

JAN 27 2021

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 only thirty-one per cent of households in the State were financially healthy. That means that more than two in three families regularly spent more than they earned, failed to pay all their bills on time, and/or had inadequate liquid and long-term savings.

The 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 of households are "underbanked," meaning they may have either a checking account or a savings account but may rely on an alternative financial services product as well. These include money orders, check cashing, payday loans and pawn shop or auto title loans services. Despite the high costs, these types of products were used by twenty-one per cent of households at least once during



1 the year as many found the convenience and quick access to cash
2 appealing.

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

13 Unfortunately, due to the State's current deferred deposit
14 law, the payday lending industry can engage in practices that
15 trap consumers in unsustainable cycles of debt. Payday lenders
16 structure loans with unrealistically short repayment terms,
17 unaffordable payments, and excessive fees, resulting in long-
18 term, high-cost debt and harm to the consumer. Lenders are also
19 granted access to the borrower's checking account and may
20 continue to debit the consumer's account after the deferred
21 deposit loan is repaid. The Pew Charitable Trusts has reported



1 that the average Hawaii payday borrower incurs \$529 in fees to
2 borrow \$300 over five months. Research also shows that this
3 amount is nearly three times higher than what the same lenders
4 charge similarly situated consumers in other states.

5 The legislature notes that there has been a growing trend
6 around the country to provide more consumer protections, which
7 benefit consumers and encourage responsible and transparent
8 lending, for deferred deposit transactions and small dollar
9 installment loans within the payday lending industry. Many
10 payday borrowers across the nation have found themselves trapped
11 in a cycle of debt because of high annual interest rates and
12 fees, especially if loans are not repaid on time or if loans are
13 rolled over into a new loan.

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

- 17 (1) Providing for new viable installment-based small
18 dollar loan transactions in addition to enhanced
19 deferred deposit transactions;
- 20 (2) Specifying various consumer protection requirements
21 for small dollar loans;



- 1 (3) Beginning January 1, 2023, requiring licensure for
2 small dollar lenders that offer small dollar loans to
3 consumers, subject to the oversight of the division of
4 financial institutions of the department of commerce
5 and consumer affairs to protect against illegal
6 lending;
- 7 (4) Specifying licensing requirements for small dollar
8 lenders;
- 9 (5) Capping interest at thirty-six per cent per annum and
10 one simple maximum monthly maintenance fee tiered up
11 to \$50.00;
- 12 (6) Amortizing loans in full and renewing the loan while
13 also permitting borrowers to choose to repay the loan
14 without penalty;
- 15 (7) Capping maximum allowable costs at sixty per cent of
16 the principal loan amount, preventing a loan from
17 being either too short or too long in duration;
- 18 (8) Capping the maximum allowable loan size at \$1,500,
19 providing more flexibility for lenders and borrowers
20 than under the current law;



(9) Requiring lenders to provide clear disclosures of the loan terms and total charges;

(10) Prohibiting a lender from making more than one loan at a time to a consumer, preventing incentives for

lenders to "split" loans and charge higher fees; and

(11) Repealing Section 480F-4, Hawaii Revised Statutes, to provide further protection to Hawaii's consumers from harmful lending practices.

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

"PART

SMALL DOLLAR INSTALLMENT LOANS

A. GENERAL PROVISIONS

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

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



1 monthly maintenance fees authorized by this part, shall be
2 included in the calculation of the annual percentage rate.

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

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

8 "Commissioner" means the commissioner of financial
9 institutions.

10 "Consumer" means a natural person who is the buyer, lessee,
11 or debtor to whom credit is granted in a transaction that is
12 primarily for that natural person's personal, family, or
13 household purposes.

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



1 "Control person" means any person in control of a licensee
2 or applicant.

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

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

8 "Division" means the division of financial institutions of
9 the department of commerce and consumer affairs.

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

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

19 "Instrument" means a method of payment, which may include a
20 debit card payment, automated clearing house transfer, e-check
21 or other forms of electronic transfers, money order, cash,



1 personal check signed by the consumer, or any other method of
2 loan payment authorized by this part or by rule adopted by the
3 commissioner pursuant to chapter 91 and made payable to a person
4 subject to this part. The term "instrument" does not include an
5 electronic fund transfer or other electronic debit or credit to
6 the consumer's checking account.

7 "Interest" means all charges payable directly or indirectly
8 by a borrower to a licensee as a condition to a loan, including
9 fees, service charges, renewal charges, and any ancillary
10 product sold in connection with a small dollar loan, but does
11 not include the monthly maintenance fees and any check
12 collection charge.

13 "Licensee" means a person who is licensed to make small
14 dollar loans pursuant to this part.

