
A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1 PART I

2 SECTION 1. The legislature finds that a 2019 survey of
3 household financial health in Hawaii identified that sixty-nine
4 per cent of households are experiencing moderate to severe
5 financial stress. One in five households had total spending
6 that exceeded their income. Alternative financial service
7 products, which includes money orders, check cashing, payday
8 loans and pawn shop or auto title loans services were used by
9 twenty-one per cent of households at least once during the year,
10 and this survey also found that five per cent of households are
11 "unbanked" meaning that they do not have a checking or savings
12 account, and an additional nineteen per cent are "underbanked",
13 meaning they have at least one of these accounts but also rely
14 on an alternative financial services product. While the
15 specific reasons for utilizing alternative financial services
16 products is unclear, it does suggest that there is demand for



1 financial services that may offer quick access and convenience,
2 but come with a heavy price tag.

3 The legislature further finds that a form of alternative
4 financial services known as deferred deposit agreements,
5 commonly referred to as payday loans, are small, short term,
6 unsecured loans that borrowers commit to repay from their next
7 paycheck or a regular income payment. According to the Federal
8 Reserve System's Report on the Economic Well-Being of United
9 States Households in 2017, forty per cent of Americans would not
10 be able to cover an unexpected expense of \$400 without having to
11 sell something or borrow money. Another study conducted by The
12 Pew Charitable Trusts found that the majority of borrowers use
13 deferred deposit agreements for recurring expenses, rather than
14 unexpected expenses or emergencies, because they live paycheck
15 to paycheck. Additional research shows that approximately
16 twelve million Americans utilize payday loans annually. The
17 Consumer Financial Protection Bureau has reported that seventy
18 per cent of those payday borrowers will end up taking out a
19 second payday loan, and some lenders allow borrowers to roll the
20 balance into a new larger loan with the same problematic fee
21 schedule.



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

11 Unfortunately, due to the State's current deferred deposit
12 laws, the payday lending industry can engage in practices that
13 trap consumers in unsustainable cycles of debt. Payday lenders
14 structure loans with unrealistically short repayment terms,
15 unaffordable payments, and excessive fees, resulting in long-
16 term, high-cost debt and harm to the consumer. Lenders are also
17 granted access to the borrower's checking account to ensure that
18 the lender gets repaid, even if the borrower cannot cover rent,
19 utilities, and other basic living expenses. The Pew Charitable
20 Trusts has reported that the average Hawaii payday borrower
21 incurs \$529 in fees to borrow \$300 over five months. Research



1 also shows that this amount is nearly three times higher than
2 what the same lenders charge similarly situated consumers in
3 other states. Due to the high cost of living in the State,
4 these practices are likely to contribute to the current
5 homelessness crisis.

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



1 practices in light of this delay and the weakening of the
2 federal consumer protections for payday and similar loans.

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

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

- 14 (1) Providing for new viable installment-based small
15 dollar loan transactions in addition to enhanced
16 deferred deposit transactions;
- 17 (2) Specifying various consumer protection requirements
18 for small dollar loans;
- 19 (3) Beginning January 1, 2022, requiring licensure for
20 small dollar lenders that offer small dollar loans to
21 consumers, subject to the oversight of the division of



- 1 financial institutions of the department of commerce
2 and consumer affairs to protect against illegal
3 offshore lending;
- 4 (4) Specifying licensing requirements for small dollar
5 lenders;
- 6 (5) Capping interest at thirty-six per cent per annum and
7 one simple maximum monthly maintenance fee tiered up
8 to \$60;
- 9 (6) Amortizing loans in full and renewing the loan while
10 also permitting borrowers to choose to repay the loan
11 without penalty;
- 12 (7) Capping maximum allowable costs at sixty per cent of
13 the principal loan amount, preventing a loan from
14 being either too short or too long in duration;
- 15 (8) Capping the maximum allowable loan size at \$1,500,
16 providing more flexibility for lenders and borrowers
17 than under the current law;
- 18 (9) Requiring lenders to provide clear disclosures of the
19 loan terms and total charges; and



1 (10) Prohibiting a lender from making more than one loan at
2 a time to a consumer, preventing incentives for
3 lenders to "split" loans and charge higher fees.

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

7 "PART

8 SMALL DOLLAR INSTALLMENT LOANS

9 A. GENERAL PROVISIONS

10 §412:9-A Definitions. As used in this part, unless the
11 context otherwise requires:

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

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



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

4 "Commissioner" means the commissioner of financial
5 institutions.

6 "Consumer" means a natural person who is the buyer, lessee,
7 or debtor to whom credit is granted in a transaction that is
8 primarily for that natural person's personal, family, or
9 household purposes.

10 "Control" means, in the context of control of an applicant
11 or licensee, ownership of, or the power to vote, twenty-five per
12 cent or more of the outstanding voting securities of a licensee
13 or control person. For the purposes of determining the
14 percentage of an applicant or a licensee controlled by any
15 person, there shall be aggregated with the control person's
16 interest the interest of any other person controlled by the
17 person, or by any spouse, parent, or child of the person.

18 "Control person" means any person in control of a licensee
19 or applicant.



1 "Default" means a consumer's failure to repay a small
2 dollar loan in compliance with the terms contained in a small
3 dollar loan agreement.

4 "Department" means the department of commerce and consumer
5 affairs.

6 "Division" means the division of financial institutions of
7 the department of commerce and consumer affairs.

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

10 "Finance charges" means the cost of credit or cost of
11 borrowing, including the interest, monthly maintenance fees, and
12 other fees authorized by this part.

13 "Financial institution" means any bank, savings bank,
14 savings and loan association, financial services loan company,
15 or credit union doing business in the State whose accounts are
16 insured by the Federal Deposit Insurance Corporation, the
17 National Credit Union Share Insurance Fund, or other similar or
18 successor program of federal insurance.

19 "Instrument" means a personal check signed by the consumer
20 and made payable to a person subject to this part. The term
21 "instrument" does not include an electronic fund transfer or



1 other electronic debit or credit to the consumer's checking
2 account.

3 "Licensee" means a person who is licensed or required to be
4 licensed under this part.

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

9 "Maintenance fee" means a monthly fee paid to a licensee to
10 maintain a small dollar loan.

11 "NMLS" means the Nationwide Multistate Licensing System and
12 Registry, which is a licensing system developed and maintained
13 by the Conference of State Bank Supervisors for the state
14 licensing and registration of state-licensed loan originators
15 and other financial services providers, or any system provided
16 by the Consumer Financial Protection Bureau.

17 "Person" means an individual, sole proprietorship,
18 partnership, corporation, limited liability company, limited
19 liability partnership, or other association of individuals,
20 however organized.



1 "Place of business" means a location where small dollar
2 loans are offered or made and includes each website through
3 which a consumer may apply for a small dollar loan from a small
4 dollar lender.

5 "Precomputed interest" means an interest method that uses
6 the original payment schedule to calculate interest.

7 "Renewal" means the refinancing of a small dollar loan that
8 occurs during the period between the original maturity date and
9 the preceding installment payment due date. "Renewal" does not
10 include the refinancing of a small dollar loan that occurs prior
11 to the penultimate installment payment due date.

12 "Small dollar lender" or "lender" means any person who is
13 in the business of offering or making a consumer loan, who
14 arranges a consumer loan for a third party, or who acts as an
15 agent for a third party, regardless of whether the third party
16 is exempt from licensure under this part or whether approval,
17 acceptance, or ratification by the third party is necessary to
18 create a legal obligation for the third party, through any
19 method including mail, telephone, the Internet, or any
20 electronic means.



1 "Small dollar loan" means a loan made pursuant to this
2 part.

