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# A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

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



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

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

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



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

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



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

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

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

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



1 consumers, subject to the supervision of the division  
2 of financial institutions of the department of  
3 commerce and consumer affairs to protect against  
4 illegal offshore lending;

5 (4) Specifying licensing requirements for small dollar  
6 lenders;

7 (5) Capping interest at thirty-six per cent per annum and  
8 one simple maximum monthly maintenance fee tiered up  
9 to \$25;

10 (6) Limiting monthly payments to five per cent of the  
11 borrower's gross monthly income or six per cent of the  
12 borrower's verified net monthly income, whichever is  
13 greater, shielding ninety-five per cent of a  
14 borrower's income so that the borrower can more  
15 realistically make rent payments, cover utility bills,  
16 and buy groceries;

17 (7) Amortizing loans in full and renewing the loan while  
18 also permitting borrowers to choose to repay the loan  
19 without penalty;



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

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



1 "CHAPTER

2 SMALL DOLLAR INSTALLMENT LOANS

3 PART I. GENERAL PROVISIONS

4 § -1 Definitions. As used in this chapter, unless the  
5 context otherwise requires:

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

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

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

17 "Commissioner" means the commissioner of financial  
18 institutions.

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



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

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

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

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

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

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

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





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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



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



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

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

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

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

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



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

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

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

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

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

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

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

21 (2) Any unearned monthly maintenance fees.



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

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

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

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



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





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

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

**"MULTIPLE  
INSTALLMENT  
PAYMENT**

- 9
- 10
- 11
- 12
- 13 Amount Financed
- 14 Finance Charge
- 15 **Amount you will receive**
- 16 Term (months)
- 17
- 18 Authorized Interest Rate
- 19
- 20 Monthly Maintenance Fee
- 21
- 22 **Total of All Permitted Charges**
- 23
- 24 **Total You Will Pay for This Loan**
- 25 (Amount Financed,
- 26 Interest, and Monthly Maintenance Fee)
- 27
- 28 ANNUAL PERCENTAGE RATE
- 29
- 30 Payment Schedule"
- 31



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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

11 **§ -8 Renewal; new loan requirements; consecutive loans;**

12 **payment plan.** (a) A small dollar loan may be renewed only  
13 once. After one renewal, the consumer shall pay the debt in  
14 cash or its equivalent.

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





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

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

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

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

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



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

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

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

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



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

7 (1) With the consumer's spouse or the consumer's domestic  
8 partner in any form, manner, or place, more than once;

9 (2) With a consumer at the consumer's place of employment  
10 more than once;

11 (3) With the consumer, the consumer's spouse, or the  
12 consumer's domestic partner at the consumer's place of  
13 residence between the hours of 9:00 p.m. and  
14 8:00 a.m.; or

15 (4) To a party other than the consumer, the consumer's  
16 attorney, the lender's attorney, or a consumer credit  
17 reporting agency if otherwise permitted by law, except  
18 for the purposes of acquiring location or contact  
19 information about the consumer.

20 (d) A lender shall maintain an accurate and complete  
21 communication log of all telephone and written communications



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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



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

5 "SMALL DOLLAR LOAN

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

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

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



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

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

#### 8 PART II. LICENSING

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

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

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

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





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

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

9 (2) The principal place of business;

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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



1           (2) The applicant or, in the case of an applicant that is  
2           not an individual, each of the applicant's control  
3           persons, executive officers, directors, general  
4           partners, and managing members, has not been convicted  
5           of, pled guilty or nolo contendere to, or been granted  
6           a deferred acceptance of a guilty plea under federal  
7           law or under chapter 853 to a felony in a domestic,  
8           foreign, or military court:

9           (A) During the seven-year period preceding the date  
10           of the application for licensing and  
11           registration; or

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

15           provided that any pardon of a conviction shall not be  
16           deemed a conviction for the purposes of this section;

17           (3) The applicant or, in the case of an applicant that is  
18           not an individual, each of the applicant's control  
19           persons, executive officers, directors, general  
20           partners, and managing members, has demonstrated  
21           financial responsibility, character, and general



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

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

- 18 (4) 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 chapter 853 to any misdemeanor involving an act  
4 of fraud, dishonesty, breach of trust, or money  
5 laundering;

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

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

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

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

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



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





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



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

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

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

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



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

4 § -36 **Renewal of license; annual report.** (a) On or  
5 before December 31 of each year, each licensee shall pay a  
6 renewal fee pursuant to section -35.