15 "Loan amount" means the amount financed as defined in
16 Regulation Z of the "Truth in Lending Act", title 12 Code of
17 Federal Regulations part 1026, as may be amended.

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

20 "NMLS" means the Nationwide Multistate Licensing System and
21 Registry, which is a licensing system developed and maintained



1 by the Conference of State Bank Supervisors for the state
2 licensing and registration of state-licensed loan originators
3 and other financial services providers, or any system provided
4 by the Consumer Financial Protection Bureau.

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

9 "Place of business" means a location where small dollar
10 loans are offered or made, including a website through which a
11 consumer may apply for a small dollar loan from a small dollar
12 lender.

13 "Precomputed interest" means an interest method that uses
14 the original payment schedule to calculate interest.

15 "Precomputed loan" means a loan in which the debt is a sum
16 comprising the principal amount and the amount of interest
17 computed in advance on the assumption that all scheduled
18 payments will be made when due.

19 "Renewal" means the refinancing of a small dollar loan that
20 occurs during the period between the original maturity date and
21 the preceding installment payment due date. "Renewal" does not



1 include the refinancing of a small dollar loan that occurs prior
2 to the penultimate installment payment 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 part 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 part.

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 **§412:9-B Small dollar loans; requirements; payments.** (a)
18 Each small dollar loan transaction and renewal shall meet the
19 following requirements:

20 (1) Each transaction and renewal shall be documented in a
21 written agreement pursuant to section 412:9-C;



- 1 (2) The total amount of the small dollar loan shall not
2 exceed \$1,500 pursuant to section 412:9-E(a);
- 3 (3) The total amount of fees and charges a small dollar
4 lender may charge, collect, or receive in connection
5 with a small dollar loan shall not exceed fifty per
6 cent of the principal loan amount;
- 7 (4) A monthly maintenance fee may be charged by the
8 lender, not to exceed the following:
- 9 (A) \$10 on a loan of an original principal loan
10 amount up to \$299.99;
- 11 (B) \$15 on a loan of an original principal loan
12 amount of at least \$300.00 and up to \$599.99;
- 13 (C) \$25 on a loan of an original principal loan
14 amount of at least \$600.00 and up to \$799.99; and
- 15 (D) \$40 on a loan of an original principal loan
16 amount of at least \$800.00 and up to \$1,000.00;
- 17 (E) \$50 on a loan of an original principal loan
18 amount of at least \$1,000.01 and up to \$1,500.00;
- 19 provided that the monthly maintenance fee shall not be
20 added to the loan balance on which the interest is
21 charged; and provided further that a small dollar



1 lender shall not charge, collect, or receive a monthly
2 maintenance fee if the consumer is a person on active
3 duty in the armed forces of the United States or a
4 dependent of that person;

5 (5) 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 (6) 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 must first be paid;

15 (7) 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 (8) A consumer's repayment obligations shall not be
19 secured by a lien on any real or personal property;



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

(10) A small dollar lender shall not require a consumer to purchase add-on products, such as credit insurance.

(b) A small dollar lender may contract for a twice-monthly or monthly payment of the loan balance due, including the applicable portion of the interest, and earned monthly maintenance fee.

(c) The lender shall inform the consumer in writing that the lender shall cash the monetary instrument or money order, upon request of the consumer, at no cost to the consumer.

(d) 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.

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

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

(2) Any unearned monthly maintenance fees.



(f) 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 two business days after receiving the request.

§412:9-C 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 annual percentage rate charged;



- 1 (5) The authorized interest rate;
- 2 (6) A statement of the total amount of finance charges
- 3 charged, expressed as a dollar amount and an annual
- 4 percentage rate;
- 5 (7) A statement that a small dollar lender shall not
- 6 require a consumer to purchase add-on products.
- 7 (8) The installment payment schedule setting out the
- 8 amount due on specific due dates;
- 9 (8) The name, address, and telephone number of any agent
- 10 or arranger involved in the small dollar loan
- 11 transaction;
- 12 (9) The name, address, and telephone number of any
- 13 arranger involved in the small dollar loan
- 14 transaction;
- 15 (10) A notice clearly stating that the consumer has the
- 16 right to rescind the small dollar loan at or before
- 17 5:00 p.m. three business days following the loan
- 18 transaction, at the location where the loan was
- 19 originated, by returning the principal in cash, the
- 20 original check or money order disbursed by the lender,
- 21 or the other disbursement of loan proceeds from the



1 lender to fund the loan. The notice shall also state
2 that the lender shall not charge the consumer for
3 rescinding the loan.

