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# A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

PART I

SECTION 1. The legislature finds that a 2019 survey of household financial health in Hawaii identified that sixty-nine per cent of households are experiencing moderate to severe financial stress. One in five households had total spending that exceeded their income. Alternative financial service products (AFS), which includes money orders, check cashing, payday loans and pawn shop or auto title loans services were used by twenty-one per cent of households at least once during the year, and this survey also found that five per cent of households are unbanked, meaning that they do not have a checking or savings account, and an additional nineteen per cent are underbanked, meaning they have at least one of these accounts but also rely on an AFS product. While the specific reasons for utilizing AFS products is unclear, it does suggest that there is demand for financial services that may offer quick access and convenience, but at higher costs than traditional



1 banking services that are generally unavailable to underbanked  
2 individuals.

3       The legislature further finds that a form of AFS known as  
4 deferred deposit agreements, commonly referred to as payday  
5 loans, are small, short term, unsecured loans that borrowers  
6 commit to repay from their next paycheck or a regular income  
7 payment. A study conducted by The Pew Charitable Trusts found  
8 that the majority of borrowers use deferred deposit agreements  
9 for recurring expenses, rather than unexpected expenses or  
10 emergencies, because they live paycheck to paycheck. Additional  
11 research shows that approximately 12,000,000 Americans utilize  
12 payday loans annually. The Consumer Financial Protection Bureau  
13 has reported that seventy per cent of those payday borrowers  
14 will end up taking out a second payday loan, and some lenders  
15 allow borrowers to roll the balance into a new larger loan with  
16 the same associated costs.

17       The legislature also finds that a payday product may not be  
18 the correct financing source for all borrowers. Many consumers  
19 would be better suited to larger loans that are repayable over a  
20 greater amount of time. These loans would allow these consumers  
21 to obtain the financing at levels that they need, improve their



1 credit history, and allow them to pay their loan off and move  
2 beyond the binary system of either payday or prime-lending – the  
3 only available alternatives under the current regulatory scheme.  
4 According to the Pew Charitable Trusts, national survey data  
5 indicates that seventy-nine per cent of payday borrowers prefer  
6 small dollar loans that are due in installments, which only take  
7 a small share of each paycheck. However, in the absence of a  
8 sensible regulatory program, this type of lending cannot come to  
9 fruition.

10 The legislature believes that, without further sensible  
11 regulatory safeguards, consumers may be forced to incur an  
12 unsustainable cycle of debt. The legislature further believes  
13 that the underbanked credit market will be substantially  
14 improved by adopting new regulations that enhance deferred  
15 deposit transactions to more effectively protect consumers and  
16 establish a new and viable installment lending product to help  
17 bridge consumers to prime-based banking products. The  
18 legislature also believes adopting new regulations that address  
19 and establish improved repayment terms, including the duration  
20 of the loan and the maximum amount of interest and fees that can  
21 be charged, will benefit both the consumers and the AFS industry



1 participants. Because lenders are granted access to the  
2 borrower's checking account to ensure that the lender gets  
3 repaid, the legislature also wants to ensure a proper order of  
4 priority in payments so that borrowers can continue to meet  
5 certain basic living expenses, such as rent, utilities, and  
6 food. The Pew Charitable Trusts has reported that the average  
7 Hawaii payday borrower incurs \$529 in fees to borrow \$300 over  
8 five months. Research also shows that this amount is nearly  
9 three times higher than what the same lenders charge similarly  
10 situated consumers in other states.

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



1 action now to join in the national effort to regulate and  
2 enhance deferred deposit transactions, and institute small  
3 dollar instalment lending so that all Hawaii consumers have  
4 access to the financial product that is right for them, and are  
5 able to establish a necessary credit history and ultimately  
6 transition to traditional bank lending products.

7 The legislature acknowledges that there is a market for  
8 small dollar installment loans. However, the legislature  
9 concludes that if small dollar installment loans are going to be  
10 offered to Hawaii consumers, there must be appropriate consumer  
11 protections in place to ensure these loans contain reasonable  
12 terms and fees, provide sufficient protections that allow  
13 borrowers to avoid extending or adding additional loans, and  
14 allow borrowers to meet their basic living expenses.

15 Accordingly, the purpose of this Act is to encourage  
16 transparency, increase consumer protection in the AFS industry,  
17 and improve the well-being of Hawaii consumers by:

- 18 (1) Providing for new viable installment-based small  
19 dollar loan transactions in addition to enhanced  
20 deferred deposit transactions;



- 1           (2)   Specifying various consumer protection requirements  
2               for small dollar loans;
- 3           (3)   Beginning January 1, 2022, requiring licensure for  
4               small dollar lenders that offer small dollar loans to  
5               consumers, subject to the oversight of the division of  
6               financial institutions of the department of commerce  
7               and consumer affairs to protect against illegal  
8               offshore lending;
- 9           (4)   Specifying licensing requirements for small dollar  
10              lenders;
- 11          (5)   Capping interest at thirty-six per cent per annum and  
12              one simple maximum monthly maintenance fee tiered up  
13              to \$50;
- 14          (6)   Amortizing loans in full and renewing the loan while  
15              also permitting borrowers to choose to repay the loan  
16              without penalty;
- 17          (7)   Capping maximum allowable loan charges at fifty per  
18              cent of the principal loan amount, preventing a loan  
19              from being either too short or too long in duration;
- 20          (8)   Capping the maximum allowable loan size at \$1,500, and  
21              setting the minimum allowable loan size at \$600,



- 1 providing more flexibility for lenders and borrowers
- 2 than under the current law;
- 3 (9) Requiring lenders to provide clear disclosures of the
- 4 loan terms and total charges;
- 5 (10) Prohibiting a lender from making more than one loan at
- 6 a time to a consumer, preventing incentives for
- 7 lenders to "split" loans and charge higher fees;
- 8 (11) Authorizing the division of financial institutions to
- 9 establish and hire two full-time equivalent permanent
- 10 examiners to carry out the purposes of the small
- 11 dollar installment loan program, funded via an
- 12 increase to the ceiling of the compliance resolution
- 13 fund;
- 14 (12) Creating a registration requirement for check cashers,
- 15 including those that enter into deferred deposit
- 16 transactions;
- 17 (13) Requiring a check casher to offer a voluntary payment
- 18 plan for deferred deposit transactions;
- 19 (14) Requiring check cashers to maintain records and create
- 20 reports related to their business activities;



(15) Requiring check cashers to take reasonable measures to ensure that consumers are limited to one deferred deposit transaction at a time;

(16) Requiring check cashers that enter deferred deposit transactions to provide additional disclosures and post notices; and

(17) Requiring the division of financial institutions of the department of commerce and consumer affairs to conduct an analysis of the implementation of the regulation of payday lenders and deferred deposit agreements and its impact on consumer protection in the State.

PART II

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER**

**SMALL DOLLAR INSTALLMENT LOANS**

**PART I. GENERAL PROVISIONS**

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





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

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

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

12 "Commissioner" means the commissioner of financial  
13 institutions.

14 "Consumer" means a natural person who is the buyer, lessee,  
15 or debtor to whom credit is granted in a transaction that is  
16 primarily for that natural person's personal, family, or  
17 household purposes.

18 "Control", in the context of control of an applicant or  
19 licensee, means ownership of, or the power to vote, twenty-five  
20 per cent or more of the outstanding voting securities of a  
21 licensee or control person. For the purposes of determining the



1 percentage of an applicant or a licensee controlled by any  
2 person, there shall be aggregated with the control person's  
3 interest the interest of any other person controlled by the  
4 person, or by any spouse, parent, or child of the person.

5 "Control person" means any person in control of a licensee  
6 or applicant.

7 "Default" means a consumer's failure to repay a small  
8 dollar loan in compliance with the terms contained in a small  
9 dollar loan agreement.