7 (b) The annual renewal fee shall be accompanied by a  
8 report, in a form prescribed by the commissioner, which shall  
9 include:

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

18 (2) A report detailing the small dollar lender's  
19 activities in this State, including:

20 (A) The number of small dollar loans made;



- 1 (B) The number of small dollar loans the lender is
- 2 servicing;
- 3 (C) The type and characteristics of loans serviced in
- 4 this State;
- 5 (D) The number of small dollar serviced loans in
- 6 default; and
- 7 (E) Any other information that the commissioner may
- 8 require;
- 9 (3) Any material changes to any of the information
- 10 submitted by the licensee on its original application
- 11 that have not previously been reported to the
- 12 commissioner on any other report required to be filed
- 13 under this chapter;
- 14 (4) A list of the principal place of business and branch
- 15 locations, if any, within this State where business
- 16 regulated by this chapter is being conducted by the
- 17 licensee;
- 18 (5) Disclosure of any pending or final suspension,
- 19 revocation, or other enforcement action by any state
- 20 or governmental authority; and
- 21 (6) Any other information the commissioner may require.



1 (c) A license may be renewed by continuing to meet the  
2 licensing requirements of sections -33, -34, and -35,  
3 filing a completed renewal statement on a form prescribed by  
4 NMLS or by the commissioner, paying a renewal fee, and meeting  
5 the requirements of this section.

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

18 **§ -37 Enforcement authorities; violations; penalties.**

19 (a) To ensure the effective supervision and enforcement of this  
20 chapter, the commissioner, pursuant to chapter 91, may take any



1 disciplinary action as specified in subsection (b) against an  
2 applicant or licensee if the commissioner finds that:

3 (1) The applicant or licensee has violated this chapter or  
4 any rule or order lawfully made pursuant to this  
5 chapter;

6 (2) Facts or conditions exist that would clearly have  
7 justified the commissioner in denying an application  
8 for licensure, had these facts or conditions been  
9 known to exist at the time the application was made;

10 (3) The applicant or licensee has failed to provide  
11 information required by the commissioner within a  
12 reasonable time, as specified by the commissioner;

13 (4) The applicant or licensee has failed to provide or  
14 maintain proof of financial responsibility;

15 (5) The applicant or licensee is insolvent;

16 (6) The applicant or licensee has made, in any document or  
17 statement filed with the commissioner, a false  
18 representation of a material fact or has omitted to  
19 state a material fact;

20 (7) The applicant, licensee, or, if an applicant or  
21 licensee is not an individual, each of the applicant's



1 or licensee's control persons, executive officers,  
2 directors, general partners, and managing members have  
3 been convicted of or entered a plea of guilty or nolo  
4 contendere to a crime involving fraud or deceit, or to  
5 any similar crime under the jurisdiction of any  
6 federal court or court of another state;

7 (8) The applicant or licensee has failed to make,  
8 maintain, or produce records that comply with section  
9 -17 or any rule adopted by the commissioner  
10 pursuant to chapter 91;

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

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



1 (11) The applicant or licensee has failed, in a timely  
2 manner as specified by the commissioner, to take or  
3 provide proof of the corrective action required by the  
4 commissioner subsequent to an investigation or  
5 examination pursuant to section -43.