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

6 **§412:9-B Small dollar loans; requirements; payments.** (a)

7 Each small dollar loan transaction and renewal shall meet the
8 following requirements:

- 9 (1) Any transaction and renewal shall be documented in a
10 written agreement pursuant to section 412:9-C;
- 11 (2) The total amount of the small dollar loan shall not
12 exceed \$1,500 pursuant to section 412:9-E(a);
- 13 (3) The total amount of fees and charges a small dollar
14 lender may charge, collect, or receive in connection
15 with a small dollar loan shall not exceed sixty per
16 cent of the principal loan amount;
- 17 (4) A monthly maintenance fee may be charged by the
18 lender, not to exceed the following:
- 19 (A) \$10 on a loan of an original principal loan
20 amount up to \$299.99;



- 1 (B) \$40 on a loan of an original principal loan
2 amount of at least \$300.00 and up to \$599.99;
- 3 (C) \$50 on a loan of an original principal loan
4 amount of at least \$600.00 and up to \$799.99; and
- 5 (D) \$60 on a loan of an original principal loan
6 amount of at least \$800.00 and up to \$1,500.00.
- 7 provided that the monthly maintenance fee shall not be
8 added to the loan balance on which the interest is
9 charged; and provided further that a small dollar
10 lender shall not charge, collect, or receive a monthly
11 maintenance fee if the borrower is a person on active
12 duty in the armed forces of the United States or a
13 dependent of that person;
- 14 (5) The written agreement required under section 412:9-C
15 may require multiple installment payments;
- 16 (6) All repayment schedule due dates shall be dates on
17 which a small dollar lender is open for business to
18 the public at the place of business where the small
19 dollar loan was made;
- 20 (7) A small dollar lender shall accept prepayment in full
21 or in part from a consumer prior to the loan due date



1 and shall not charge the consumer a fee or penalty if
2 the consumer opts to prepay the loan; provided that in
3 order to make a prepayment all past due interest and
4 fees and fees must first be paid;

5 (8) The loan amount shall be fully amortized over the term
6 of the loan, and maintenance fees shall be applied in
7 arrears on a monthly basis;

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

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

13 (11) The written agreement required under section 412:9-C
14 shall not require a consumer to purchase add-on
15 products, such as credit insurance.

16 (b) In a multiple installment small dollar loan, a lender
17 may contract once every two weeks, monthly, or twice-monthly for
18 a payment of the loan balance due, including the applicable
19 portion of the interest, and earned monthly maintenance fee.

20 (c) For each payment made by a consumer, a lender shall
21 give the consumer a written receipt with the lender's name and



1 address, payment date, amount paid, consumer's name, and
2 sufficient information to identify the account to which the
3 payment is applied.

4 (d) Upon prepayment in full by the consumer, the lender
5 shall refund:

6 (1) Any unearned portion of the interest charged; and

7 (2) Any unearned monthly maintenance fees.

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

20 **§412:9-C Written agreement; requirements; disclosure.** (a)

21 Each small dollar loan transaction and renewal shall be



1 documented by a written agreement signed by the small dollar
2 lender and consumer. The written agreement shall contain the
3 following information:

4 (1) The name and address of the consumer and the lender;

5 (2) The transaction date;

6 (3) The loan amount;

7 (4) The authorized interest rate;

8 (5) A statement of the total amount of finance charges
9 charged, expressed as a dollar amount and an annual
10 percentage rate;

11 (6) The installment payment schedule setting out the
12 amount due on specific due dates;

13 (7) The name, address, and telephone number of any agent
14 or arranger involved in the small dollar loan
15 transaction;

16 (8) The right to rescind the small dollar loan before
17 5:00 p.m. on the next day of business at the location
18 where the loan was originated;

19 (9) A notice to the consumer that a returned instrument
20 may result in a dishonored instrument charge, not to
21 exceed \$25; and



1 (10) A description of the methods by which small dollar
2 loan payments may be made, which may include a debit
3 card payment, automated clearing house transfer, e-
4 check, other forms of electronic transfers, money
5 order, cash, check, or any additional method of loan
6 payment authorized by this part or by rule adopted by
7 the commissioner pursuant to chapter 91.

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

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

"MULTIPLE
INSTALLMENT
PAYMENT

16
17
18
19
20 Amount Financed
21 Finance Charge
22 Amount you will receive
23 Term (months)
24



1 Authorized Interest Rate
2
3 Monthly Maintenance Fee
4
5 **Total of All Permitted Charges**
6
7 **Total You Will Pay for This Loan**
8 (Amount Financed,
9 Interest, and Monthly Maintenance Fee)
10
11 ANNUAL PERCENTAGE RATE
12
13 Payment Schedule"

15 (d) The consumer shall sign and date each of two copies of
16 the written disclosure required pursuant to subsection (c), one
17 of which shall be given to the consumer and the other of which
18 shall be retained by the lender as part of its records of the
19 small dollar loan; provided that if the consumer is applying for
20 the small dollar loan over the Internet, this requirement shall
21 be satisfied by the consumer's electronic signature on an
22 electronic copy of the disclosure. For purposes of preparing
23 the written disclosure, the small dollar loan shall be
24 structured on a precomputed basis (total of payments) with the
25 assumption that all payments will be made as scheduled.

26 (e) The written agreement may include a demand feature
27 that permits the lender or any other person, in the event the
28 consumer fails to meet the repayment terms for any outstanding



1 balance, to terminate the small dollar loan in advance of the
2 original maturity date, but no earlier than ten days after the
3 missed payment, and demand repayment of the entire outstanding
4 balance. If the written agreement includes a demand feature and
5 the demand feature is exercised, the lender shall be entitled to
6 collect only the outstanding balance and a prorated portion of
7 the unpaid interest and fees earned up to the date of
8 termination. For purposes of this subsection, the outstanding
9 balance and prorated portion of the unpaid interest and fees
10 shall be calculated as if the consumer had voluntarily prepaid
11 the loan in full on the date of termination.

12 **§412:9-D Authorized interest rate.** (a) Subject to
13 section 412:9-B(a)(4), a small dollar lender may contract for,
14 and receive interest at, a rate not exceeding thirty-six per
15 cent per year on that portion of the unpaid principal balance of
16 the loan. Loans shall be precomputed.

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



1 (c) Loans shall be repayable in substantially equal and
2 consecutive monthly installments of principal and interest
3 combined; provided that the first installment period may exceed
4 one month by not more than fifteen days and the first
5 installment payment amount may be larger than the remaining
6 payments by the amount of interest charged for the extra days;
7 and provided further that monthly installment payment dates may
8 be omitted if the parties agree in writing, either in the
9 written agreement required under section 412:9-C or in a
10 subsequent agreement, to accommodate consumers having seasonal
11 income.

12 (d) Payments may be applied to the combined total of
13 principal and precomputed interest until maturity of the loan,
14 with priority given to any past due interest before applying
15 payments to the principal.

16 (e) If a small dollar loan is prepaid in full or renewed
17 prior to the loan's maturity date, the lender shall refund to
18 the consumer a prorated portion of the interest and monthly
19 maintenance fees based on a ratio of the number of days the loan
20 was outstanding and the number of days for which the loan was
21 originally contracted. For the purposes of this section, the



1 monthly maintenance fee shall not be considered to be fully
2 earned at the beginning of a month.

3 (f) If the parties agree in writing, either in the written
4 agreement required under section 412:9-C or in a subsequent
5 agreement, to a deferment of wholly unpaid installments, a
6 lender may grant one deferment; provided that:

7 (1) A deferment shall postpone the scheduled due date of
8 the earliest unpaid installment and all subsequent
9 installments as originally scheduled, or as previously
10 deferred, for a period equal to the deferment period;

11 (2) The deferment period shall be that period during which
12 no installment is scheduled to be paid by reason of
13 the deferment; and

14 (3) The lender shall not charge or collect a deferment
15 fee.

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

19 (h) A lender shall not charge or receive loan origination
20 fees.



1 (i) A lender shall not collect a default charge on any
2 installment not paid in full within ten days after its due date.
3 A lender may charge a default charge of \$30. For this purpose,
4 all installments are considered paid in the order in which they
5 become due.

6 **§412:9-E Maximum loan amount; prohibition against multiple**
7 **loans.** (a) A lender shall not lend an amount greater than
8 \$1,500 nor shall the amount financed exceed \$1,500 by any one
9 lender at any time to a consumer.

10 (b) Except as otherwise provided in section 412:9-H, no
11 small dollar lender shall make a small dollar loan to a consumer
12 if there exists an outstanding loan between that consumer and
13 any of the following:

- 14 (1) The small dollar lender;
15 (2) A person related to the small dollar lender by common
16 ownership or control;
17 (3) A person in whom the small dollar lender has any
18 financial interest of ten per cent or more; or
19 (4) Any employee or agent of the small dollar lender.

20 (c) If a consumer obtains a small dollar loan voluntarily
21 and separately from the consumer's spouse and the consumer's



1 action is documented in writing, either in the written agreement
2 required under section - 3 or in a subsequent agreement,
3 signed by the consumer, and retained by the lender, the
4 transaction shall not be considered a violation of this section.

5 **§412:9-F Right of rescission.** (a) A consumer shall have
6 the right to rescind a small dollar loan, on or before 5:00 p.m.
7 on the next day of business at the location where the loan was
8 originated, by returning the principal in cash, the original
9 check or money order disbursed by the lender, or the other
10 disbursement of loan proceeds from the lender to fund the loan.
11 The lender shall not charge the consumer for rescinding the
12 loan.