10 "Department" means the department of commerce and consumer  
11 affairs.

12 "Division" means the division of financial institutions of  
13 the department of commerce and consumer affairs.

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

16 "Finance charges" means the cost of credit or cost of  
17 borrowing, including the interest, monthly maintenance fees, and  
18 other fees authorized by this chapter.

19 "Financial institution" means any bank, savings bank,  
20 savings and loan association, financial services loan company,  
21 or credit union doing business in the State whose accounts are



1 insured by the Federal Deposit Insurance Corporation, the  
2 National Credit Union Share Insurance Fund, or other similar or  
3 successor program of federal insurance.

4 "Instrument" means a personal check signed by the consumer  
5 and made payable to a person subject to this chapter.

6 "Instrument" does not include an electronic fund transfer or  
7 other electronic debit or credit to the consumer's checking  
8 account.

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

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

15 "Loan charges" means the total of monthly maintenance fees,  
16 dishonored instrument fees, and default charges charged by a  
17 lender to a borrower for the maintenance and servicing of a  
18 loan.

19 "Maintenance fee" means a monthly fee paid to a licensee to  
20 maintain a small dollar loan.



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

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

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

15 "Precomputed interest" means an interest method that uses  
16 the original payment schedule to calculate interest.

17 "Renewal" means the refinancing of a small dollar loan that  
18 occurs during the period between the original maturity date and  
19 the immediately preceding installment payment due date.

20 "Renewal" does not include the refinancing of a small dollar



1 loan that occurs prior to the penultimate installment payment  
2 due date.

3 "Small dollar lender" or "lender" means any person who is  
4 in the business of offering or making a consumer loan, who  
5 arranges a consumer loan for a third party, or who acts as an  
6 agent for a third party, regardless of whether the third party  
7 is exempt from licensure under this chapter or whether approval,  
8 acceptance, or ratification by the third party is necessary to  
9 create a legal obligation for the third party, through any  
10 method including mail, telephone, the Internet, or any  
11 electronic means.

12 "Small dollar loan" means a loan made pursuant to this  
13 chapter.

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

17 **§ -2 Small dollar loans; requirements; payments. (a)**

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

20 (1) Any transaction and renewal shall be documented in a  
21 written agreement pursuant to section -3;



(2) The total amount of the small dollar loan shall not be less than \$600 nor greater than \$1,500 pursuant to section -5(a);

(3) The total amount of loan charges a small dollar lender may charge, collect, or receive in connection with a small dollar loan shall not exceed fifty per cent of the principal loan amount;

(4) A monthly maintenance fee may be charged by the lender, not to exceed the following:

(A) \$40 on a loan of an original principal loan amount up to \$699.99;

(B) \$50 on a loan of an original principal loan amount of at least \$700.00 and up to \$799.99; and

(C) \$60 on a loan of an original principal loan amount of at least \$800.00 and up to \$1,500.00;

provided that the monthly maintenance fee shall not be added to the loan balance on which the interest is charged; provided further that a small dollar lender shall not charge, collect, or receive a monthly maintenance fee if the borrower is a person on active



1 duty in the armed forces of the United States or a  
2 dependent of that person;

3 (5) The written agreement required under section -3 may  
4 require multiple installment payments;

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

9 (7) A small dollar lender shall accept prepayment in full  
10 or in part from a consumer prior to the loan due date  
11 and shall not charge the consumer a fee or penalty if  
12 the consumer opts to prepay the loan; provided that in  
13 order to make a prepayment all past due interest and  
14 fees shall be paid first;

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

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



(10) A small dollar lender shall not charge a consumer any loan charges for a small dollar loan, other than the fees permitted by this chapter; and

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

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

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

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

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

(2) Any unearned monthly maintenance fees.





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

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

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

- (1) The name and address of the consumer and the lender;
- (2) The transaction date;
- (3) The loan amount;
- (4) The authorized interest rate;



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



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

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

**"MULTIPLE  
INSTALLMENT  
PAYMENT**

Amount Financed

Finance Charge

**Amount you will receive**

Term (months)

Authorized Interest Rate

Monthly Maintenance Fee

**Total of All Permitted Charges**

**Total You Will Pay for This Loan**

(Amount Financed,  
Interest, and Monthly Maintenance Fee)

ANNUAL PERCENTAGE RATE

Payment Schedule"



1 (d) The consumer shall sign and date each of two copies of  
2 the written disclosure required pursuant to subsection (c), one  
3 of which shall be given to the consumer and the other of which  
4 shall be retained by the lender as part of its records of the  
5 small dollar loan. This requirement may also be accomplished by  
6 electronically signing an electronic copy of the disclosure and  
7 making the disclosure electronically available to the consumer,  
8 if the consumer is applying for the loan over the Internet. For  
9 purposes of preparing the written disclosure, the small dollar  
10 loan shall be structured on a precomputed basis (total of  
11 payments) with the assumption that all payments will be made as  
12 scheduled.

13 (e) The written agreement may include a demand feature  
14 that permits the lender or any other person, in the event the  
15 consumer fails to make any payment when due, to terminate the  
16 small dollar loan in advance of the original maturity date, but  
17 no earlier than ten days after the missed payment, and demand  
18 repayment of the entire outstanding balance. If the written  
19 agreement includes a demand feature and the demand feature is  
20 exercised, the lender shall be entitled to collect only the  
21 outstanding balance and a prorated portion of the unpaid



1 interest and fees earned up to the date of termination. For  
2 purposes of this subsection, the outstanding balance and  
3 prorated portion of the unpaid interest and fees shall be  
4 calculated as if the consumer had voluntarily prepaid the loan  
5 in full on the date of termination.

6       **§ -4 Authorized interest rate.** (a) Subject to  
7 section -2(a)(4), a small dollar lender may contract for, and  
8 receive interest at, a rate not exceeding thirty-six per cent  
9 per year on that portion of the unpaid principal balance of the  
10 small dollar loan. Loans shall be precomputed. Any loan  
11 charges assessed in compliance with this chapter shall be exempt  
12 from chapter 478.

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) Small dollar loans shall be repayable in substantially  
19 equal and consecutive monthly installments of principal and  
20 interest combined; provided that the first installment period  
21 may exceed 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 provided further that monthly installment payment dates may be  
4 omitted if the parties agree in writing, either in the written  
5 agreement required under section -3 or in a subsequent  
6 agreement, to accommodate consumers with seasonal income.

7 (d) Payments may be applied to the combined total of  
8 principal and precomputed interest until maturity of the small  
9 dollar loan, with priority given to any past due interest before  
10 applying payments to the principal.

11 (e) If a small dollar loan is prepaid in full or renewed  
12 prior to the loan's maturity date, the lender shall refund to  
13 the consumer a prorated portion of the unearned and unaccrued  
14 interest and monthly maintenance fees based on a ratio of the  
15 number of days the loan was outstanding and the number of days  
16 for which the loan was originally contracted.

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



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

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

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

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

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

(i) A lender shall not collect a default charge on any installment not paid in full within ten days after its due date.

A lender may charge a default charge of \$30 on an installment not paid in full after ten days have passed since its due date.

For purposes of this subsection, all installments are considered paid in the order in which they become due.



1           §   -5   **Maximum loan amount; prohibition against multiple**  
2   **loans.**   (a)   A lender shall not lend an amount less than \$600  
3   nor greater than \$1,500 nor shall the amount financed exceed  
4   \$1,500 by any one lender at any time to a consumer.

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

9           (1)   The small dollar lender;

10          (2)   A person related to the small dollar lender by common  
11               ownership or control;

12          (3)   A person in whom the small dollar lender has any  
13               financial interest of ten per cent or more; or

14          (4)   Any employee or agent of the small dollar lender.