6 (b) After a finding of one or more of the conditions under  
7 subsection (a), the commissioner may take any or all of the  
8 following actions:

- 9 (1) Deny an application for licensure, including an  
10 application for a branch office license;
- 11 (2) Revoke the license;
- 12 (3) Suspend the license for a period of time;
- 13 (4) Issue an order to the licensee to cease and desist  
14 from engaging in any act specified under subsection  
15 (a);
- 16 (5) Order the licensee to make refunds to consumers of  
17 excess charges under this chapter;
- 18 (6) Impose penalties of up to a \$1,000 for each violation;  
19 or





1           (7) Bar a person from applying for or holding a license  
2           for a period of five years following revocation of the  
3           person's license.

4           (c) The commissioner may issue a temporary cease and  
5 desist order if the commissioner makes a finding that the  
6 licensee, applicant, or person is engaging, has engaged, or is  
7 about to engage in an illegal, unauthorized, unsafe, or unsound  
8 practice in violation of this chapter. Whenever the  
9 commissioner denies a license application or takes disciplinary  
10 action pursuant to this subsection, the commissioner shall enter  
11 an order to that effect and notify the licensee, applicant, or  
12 person of the denial or disciplinary action. The notification  
13 required by this subsection shall be given by personal service  
14 or by mail to the last known address of the licensee or  
15 applicant as shown on the application, license, or as  
16 subsequently furnished in writing to the commissioner.

17           (d) The revocation, suspension, expiration, or surrender  
18 of a license shall not affect the licensee's liability for acts  
19 previously committed or impair the commissioner's ability to  
20 issue a final agency order or impose discipline against the  
21 licensee.



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

4 (f) The commissioner may reinstate a license, terminate a  
5 suspension, or grant a new license to a person whose license has  
6 been revoked or suspended if no fact or condition then exists  
7 that clearly would justify the commissioner in revoking,  
8 suspending, or refusing to grant a license.

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

16 (h) Each violation or failure to comply with any directive  
17 or order of the commissioner shall be a separate and distinct  
18 violation.

19 (i) Any violation of this chapter that is directed toward,  
20 targets, or injures an elder may be subject to an additional  
21 civil penalty not to exceed \$10,000 for each violation in



1 addition to any other fines or penalties assessed for the  
2 violation.

3       **§ -38 Voluntary surrender of license.** (a) A licensee  
4 may voluntarily cease business and surrender its license by  
5 giving written notice to the commissioner of its intent to  
6 surrender its license. Prior to the surrender date of a  
7 license, the licensee shall have either completed all pending  
8 small dollar loan transactions or assigned each pending small  
9 dollar loan transaction to another licensee.

10       (b) Notice pursuant to this section shall be provided at  
11 least thirty days before the surrender of the license and shall  
12 include:

- 13       (1) The date of surrender;
- 14       (2) The name, address, telephone number, facsimile number,  
15           and electronic mail address of a contact individual  
16           with knowledge and authority sufficient to communicate  
17           with the commissioner regarding all matters relating  
18           to the licensee during the period that it was licensed  
19           pursuant to this chapter;
- 20       (3) The reason or reasons for surrender;



- 1           (4) Total dollar amount of the licensee's outstanding  
2           small dollar loans sold in Hawaii and the individual  
3           amounts of each outstanding small dollar loans, and  
4           the name, address, and contact telephone number of the  
5           licensee to which each outstanding small dollar loan  
6           was assigned;
- 7           (5) A list of the licensee's Hawaii authorized branch  
8           offices, if any, as of the date of surrender;
- 9           (6) Confirmation that the licensee has notified each of  
10          its Hawaii authorized branch offices, if any, that the  
11          branch offices may no longer make small dollar loans  
12          on the licensee's behalf; and
- 13          (7) Confirmation that the licensee has notified each of  
14          its small dollar consumers, if any, that the small  
15          dollar loan is being transferred and the name,  
16          address, telephone number, and any other contact  
17          information of the licensee to whom the small dollar  
18          loan was assigned.
- 19          (c) Voluntary surrender of a license shall be effective  
20          upon the date of surrender specified on the written notice to  
21          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       **§ -39 Sale or transfer of license; change of control.**

4 (a) No small dollar loan 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 -33 and -36.  
20 The information shall include, for the five-year period prior to  
21 the date of the application for change of control of the



1 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           **§ -40 Authorized places of business; principal office;**  
2 **branch offices; relocation; closure.** (a) Every small dollar  
3 lender licensed under this chapter 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 -35.

