company, and depository financial services loan
10 company as provided by section 412:3-201;

11 (26) The department of commerce and consumer affairs on
12 proposed directors and executive officers of a
13 nondepository financial services loan company as
14 provided by section 412:3-301;

15 (27) The department of commerce and consumer affairs on the
16 original chartering applicants and proposed executive
17 officers of a credit union as provided by section
18 412:10-103;

19 (28) The department of commerce and consumer affairs on:
20 (A) Each principal of every non-corporate applicant
21 for a money transmitter license;



- 1 (B) Each person who upon approval of an application
- 2 by a corporate applicant for a money transmitter
- 3 license will be a principal of the licensee; and
- 4 (C) Each person who upon approval of an application
- 5 requesting approval of a proposed change in
- 6 control of licensee will be a principal of the
- 7 licensee,
- 8 as provided by sections 489D-9 and 489D-15;
- 9 (29) The department of commerce and consumer affairs on
- 10 applicants for licensure and persons licensed under
- 11 title 24;
- 12 (30) The Hawaii health systems corporation on:
- 13 (A) Employees;
- 14 (B) Applicants seeking employment;
- 15 (C) Current or prospective members of the corporation
- 16 board or regional system board; or
- 17 (D) Current or prospective volunteers, providers, or
- 18 contractors,
- 19 in any of the corporation's health facilities as
- 20 provided by section 323F-5.5;
- 21 (31) The department of commerce and consumer affairs on:



- 1 (A) An applicant for a mortgage loan originator
- 2 license, or license renewal; and
- 3 (B) Each control person, executive officer, director,
- 4 general partner, and managing member of an
- 5 applicant for a mortgage loan originator company
- 6 license or license renewal,
- 7 as provided by chapter 454F;
- 8 (32) The state public charter school commission or public
- 9 charter schools on employees, teacher trainees,
- 10 prospective employees, and prospective teacher
- 11 trainees in any public charter school for any position
- 12 that places them in close proximity to children, as
- 13 provided in section 302D-33;
- 14 (33) The counties on prospective employees who work with
- 15 children, vulnerable adults, or senior citizens in
- 16 community-based programs;
- 17 (34) The counties on prospective employees for fire
- 18 department positions which involve contact with
- 19 children or vulnerable adults;



1 (35) The counties on prospective employees for emergency
2 medical services positions which involve contact with
3 children or vulnerable adults;

4 (36) The counties on prospective employees for emergency
5 management positions and community volunteers whose
6 responsibilities involve planning and executing
7 homeland security measures including viewing,
8 handling, and engaging in law enforcement or
9 classified meetings and assisting vulnerable citizens
10 during emergencies or crises;

11 (37) The State and counties on employees, prospective
12 employees, volunteers, and contractors whose position
13 responsibilities require unescorted access to secured
14 areas and equipment related to a traffic management
15 center;

16 (38) The State and counties on employees and prospective
17 employees whose positions involve the handling or use
18 of firearms for other than law enforcement purposes;

19 (39) The State and counties on current and prospective
20 systems analysts and others involved in an agency's
21 information technology operation whose position



1 responsibilities provide them with access to
2 proprietary, confidential, or sensitive information;
3 (40) The department of commerce and consumer affairs on:
4 (A) Applicants for real estate appraiser licensure or
5 certification as provided by chapter 466K;
6 (B) Each person who owns more than ten per cent of an
7 appraisal management company who is applying for
8 registration as an appraisal management company,
9 as provided by section 466L-7; and
10 (C) Each of the controlling persons of an applicant
11 for registration as an appraisal management
12 company, as provided by section 466L-7;
13 (41) The department of health or its designee on all
14 license applicants, licensees, employees, contractors,
15 and prospective employees of medical cannabis
16 dispensaries, and individuals permitted to enter and
17 remain in medical cannabis dispensary facilities as
18 provided under sections 329D-15(a)(4) and
19 329D-16(a)(3);
20 (42) The department of commerce and consumer affairs on
21 applicants for nurse licensure or license renewal,