15          (c)   If a consumer's spouse obtains a small dollar loan  
16   voluntarily and separately from the consumer, and subsequently  
17   the consumer obtains a small dollar loan voluntarily and  
18   separately from the consumer's spouse, such that neither the  
19   consumer nor the consumer's spouse are coborrowers with each  
20   other on either loan, and the consumer's action is documented in  
21   writing, either in the written agreement required under





1 section -3 or in a subsequent agreement, signed by the  
2 consumer, and retained by the lender, the secondary transaction  
3 shall not be considered a violation of this section.

4       **§ -6 Right of rescission.** (a) A consumer shall have  
5 the right to rescind a small dollar loan, on or before 5:00 p.m.  
6 on the next day of business at the location where the loan was  
7 originated, by returning the principal in cash, the original  
8 check or money order disbursed by the lender, or the other  
9 disbursement of loan proceeds from the lender to fund the loan.

10 The lender shall not charge the consumer for rescinding the  
11 loan.

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

16       "RESCINDED BY [lender's name; license number], [date]"  
17 and below which the lender's authorized representative shall  
18 sign.

19       **§ -7 Notice to consumers; general requirements; right to**  
20 **prepay; loan limits; right to rescind.** A small dollar lender  
21 shall provide the following notice on each written agreement for



1 a small dollar loan. The notice shall be in a prominent place  
2 and in at least twelve-point type:

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

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

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

9 RENEWING THIS SMALL DOLLAR LOAN RATHER THAN  
10 PAYING THE DEBT IN FULL MAY REQUIRE ADDITIONAL FEES OR  
11 CHARGES.

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

16 YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY  
17 5:00 P.M. [SPECIFY HERE THE CLOSE OF THE NEXT BUSINESS  
18 DAY BY DAY OF WEEK AND DATE]."

19 **\$ -8 Renewal; new loan requirements; consecutive loans;**  
20 **payment plan.** (a) A small dollar loan may be renewed only



1 once. After one renewal, the consumer shall pay the debt in  
2 cash or its equivalent.

3 (b) Upon renewal of a small dollar loan, the lender may  
4 renew up to \$1,500 of the remaining unpaid principal balance.  
5 If the unpaid balance on renewal is more than \$1,500, the  
6 consumer may be required to pay the remaining balance; provided  
7 that the lender shall not finance any amount over \$1,500. The  
8 total amount of loan charges for the renewed loan shall meet the  
9 requirements of section -2, with the understanding that the  
10 total amount of loan charges a small dollar lender may charge,  
11 collect, or receive in connection with the renewal of a small  
12 dollar loan shall not exceed fifty per cent of the renewal  
13 principal loan amount. If the small dollar loan is renewed  
14 prior to the maturity date, the lender shall refund to the  
15 consumer a prorated portion of the finance charge based upon the  
16 ratio of time left before maturity to the loan term.

17 **§ -9 Form of loan proceeds.** A small dollar lender may  
18 pay the proceeds from or otherwise fund a small dollar loan to  
19 the consumer in the form of a monetary instrument, prepaid debit  
20 cards, Automated Clearing House transfers, electronic checks,  
21 other forms of electronic transfers, money order, or cash.



1       §   -10   Delinquent small dollar loans; restrictions on  
2   collection by lender or third party. (a) A small dollar lender  
3   shall comply with all applicable state and federal laws when  
4   collecting a delinquent small dollar loan. A lender may take  
5   civil action to collect principal, interest, fees, and costs  
6   allowed under this chapter. A lender may not threaten criminal  
7   prosecution as a method of collecting a delinquent small dollar  
8   loan or threaten to take any legal action against the consumer  
9   that is not otherwise permitted by law.

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

18       (c) A lender shall not communicate with a consumer in a  
19   manner intended to harass, intimidate, abuse, or embarrass a  
20   consumer, including but not limited to communication at an  
21   unreasonable hour, with unreasonable frequency, by threats of



1 force or violence, or by use of offensive language. A  
2 communication shall be presumed to have been made for the  
3 purposes of harassment if it is initiated by the lender for the  
4 purposes of collection and the communication is made:

5 (1) With the consumer's spouse or the consumer's domestic  
6 partner in any form, manner, or place, more than once,  
7 excluding calling a shared phone number and asking to  
8 speak to the consumer, sending a text message to a  
9 shared phone number, sending an electronic mail to a  
10 shared electronic mail address, or other electronic  
11 writing to a shared electronic account;

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

14 (3) With the consumer, the consumer's spouse, or the  
15 consumer's domestic partner at the consumer's place of  
16 residence between the hours of 9:00 p.m. and  
17 8:00 a.m.; or

18 (4) To a party other than the consumer, the consumer's  
19 attorney, the lender's attorney, or a consumer credit  
20 reporting agency if otherwise permitted by law, except



1           for the purposes of acquiring location or contact  
2           information about the consumer.

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

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

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

15          (1) "Communication" includes the time the lender initiates  
16          contact with a consumer, regardless of whether the  
17          communication is received or accessed by the consumer;  
18          and

19          (2) "Communication" does not include:



1 (A) Verbal communication with the consumer while the  
2 consumer is physically present in the lender's  
3 place of business;

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

8 (C) An initial letter to the consumer that includes  
9 disclosures under the federal Fair Debt  
10 Collection Practices Act.

11 **§ -11 Authorized insufficient funds charge. (a)**

12 Regardless of the number of instances where a consumer's payment  
13 is rejected due to insufficient funds, a small dollar lender may  
14 contract for and collect one insufficient funds charge for each  
15 payment due on a small dollar loan, not to exceed \$25. The  
16 lender shall not collect any other fees as a result of the  
17 insufficient funds of the consumer.

18 (b) If the loan proceeds instrument delivered by the small  
19 dollar lender to the consumer is dishonored by the financial  
20 institution, the small dollar lender shall cover any fees and



1 charges incurred by the consumer as a direct result of the  
2 dishonored loan proceeds instrument.

3       **§ -12 Posting of license and loan charges.** Any small  
4 dollar lender offering a small dollar loan shall conspicuously  
5 and continuously post at any place of business where small  
6 dollar loans are made, the license required pursuant to this  
7 chapter and a notice of the loan charges imposed for small  
8 dollar loans.

9       **§ -13 Internet lending.** (a) A small dollar lender may  
10 advertise and accept applications for small dollar loans by any  
11 lawful medium, including but not limited to the Internet, and  
12 may provide all required notices and disclosures via the  
13 Internet, and the consumer may provide a valid electronic  
14 signature on the disclosures and loan agreement, subject to  
15 subsection (b).

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

20       (c) The unique identifier of any small dollar lender  
21 originating a small dollar loan, except a person who is exempt





1 from licensure under this chapter, shall be clearly shown on all  
2 solicitations, including websites, and all other documents, as  
3 established by rule or order of the commissioner.

4       **§ -14 Notice on assignment or sale of contract.** (a) No  
5 licensee may pledge, negotiate, sell, or assign a current and  
6 performing small dollar loan, except to another licensee or to a  
7 bank, savings bank, trust company, savings and loan or building  
8 and loan association, or credit union organized under the laws  
9 of this State or the laws of the United States.

10       (b) Prior to sale or assignment of a current and  
11 performing small dollar loan contract held by the small dollar  
12 lender as a result of a small dollar loan, the lender shall  
13 place a notice on the small dollar loan contract in at least  
14 twelve-point type that reads:

15                       "SMALL DOLLAR LOAN

16               No licensee may pledge, negotiate, sell, or  
17 assign a small dollar loan, except to another licensee  
18 or to a bank, savings bank, trust company, savings and  
19 loan or building and loan association, or credit union  
20 organized under the laws of Hawaii or the laws of the  
21 United States."



(c) This section shall not apply to:

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

(2) The pledge or other granting of a security interest in the small dollar loan to a financial institution in connection with asset back financing or similar lending facility of the small dollar lender;

provided that the small dollar lender shall not pledge, negotiate, sell, assign, or otherwise relinquish its servicing rights and requirements on the small dollar loan.