13 (b) At the time of rescission, the lender shall refund any
14 loan fees and interest received and shall return to the consumer
15 the originally signed written agreement, clearly marked across
16 the face:

17 "RESCINDED BY [lender's name; license number],
18 [date]"

19 and below which the lender's authorized representative shall
20 sign.



1 §412:9-G Notice to consumers; general requirements; right
2 to prepay; loan limits; right to rescind. A small dollar lender
3 shall provide the following notice on each written agreement for
4 a small dollar loan. The notice shall be in a prominent place
5 and in at least twelve-point type:

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

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

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

12 RENEWING THIS SMALL DOLLAR LOAN RATHER THAN
13 PAYING THE DEBT IN FULL MAY REQUIRE ADDITIONAL FEES OR
14 CHARGES.

15 STATE LAW PROHIBITS THIS SMALL DOLLAR LOAN FROM
16 EXCEEDING ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)
17 IN TOTAL DEBT. EXCEEDING THIS AMOUNT MAY CREATE
18 FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY.

19 YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY
20 5:00 P.M. [SPECIFY HERE THE CLOSE OF THE NEXT BUSINESS
21 DAY BY DAY OF WEEK AND DATE]."



1 **§412:9-H Renewal; new loan requirements; consecutive**
2 **loans; payment plan.** (a) A small dollar loan may be renewed
3 only once. After one renewal, the consumer shall pay the debt
4 in cash or its equivalent.

5 (b) Upon renewal of a small dollar loan, the lender may
6 renew up to \$1,500 of the remaining unpaid principal balance.
7 If the unpaid balance on renewal is more than \$1,500, the
8 consumer may be required to pay the remaining balance; provided
9 that the lender shall not finance any amount over \$1,500. The
10 total amount of fees and charges for the renewed loan shall meet
11 the requirements of section 412:9-B, with the understanding that
12 the total amount of fees and charges a small dollar lender may
13 charge, collect, or receive in connection with the renewal of a
14 small dollar loan shall not exceed sixty per cent of the renewal
15 principal loan amount. If the small dollar loan is renewed
16 prior to the maturity date, the lender shall refund to the
17 consumer a prorated portion of the finance charge based upon the
18 ratio of time left before maturity to the loan term.

19 (c) Once the consumer has paid off the small dollar loan
20 transaction, the consumer may enter into a new small dollar loan
21 agreement with the lender; provided that the lender shall not



1 have more than one outstanding loan with a borrower at any one
2 time, pursuant to section 412:9-E.

3 **§412:9-I Form of loan proceeds.** A small dollar lender may
4 pay the proceeds from a small dollar loan to the consumer in the
5 form of a monetary instrument, prepaid debit card, automated
6 clearing house transfer, e-check, other forms of electronic
7 transfers, money order, or cash. The lender shall inform the
8 consumer in writing that the lender shall cash the monetary
9 instrument or money order, upon request of the consumer, at no
10 cost to the consumer.

11 **§412:9-J Endorsement of instrument.** A small dollar lender
12 shall not negotiate or present an instrument for payment unless
13 the instrument is endorsed with the actual business name of the
14 lender.

15 **§412:9-K Redemption of instrument.** Prior to a small
16 dollar lender negotiating or presenting the instrument, a
17 consumer shall have the right to redeem any instrument held by
18 the lender as a result of a small dollar loan if the consumer
19 pays the full amount of the instrument to the lender.

20 **§412:9-L Delinquent small dollar loans; restrictions on**
21 **collection by lender or third party.** (a) A small dollar lender



1 shall comply with all applicable state and federal laws when
2 collecting a delinquent small dollar loan. A lender may take
3 civil action to collect principal, interest, fees, and costs
4 allowed under this part. A lender may not threaten criminal
5 prosecution as a method of collecting a delinquent small dollar
6 loan or threaten to take any legal action against the consumer
7 that is not otherwise permitted by law.

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

16 (c) A lender shall not communicate with a consumer in a
17 manner intended to harass, intimidate, abuse, or embarrass a
18 consumer, including but not limited to communication at an
19 unreasonable hour, with unreasonable frequency, by threats of
20 force or violence, or by use of offensive language. A
21 communication shall be presumed to have been made for the



1 purposes of harassment if it is initiated by the lender for the
2 purposes of collection and the communication is made:

- 3 (1) With the consumer's spouse or the consumer's domestic
4 partner in any form, manner, or place, more than once,
5 except when calling a shared telephone number and
6 asking to speak to the consumer, sending a text
7 message to a shared telephone number, sending an
8 electronic mail to a shared electronic mail address,
9 or other electronic writing to a shared electronic
10 account;
- 11 (2) With a consumer at the consumer's place of employment
12 more than once;
- 13 (3) With the consumer, the consumer's spouse, or the
14 consumer's domestic partner at the consumer's place of
15 residence between the hours of 9:00 p.m. and
16 8:00 a.m.; or
- 17 (4) To a party other than the consumer, the consumer's
18 attorney, the lender's attorney, or a consumer credit
19 reporting agency if otherwise permitted by law, except
20 for the purposes of acquiring location or contact
21 information about the consumer.



1 (d) A lender shall maintain an accurate and complete
2 communication log of all telephone and written communications
3 with a consumer initiated by the lender regarding any collection
4 efforts, including date, time, and the nature of each
5 communication.

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

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

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

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

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



1 (B) An unanswered telephone call in which no message,
2 other than a caller identification, is left,
3 unless the telephone call is in violation of
4 subsection (c) (3); or

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

8 **§412:9-M Authorized dishonored instrument charge. (a)**

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

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

19 **§412:9-N Posting of license and fees and charges. Any**
20 small dollar lender offering a small dollar loan shall
21 conspicuously and continuously post at any place of business



1 where small dollar loans are made, the license required pursuant
2 to this part and a notice of the fees and charges imposed for
3 small dollar loans.

4 §412:9-O Internet lending. (a) A small dollar lender may
5 advertise and accept applications for small dollar loans by any
6 lawful medium, including but not limited to the Internet, and
7 the consumer may provide a valid electronic signature on the
8 disclosures and loan agreement, subject to subsection (b).

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

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

18 §412:9-P Notice on assignment or sale of contract. (a)
19 No small dollar lender may pledge, negotiate, sell, or assign a
20 current and performing small dollar loan, except to another
21 small dollar lender or to a bank, savings bank, trust company,



1 savings and loan or building and loan association, or credit
2 union organized under the laws of Hawaii or the laws of the
3 United States.

4 (b) Prior to sale or assignment of a current and
5 performing small dollar loan contract held by the small dollar
6 lender as a result of a small dollar loan, the lender shall
7 place a notice on the small dollar loan contract in at least
8 twelve-point type that reads:

9 "SMALL DOLLAR LOAN

10 No small dollar lender may pledge, negotiate,
11 sell, or assign a small dollar loan, except to another
12 small dollar lender or to a bank, savings bank, trust
13 company, savings and loan or building and loan
14 association, or credit union organized under the laws
15 of Hawaii or the laws of the United States."

16 (c) This provision shall not apply to:

17 (1) The transfer of a small dollar loan to a company
18 affiliated with the small dollar lender that
19 securitizes the small dollar lender's loan
20 receivables; and



1 (2) The pledge or other granting of a security interest in
2 the small dollar loan to a financial institution in
3 connection with asset backed financing or similar
4 lending facility of the small dollar lender;
5 provided that when making the transfer or pledge, the small
6 dollar lender does not pledge, negotiate, sell, assign, or
7 otherwise relinquish its servicing rights and requirements on
8 the small dollar loan.

9 **§412:9-Q Maintenance of books and records.** (a) Every
10 small dollar lender shall keep in a safe and secure place those
11 books and records that directly relate to any small dollar loan
12 made within this State, and other books and records as may be
13 necessary for the commissioner to ensure full compliance with
14 the laws of this State.

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

19 (c) All records, statements, and reports required or
20 authorized by this part shall be made in writing in the English
21 language.



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

5 **B. LICENSING**

6 **§412:9-R License required.** No person, unless exempt under
7 this part, shall act as a small dollar lender in this State
8 unless licensed to do so by the commissioner.

9 **§412:9-S Exemptions.** This part shall not apply to the
10 following:

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

16 **§412:9-T License; application; issuance.** (a) The
17 commissioner shall require all licensees to register with NMLS.