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 -35.

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 chapter shall be  
 17 prominently displayed in the principal place of business and  
 18 each branch office.

19 **§ -41 Payment of fees.** All fees collected pursuant to  
 20 section -35, administrative fines, and other charges  
 21 collected pursuant to this chapter shall be deposited into the



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

6       **§ -42 Powers of commissioner.** (a) The commissioner may  
7 adopt rules pursuant to chapter 91 as the commissioner deems  
8 necessary for the administration of this chapter.

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

- 11       (1) Issue declaratory rulings or informal nonbinding  
12           interpretations;
- 13       (2) Investigate and conduct hearings regarding any  
14           violation of this chapter 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 chapter;
- 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 chapter;
- 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 chapter 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           §   -43   **Investigation and examination authority.**   (a)   In  
2   addition to the authority granted under section   -42(b), the  
3   commissioner shall have the authority to conduct investigations  
4   and examinations in accordance with this section.   The  
5   commissioner may access, receive, and use any books, accounts,  
6   records, files, documents, information, or evidence that the  
7   commissioner deems relevant to the investigation or examination,  
8   regardless of the location, possession, control, or custody of  
9   the documents, information, or evidence.

10           (b)   For the purposes of investigating violations or  
11   complaints arising under this chapter, or for the purposes of  
12   examination, the commissioner may review, investigate, or  
13   examine any licensee or person subject to this chapter as often  
14   as necessary to carry out the purposes of this chapter.   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 chapter 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 chapter. The commissioner shall have access to the books  
5 and records and shall be permitted to interview the control  
6 persons, executive officers, directors, general partners,  
7 managing members, principals, managers, employees, independent  
8 contractors, agents, and consumers of the licensee or person  
9 subject to this chapter concerning their business.

10 (d) Each licensee or person subject to this chapter 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 chapter, the commissioner may control access



1 to 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 chapter, the licensee or owner of the documents and records  
13 shall have access to the documents or records as necessary to  
14 conduct its ordinary business affairs.

15 (f) The authority of this section shall remain in effect,  
16 whether a licensee or person subject to this chapter acts or  
17 claims to act under any licensing or registration law of this  
18 State, or claims to act without such 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 chapter investigated or examined by the commissioner or  
7 the commissioner's staff. The hourly fee shall be \$60 or an  
8 amount as the commissioner shall establish by rule pursuant to  
9 chapter 91. In addition to the investigation or examination  
10 fee, the 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 chapter  
17 or the rules adopted under this chapter have been violated, or  
18 that a license issued under this chapter should be suspended or  
19 revoked, may file a written complaint with the commissioner,  
20 setting forth the details of the alleged violation or grounds  
21 for suspension or revocation.





1           **§ -44 Confidentiality.** (a) Except as otherwise  
2 provided in Public Law 110-289, section 1512, the requirements  
3 under any federal or state law regarding the privacy or  
4 confidentiality of any information or material provided to NMLS,  
5 and any privilege arising under federal or state law, including  
6 the rules of any federal or state court, with respect to the  
7 information or material shall continue to apply to the  
8 information or material after the information or material has  
9 been disclosed to NMLS. The information and material may be  
10 shared with all state and federal regulatory officials with  
11 oversight authority over transactions subject to this chapter,  
12 without the loss of privilege or the loss of confidentiality  
13 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) In the event of a conflict between this section and  
17 any other section of law relating to the disclosure of  
18 privileged or confidential information or material, this section  
19 shall 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,  
2 mortgage servicers that are included in NMLS for access by the  
3 public.