**§ -15 Maintenance of books and records.** (a) Every

small dollar lender shall keep in a safe and secure place those books and records that directly relate to any small dollar loan made within this State, and other books and records as may be necessary for the commissioner to ensure full compliance with the laws of this State.

(b) All books and records may be maintained as originals or photocopies, on microfilm or microfiche, on computer disks or



1 tapes, or similar forms; provided that the books and records are  
2 readily accessible and may be easily examined.

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

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

10 **PART II. LICENSING**

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

14 **§ -32 Exemptions.** This chapter shall not apply to the  
15 following:

- 16 (1) A financial institution;  
17 (2) A nondepository financial service loan company;  
18 (3) An "open end credit plan", as defined in the Truth in  
19 Lending Act, title 15 United States Code section  
20 1602(j); or  
21 (4) A tax refund anticipation loan.



1           §   -33   License; application; issuance. (a) The  
2 commissioner shall require all licensees to register with NMLS.

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

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

11          (2) The principal place of business;

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

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



1 (c) To fulfill the purposes of this chapter, the  
2 commissioner may enter into agreements or contracts with NMLS or  
3 other entities to use NMLS to collect and maintain records and  
4 process transaction fees or other fees related to licensees or  
5 other persons subject to this chapter.

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

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

- 15 (1) Fingerprints of the applicant or, if an applicant is  
16 not an individual, each of the applicant's control  
17 persons, executive officers, directors, general  
18 partners, and managing members for submission to the  
19 Federal Bureau of Investigation and any governmental  
20 agency or entity authorized to receive the  
21 fingerprints for a state, national, and international



1 criminal history background check, accompanied by the  
2 applicable fee charged by the entities conducting the  
3 criminal history background check; and

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

10 (A) An independent credit report obtained from a  
11 consumer reporting agency described in section  
12 603(p) of the Fair Credit Reporting Act, title 15  
13 United States Code section 1681a(p); and

14 (B) Information related to any administrative, civil,  
15 or criminal findings by any governmental  
16 jurisdiction;

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



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

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

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

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

17 (1) 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 never had a small  
21 dollar lender license revoked in any jurisdiction;



1 provided that a subsequent formal vacation of a  
2 revocation shall not be deemed a revocation;

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

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

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

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

18 (3) 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 demonstrated





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

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

- 19 (4) The applicant or, in the case of an applicant that is  
20 not an individual, each of the applicant's control  
21 persons, executive officers, directors, general



1           partners, and managing members, has not been convicted  
2           of, pled guilty or nolo contendere to, or been granted  
3           a deferred acceptance of a guilty plea under federal  
4           law or chapter 853 to any misdemeanor involving an act  
5           of fraud, dishonesty, breach of trust, or money  
6           laundering;

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

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

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

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



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

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

11 (3) Who has advertised directly and purposefully to Hawaii  
12 consumers or made internet loans in violation of this  
13 chapter; or

14 (4) Who has failed to complete an application for  
15 licensure.

16 (d) A license issued in accordance with this chapter shall  
17 remain in force and effect until surrendered, suspended, or  
18 revoked, or until the license expires as a result of nonpayment  
19 of the annual license renewal fee as required by this chapter.



1           §    **-35 Fees; bond.** (a) A small dollar lender shall pay  
2 the following fees to the division to obtain and maintain a  
3 valid license under this chapter:

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

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

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

7           (4) Applicable fee charged by the entities conducting the  
8 criminal history background check of each of the

9 applicant's control persons, executive officers,

10 directors, general partners, and managing members for

11 submission to the Federal Bureau of Investigation and

12 any governmental agency or entity authorized to

13 receive the fingerprints for a state, national, and

14 international criminal history background check; and

15           (5) Applicable fee charged by the entities conducting an

16 independent credit report obtained from a consumer

17 reporting agency described in section 603(p) of the

18 Fair Credit Reporting Act, title 15 United States Code

19 section 1681a(p).



1 (b) Each branch office shall pay the following fees to the  
2 division to obtain and maintain a valid license under this  
3 chapter:

4 (1) Nonrefundable initial application fee of \$600; and

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

6 (c) The applicant shall file and maintain a surety bond,  
7 approved by the commissioner, executed by the applicant as  
8 obligor and by a surety company authorized to operate as a  
9 surety in this State, whose liability as a surety does not  
10 exceed, in the aggregate, the penal sum of the bond. The penal  
11 sum of the bond shall be a minimum of \$30,000 and a maximum of  
12 \$250,000, based upon the annual dollar amount of loans  
13 originated.

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

19 (1) The licensee as obligor shall faithfully conform to  
20 and abide by this chapter and all the rules adopted  
21 under this chapter; and



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

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

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

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

(1) A copy of the licensee's most recent audited annual financial statement, including balance sheets, statement of income or loss, statement of changes in shareholders' equity, and statement of cash flows or, if a licensee is a wholly owned subsidiary of another corporation, the consolidated audited annual financial



1 statement of the parent corporation in lieu of the  
2 licensee's audited annual financial statement;

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

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

6 (B) The number of small dollar loans the lender is  
7 servicing;

8 (C) The type and characteristics of loans serviced in  
9 this State;

10 (D) The number of small dollar serviced loans in  
11 default; and

12 (E) Any other information that the commissioner may  
13 require;

14 (3) Any material changes to any of the information  
15 submitted by the licensee on its original application  
16 that have not previously been reported to the  
17 commissioner on any other report required to be filed  
18 under this chapter;

19 (4) A list of the principal place of business and branch  
20 locations, if any, within this State where business



1 regulated by this chapter is being conducted by the  
2 licensee;

3 (5) Disclosure of any pending or final suspension,  
4 revocation, or other enforcement action by any state  
5 or governmental authority; and

6 (6) Any other information the commissioner may require.

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

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





1 extension of the renewal date or reduce or suspend the \$250 per  
2 day late filing fee.

3       **§ -37 Enforcement authorities; violations; penalties.**

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

8       (1) The applicant or licensee has violated this chapter or  
9           any rule or order lawfully made pursuant to this  
10          chapter;

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

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

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

20       (5) The applicant or licensee is insolvent;



1           (6) The applicant or licensee has made, in any document or  
2           statement filed with the commissioner, a false  
3           representation of a material fact or has omitted to  
4           state a material fact;

5           (7) The applicant, licensee, or, if an applicant or  
6           licensee is not an individual, each of the applicant's  
7           or licensee's control persons, executive officers,  
8           directors, general partners, and managing members have  
9           been convicted of or entered a plea of guilty or nolo  
10          contendere to a crime involving fraud or deceit, or to  
11          any similar crime under the jurisdiction of any  
12          federal court or court of another state;

13          (8) The applicant or licensee has failed to make,  
14          maintain, or produce records that comply with  
15          section     -15 or any rule adopted by the commissioner  
16          pursuant to chapter 91;

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

20          (10) A final judgment has been entered against the  
21          applicant or licensee for violations of this chapter,



1 any state or federal law concerning small dollar  
2 loans, deferred deposit loans, check cashing, payday  
3 loans, banking, mortgage loan originators, money  
4 transmitters, or any state or federal law prohibiting  
5 unfair or deceptive acts or practices; or

6 (11) The applicant or licensee has failed, in a timely  
7 manner as specified by the commissioner, to take or  
8 provide proof of the corrective action required by the  
9 commissioner subsequent to an investigation or  
10 examination pursuant to section -43.