1 reactivation, or restoration as provided by sections
2 457-7, 457-8, 457-8.5, and 457-9;

3 (43) The county police departments on applicants for
4 permits to acquire firearms pursuant to section 134-2
5 and on individuals registering their firearms pursuant
6 to section 134-3;

7 (44) The department of commerce and consumer affairs on:

8 (A) Each of the controlling persons of the applicant
9 for licensure as an escrow depository, and each
10 of the officers, directors, and principals who
11 will be in charge of the escrow depository's
12 activities upon licensure; and

13 (B) Each of the controlling persons of an applicant
14 for proposed change in control of an escrow
15 depository licensee, and each of the officers,
16 directors, and principals who will be in charge
17 of the licensee's activities upon approval of
18 such application,

19 as provided by chapter 449;

20 (45) The department of taxation on current or prospective
21 employees or contractors who have access to federal



- 1 tax information in order to comply with requirements
2 of federal law, regulation, or procedure, as provided
3 by section 231-1.6;
- 4 (46) The department of labor and industrial relations on
5 current or prospective employees or contractors who
6 have access to federal tax information in order to
7 comply with requirements of federal law, regulation,
8 or procedure, as provided by section 383-110;
- 9 (47) The department of human services on current or
10 prospective employees or contractors who have access
11 to federal tax information in order to comply with
12 requirements of federal law, regulation, or procedure,
13 as provided by section 346-2.5;
- 14 (48) The child support enforcement agency on current or
15 prospective employees, or contractors who have access
16 to federal tax information in order to comply with
17 federal law, regulation, or procedure, as provided by
18 section 576D-11.5; [and]
- 19 (49) The department of commerce and consumer affairs on
20 each control person, executive officer, director,
21 general partner, and managing member of a small dollar



1 loan licensee, or an applicant for a small dollar loan
 2 license as provided by chapter ; and
 3 [~~(49)~~] (50) Any other organization, entity, or the State,
 4 its branches, political subdivisions, or agencies as
 5 may be authorized by state law."

6 SECTION 10. Section 480F-4, Hawaii Revised Statutes, is
 7 repealed.

8 [~~"§480F-4 Deferred deposits, when allowed. (a) No check~~
 9 ~~casher may defer the deposit of a check except as provided in~~
 10 ~~this section.~~

11 ~~(b) Each deferred deposit shall be made pursuant to a~~
 12 ~~written agreement that has been signed by the customer and the~~
 13 ~~check casher or an authorized representative of the check~~
 14 ~~casher. The written agreement shall contain a statement of the~~
 15 ~~total amount of any fees charged for the deferred deposit,~~
 16 ~~expressed both in United States currency and as an annual~~
 17 ~~percentage rate. The written agreement shall authorize the~~
 18 ~~check casher to defer deposit of the personal check until a~~
 19 ~~specific date not later than thirty two days from the date the~~
 20 ~~written agreement was signed. The written agreement shall not~~
 21 ~~permit the check casher to accept collateral.~~



1 ~~(c) The face amount of the check shall not exceed \$600 and~~
2 ~~the deposit of a personal check written by a customer pursuant~~
3 ~~to a deferred deposit transaction may be deferred for no more~~
4 ~~than thirty two days. A check casher may charge a fee for~~
5 ~~deferred deposit of a personal check in an amount not to exceed~~
6 ~~fifteen per cent of the face amount of the check. Any fees~~
7 ~~charged for deferred deposit of a personal check in compliance~~
8 ~~with this section shall be exempt from chapter 478.~~

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

15 ~~(e) A check casher who enters into a deferred deposit~~
16 ~~agreement and accepts a check passed on insufficient funds, or~~
17 ~~any assignee of that check casher, shall not be entitled to~~
18 ~~recover damages in any action brought pursuant to or governed by~~
19 ~~chapter 490. Instead, the check casher may charge and recover a~~
20 ~~fee for the return of a dishonored check in an amount not~~
21 ~~greater than \$20.~~



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

5 SECTION 11. There is appropriated out of the compliance
6 resolution fund the sum of \$ _____ or so much thereof as may
7 be necessary for fiscal year 2019-2020 and the same sum or so
8 much thereof as may be necessary for fiscal year 2020-2021 to
9 establish and hire two full-time equivalent (2.0 FTE) permanent
10 examiners, without regard to chapter 76, Hawaii Revised
11 Statutes, to carry out the purposes of the small dollar
12 installment loan program established by section 2 of this Act;
13 provided that the positions may be added to the position count
14 for the division of financial institutions of the department of
15 commerce and consumer affairs.