4       **§ -45 Prohibited practices.** (a) It shall be a  
5 violation of this chapter for a licensee, its control persons,  
6 executive officers, directors, general partners, managing  
7 members, employees, or independent contractors, or any other  
8 person subject to this chapter to:

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



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



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



1 electronic form for processing through the Automated  
2 Clearing House or similar system;

3 (15) Attempt to collect from a consumer's account after two  
4 consecutive attempts have failed, unless the licensee  
5 obtains new written authorization from the consumer to  
6 transfer or withdraw funds from the account;

7 (16) Make a loan to a consumer that includes a demand  
8 feature that was not clearly disclosed in the written  
9 agreement pursuant to section -3 or collect or  
10 demand repayment of any outstanding balance or unpaid  
11 interest or fees except as provided in section -3;

12 (17) Fail to comply with all applicable state and federal  
13 laws relating to the activities governed by this  
14 chapter; or

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

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

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, chapter \_\_\_\_\_."

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

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



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

4        (2) Any small dollar loan regulated under chapter \_\_\_\_\_ ."

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

7        "**§478-6 Usury; penalty.** Any person who directly or  
8        indirectly receives any interest or finance charge at a rate  
9        greater than that permitted by law or who, by any method or  
10        device whatsoever, receives or arranges for the receipt of  
11        interest or finance charge at a greater rate than that permitted  
12        by law on any credit transaction shall be guilty of usury and  
13        shall be fined not more than \$250, unless a greater amount is  
14        allowed by law, or imprisoned not more than one year, or both."

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

17        [~~"Deferred deposit" means a transaction in which a check~~  
18        ~~easher refrains from depositing a personal check written by a~~  
19        ~~customer until a date after the transaction date, pursuant to a~~  
20        ~~written agreement." ]~~





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

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

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

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



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

3 **"§480F-6 Penalties.** (a) Any person who violates this  
4 chapter shall be deemed to have engaged in an unfair or  
5 deceptive act or practice in the conduct of any trade or  
6 commerce within the meaning of section 480-2(a). Aggrieved  
7 consumers may seek those remedies set forth in section  
8 480-13(b).

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

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

18 ~~[(d) A customer who enters into a written deferred deposit~~  
19 ~~agreement and offers a personal check to a check casher pursuant~~  
20 ~~to that agreement shall not be subject to any criminal penalty~~  
21 ~~for failure to comply with the terms of that agreement unless~~



1 ~~the check is dishonored because the customer closed the account~~  
2 ~~or stopped payment on the check.]"~~

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

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

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

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

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



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



1 (10) The department of human services or its designee on  
2 applicants to operate child care facilities, household  
3 members of the applicant, prospective employees of the  
4 applicant, and new employees and household members of  
5 the provider after registration or licensure as  
6 provided by section 346-154, and persons subject to  
7 section 346-152.5;

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

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

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

20 (14) The department of human services on employees,  
21 prospective employees, and volunteers of contracted



1 providers and subcontractors in positions that place  
2 them in close proximity to youth when providing  
3 services on behalf of the office or the Hawaii youth  
4 correctional facility as provided by section 352D-4.3;

5 (15) The judiciary on employees and applicants at detention  
6 and shelter facilities as provided by section 571-34;

7 (16) The department of public safety on employees and  
8 prospective employees who are directly involved with  
9 the treatment and care of persons committed to a  
10 correctional facility or who possess police powers  
11 including the power of arrest as provided by section  
12 353C-5;

13 (17) The board of private detectives and guards on  
14 applicants for private detective or private guard  
15 licensure as provided by section 463-9;

16 (18) Private schools and designated organizations on  
17 employees and prospective employees who may be in  
18 positions that necessitate close proximity to  
19 children; provided that private schools and designated  
20 organizations receive only indications of the states