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



- 1 (1) The legal name, trade names, and business address of
2 the applicant and, if the applicant is a partnership,
3 association, limited liability company, limited
4 liability partnership, or corporation, every member,
5 officer, principal, or director thereof;
- 6 (2) The principal place of business;
- 7 (3) The complete address of any other branch offices at
8 which the applicant currently proposes to engage in
9 making small dollar loans; and
- 10 (4) Other data, financial statements, and pertinent
11 information as the commissioner may require with
12 respect to the applicant or, if an applicant is not an
13 individual, each of the applicant's control persons,
14 executive officers, directors, general partners, and
15 managing members.
- 16 (c) To fulfill the purposes of this part, the commissioner
17 may enter into agreements or contracts with NMLS or other
18 entities to use NMLS to collect and maintain records and process
19 transaction fees or other fees related to licensees or other
20 persons subject to this part.



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

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

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



1 applicant's control persons, executive officers,
2 directors, general partners, and managing members in a
3 form prescribed by NMLS, including the submission of
4 authorization for NMLS and the commissioner to obtain:

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

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

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

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

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



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

5 **§412:9-U Issuance of license; grounds for denial.** (a)

6 The commissioner shall conduct an investigation of every
7 applicant to determine the financial responsibility, character,
8 and general fitness of the applicant. The commissioner shall
9 issue the applicant a license to engage in the business of
10 making small dollar loans if the commissioner determines that:

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

18 (2) The applicant or, in the case of an applicant that is
19 not an individual, each of the applicant's control
20 persons, executive officers, directors, general
21 partners, and managing members, has not been convicted



1 of, pled guilty or nolo contendere to, or been granted
2 a deferred acceptance of a guilty plea under federal
3 law or under chapter 853 to a felony in a domestic,
4 foreign, or military court:

5 (A) During the seven-year period preceding the date
6 of the application for licensing; or

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

10 provided that any conviction for which a pardon has
11 been granted shall not be deemed a conviction for the
12 purposes of this section;

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



1 person is not financially responsible if the person
2 has shown a disregard in the management of the
3 person's financial condition. A determination that a
4 person has shown a disregard in the management of the
5 person's financial condition may be based upon:

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

8 (B) Current outstanding tax liens or other government
9 liens and filings, subject to applicable
10 disclosure laws and administrative rules;

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

12 (D) A pattern of seriously delinquent accounts within
13 the past three years;

14 (4) 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 not been convicted
18 of, pled guilty or nolo contendere to, or been granted
19 a deferred acceptance of a guilty plea under federal
20 law or chapter 853 to any misdemeanor involving an act



1 of fraud, dishonesty, breach of trust, or money
2 laundering;

3 (5) The applicant has satisfied all other licensing
4 requirements of this part; and

5 (6) The applicant has the bond required by section 412:9-
6 v.

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

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

18 (1) Whose license to conduct business under this part, or
19 any similar statute in any other jurisdiction, has
20 been suspended or revoked within five years of the
21 filing of the present application;



1 (2) Whose license to conduct business in the small dollar
2 loan or payday industry has been revoked by an
3 administrative order issued by the commissioner or the
4 commissioner's designee, or the licensing authority of
5 another state or jurisdiction, for the period
6 specified in the administrative order;

7 (3) Who has advertised purposefully and directly to
8 consumers in Hawaii or made internet loans prior to
9 obtaining a license under this part; or

10 (4) Who has failed to complete an application for
11 licensure.

12 (d) A license issued in accordance with this part remains
13 in force and effect until surrendered, suspended, or revoked, or
14 until the license expires as a result of nonpayment of the
15 annual license renewal fee as required by this part.

16 **§412:9-V Fees; bond.** (a) A small dollar lender shall pay
17 the following fees to the division to obtain and maintain a
18 valid license under this part:

19 (1) Initial application fee of \$900;

20 (2) Processing fee of \$35 for each control person;

21 (3) Annual license renewal fee of \$600;



- 1 (4) Applicable fee charged by the entities conducting the
2 criminal history background check of each of the
3 applicant's control persons, executive officers,
4 directors, general partners, and managing members for
5 submission to the Federal Bureau of Investigation and
6 any governmental agency or entity authorized to
7 receive the fingerprints for a state, national, and
8 international criminal history background check; and
- 9 (5) Applicable fee charged by the entities conducting an
10 independent credit report obtained from a consumer
11 reporting agency described in section 603(p) of the
12 Fair Credit Reporting Act, title 15 United States Code
13 section 1681a(p).
- 14 (b) Each branch office shall pay the following fees to the
15 division to obtain and maintain a valid license under this part:
- 16 (1) Nonrefundable initial application fee of \$600; and
17 (2) Annual license renewal fee of \$450.
- 18 (c) The applicant shall file and maintain a surety bond,
19 approved by the commissioner, executed by the applicant as
20 obligor and by a surety company authorized to operate as a
21 surety in this State, whose liability as a surety does not



1 exceed, in the aggregate, the penal sum of the bond. The penal
2 sum of the bond shall be a minimum of \$30,000 and a maximum of
3 \$250,000, based upon the annual dollar amount of loans
4 originated.

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

10 (1) The licensee as obligor shall faithfully conform to
11 and abide by this part and all the rules adopted under
12 this part; and

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

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



1 **§412:9-W 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 412:9-V.

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 part;
- 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 part 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 412:9-T, 412:9-U, and 412:9-
20 V, 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 **§412:9-X Enforcement authorities; violations; penalties.**

16 (a) To ensure the effective supervision and enforcement of this
17 part, 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:

20 (1) The applicant or licensee has violated this part or
21 any rule or order lawfully made pursuant to this part;



- 1 (2) Facts or conditions exist that would clearly have
2 justified the commissioner in denying an application
3 for licensure, had these facts or conditions been
4 known to exist at the time the application was made;
- 5 (3) The applicant or licensee has failed to provide
6 information required by the commissioner within a
7 reasonable time, as specified by the commissioner;
- 8 (4) The applicant or licensee has failed to provide or
9 maintain proof of financial responsibility;
- 10 (5) The applicant or licensee is insolvent;
- 11 (6) The applicant or licensee has made, in any document or
12 statement filed with the commissioner, a false
13 representation of a material fact or has omitted to
14 state a material fact;
- 15 (7) The applicant, licensee, or, if an applicant or
16 licensee is not an individual, each of the applicant's
17 or licensee's control persons, executive officers,
18 directors, general partners, and managing members have
19 been convicted of or entered a plea of guilty or nolo
20 contendere to a crime involving fraud or deceit, or to



- 1 any similar crime under the jurisdiction of any
2 federal court or court of another state;
- 3 (8) The applicant or licensee has failed to make,
4 maintain, or produce records that comply with section
5 412:9-Q or any rule adopted by the commissioner
6 pursuant to chapter 91;
- 7 (9) The applicant or licensee has been the subject of any
8 disciplinary action by any state or federal agency
9 that resulted in revocation of a license;
- 10 (10) A final judgment has been entered against the
11 applicant or licensee for violations of this part, any
12 state or federal law concerning small dollar loans,
13 deferred deposit loans, check cashing, payday loans,
14 banking, mortgage loan originators, money
15 transmitters, or any state or federal law prohibiting
16 deceptive or unfair trade or business practices; or
- 17 (11) The applicant or licensee has failed, in a timely
18 manner as specified by the commissioner, to take or
19 provide proof of the corrective action required by the
20 commissioner subsequent to an investigation or
21 examination pursuant to section -43.



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

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

18 (c) The commissioner may issue a temporary cease and
19 desist order if the commissioner makes a finding that the
20 licensee, applicant, or person is engaging, has engaged, or is
21 about to engage in an illegal, unauthorized, unsafe, or unsound



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

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

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

18 (f) The commissioner may reinstate a license, terminate a
19 suspension, or grant a new license to a person whose license has
20 been revoked or suspended if no fact or condition then exists



1 that clearly would justify the commissioner in revoking,
2 suspending, or refusing to grant a license.

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

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

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

18 **§412:9-Y Voluntary surrender of license.** (a) A licensee
19 may voluntarily cease business and surrender its license by
20 giving written notice to the commissioner of its intent to
21 surrender its license. Prior to the surrender date of a



1 license, the licensee shall have either completed all pending
2 small dollar loan transactions or assigned each pending small
3 dollar loan transaction to another licensee, bank, savings bank,
4 trust company, savings and loan or building and loan
5 association, or credit union organized under the laws of Hawaii
6 or the laws of the United States.

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

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



1 licensee to which each outstanding small dollar loan
2 was assigned;

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

5 (6) Confirmation that the licensee has notified each of
6 its Hawaii authorized branch offices, if any, that the
7 branch offices may no longer make small dollar loans
8 on the licensee's behalf; and

9 (7) Confirmation that the licensee has notified each of
10 its small dollar loan consumers, if any, that the
11 small dollar loan is being transferred and the name,
12 address, telephone number, and any other contact
13 information of the licensee, bank, savings bank, trust
14 company, savings and loan or building and loan
15 association, or credit union organized under the laws
16 of Hawaii or the laws of the United States to whom the
17 small dollar loan was assigned.