11 (b) After a finding of one or more of the conditions under  
12 subsection (a), the commissioner may take any or all of the  
13 following actions:

14 (1) Deny an application for licensure, including an  
15 application for a branch office license;

16 (2) Revoke the license;

17 (3) Suspend the license for a period of time;

18 (4) Issue an order to the licensee to cease and desist  
19 from engaging in any act specified under subsection

20 (a);



1           (5) Order the licensee to make refunds to consumers of  
2           excess charges under this chapter;  
3           (6) Impose penalties of up to \$1,000 for each violation;  
4           or  
5           (7) Bar a person from applying for or holding a license  
6           for a period of five years following revocation of the  
7           person's license.  
8           (c) The commissioner may issue a temporary cease and  
9           desist order if the commissioner makes a finding that the  
10          licensee, applicant, or person is engaging, has engaged, or is  
11          about to engage in an illegal, unauthorized, unsafe, or unsound  
12          practice in violation of this chapter. Whenever the  
13          commissioner denies a license application or takes disciplinary  
14          action pursuant to this subsection, the commissioner shall enter  
15          an order to that effect and notify the licensee, applicant, or  
16          person of the denial or disciplinary action. The notification  
17          required by this subsection shall be given by personal service  
18          or by mail to the last known address of the licensee or  
19          applicant as shown on the application, license, or as  
20          subsequently furnished in writing to the commissioner.



1 (d) The revocation, suspension, expiration, or surrender  
2 of a license shall not affect the licensee's liability for acts  
3 previously committed or impair the commissioner's ability to  
4 issue a final agency order or impose discipline against the  
5 licensee.

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

9 (f) The commissioner may reinstate a license, terminate a  
10 suspension, or grant a new license to a person whose license has  
11 been revoked or suspended if no fact or condition then exists  
12 that clearly would justify the commissioner in revoking,  
13 suspending, or refusing to grant a license.

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



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

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

**§ -38 Voluntary surrender of license.** (a) A licensee may voluntarily cease business and surrender its license by giving written notice to the commissioner of its intent to surrender its license. Prior to the surrender date of a license, the licensee shall have either completed all pending small dollar loan transactions or assigned each pending small dollar loan transaction to another licensee or entity described in section -14.

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

(1) The date of surrender;



- 1           (2) The name, address, telephone number, facsimile number,  
2           and electronic mail address of a contact individual  
3           with knowledge and authority sufficient to communicate  
4           with the commissioner regarding all matters relating  
5           to the licensee during the period that it was licensed  
6           pursuant to this chapter;
- 7           (3) The reason or reasons for surrender;
- 8           (4) Total dollar amount of the licensee's outstanding  
9           small dollar loans sold in Hawaii and the individual  
10          amounts of each outstanding small dollar loan, and the  
11          name, address, and contact telephone number of the  
12          licensee to whom each outstanding small dollar loan  
13          was assigned;
- 14          (5) A list of the licensee's Hawaii authorized branch  
15          offices, if any, as of the date of surrender;
- 16          (6) Confirmation that the licensee has notified each of  
17          its Hawaii authorized branch offices, if any, that the  
18          branch offices may no longer make small dollar loans  
19          on the licensee's behalf; and
- 20          (7) Confirmation that the licensee has notified each of  
21          its small dollar loan consumers, if any, that the



1           small dollar loan is being transferred and the name,  
2           address, telephone number, and any other contact  
3           information of the licensee or entity described in  
4           section     -14 to whom the small dollar loan was  
5           assigned.

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

11          **§   -39   Sale or transfer of license; change of control.**

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

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

19          (c) After review of a request for approval under  
20          subsection (b), the commissioner may require the licensee or  
21          person or group of persons requesting approval of a proposed





1 change of control of the licensee, or both, to provide  
2 additional information concerning the persons who shall assume  
3 control of the licensee. The additional information shall be  
4 limited to similar information required of the licensee or  
5 persons in control of the licensee as part of its original  
6 license or renewal application under sections -33 and -36.  
7 The information shall include, for the five-year period prior to  
8 the date of the application for change of control of the  
9 licensee, a history of material litigation and criminal  
10 convictions of each person who, upon approval of the application  
11 for change of control, will be a principal of the licensee.  
12 Authorization shall also be given to conduct criminal history  
13 record checks of those persons, accompanied by the appropriate  
14 payment of the applicable fee for each record check.

15 (d) The commissioner shall approve a request for change of  
16 control under subsection (b) if, after investigation, the  
17 commissioner determines that the person or group of persons  
18 requesting approval has the competence, experience, character,  
19 and general fitness to control the licensee or person in control  
20 of the licensee in a lawful and proper manner, and that the



1 interests of the public will not be jeopardized by the change of  
2 control.

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

7 (1) A person who acts as a proxy for the sole purpose of  
8 voting at a designated meeting of the security holders  
9 or holders of voting interests of a licensee or person  
10 in control of a licensee;

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

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

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

19 (f) Before filing a request for approval for a change of  
20 control, a person may request, in writing, a determination from  
21 the commissioner as to whether the person would be considered a



1 person in control of a licensee upon consummation of a proposed  
2 transaction. If the commissioner determines that the person  
3 would not be a person in control of a licensee, the commissioner  
4 shall enter an order to that effect and the proposed person and  
5 transaction shall not be subject to subsections (b) through (d).

6 (g) Subsection (b) shall not apply to public offerings of  
7 securities.

8 **§ -40 Authorized places of business; principal office;**  
9 **branch offices; relocation; closure.** (a) Every small dollar  
10 lender licensed under this chapter shall have and maintain a  
11 principal place of business in the State, regardless of whether  
12 the small dollar lender maintains its principal office outside  
13 of the State.

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

19 (c) A small dollar lender shall not maintain any branch  
20 offices in the State in addition to its principal place of  
21 business without the prior written approval of the commissioner.



1 An application to establish a branch office shall be submitted  
2 through NMLS with a nonrefundable application fee as required by  
3 section -35.

4 (d) A small dollar lender shall not relocate any office in  
5 this State without the prior written approval of the  
6 commissioner. An application to relocate an office shall be  
7 submitted to the commissioner at least thirty days prior to  
8 relocating and shall set forth the reasons for the relocation,  
9 the street address of the proposed relocated office, and other  
10 information that may be required by the commissioner. An  
11 application to relocate an office pursuant to this subsection  
12 shall be submitted with a nonrefundable fee as required by  
13 section -35.

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

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

18 (2) Specify the reasons for the closing.

19 (f) The principal place of business and each branch office  
20 of the small dollar lender shall be identified in NMLS to



1 consumers as a location at which the licensee holds itself out  
2 as a small dollar lender.

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

6 § -41 **Payment of fees.** All fees collected pursuant to  
7 section -35, administrative fines, and other charges  
8 collected pursuant to this chapter shall be deposited into the  
9 compliance resolution fund established pursuant to  
10 section 26-9(o) and shall be payable through NMLS, to the extent  
11 allowed by NMLS. Fees not eligible for payment through NMLS  
12 shall be deposited into a separate account within the compliance  
13 resolution fund for use by the division.

14 § -42 **Powers of commissioner.** (a) The commissioner may  
15 adopt rules pursuant to chapter 91 as the commissioner deems  
16 necessary for the administration of this chapter.

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

19 (1) Issue declaratory rulings or informal nonbinding  
20 interpretations;



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



1 and duties, including the authority to conduct  
2 contested case proceedings under chapter 91;

3 (7) Require a licensee to comply with any rule, guidance,  
4 guideline, statement, supervisory policy or any  
5 similar proclamation issued or adopted by the Federal  
6 Deposit Insurance Corporation to the same extent and  
7 in the same manner as a bank chartered by the State  
8 or, in the alternative, any policy position of the  
9 Conference of State Bank Supervisors;

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

16 (9) Use, hire, contract, or employ public or privately  
17 available analytical systems, methods, or software to  
18 investigate or examine a licensee or person subject to  
19 this chapter;



1 (10) Accept and rely on investigation or examination  
2 reports made by other government officials, within or  
3 without this State; and

4 (11) Accept audit reports made by an independent certified  
5 public accountant for the licensee or person subject  
6 to this chapter in the course of that part of the  
7 examination covering the same general subject matter  
8 as the audit and may incorporate the audit report in  
9 the report of the examination, report of  
10 investigation, or other writing of the commissioner.