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



1 protective and community services branch, as provided  
2 by section 346-97;

3 (23) The department of human services on foster grandparent  
4 program, senior companion program, and respite  
5 companion program participants as provided by section  
6 346-97;

7 (24) The department of human services on contracted and  
8 subcontracted service providers and their current and  
9 prospective employees that provide home and community-  
10 based services under section 1915(c) of the Social  
11 Security Act, title 42 United States Code section  
12 1396n(c), or under any other applicable section or  
13 sections of the Social Security Act for the purposes  
14 of providing home and community-based services, as  
15 provided by section 346-97;

16 (25) The department of commerce and consumer affairs on  
17 proposed directors and executive officers of a bank,  
18 savings bank, savings and loan association, trust  
19 company, and depository financial services loan  
20 company as provided by section 412:3-201;





- 1       (26) The department of commerce and consumer affairs on
- 2             proposed directors and executive officers of a
- 3             nondepository financial services loan company as
- 4             provided by section 412:3-301;
  
- 5       (27) The department of commerce and consumer affairs on the
- 6             original chartering applicants and proposed executive
- 7             officers of a credit union as provided by section
- 8             412:10-103;
  
- 9       (28) The department of commerce and consumer affairs on:
- 10            (A) Each principal of every non-corporate applicant
- 11                for a money transmitter license;
- 12            (B) Each person who upon approval of an application
- 13                by a corporate applicant for a money transmitter
- 14                license will be a principal of the licensee; and
- 15            (C) Each person who upon approval of an application
- 16                requesting approval of a proposed change in
- 17                control of licensee will be a principal of the
- 18                licensee,
- 19            as provided by sections 489D-9 and 489D-15;



- 1       (29) The department of commerce and consumer affairs on
- 2             applicants for licensure and persons licensed under
- 3             title 24;
- 4       (30) The Hawaii health systems corporation on:
- 5             (A) Employees;
- 6             (B) Applicants seeking employment;
- 7             (C) Current or prospective members of the corporation
- 8             board or regional system board; or
- 9             (D) Current or prospective volunteers, providers, or
- 10            contractors,
- 11            in any of the corporation's health facilities as
- 12            provided by section 323F-5.5;
- 13       (31) The department of commerce and consumer affairs on:
- 14             (A) An applicant for a mortgage loan originator
- 15             license, or license renewal; and
- 16             (B) Each control person, executive officer, director,
- 17             general partner, and managing member of an
- 18             applicant for a mortgage loan originator company
- 19             license or license renewal,
- 20            as provided by chapter 454F;



- 1       (32) The state public charter school commission or public  
2           charter schools on employees, teacher trainees,  
3           prospective employees, and prospective teacher  
4           trainees in any public charter school for any position  
5           that places them in close proximity to children, as  
6           provided in section 302D-33;
- 7       (33) The counties on prospective employees who work with  
8           children, vulnerable adults, or senior citizens in  
9           community-based programs;
- 10      (34) The counties on prospective employees for fire  
11           department positions which involve contact with  
12           children or vulnerable adults;
- 13      (35) The counties on prospective employees for emergency  
14           medical services positions which involve contact with  
15           children or vulnerable adults;
- 16      (36) The counties on prospective employees for emergency  
17           management positions and community volunteers whose  
18           responsibilities involve planning and executing  
19           homeland security measures including viewing,  
20           handling, and engaging in law enforcement or



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



1 registration as an appraisal management company,  
2 as provided by section 466L-7; and

3 (C) Each of the controlling persons of an applicant  
4 for registration as an appraisal management  
5 company, as provided by section 466L-7;

6 (41) The department of health or its designee on all  
7 license applicants, licensees, employees, contractors,  
8 and prospective employees of medical cannabis  
9 dispensaries, and individuals permitted to enter and  
10 remain in medical cannabis dispensary facilities as  
11 provided under sections 329D-15(a)(4) and  
12 329D-16(a)(3);