16 The sums appropriated shall be expended by the department
17 of commerce and consumer affairs for the purposes of this part.

18 PART II

19 SECTION 12. Chapter 480F, Hawaii Revised Statutes, is
20 amended by adding five new sections to be appropriately
21 designated and to read as follows:



1 "§480F- Registration required. (a) No check casher
2 shall conduct business in the State, including deferred deposit
3 transactions, without first registering with the department
4 under this chapter.

5 (b) The director shall prescribe the form of the
6 application for registration. Each application shall be
7 accompanied by the appropriate fee as prescribed by the director
8 by rules adopted pursuant to chapter 91.

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 cashier;

13 (2) The name and address of the check casher's agent for
14 service of process in the State; and

15 (3) Payment of the appropriate registration fees, as
16 established by the director under rules adopted
17 pursuant to chapter 91.

18 §480F- Voluntary payment plans. (a) At the time of
19 origination of a third consecutive deferred deposit transaction
20 made to a customer by a check casher, and at the time of
21 origination of any subsequent consecutive deferred deposit



1 transactions, the check casher shall offer the customer in
2 writing the option to participate in a voluntary payment plan.
3 Should the customer be in financial hardship, a voluntary
4 payment plan may be requested by the customer and arranged by
5 the customer and the check casher at any time.

6 (b) The voluntary payment plan shall be structured to pay
7 the existing debt, both the principal and the fee, in at least
8 six equal payments of no more than five per cent of the
9 customer's monthly pretax paycheck that coincide with the
10 customer's periodic pay dates or the date the customer is
11 scheduled to receive benefits, unless the customer requests
12 different payment due dates. The payments made pursuant to the
13 voluntary payment plan shall be applied directly to the existing
14 debt, and the lender shall not charge the customer any
15 additional fee other than an administration fee not to exceed
16 \$30 for participation in the voluntary payment plan. The
17 administration fee charged for a voluntary payment plan in
18 compliance with this section shall be exempt from chapter 478.

19 (c) The check casher shall provide a written copy of the
20 voluntary payment plan agreement to the customer. The check
21 casher shall be prohibited from engaging in collection



1 activities while the customer continues to make payments in
2 accordance with the payment plan. The check casher is
3 prohibited from making any additional deferred deposit
4 transactions to the customer prior to the completion of the
5 payments under the voluntary payment plan.

6 (d) The check casher may require the customer to provide a
7 post-dated check or electronic authorization for funds
8 transferred for each payment under the voluntary payment plan.
9 If any check or electronic authorization accepted by the check
10 casher as payment for a voluntary payment plan is dishonored,
11 the check casher shall not charge the customer a fee for the
12 dishonored instrument.

13 (e) If the customer fails to make payments in accordance
14 with a voluntary payment plan, the check casher is entitled to
15 take action as otherwise allowed under this chapter to collect
16 the remaining funds due and may charge the customer a one-time
17 default fee of \$30.

18 §480F- Single deferred deposit transaction limitation.
19 A check casher shall take reasonable measure to ensure that no
20 customer has more than one deferred deposit transaction
21 outstanding at a time from all sources. Check cashers shall



1 receive written confirmation from each customer that the
2 customer does not have any outstanding deferred deposit
3 transactions as of the date the customer enters into a deferred
4 deposit transaction with the check casher.

5 §480F- Records and reports. Every check casher shall
6 keep records and make reports with respect to the operation of
7 business as provided in rules adopted by the director pursuant
8 to chapter 91.

9 §480F- Rules. The director shall adopt rules necessary
10 to implement this chapter pursuant to chapter 91."