11 **§ -43 Investigation and examination authority.** (a) In  
12 addition to the authority granted under section -42(b), the  
13 commissioner shall have the authority to conduct investigations  
14 and examinations in accordance with this section. The  
15 commissioner may access, receive, and use any books, accounts,  
16 records, files, documents, information, or evidence that the  
17 commissioner deems relevant to the investigation or examination,  
18 regardless of the location, possession, control, or custody of  
19 the documents, information, or evidence.

20 (b) For the purposes of investigating violations or  
21 complaints arising under this chapter, or for the purposes of





1 examination, the commissioner may review, investigate, or  
2 examine any licensee or person subject to this chapter as often  
3 as necessary to carry out the purposes of this chapter. The  
4 commissioner may direct, subpoena, or order the attendance of,  
5 and examine under oath, all persons whose testimony may be  
6 required about loans or the business or subject matter of any  
7 investigation or examination and may direct, subpoena, or order  
8 the person to produce books, accounts, records, files, and any  
9 other documents the commissioner deems relevant to the inquiry.

10 (c) Each licensee or person subject to this chapter shall  
11 provide to the commissioner, upon request, the books and records  
12 relating to the operations of the licensee or person subject to  
13 this chapter. The commissioner shall have access to the books  
14 and records and shall be permitted to interview the control  
15 persons, executive officers, directors, general partners,  
16 managing members, principals, managers, employees, independent  
17 contractors, agents, and consumers of the licensee or person  
18 subject to this chapter concerning their business.

19 (d) Each licensee or person subject to this chapter shall  
20 make or compile reports or prepare other information, as



1 directed by the commissioner, to carry out the purposes of this  
2 section, including:

3 (1) Accounting compilations;

4 (2) Information lists and data concerning loan  
5 transactions in a format prescribed by the  
6 commissioner; or

7 (3) Other information that the commissioner deems  
8 necessary.

9 (e) In conducting any investigation or examination  
10 authorized by this chapter, the commissioner may control access  
11 to any documents and records of the licensee or person under  
12 investigation or examination. The commissioner may take  
13 possession of the documents and records or place a person in  
14 exclusive charge of the documents and records. During the  
15 period of control, no person shall remove or attempt to remove  
16 any of the documents and records except pursuant to a court  
17 order or with the consent of the commissioner. Unless the  
18 commissioner has reasonable grounds to believe the documents or  
19 records of the licensee or person under investigation or  
20 examination have been, or are at risk of being, altered or  
21 destroyed for the purposes of concealing a violation of this



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

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

8 (g) No licensee or person subject to investigation or  
9 examination under this section may knowingly withhold, abstract,  
10 remove, mutilate, destroy, or secrete any books, records,  
11 computer records, or other information.

12 (h) The commissioner may charge an investigation or  
13 examination fee, payable to the commissioner, based upon the  
14 cost per hour per examiner for all licensees and persons subject  
15 to this chapter investigated or examined by the commissioner or  
16 the commissioner's staff. The hourly fee shall be \$60 or an  
17 amount as the commissioner shall establish by rule pursuant to  
18 chapter 91. In addition to the investigation or examination  
19 fee, the commissioner may charge any person who is investigated  
20 or examined by the commissioner or the commissioner's staff  
21 pursuant to this section additional amounts for travel, per



1 diem, mileage, and other reasonable expenses incurred in  
2 connection with the investigation or examination, payable to the  
3 commissioner.

4 (i) Any person having reason to believe that this chapter  
5 or the rules adopted under this chapter have been violated, or  
6 that a license issued under this chapter should be suspended or  
7 revoked, may file a written complaint with the commissioner,  
8 setting forth the details of the alleged violation or grounds  
9 for suspension or revocation.

10 § -44 Confidentiality. (a) Except as otherwise  
11 provided in title 12 United States Code section 5111, the  
12 requirements under any federal or state law regarding the  
13 privacy or confidentiality of any information or material  
14 provided to NMLS, and any privilege arising under federal or  
15 state law, including the rules of any federal or state court,  
16 with respect to the information or material shall continue to  
17 apply to the information or material after the information or  
18 material has been disclosed to NMLS. The information and  
19 material may be shared with all state and federal regulatory  
20 officials with oversight authority over transactions subject to



1 this chapter, without the loss of privilege or the loss of  
2 confidentiality protections provided by federal or state law.

3 (b) For the purposes of this section, the commissioner  
4 shall be authorized to enter into agreements or sharing  
5 arrangements with other governmental agencies, the Conference of  
6 State Bank Supervisors, or other associations representing  
7 governmental agencies as established by rule or order of the  
8 commissioner.

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

11 (1) Disclosure under any federal or state law governing  
12 the disclosure to the public of information held by an  
13 officer or an agency of the federal government or a  
14 state; or

15 (2) Subpoena or discovery, or admission into evidence, in  
16 any private civil action or administrative process,  
17 unless any privilege is determined by NMLS to be  
18 applicable to the information or material; provided  
19 that the person to whom the information or material  
20 pertains waives, in whole or in part, in the  
21 discretion of the person, that privilege.



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

5 (e) In the event of a conflict between this section and  
6 any other section of law relating to the disclosure of  
7 privileged or confidential information or material, this section  
8 shall control.

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

13 **§ -45 Prohibited practices.** (a) It shall be a  
14 violation of this chapter for a licensee, its control persons,  
15 executive officers, directors, general partners, managing  
16 members, employees, or independent contractors, or any other  
17 person subject to this chapter to:

- 18 (1) Engage in any act that limits or restricts the  
19 application of this chapter, including making a small  
20 dollar loan disguised as a leaseback transaction or a  
21 personal property, personal sales, or automobile title



1 loan, or by disguising loan proceeds as cash rebates  
2 for the pretextual installment sale of goods and  
3 services;

4 (2) Make a secured small dollar loan;

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

7 (4) Charge, collect, or receive, directly or indirectly,  
8 charges for negotiating forms of loan proceeds other  
9 than cash, charges for brokering or obtaining loans,  
10 prepayment fees, or any fees, interest, or charges in  
11 connection with a small dollar loan except those  
12 explicitly authorized in this chapter;

13 (5) Fail to make disclosures as required by this chapter  
14 and any other applicable state or federal law,  
15 including rules or regulations adopted pursuant to  
16 state or federal law;

17 (6) Directly or indirectly employ any scheme, device, or  
18 artifice to defraud or mislead any consumer, any  
19 lender, or any person;



- 1 (7) Directly or indirectly engage in unfair or deceptive  
2 acts, practices, or advertising in connection with a  
3 small dollar loan toward any person;
- 4 (8) Directly or indirectly obtain property by fraud or  
5 misrepresentation;
- 6 (9) Make a small dollar loan to any person physically  
7 located in the State through the use of the Internet,  
8 facsimile, telephone, kiosk, or other means without  
9 first obtaining a license under this chapter;
- 10 (10) Make, in any manner, any false or deceptive statement  
11 or representation, including with regard to the rates,  
12 fees, or other financing terms or conditions for a  
13 small dollar loan, or engage in bait and switch  
14 advertising;
- 15 (11) Make any false statement or knowingly and wilfully  
16 make any omission of material fact in connection with  
17 any reports filed with the division by a licensee or  
18 in connection with any investigation conducted by the  
19 division;
- 20 (12) Advertise any rate of interest without conspicuously  
21 disclosing the annual percentage rate implied by that





1 rate of interest or otherwise fail to comply with any  
2 requirement of the Truth in Lending Act, or any other  
3 applicable state or federal laws or regulations;