13 (42) The department of commerce and consumer affairs on  
14 applicants for nurse licensure or license renewal,  
15 reactivation, or restoration as provided by sections  
16 457-7, 457-8, 457-8.5, and 457-9;

17 (43) The county police departments on applicants for  
18 permits to acquire firearms pursuant to section 134-2  
19 and on individuals registering their firearms pursuant  
20 to section 134-3;

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



1 (A) Each of the controlling persons of the applicant  
2 for licensure as an escrow depository, and each  
3 of the officers, directors, and principals who  
4 will be in charge of the escrow depository's  
5 activities upon licensure; and

6 (B) Each of the controlling persons of an applicant  
7 for proposed change in control of an escrow  
8 depository licensee, and each of the officers,  
9 directors, and principals who will be in charge  
10 of the licensee's activities upon approval of  
11 such application,

12 as provided by chapter 449;

13 (45) The department of taxation on current or prospective  
14 employees or contractors who have access to federal  
15 tax information in order to comply with requirements  
16 of federal law, regulation, or procedure, as provided  
17 by section 231-1.6;

18 (46) The department of labor and industrial relations on  
19 current or prospective employees or contractors who  
20 have access to federal tax information in order to



1           comply with requirements of federal law, regulation,  
2           or procedure, as provided by section 383-110;

3       (47) The department of human services on current or  
4           prospective employees or contractors who have access  
5           to federal tax information in order to comply with  
6           requirements of federal law, regulation, or procedure,  
7           as provided by section 346-2.5;

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

13       (49) The department of commerce and consumer affairs on  
14       each control person, executive officer, director,  
15       general partner, and managing member of a small dollar  
16       loan licensee, or an applicant for a small dollar loan  
17       license as provided by chapter           ; and

18       ~~(49)~~ (50) Any other organization, entity, or the State,  
19           its branches, political subdivisions, or agencies as  
20           may be authorized by state law."



1 SECTION 10. Section 480F-4, Hawaii Revised Statutes, is  
2 repealed.

3 [~~"§480F-4 Deferred deposits, when allowed. (a) No check~~  
4 ~~casher may defer the deposit of a check except as provided in~~  
5 ~~this section.~~

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

17 ~~(c) The face amount of the check shall not exceed \$600 and~~  
18 ~~the deposit of a personal check written by a customer pursuant~~  
19 ~~to a deferred deposit transaction may be deferred for no more~~  
20 ~~than thirty two days. A check casher may charge a fee for~~  
21 ~~deferred deposit of a personal check in an amount not to exceed~~





1 ~~fifteen per cent of the face amount of the check. Any fees~~  
2 ~~charged for deferred deposit of a personal check in compliance~~  
3 ~~with this section shall be exempt from chapter 478.~~

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

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

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



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

12 The sums appropriated shall be expended by the department  
13 of commerce and consumer affairs for the purposes of this Act.

14 SECTION 12. This Act does not affect rights and duties  
15 that matured, penalties that were incurred, and proceedings that  
16 were begun before its effective date.

17 SECTION 13. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 14. This Act shall take effect on July 1, 2050;  
20 provided that the licensing requirements for small dollar



1 lenders established by section 2 of this Act shall take effect  
2 on January 1, 2051.



**Report Title:**

Payday Lending; Small Dollar Loans; Small Dollar Lenders;  
Licensure; Requirements; Appropriation

**Description:**

Transitions from lump sum deferred deposit transactions to installment-based small dollar loan transactions. Specifies various consumer protection requirements for small dollar loans. Beginning 1/1/2020, requires licensure for small dollar lenders that offer small dollar loans to consumers. Specifies licensing requirements for small dollar lenders. Authorizes the division of financial institutions to appoint 2.0 FTE examiner positions, funded via the compliance resolution fund, to carry out the purposes of the small dollar installment loan program. Effective 7/1/2050. (SD2)

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