18 (c) Voluntary surrender of a license shall be effective
19 upon the date of surrender specified on the written notice to
20 the commissioner as required by this section; provided that the



1 licensee has met all the requirements of voluntary surrender and
2 has returned the original license issued.

3 **§412:9-Z Sale or transfer of license; change of control.**

4 (a) No small dollar lender license shall be transferred, except
5 as provided in this section.

6 (b) A person or group of persons requesting approval of a
7 proposed change of control of a licensee shall submit to the
8 commissioner an application requesting approval of a proposed
9 change of control of the licensee, accompanied by a
10 nonrefundable application fee of \$500.

11 (c) After review of a request for approval under
12 subsection (b), the commissioner may require the licensee or
13 person or group of persons requesting approval of a proposed
14 change of control of the licensee, or both, to provide
15 additional information concerning the persons who shall assume
16 control of the licensee. The additional information shall be
17 limited to similar information required of the licensee or
18 persons in control of the licensee as part of its original
19 license or renewal application under sections 412:9-T and 412:9-
20 W. The information shall include, for the five-year period
21 prior to the date of the application for change of control of



1 the licensee, a history of material litigation and criminal
2 convictions of each person who, upon approval of the application
3 for change of control, will be a principal of the licensee.
4 Authorization shall also be given to conduct criminal history
5 record checks of those persons, accompanied by the appropriate
6 payment of the applicable fee for each record check.

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

15 (e) The following persons shall be exempt from the
16 requirements of subsection (b), but the licensee regardless
17 shall notify the commissioner when a change of control results
18 in the following:

19 (1) A person who acts as a proxy for the sole purpose of
20 voting at a designated meeting of the security holders



1 or holders of voting interests of a licensee or person
2 in control of a licensee;

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

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

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

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

19 (g) Subsection (b) shall not apply to public offerings of
20 securities.



1 §412:9-AA Authorized places of business; principal office;
2 branch offices; relocation; closure. (a) Every small dollar
3 lender licensed under this part shall have and maintain a
4 principal place of business in the State, regardless of whether
5 the small dollar lender maintains its principal office outside
6 of the State.

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

12 (c) A small dollar lender shall not maintain any branch
13 offices in the State in addition to its principal place of
14 business without the prior written approval of the commissioner.
15 An application to establish a branch office shall be submitted
16 through NMLS with a nonrefundable application fee as required by
17 section 412:9-V.

18 (d) A small dollar lender shall not relocate any office in
19 this State without the prior written approval of the
20 commissioner. An application to relocate an office shall be
21 submitted to the commissioner at least thirty days prior to



1 relocating and shall set forth the reasons for the relocation,
2 the street address of the proposed relocated office, and other
3 information that may be required by the commissioner. An
4 application to relocate an office pursuant to this subsection
5 shall be submitted with a nonrefundable fee as required by
6 section 412:9-V.

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

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

11 (2) Specify the reasons for the closing.

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

16 (g) A license issued under this part shall be prominently
17 displayed in the principal place of business and each branch
18 office.

19 **§412:9-BB Payment of fees.** All fees collected pursuant to
20 section 412:9-V, administrative fines, and other charges
21 collected pursuant to this part shall be deposited into the



1 compliance resolution fund established pursuant to
2 section 26-9(o) and shall be payable through NMLS, to the extent
3 allowed by NMLS. Fees not eligible for payment through NMLS
4 shall be deposited into a separate account within the compliance
5 resolution fund for use by the division.

6 §412:9-CC Powers of commissioner. (a) The commissioner
7 may adopt rules pursuant to chapter 91 as the commissioner deems
8 necessary for the administration of this part.

9 (b) In addition to any other powers provided by law, the
10 commissioner may:

11 (1) Issue declaratory rulings or informal nonbinding
12 interpretations;

13 (2) Investigate and conduct hearings regarding any
14 violation of this part or any rule or order of, or
15 agreement with, the commissioner;

16 (3) Create fact-finding committees that may make
17 recommendations to the commissioner for the
18 commissioner's deliberations;

19 (4) Require an applicant or any of its control persons,
20 executive officers, directors, general partners, and
21 managing members to disclose their relevant criminal



1 history and request a criminal history record check in
2 accordance with chapter 846;

3 (5) Contract with or employ qualified persons, including
4 accountants, attorneys, investigators, examiners,
5 auditors, or other professionals who may be exempt
6 from chapter 76 and who shall assist the commissioner
7 in exercising the commissioner's powers and duties;

8 (6) Process and investigate complaints, subpoena witnesses
9 and documents, administer oaths, and receive
10 affidavits and oral testimony, including telephonic
11 communications, and do any and all things necessary or
12 incidental to the exercise of the commissioner's power
13 and duties, including the authority to conduct
14 contested case proceedings under chapter 91;

15 (7) Require a licensee to comply with any rule, guidance,
16 guideline, statement, supervisory policy or any
17 similar proclamation issued or adopted by the Federal
18 Deposit Insurance Corporation to the same extent and
19 in the same manner as a bank chartered by the State
20 or, in the alternative, any policy position of the
21 Conference of State Bank Supervisors;



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



1 §412:9-DD Investigation and examination authority. (a)
2 In addition to the authority granted under section 412:9-CC(b),
3 the commissioner may conduct investigations and examinations in
4 accordance with this section. The commissioner may access,
5 receive, and use any books, accounts, records, files, documents,
6 information, or evidence that the commissioner deems relevant to
7 the investigation or examination, regardless of the location,
8 possession, control, or custody of the documents, information,
9 or evidence.

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



1 (c) Each licensee or person subject to this part shall
2 provide to the commissioner, upon request, the books and records
3 relating to the operations of the licensee or person subject to
4 this part. The commissioner shall have access to the books and
5 records and shall be permitted to interview the control persons,
6 executive officers, directors, general partners, managing
7 members, principals, managers, employees, independent
8 contractors, agents, and consumers of the licensee or person
9 subject to this part concerning their business.

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

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

20 (e) In conducting any investigation or examination
21 authorized by this part, the commissioner may control access to



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

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

19 (g) No licensee or person subject to investigation or
20 examination under this section may knowingly withhold, abstract,



1 remove, mutilate, destroy, or secrete any books, records,
2 computer records, or other information.

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

16 (i) Any person having reason to believe that this part or
17 the rules adopted under this part have been violated, or that a
18 license issued under this part should be suspended or revoked,
19 may file a written complaint with the commissioner, setting
20 forth the details of the alleged violation or grounds for
21 suspension or revocation.



1 **§412:9-EE Confidentiality.** (a) Except as otherwise
2 provided in title 12 United States Code section 5111, the
3 requirements under any federal or state law regarding the
4 privacy or confidentiality of any information or material
5 provided to NMLS, and any privilege arising under federal or
6 state law, including the rules of any federal or state court,
7 with respect to the information or material shall continue to
8 apply to the information or material after the information or
9 material has been disclosed to NMLS. The information and
10 material may be shared with all state and federal regulatory
11 officials having oversight authority over transactions subject
12 to this part, without the loss of privilege or the loss of
13 confidentiality protections provided by federal or state law.

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

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



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

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

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

16 (e) If a conflict between this section and any other
17 section of law relating to the disclosure of privileged or
18 confidential information or material occurs, this section shall
19 control.

20 (f) This section shall not apply to information or
21 material relating to the employment history of, and publicly



1 adjudicated disciplinary and enforcement actions against, any
2 persons that are included in NMLS for access by the public.