4 (13) Make small dollar loans from any unlicensed location;

5 (14) Draft funds from any depository financial institution  
6 without written approval of the consumer; provided  
7 that nothing in this paragraph shall prohibit the  
8 conversion of a negotiable instrument into an  
9 electronic form for processing through the Automated  
10 Clearing House or similar system;

11 (15) Attempt to collect from a consumer's account after two  
12 consecutive attempts have failed, unless the licensee  
13 obtains new written authorization from the consumer to  
14 transfer or withdraw funds from the account;

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



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

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

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

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

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

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

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

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



1       **"§478-5 Usury not recoverable.** If a greater rate of  
2 interest than that permitted by law is contracted for with  
3 respect to any consumer credit transaction, any home business  
4 loan or any credit card agreement, the contract shall not, by  
5 reason thereof, be void. But if in any action on the contract  
6 proof is made that a greater rate of interest than that  
7 permitted by law has been directly or indirectly contracted for,  
8 the creditor shall only recover the principal and the debtor  
9 shall recover costs. If interest has been paid, judgment shall  
10 be for the principal less the amount of interest paid. This  
11 section shall not be held to apply[~~, to loans~~] to:

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

15       (2) Any small dollar loan regulated under chapter ; or

16       (3) Fees authorized under and pursuant to chapter 480F."

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

19       **"§478-6 Usury; penalty.** Any person who directly or  
20 indirectly receives any interest or finance charge at a rate  
21 greater than that permitted by law or who, by any method or



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

6 SECTION 6. Section 846-2.7, Hawaii Revised Statutes, is  
7 amended by amending subsection (b) to read as follows:

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

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

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

20 (3) The department of health or its designee on all  
21 applicants for licensure or certification for,



1 operators for, prospective employees, adult  
2 volunteers, and all adults, except adults in care, at  
3 healthcare facilities as defined in section 321-15.2;

4 (4) The department of education on employees, prospective  
5 employees, and teacher trainees in any public school  
6 in positions that necessitate close proximity to  
7 children as provided by section 302A-601.5;

8 (5) The counties on employees and prospective employees  
9 who may be in positions that place them in close  
10 proximity to children in recreation or child care  
11 programs and services;

12 (6) The county liquor commissions on applicants for liquor  
13 licenses as provided by section 281-53.5;

14 (7) The county liquor commissions on employees and  
15 prospective employees involved in liquor  
16 administration, law enforcement, and liquor control  
17 investigations;

18 (8) The department of human services on operators and  
19 employees of child caring institutions, child placing  
20 organizations, and foster boarding homes as provided  
21 by section 346-17;



- 1           (9)   The department of human services on prospective  
2           adoptive parents as established under section  
3           346-19.7;
- 4           (10) The department of human services or its designee on  
5           applicants to operate child care facilities, household  
6           members of the applicant, prospective employees of the  
7           applicant, and new employees and household members of  
8           the provider after registration or licensure as  
9           provided by section 346-154, and persons subject to  
10          section 346-152.5;
- 11          (11) The department of human services on persons exempt  
12          pursuant to section 346-152 to be eligible to provide  
13          child care and receive child care subsidies as  
14          provided by section 346-152.5;
- 15          (12) The department of health on operators and employees of  
16          home and community-based case management agencies and  
17          operators and other adults, except for adults in care,  
18          residing in community care foster family homes as  
19          provided by section 321-15.2;



- 1       (13) The department of human services on staff members of  
2       the Hawaii youth correctional facility as provided by  
3       section 352-5.5;
- 4       (14) The department of human services on employees,  
5       prospective employees, and volunteers of contracted  
6       providers and subcontractors in positions that place  
7       them in close proximity to youth when providing  
8       services on behalf of the office or the Hawaii youth  
9       correctional facility as provided by section 352D-4.3;
- 10      (15) The judiciary on employees and applicants at detention  
11      and shelter facilities as provided by section 571-34;
- 12      (16) The department of public safety on employees and  
13      prospective employees who are directly involved with  
14      the treatment and care of persons committed to a  
15      correctional facility or who possess police powers  
16      including the power of arrest as provided by section  
17      353C-5;
- 18      (17) The board of private detectives and guards on  
19      applicants for private detective or private guard  
20      licensure as provided by section 463-9;



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





subcontracted service providers and their employees,  
and adult volunteers as provided by section 321-15.2;

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

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

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



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

6       (26) The department of commerce and consumer affairs on  
7           proposed directors and executive officers of a  
8           nondepository financial services loan company as  
9           provided by section 412:3-301;

10      (27) The department of commerce and consumer affairs on the  
11          original chartering applicants and proposed executive  
12          officers of a credit union as provided by section  
13          412:10-103;

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

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

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

20          (C) Each person who upon approval of an application  
21              requesting approval of a proposed change in



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



1 applicant for a mortgage loan originator company

2 license or license renewal,

3 as provided by chapter 454F;

4 (32) The state public charter school commission or public

5 charter schools on employees, teacher trainees,

6 prospective employees, and prospective teacher

7 trainees in any public charter school for any position

8 that places them in close proximity to children, as

9 provided in section 302D-33;

10 (33) The counties on prospective employees who work with

11 children, vulnerable adults, or senior citizens in

12 community-based programs;

13 (34) The counties on prospective employees for fire

14 department positions which involve contact with

15 children or vulnerable adults;

16 (35) The counties on prospective employees for emergency

17 medical services positions which involve contact with

18 children or vulnerable adults;

19 (36) The counties on prospective employees for emergency

20 management positions and community volunteers whose

21 responsibilities involve planning and executing



1 homeland security measures including viewing,  
2 handling, and engaging in law enforcement or  
3 classified meetings and assisting vulnerable citizens  
4 during emergencies or crises;

5 (37) The State and counties on employees, prospective  
6 employees, volunteers, and contractors whose position  
7 responsibilities require unescorted access to secured  
8 areas and equipment related to a traffic management  
9 center;

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

13 (39) The State and counties on current and prospective  
14 systems analysts and others involved in an agency's  
15 information technology operation whose position  
16 responsibilities provide them with access to  
17 proprietary, confidential, or sensitive information;

18 (40) The department of commerce and consumer affairs on:

19 (A) Applicants for real estate appraiser licensure or  
20 certification as provided by chapter 466K;



1 (B) Each person who owns more than ten per cent of an  
2 appraisal management company who is applying for  
3 registration as an appraisal management company,  
4 as provided by section 466L-7; and

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

8 (41) The department of health or its designee on all  
9 license applicants, licensees, employees, contractors,  
10 and prospective employees of medical cannabis  
11 dispensaries, and individuals permitted to enter and  
12 remain in medical cannabis dispensary facilities as  
13 provided under sections 329D-15(a)(4) and  
14 329D-16(a)(3);

15 (42) The department of commerce and consumer affairs on  
16 applicants for nurse licensure or license renewal,  
17 reactivation, or restoration as provided by sections  
18 457-7, 457-8, 457-8.5, and 457-9;

19 (43) The county police departments on applicants for  
20 permits to acquire firearms pursuant to section 134-2



1 and on individuals registering their firearms pursuant  
2 to section 134-3;

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

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

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

15 as provided by chapter 449;

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



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

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

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

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





1        [~~49~~] (50) Any other organization, entity, or the State, its  
2                branches, political subdivisions, or agencies as may  
3                be authorized by state law."

4        SECTION 7. There is appropriated out of the general  
5 revenues of the State of Hawaii the sum of \$                or so  
6 much thereof as may be necessary for fiscal year 2021-2022 and  
7 the same sum or so much thereof as may be necessary for fiscal  
8 year 2022-2023 to establish and hire two full-time equivalent  
9 (2.0 FTE) permanent examiners, without regard to chapter 76,  
10 Hawaii Revised Statutes, to carry out the purposes of the small  
11 dollar installment loan program established by section 2 of this  
12 Act; provided that the positions may be added to the position  
13 count for the division of financial institutions of the  
14 department of commerce and consumer affairs.