11 SECTION 13. Section 480F-1, Hawaii Revised Statutes, is
12 amended by adding three new definitions to be appropriately
13 inserted and to read as follows:

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

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

18 "Financial hardship" means any hardship from loss of
19 income, reduced work hours, increased living costs, or other
20 hardships outside of the control of the customer at the



1 discretion of the check casher and evidenced with
2 documentation."

3 SECTION 14. Section 480F-2, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~[+] §480F-2~~ **Posting and notice of fees charged.** Any
6 person who cashes one or more checks for a fee shall:

7 (1) Post in a conspicuous place in every location at which
8 the person does business a notice that sets forth~~[+]~~
9 in no smaller than thirty-eight point type:

10 (A) The fees charged for cashing a check, for selling
11 or issuing a money order, and for the initial
12 issuance of any membership or identification
13 cards; and

14 (B) That consumer complaints about the check cashing
15 business may be filed with the department ~~[of~~
16 ~~commerce and consumer affairs]~~, and includes and
17 identifies the telephone number and address of
18 the consumer information service of the
19 department ~~[of commerce and consumer affairs]~~;

20 (2) Provide written notice to each customer ~~[of the fees~~
21 ~~charged for cashing checks]~~ in no smaller than twelve-



- 1 point type that is separate from and in addition to
2 any posted notice[+] the following information:
- 3 (A) The fees charged for cashing checks; and
4 (B) That consumer complaints about the check cashing
5 business may be filed with the department,
6 including and identifying the telephone number
7 and address of the consumer information service
8 of the department;
- 9 (3) Obtain a written acknowledgment from the customer that
10 written notice [~~of the fees charged for cashing~~
11 ~~checks~~] as required by paragraph (2) was provided[+]
12 to the customer; and
- 13 (4) Provide each customer a receipt documenting any and
14 all fees charged."

15 SECTION 15. Section 480F-4, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§480F-4 Deferred deposits, when allowed.** (a) No check
18 casher may defer the deposit of a check except as provided in
19 this section.

20 (b) In addition to the notice required by section 480F-2,
21 a check casher that defers the deposit of any checks shall post



1 in a conspicuous place in every location at which the check
2 cashier does business a notice that sets forth in no smaller than
3 thirty-eight point type:

4 (1) The total amount of any fees charged for the deferred
5 deposit, expressed both in United States currency and
6 as an annual percentage rate;

7 (2) That customers have a right to rescind a deferred
8 deposit transaction within twenty-four hours of the
9 transaction;

10 (3) That deferred deposit transactions are not suitable
11 for long-term borrowing;

12 (4) That a customer may have no more than one outstanding
13 deferred deposit transaction from all sources;

14 (5) Information on available financial education services,
15 including contact information for an approved budget
16 and credit counselor or an approved housing counselor;
17 and

18 (6) A copy of the registration to do business as a check
19 cashier as required by this chapter.

20 ~~[(b)]~~ (c) Each deferred deposit shall be made pursuant to
21 a written agreement that has been signed by the customer and the



1 check casher or an authorized representative of the check
2 casher. The written agreement shall contain a statement of the
3 following:

4 (1) The total amount of any fees charged for the deferred
5 deposit, expressed both in United States currency and
6 as an annual percentage rate[-]; and

7 (2) Notices stating that:

8 (A) The customer has a right to rescind a deferred
9 deposit transaction within twenty-four hours of
10 the transaction;

11 (B) The customer may have no more than one
12 outstanding deferred deposit transaction from all
13 sources;

14 (C) Deferred deposit transactions are not suitable
15 for long-term borrowing; and

16 (D) The customer may enter into a voluntary payment
17 plan if the customer:

18 (i) Is experiencing financial hardship; or

19 (ii) Has entered into three or more consecutive
20 transactions with the same check casher; and



1 (3) A declaration that financial education services are
 2 available and include contact information for an
 3 approved budget and credit counselor or an approved
 4 housing counselor.