3 **§412:9-FF Prohibited practices.** (a) It shall be a
4 violation of this part for a licensee, its control persons,
5 executive officers, directors, general partners, managing
6 members, employees, or independent contractors, or any other
7 person subject to this part to:

- 8 (1) Engage in any act that limits or restricts the
9 application of this part, including making a small
10 dollar loan disguised as a leaseback transaction or a
11 personal property, personal sales, or automobile title
12 loan, or by disguising loan proceeds as cash rebates
13 for the pretextual installment sale of goods and
14 services;
- 15 (2) Make a secured small dollar loan;
- 16 (3) Use a consumer's account number to prepare, issue, or
17 create a check on behalf of the consumer;
- 18 (4) Charge, collect, or receive, directly or indirectly,
19 mandatory credit insurance premiums, charges for
20 negotiating forms of loan proceeds other than cash,
21 charges for brokering or obtaining loans, prepayment



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



- 1 fees, or other financing terms or conditions for a
2 small dollar loan, or engage in bait and switch
3 advertising;
- 4 (11) Make any false statement or knowingly and wilfully
5 make any omission of material fact in connection with
6 any reports filed with the division by a licensee or
7 in connection with any investigation conducted by the
8 division;
- 9 (12) Advertise any rate of interest without conspicuously
10 disclosing the annual percentage rate implied by that
11 rate of interest or otherwise fail to comply with any
12 requirement of the Truth in Lending Act, or any other
13 applicable state or federal laws or regulations;
- 14 (13) Make small dollar loans from any unlicensed location;
- 15 (14) Draft funds from any depository financial institution
16 without written approval of the consumer; provided
17 that nothing in this paragraph shall prohibit the
18 conversion of a negotiable instrument into an
19 electronic form for processing through the Automated
20 Clearing House or similar system;



- 1 (15) Attempt to collect from a consumer's account after two
2 consecutive attempts have failed, unless the licensee
3 obtains new written authorization from the consumer to
4 transfer or withdraw funds from the account;
- 5 (16) Make a loan to a consumer that includes a demand
6 feature that was not clearly disclosed in the written
7 agreement pursuant to section 412:9-C or collect or
8 demand repayment of any outstanding balance or unpaid
9 interest or fees except as provided in section 412:9-
10 C;
- 11 (17) Fail to comply with any applicable state and federal
12 law relating to the activities governed by this part;
13 or
- 14 (18) Fail to pay any fee, assessment, or moneys due to the
15 department.

16 (b) In addition to any other penalties provided for under
17 this part, any small dollar loan transaction in violation of
18 subsection (a) shall be void and unenforceable."

19 PART II

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



1 "(d) The rate limitations contained in subsections (a) and
2 (b) of this section and section 478-11.5 shall not apply to any
3 ~~credit~~;

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

7 (2) Small dollar loan transaction authorized by, and
8 entered into in accordance with, part , article 9,
9 chapter 412."

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

12 "**§478-5 Usury not recoverable.** If a greater rate of
13 interest than that permitted by law is contracted for with
14 respect to any consumer credit transaction, any home business
15 loan or any credit card agreement, the contract shall not, by
16 reason thereof, be void. But if in any action on the contract
17 proof is made that a greater rate of interest than that
18 permitted by law has been directly or indirectly contracted for,
19 the creditor shall only recover the principal and the debtor
20 shall recover costs. If interest has been paid, judgment shall



1 be for the principal less the amount of interest paid. This
2 section shall not be held to apply[~~, to loans~~] to:

3 (1) Loans made by financial services loan companies and
4 credit unions at the rates authorized under and
5 pursuant to articles 9 and 10 of chapter 412[~~-~~]; or

6 (2) Any small dollar loan regulated under part ,
7 article 9, chapter 412."

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

10 "**§478-6 Usury; penalty.** Any person who directly or
11 indirectly receives any interest or finance charge at a rate
12 greater than that permitted by law or who, by any method or
13 device whatsoever, receives or arranges for the receipt of
14 interest or finance charge at a greater rate than that permitted
15 by law on any credit transaction shall be guilty of usury and
16 shall be fined not more than \$250, unless a greater amount is
17 allowed by law, or imprisoned not more than one year, or both."

18 SECTION 6. Section 480F-3, Hawaii Revised Statutes, is
19 amended to read as follows:



1 " ~~[+] §480F-3 [1]~~ **Authorized fees.** ~~[Except as provided in~~
2 ~~section 480F-4, no]~~ No check casher shall charge fees in excess
3 of the following amounts:

- 4 (1) Five per cent of the face amount of the check or \$5,
5 whichever is greater;
- 6 (2) Three per cent of the face amount of the check or \$5,
7 whichever is greater, if the check is the payment of
8 any kind of state public assistance or federal social
9 security benefit payable to the bearer of the check;
- 10 (3) Ten per cent of the face amount of a personal check or
11 money order, or \$5, whichever is greater; or
- 12 (4) No more than \$10 to set up an initial account and
13 issue an optional membership or identification card,
14 and no more than \$5 for a replacement optional
15 identification card.

16 The fees allowed in this section shall not be assessed in any
17 transaction or agreement in which the check casher defers
18 deposit of the check."

19 SECTION 7. Section 480F-6, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§480F-6 Penalties. (a) Any person who violates this
2 chapter shall be deemed to have engaged in an unfair or
3 deceptive act or practice in the conduct of any trade or
4 commerce within the meaning of section 480-2(a). Aggrieved
5 consumers may seek those remedies set forth in section 480-
6 13(b).

7 (b) Any person who is not a consumer and is injured by a
8 wilful violation of this chapter may bring an action for the
9 recovery of damages, a proceeding to restrain and enjoin those
10 violations, or both. If judgment is for the plaintiff, the
11 plaintiff shall be awarded a sum not less than \$1,000 or
12 threefold damages, whichever sum is greater, and reasonable
13 attorneys' fees together with the costs of suit.

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

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



1 SECTION 8. Section 846-2.7, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

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

4 (1) The department of health or its designee on operators
5 of adult foster homes for individuals with
6 developmental disabilities or developmental
7 disabilities domiciliary homes and their employees, as
8 provided by section 321-15.2;

9 (2) The department of health or its designee on
10 prospective employees, persons seeking to serve as
11 providers, or subcontractors in positions that place
12 them in direct contact with clients when providing
13 non-witnessed direct mental health or health care
14 services as provided by section 321-171.5;

15 (3) The department of health or its designee on all
16 applicants for licensure or certification for,
17 operators for, prospective employees, adult
18 volunteers, and all adults, except adults in care, at
19 healthcare facilities as defined in section 321-15.2;

20 (4) The department of education on employees, prospective
21 employees, and teacher trainees in any public school



- 1 in positions that necessitate close proximity to
2 children as provided by section 302A-601.5;
- 3 (5) The counties on employees and prospective employees
4 who may be in positions that place them in close
5 proximity to children in recreation or child care
6 programs and services;
- 7 (6) The county liquor commissions on applicants for liquor
8 licenses as provided by section 281-53.5;
- 9 (7) The county liquor commissions on employees and
10 prospective employees involved in liquor
11 administration, law enforcement, and liquor control
12 investigations;
- 13 (8) The department of human services on operators and
14 employees of child caring institutions, child placing
15 organizations, and foster boarding homes as provided
16 by section 346-17;
- 17 (9) The department of human services on prospective
18 adoptive parents as established under section
19 346-19.7;
- 20 (10) The department of human services or its designee on
21 applicants to operate child care facilities, household



1 members of the applicant, prospective employees of the
2 applicant, and new employees and household members of
3 the provider after registration or licensure as
4 provided by section 346-154, and persons subject to
5 section 346-152.5;

6 (11) The department of human services on persons exempt
7 pursuant to section 346-152 to be eligible to provide
8 child care and receive child care subsidies as
9 provided by section 346-152.5;

10 (12) The department of health on operators and employees of
11 home and community-based case management agencies and
12 operators and other adults, except for adults in care,
13 residing in community care foster family homes as
14 provided by section 321-15.2;

15 (13) The department of human services on staff members of
16 the Hawaii youth correctional facility as provided by
17 section 352-5.5;

18 (14) The department of human services on employees,
19 prospective employees, and volunteers of contracted
20 providers and subcontractors in positions that place
21 them in close proximity to youth when providing



- 1 services on behalf of the office or the Hawaii youth
2 correctional facility as provided by section 352D-4.3;
- 3 (15) The judiciary on employees and applicants at detention
4 and shelter facilities as provided by section 571-34;
- 5 (16) The department of public safety on employees and
6 prospective employees who are directly involved with
7 the treatment and care of persons committed to a
8 correctional facility or who possess police powers
9 including the power of arrest as provided by section
10 353C-5;
- 11 (17) The board of private detectives and guards on
12 applicants for private detective or private guard
13 licensure as provided by section 463-9;
- 14 (18) Private schools and designated organizations on
15 employees and prospective employees who may be in
16 positions that necessitate close proximity to
17 children; provided that private schools and designated
18 organizations receive only indications of the states
19 from which the national criminal history record
20 information was provided pursuant to section 302C-1;



- 1 (19) The public library system on employees and prospective
2 employees whose positions place them in close
3 proximity to children as provided by section
4 302A-601.5;
- 5 (20) The State or any of its branches, political
6 subdivisions, or agencies on applicants and employees
7 holding a position that has the same type of contact
8 with children, vulnerable adults, or persons committed
9 to a correctional facility as other public employees
10 who hold positions that are authorized by law to
11 require criminal history record checks as a condition
12 of employment as provided by section 78-2.7;
- 13 (21) The department of health on licensed adult day care
14 center operators, employees, new employees,
15 subcontracted service providers and their employees,
16 and adult volunteers as provided by section 321-15.2;
- 17 (22) The department of human services on purchase of
18 service contracted and subcontracted service providers
19 and their employees serving clients of the adult
20 protective and community services branch, as provided
21 by section 346-97;