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

17                                PART III

18        SECTION 8. Chapter 480F, Hawaii Revised Statutes, is  
19 amended by adding six new sections to be appropriately  
20 designated and to read as follows:



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

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

9        (c)   Check cashier registration shall be updated annually  
10   and shall include the following:

11        (1)   The address of the principal office of the check  
12        cashier;

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

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

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



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

6 (b) The voluntary payment plan shall be structured to pay  
7 the existing debt, both the principal and the fee, in at least  
8 four equal payments that coincide with the customer's periodic  
9 pay dates or the date the customer is scheduled to receive  
10 benefits, unless the customer requests different payment due  
11 dates. The payments made pursuant to the voluntary payment plan  
12 shall be applied directly to the existing debt, and the lender  
13 shall not charge the customer any additional fee other than an  
14 administration fee not to exceed \$30 for participation in the  
15 voluntary payment plan.

16 (c) The check casher shall provide a written copy of the  
17 voluntary payment plan agreement to the customer, or an electric  
18 copy if the transaction is being conducted over the Internet.  
19 The check casher shall be prohibited from engaging in collection  
20 activities while the customer continues to make payments in  
21 accordance with the payment plan. The check casher shall be



1 prohibited from making any additional deferred deposit  
2 transactions to the customer prior to the completion of the  
3 payments under the voluntary payment plan.

4 (d) The check casher may require the customer to provide a  
5 post-dated check or electronic authorization for funds  
6 transferred for each payment under the voluntary payment plan.  
7 If any check or electronic authorization accepted by the check  
8 casher as payment for a voluntary payment plan is dishonored,  
9 the check casher shall charge the customer a fee for the  
10 dishonored instrument not to exceed \$20.

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

16 **\$480F- Single deferred deposit transaction limitation.**

17 A check casher shall take reasonable measures to ensure that no  
18 customer has more than one deferred deposit transaction  
19 outstanding at a time from all sources. A check casher that  
20 receives written confirmation from each customer that the  
21 customer does not have any outstanding deferred deposit



1 transactions as of the date the customer enters into a deferred  
2 deposit transaction with the check casher shall be deemed to  
3 have met the requirements of this section.

4 **\$480F- Fees; relation to usury.** Any fee charged in  
5 compliance with this chapter shall be exempt from chapter 478.

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

10 **\$480F- Rules.** The director shall adopt rules necessary  
11 to implement this chapter pursuant to chapter 91."

12 SECTION 9. Section 480F-1, Hawaii Revised Statutes, is  
13 amended by adding three new definitions to be appropriately  
14 inserted and to read as follows:

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

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

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



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

3 SECTION 10. Section 480F-2, Hawaii Revised Statutes, is  
4 amended to read as follows:

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

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

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

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

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



1           point type that is separate from and in addition to  
2           any posted notice[+] the following information:

3           (A) The fees charged for cashing checks; and

4           (B) That consumer complaints about the check cashing  
5           business may be filed with the department,  
6           including and identifying the telephone number  
7           and address of the consumer information service  
8           of the department;

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

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

15          SECTION 11. Section 480F-3, Hawaii Revised Statutes, is  
16          amended to read as follows:

17          "~~[+]§480F-3[+]~~ **Authorized fees.** Except as provided in  
18          ~~[section 480F-4,]~~ this chapter for check cashers that enter into  
19          deferred deposit transactions, no check casher shall charge fees  
20          in excess of the following amounts:



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

13 The fees allowed in this section shall not be assessed in any  
14 transaction or agreement in which the check casher defers  
15 deposit of the check."

16 SECTION 12. Section 480F-4, Hawaii Revised Statutes, is  
17 amended to read as follows:

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





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

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

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

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

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

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

20       (6) A copy of the registration to do business as a check  
21       casher as required by this chapter.



1        ~~[(b)]~~ (c) Each deferred deposit shall be made pursuant to  
2        a written agreement that has been signed by the customer and the  
3        check casher or an authorized representative of the check  
4        casher. The written agreement shall contain a statement of the  
5        following:

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

9        (2) Notices stating that:

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

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

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

18        (D) The customer may enter into a voluntary payment  
19        plan if the customer:

20        (i) Is experiencing financial hardship; or



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

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

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

12       ~~[(e)]~~ (d) The face amount of the check shall not exceed  
13 \$600 or twenty five per cent of the customer's gross monthly  
14 income, whichever is less, and the deposit of a personal check  
15 written by a customer pursuant to a deferred deposit transaction  
16 may be deferred for no more than thirty-two days. A check  
17 casher may charge a fee for deferred deposit of a personal check  
18 in an amount not to exceed fifteen per cent of the face amount  
19 of the check. Any fees charged for deferred deposit of a  
20 personal check in compliance with this section shall be exempt  
21 from chapter 478.



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

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

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



1       (h) For purposes of this section, "approved budget and  
2 credit counselor" and "approved housing counselor" shall have  
3 the same meaning as those terms are defined in section 667-1."

4       SECTION 13. Section 480F-5, Hawaii Revised Statutes, is  
5 amended to read as follows:

6       "~~{}~~\$480F-5~~{}~~ **Exemptions.** This chapter shall not apply  
7 to~~+~~

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

15       ~~{2}~~ ~~Any~~ any person authorized to engage in business as a  
16 bank, trust company, savings bank, savings and loan  
17 association, financial services loan company, or  
18 credit union under the laws of the United States, any  
19 state or territory of the United States, or the  
20 District of Columbia."



SECTION 14. Section 480F-6, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

~~[(d) A customer who enters into a written deferred deposit agreement and offers a personal check to a check casher pursuant to that agreement shall not be subject to any criminal penalty 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 15. (a) The division of financial institutions of  
4 the department of commerce and consumer affairs shall conduct an  
5 analysis of the regulation of payday lenders and deferred  
6 deposit agreements and its impact on consumer protection in the  
7 State as part of its implementation of the purposes of this Act.

8 (b) In conducting the analysis, the division of financial  
9 institutions of the department of commerce and consumer affairs  
10 shall examine the following:

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

13 (2) Data regarding consumer complaints;

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

17 (4) Any further measures necessary for increased consumer  
18 protection in the State.

19 (c) The division of financial institutions of the  
20 department of commerce and consumer affairs shall submit a  
21 report of findings and recommendations, including any proposed



1 legislation, to the legislature no later than twenty days prior  
2 to the convening of the regular session of 2023.

3 PART IV

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

7 SECTION 17. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 18. This Act shall take effect on July 1, 2022;  
10 provided that the licensing requirements for small dollar  
11 lenders established by section 2 of this Act shall take effect  
12 on January 1, 2023.

13  
INTRODUCED BY:



JAN 26 2021





# H.B. NO. 1192

**Report Title:**

Payday Lending; Small Dollar Loans; Small Dollar Lenders;  
Licensure; Requirements; Check Cashers; Registration; Voluntary  
Payment Plans; Notices; 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 1/1/2023, requires licensure for small dollar lenders that offer small dollar loans to consumers. Specifies licensing requirements for small dollar lenders. Authorizes the division of financial institutions to appoint 2.0 FTE examiner positions, funded via the compliance resolution fund, to carry out the purposes of the small dollar installment loan program. Requires check cashers to be registered with DCCA and to offer a voluntary payment plan to customers under certain circumstances. Establishes the terms of voluntary payment plans. Clarifies that a customer may only have one outstanding deferred deposit transaction from any source. Amends notices to customers required of check cashers. Removes the exemption for persons engaged in the bona fide retail sale of goods or services. Requires the division of financial institutions of the DCCA to conduct an analysis of the regulation of payday lenders and deferred deposit agreements in the State. Effective 7/1/2022.

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