5 The written agreement shall authorize the check casher to defer
 6 deposit of the personal check until a specific date not later
 7 than thirty-two days from the date the written agreement was
 8 signed. The written agreement shall not permit the check casher
 9 to accept collateral.

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

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



1 be repaid, refinanced, or consolidated by or with the proceeds
2 of another deferred deposit transaction.

3 ~~[(e)]~~ (f) A check casher who enters into a deferred
4 deposit agreement and accepts a check passed on insufficient
5 funds, or any assignee of that check casher, shall not be
6 entitled to recover damages in any action brought pursuant to or
7 governed by chapter 490. No additional interest may be
8 collected except the ten per cent allowed by law on uncollected
9 judgments. Instead, the check casher may charge and recover a
10 fee for the return of a dishonored check in an amount not
11 greater than ~~[\$20.]~~ the fee incurred by the check casher from
12 its financial institution.

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

17 (h) For the purposes of this section:
18 "Approved budget and credit counselor" and "approved
19 housing counselor" shall have the same meaning as those terms
20 are defined in section 667-1."



1 SECTION 16. Section 480F-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[f]~~ §480F-5 ~~[t]~~ Exemptions. This chapter shall not apply
4 to ~~[+]~~

5 ~~(1) Any person who is principally engaged in the bona fide~~
6 ~~retail sale of goods or services, and who, either as~~
7 ~~incident to or independent of the retail sale or~~
8 ~~service, from time to time cashes items for a fee or~~
9 ~~other consideration, where not more than \$2, or two~~
10 ~~per cent of the amount of the check, whichever is~~
11 ~~greater, is charged for the service; or~~

12 ~~(2) Any] any~~ person authorized to engage in business as a
13 bank, trust company, savings bank, savings and loan
14 association, financial services loan company, or
15 credit union under the laws of the United States, any
16 state or territory of the United States, or the
17 District of Columbia."

18 SECTION 17. (a) The state auditor shall conduct a sunrise
19 analysis of the regulation of payday lenders and deferred
20 deposit agreements and its impact on consumer protection in the
21 State.



1 (b) In conducting the analysis, the state auditor shall
2 examine the following:

3 (1) The increasing impact of out-of-state internet lenders
4 who operate in the State;

5 (2) Data regarding consumer complaints;

6 (3) The impact of chapter 480F, Hawaii Revised Statutes,
7 on consumers within the State over the past fifteen
8 years; and

9 (4) Any further measures necessary for increased consumer
10 protection in the State.

11 (c) The auditor shall submit a report of findings and
12 recommendations, including any proposed legislation, to the
13 legislature no later than twenty days prior to the convening of
14 the regular session of 2020.

15 PART III

16 SECTION 18. This Act does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun before its effective date.

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



1 SECTION 20. This Act shall take effect on July 1, 2050;

2 provided that:

3 (1) The licensing requirements for small dollar lenders
4 established by section 2 of this Act shall take effect
5 on January 1, 2051; and

6 (2) Part II shall take effect on July 1, 3000.



Report Title:

Payday Lending; Small Dollar Loans; Small Dollar Lenders;
Licensure; Requirements; Appropriation; Check Cashers;
Registration; Voluntary Payment Plans; Notices

Description:

Transitions from lump sum deferred deposit transactions to installment-based small dollar loan transactions. Specifies various consumer protection requirements for small dollar loans. Beginning 1/1/2020, requires licensure for small dollar lenders that offer small dollar loans to consumers. Specifies licensing requirements for small dollar lenders. Authorizes the division of financial institutions to appoint 2.0 FTE examiner positions, funded via the compliance resolution fund, to carry out the purposes of the small dollar installment loan program. Requires check cashers to be registered with DCCA and to offer a voluntary payment plan to customers under certain circumstances. Establishes the terms of voluntary payment plans. Clarifies that a customer may only have one outstanding deferred deposit transaction from any source. Amends notices to customers required of check cashers. Removes the exemption for persons engaged in the bona fide retail sale of goods or services. Requires the Auditor to conduct a sunrise analysis of the regulation of payday lenders and deferred deposit agreements in the State. (SB537 HD3)

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