- 1 (23) The department of human services on foster grandparent
2 program, senior companion program, and respite
3 companion program participants as provided by section
4 346-97;
- 5 (24) The department of human services on contracted and
6 subcontracted service providers and their current and
7 prospective employees that provide home and
8 community-based services under section 1915(c) of the
9 Social Security Act, title 42 United States Code
10 section 1396n(c), or under any other applicable
11 section or sections of the Social Security Act for the
12 purposes of providing home and community-based
13 services, as provided by section 346-97;
- 14 (25) The department of commerce and consumer affairs on
15 proposed directors and executive officers of a bank,
16 savings bank, savings and loan association, trust
17 company, and depository financial services loan
18 company as provided by section 412:3-201;
- 19 (26) The department of commerce and consumer affairs on
20 proposed directors and executive officers of a



1 nondepository financial services loan company as
2 provided by section 412:3-301;

3 (27) The department of commerce and consumer affairs on the
4 original chartering applicants and proposed executive
5 officers of a credit union as provided by section
6 412:10-103;

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

8 (A) Each principal of every non-corporate applicant
9 for a money transmitter license;

10 (B) Each person who upon approval of an application
11 by a corporate applicant for a money transmitter
12 license will be a principal of the licensee; and

13 (C) Each person who upon approval of an application
14 requesting approval of a proposed change in
15 control of licensee will be a principal of the
16 licensee,

17 as provided by sections 489D-9 and 489D-15;

18 (29) The department of commerce and consumer affairs on
19 applicants for licensure and persons licensed under
20 title 24;

21 (30) The Hawaii health systems corporation on:



- 1 (A) Employees;
- 2 (B) Applicants seeking employment;
- 3 (C) Current or prospective members of the corporation
- 4 board or regional system board; or
- 5 (D) Current or prospective volunteers, providers, or
- 6 contractors,
- 7 in any of the corporation's health facilities as
- 8 provided by section 323F-5.5;
- 9 (31) The department of commerce and consumer affairs on:
- 10 (A) An applicant for a mortgage loan originator
- 11 license, or license renewal; and
- 12 (B) Each control person, executive officer, director,
- 13 general partner, and managing member of an
- 14 applicant for a mortgage loan originator company
- 15 license or license renewal,
- 16 as provided by chapter 454F;
- 17 (32) The state public charter school commission or public
- 18 charter schools on employees, teacher trainees,
- 19 prospective employees, and prospective teacher
- 20 trainees in any public charter school for any position



- 1 that places them in close proximity to children, as
2 provided in section 302D-33;
- 3 (33) The counties on prospective employees who work with
4 children, vulnerable adults, or senior citizens in
5 community-based programs;
- 6 (34) The counties on prospective employees for fire
7 department positions which involve contact with
8 children or vulnerable adults;
- 9 (35) The counties on prospective employees for emergency
10 medical services positions which involve contact with
11 children or vulnerable adults;
- 12 (36) The counties on prospective employees for emergency
13 management positions and community volunteers whose
14 responsibilities involve planning and executing
15 homeland security measures including viewing,
16 handling, and engaging in law enforcement or
17 classified meetings and assisting vulnerable citizens
18 during emergencies or crises;
- 19 (37) The State and counties on employees, prospective
20 employees, volunteers, and contractors whose position
21 responsibilities require unescorted access to secured



- 1 areas and equipment related to a traffic management
2 center;
- 3 (38) The State and counties on employees and prospective
4 employees whose positions involve the handling or use
5 of firearms for other than law enforcement purposes;
- 6 (39) The State and counties on current and prospective
7 systems analysts and others involved in an agency's
8 information technology operation whose position
9 responsibilities provide them with access to
10 proprietary, confidential, or sensitive information;
- 11 (40) The department of commerce and consumer affairs on:
- 12 (A) Applicants for real estate appraiser licensure or
13 certification as provided by chapter 466K;
- 14 (B) Each person who owns more than ten per cent of an
15 appraisal management company who is applying for
16 registration as an appraisal management company,
17 as provided by section 466L-7; and
- 18 (C) Each of the controlling persons of an applicant
19 for registration as an appraisal management
20 company, as provided by section 466L-7;



- 1 (41) The department of health or its designee on all
2 license applicants, licensees, employees, contractors,
3 and prospective employees of medical cannabis
4 dispensaries, and individuals permitted to enter and
5 remain in medical cannabis dispensary facilities as
6 provided under sections 329D-15(a)(4) and
7 329D-16(a)(3);
- 8 (42) The department of commerce and consumer affairs on
9 applicants for nurse licensure or license renewal,
10 reactivation, or restoration as provided by sections
11 457-7, 457-8, 457-8.5, and 457-9;
- 12 (43) The county police departments on applicants for
13 permits to acquire firearms pursuant to section 134-2
14 and on individuals registering their firearms pursuant
15 to section 134-3;
- 16 (44) The department of commerce and consumer affairs on:
17 (A) Each of the controlling persons of the applicant
18 for licensure as an escrow depository, and each
19 of the officers, directors, and principals who
20 will be in charge of the escrow depository's
21 activities upon licensure; and



1 (B) Each of the controlling persons of an applicant
2 for proposed change in control of an escrow
3 depository licensee, and each of the officers,
4 directors, and principals who will be in charge
5 of the licensee's activities upon approval of
6 such application,

7 as provided by chapter 449;

8 (45) The department of taxation on current or prospective
9 employees or contractors who have access to federal
10 tax information in order to comply with requirements
11 of federal law, regulation, or procedure, as provided
12 by section 231-1.6;

13 (46) The department of labor and industrial relations on
14 current or prospective employees or contractors who
15 have access to federal tax information in order to
16 comply with requirements of federal law, regulation,
17 or procedure, as provided by section 383-110;

18 (47) The department of human services on current or
19 prospective employees or contractors who have access
20 to federal tax information in order to comply with



1 requirements of federal law, regulation, or procedure,
2 as provided by section 346-2.5;

3 (48) The child support enforcement agency on current or
4 prospective employees, or contractors who have access
5 to federal tax information in order to comply with
6 federal law, regulation, or procedure, as provided by
7 section 576D-11.5; [and]

8 (49) The department of commerce and consumer affairs on
9 each control person, executive officer, director,
10 general partner, and managing member of a small dollar
11 loan licensee, or an applicant for a small dollar loan
12 license as provided by part , article 9, chapter
13 412; and

14 [~~(49)~~] (50) Any other organization, entity, or the State,
15 its branches, political subdivisions, or agencies as
16 may be authorized by state law."

17 SECTION 9. There is appropriated out of the compliance
18 resolution fund the sum of \$ or so much thereof as may
19 be necessary for fiscal year 2020-2021 to establish and hire two
20 full-time equivalent (2.0 FTE) permanent examiners, without
21 regard to chapter 76, Hawaii Revised Statutes, to carry out the



1 purposes of the small dollar installment loan program
2 established by section 2 of this Act; provided that the
3 positions may be added to the position count for the division of
4 financial institutions of the department of commerce and
5 consumer affairs.

6 The sum appropriated shall be expended by the department of
7 commerce and consumer affairs for the purposes of this part.

8 PART III

9 SECTION 10. Chapter 480F, Hawaii Revised Statutes, is
10 amended by adding five new sections to be appropriately
11 designated and to read as follows:

12 "§480F- Registration required. (a) No check casher
13 shall conduct business in the State, including deferred deposit
14 transactions, without first registering with the department
15 under this chapter.

16 (b) The director shall prescribe the form of the
17 application for registration. Each application shall be
18 accompanied by an appropriate fee as prescribed by the director
19 by rules adopted pursuant to chapter 91.

20 (c) Check casher registration shall be updated annually
21 and shall include the following:



- 1 (1) The address of the principal office of the check
2 cashier;
- 3 (2) The name and address of the check cashier's agent for
4 service of process in the State; and
- 5 (3) Payment of the appropriate registration renewal fees,
6 as established by the director under rules adopted
7 pursuant to chapter 91.

8 §480F- Voluntary payment plans. (a) At the time of
9 origination of a third consecutive deferred deposit transaction
10 made to a customer by a check cashier, and at the time of
11 origination of any subsequent consecutive deferred deposit
12 transactions, the check cashier shall offer the customer in
13 writing the option to participate in a voluntary payment plan.
14 Should the customer be in financial hardship, a voluntary
15 payment plan may be requested by the customer and arranged by
16 the customer and the check cashier at any time.

17 (b) The voluntary payment plan shall be structured to pay
18 the existing debt, both the principal and the fee, in at least
19 six equal payments of no more than five per cent of the
20 customer's monthly pretax paycheck that coincide with the
21 customer's periodic pay dates or the date the customer is



1 scheduled to receive benefits, unless the customer requests
2 different payment due dates. The payments made pursuant to the
3 voluntary payment plan shall be applied directly to the existing
4 debt, and the lender shall not charge the customer any
5 additional fee other than an administration fee not to exceed
6 \$30 for participation in the voluntary payment plan. The
7 administration fee charged for a voluntary payment plan in
8 compliance with this section shall be exempt from chapter 478.

9 (c) The check casher shall provide a written copy of the
10 voluntary payment plan agreement to the customer, or an
11 electronic copy if the transaction is being conducted over the
12 Internet. The check casher shall be prohibited from engaging in
13 collection activities while the customer continues to make
14 payments in accordance with the payment plan. The check casher
15 is prohibited from making any additional deferred deposit
16 transactions with the customer prior to the completion of the
17 payments under the voluntary payment plan.

18 (d) The check casher may require the customer to provide a
19 post-dated check or electronic authorization for funds
20 transferred for each payment under the voluntary payment plan.
21 If any check or electronic authorization accepted by the check



1 casher as payment for a voluntary payment plan is dishonored,
2 the check casher shall not charge the customer a fee for the
3 dishonored instrument.

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

9 §480F- Single deferred deposit transaction limitation.

10 A check casher shall take reasonable measures to ensure that no
11 customer has more than one deferred deposit transaction
12 outstanding at a time from all sources. Check cashers shall
13 receive written confirmation from each customer that the
14 customer does not have any outstanding deferred deposit
15 transactions as of the date the customer enters into a deferred
16 deposit transaction with the check casher.

17 §480F- Records and reports. Every check casher shall
18 keep records and make reports with respect to the operation of
19 business as provided in rules adopted by the director pursuant
20 to chapter 91.



1 §480F- Rules. The director shall adopt rules necessary
2 to implement this chapter pursuant to chapter 91."

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

6 "Department" means the department of commerce and consumer
7 affairs.

8 "Director" means the director of commerce and consumer
9 affairs.

10 "Financial hardship" means any hardship from loss of
11 income, reduced work hours, increased living costs, or other
12 hardships outside of the control of the customer to be
13 determined at the discretion of the check casher and evidenced
14 with documentation."

15 SECTION 12. Section 480F-2, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+]§480F-2[+] **Posting and notice of fees charged.** Any
18 person who cashes one or more checks for a fee shall:

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



- 1 (A) The fees charged for cashing a check, for selling
2 or issuing a money order, and for the initial
3 issuance of any membership or identification
4 cards; and
- 5 (B) That consumer complaints about the check cashing
6 business may be filed with the department [~~of~~
7 ~~commerce and consumer affairs~~], and includes and
8 identifies the telephone number and address of
9 the consumer information service of the
10 department [~~of commerce and consumer affairs~~];
- 11 (2) Provide written notice to each customer [~~of the fees~~
12 ~~charged for cashing checks~~] in no smaller than twelve-
13 point type that is separate from and in addition to
14 any posted notice[+] the following information:
- 15 (A) The fees charged for cashing checks; and
- 16 (B) That consumer complaints about the check cashing
17 business may be filed with the department,
18 including and identifying the telephone number
19 and address of the consumer information service
20 of the department;



1 (3) Obtain a written acknowledgment from the customer that
2 written notice [~~of the fees charged for cashing~~
3 ~~checks~~] as required by paragraph (2) was provided[+]
4 to the customer; and

5 (4) Provide each customer a receipt documenting any and
6 all fees charged."

7 SECTION 13. Section 480F-4, Hawaii Revised Statutes, is
8 amended to read as follows:

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

12 (b) In addition to the notice required by section 480F-2,
13 a check cashier that defers the deposit of any checks shall post
14 in a conspicuous place in every location at which the check
15 cashier does business a notice that sets forth in no smaller than
16 thirty-eight point type:

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



- 1 (2) That customers have a right to rescind a deferred
- 2 deposit transaction within twenty-four hours of the
- 3 transaction;
- 4 (3) That deferred deposit transactions are not suitable
- 5 for long-term borrowing;
- 6 (4) That a customer may have no more than one outstanding
- 7 deferred deposit transaction from all sources;
- 8 (5) Information on available financial education services,
- 9 including contact information for an approved budget
- 10 and credit counselor or an approved housing counselor;
- 11 and
- 12 (6) A copy of the registration to do business as a check
- 13 cashier as required by this chapter.

14 [~~(b)~~] (c) Each deferred deposit shall be made pursuant to
 15 a written agreement that has been signed by the customer and the
 16 check cashier or an authorized representative of the check
 17 cashier. The written agreement shall contain a statement of the
 18 following:

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



1 (2) Notices stating that:

2 (A) The customer has a right to rescind a deferred
3 deposit transaction within twenty-four hours of
4 the transaction;

5 (B) The customer may have no more than one
6 outstanding deferred deposit transaction from all
7 sources;

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

10 (D) The customer may enter into a voluntary payment
11 plan if the customer:

12 (i) Is experiencing financial hardship; or

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

15 (3) A declaration that financial education services are
16 available and include contact information for an
17 approved budget and credit counselor or an approved
18 housing counselor.

19 The written agreement shall authorize the check casher to defer
20 deposit of the personal check until a specific date not later
21 than thirty-two days from the date the written agreement was



1 signed. The written agreement shall not permit the check casher
2 to accept collateral.

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

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

17 ~~[(e)]~~ (f) A check casher who enters into a deferred
18 deposit agreement and accepts a check passed on insufficient
19 funds, or any assignee of that check casher, shall not be
20 entitled to recover damages in any action brought pursuant to or
21 governed by chapter 490. No additional interest may be



1 collected except the ten per cent pursuant to section 478-3 on
2 uncollected judgments. Instead, the check casher may charge and
3 recover a fee for the return of a dishonored check in an amount
4 not greater than [~~\$20-~~] the fee incurred by the check casher
5 from its financial institution.

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

10 (h) For the purposes of this section:

11 "Approved budget and credit counselor" and "approved
12 housing counselor" shall have the same meaning as those terms
13 are defined in section 667-1."

14 SECTION 14. Section 480F-5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[~~f~~] ~~§480F-5~~ [~~]~~ **Exemptions.** This chapter shall not apply
17 to [~~+~~

18 ~~(1) Any person who is principally engaged in the bona fide~~
19 ~~retail sale of goods or services, and who, either as~~
20 ~~incident to or independent of the retail sale or~~
21 ~~service, from time to time cashes items for a fee or~~



1 ~~other consideration, where not more than \$2, or two~~
2 ~~per cent of the amount of the check, whichever is~~
3 ~~greater, is charged for the service; or~~

4 (2) ~~Any]~~ any person authorized to engage in business as a
5 bank, trust company, savings bank, savings and loan
6 association, financial services loan company, or
7 credit union under the laws of the United States, any
8 state or territory of the United States, or the
9 District of Columbia."

10 SECTION 15. (a) The auditor shall conduct an analysis of
11 the regulation of payday lenders and deferred deposit agreements
12 and its impact on consumer protection in the State as part of
13 the implementation of the purposes of this Act.

14 (b) In conducting the analysis, the auditor shall examine
15 the following:

- 16 (1) The increasing impact of out-of-state Internet lenders
17 who operate in the State;
- 18 (2) Data regarding consumer complaints;
- 19 (3) The impact of chapter 480F, Hawaii Revised Statutes,
20 on consumers within the State over the past fifteen
21 years; and



1 (4) Any further measures necessary for increased consumer
2 protection in the State.

3 (c) The auditor shall submit a report of findings and
4 recommendations, including any proposed legislation, to the
5 legislature no later than twenty days prior to the convening of
6 the regular session of 2021.

7 PART IV

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

11 SECTION 17. In codifying the new sections added by
12 section 2 of this Act, the revisor of statutes shall substitute
13 appropriate section numbers for the letters used in designating
14 the new sections in this Act.

15 SECTION 18. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 19. This Act shall take effect on July 1, 2050;
18 provided that the licensing requirements for small dollar
19 lenders established by section 2 of this Act shall take effect
20 on January 1, 2022.



Report Title:

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

Description:

Establishes regulatory framework for small dollar lenders in article 9 of chapter 412, HRS. Specifies various consumer protection requirements for small dollar loans. Beginning 1/1/2022, 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 an analysis of the regulation of payday lenders and deferred deposit agreements in the State. Effective 7/1/2050. (HD1)

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