4 (11) A notice to the consumer that a returned instrument
5 may result in a dishonored instrument charge, not to
6 exceed \$25;

7 (12) A statement that it shall not be considered a
8 violation of this part if a consumer obtains a small
9 dollar loan voluntarily and separately from the
10 consumer's spouse if the consumer documents the action
11 in writing, either in the written agreement or in a
12 subsequent agreement; and

13 (13) A description of the methods by which small dollar
14 loan payments may be made, which may include a debit
15 card payment, automated clearing house transfer,
16 e-check, other forms of electronic transfers, money
17 order, cash, check, or any additional method of loan
18 payment authorized by this part or by rule adopted by
19 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)



1 ANNUAL PERCENTAGE RATE

2 Payment Schedule"

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

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



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

7 **§412:9-D Authorized interest rate.** (a) Subject to
8 section 412:9-B(a)(4), a small dollar lender may contract for
9 and receive interest at, a rate not exceeding thirty-six per
10 cent per year on that portion of the unpaid principal balance of
11 the loan. Loans shall be precomputed.

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

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



1 payments by the amount of interest charged for the extra days.

2 (d) Payments may be applied to the combined total of
3 principal and precomputed interest until maturity of the loan,
4 with priority given to any past due interest before applying
5 payments to the principal.

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

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

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



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

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

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

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

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

15 **§412:9-E Maximum loan amount; prohibition against multiple**
16 **loans.** (a) A lender shall not lend an amount greater than
17 \$1,500 nor shall the amount financed exceed \$1,500 by any one
18 lender at any time to a consumer.

19 (b) Except as otherwise provided in section 412:9-H, no
20 small dollar lender shall make a small dollar loan to a consumer



1 if there exists an outstanding loan between that consumer and
2 any of the following:

3 (1) The small dollar lender;

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

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

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

9 (c) If a consumer obtains a small dollar loan voluntarily
10 and separately from the consumer's spouse and the consumer's
11 action is documented in writing, either in the written agreement
12 required under section 412:9-C or in a subsequent agreement,
13 signed by the consumer, and retained by the lender, the
14 transaction shall not be considered a violation of this section.

15 **§412:9-F Right of rescission.** (a) A consumer shall have
16 the right to rescind a small dollar loan, at or before 5:00 p.m.
17 three business days following the loan transaction, at the
18 location where the loan was originated, by returning the
19 principal in cash, the original check or money order disbursed
20 by the lender, or the other disbursement of loan proceeds from



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

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

7 "RESCINDED BY [lender's name; license number], [date]"
8 which the lender's authorized representative shall sign.

9 §412:9-G Notice to consumers; general requirements; right
10 to prepay; loan limits; right to rescind. A small dollar lender
11 shall provide the following notice in a prominent place on each
12 written agreement for a small dollar loan in at least twelve-
13 point type:

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

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

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



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

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

8 YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY
9 5:00 P.M. THREE BUSINESS DAYS FOLLOWING THIS
10 TRANSACTION."

11 **§412:9-H Renewal; new loan requirements; consecutive**
12 **loans; payment plan.** (a) A small dollar loan may be renewed
13 only once. After one renewal, the consumer shall pay the debt
14 in cash or its equivalent.

15 (b) Upon renewal of a small dollar loan, the lender may
16 renew up to \$1,500 of the remaining unpaid principal balance.
17 If the unpaid balance on renewal is more than \$1,500, the
18 consumer may be required to pay the remaining balance; provided
19 that the lender shall not finance any amount over \$1,500. The
20 total amount of fees and charges for the renewed loan shall meet
21 the requirements of section 412:9-B, with the understanding that



1 the total amount of fees and charges a small dollar lender may
2 charge, collect, or receive in connection with the renewal of a
3 small dollar loan shall not exceed sixty per cent of the renewal
4 principal loan amount. If the small dollar loan is renewed
5 prior to the maturity date, the lender shall refund to the
6 consumer a prorated portion of the finance charge based upon the
7 ratio of time left before maturity to the loan term.

8 (c) Once the consumer has paid off the small dollar loan
9 transaction, the consumer may enter into a new small dollar loan
10 agreement with the lender; provided that the lender shall not
11 have more than one outstanding loan with a consumer at any one
12 time, pursuant to section 412:9-E.

13 **§412:9-I Form of loan proceeds.** A small dollar lender may
14 pay the proceeds from a small dollar loan to the consumer in the
15 form of a monetary instrument, prepaid debit card, automated
16 clearing house transfer, e-check, other forms of electronic
17 transfers, money order, or cash.

18 **§412:9-J Endorsement of instrument.** A small dollar lender
19 shall not negotiate or present an instrument for payment unless
20 the instrument is endorsed with the actual business name of the
21 lender.



1 **§412:9-K Redemption of instrument.** Prior to a small
2 dollar lender negotiating or presenting the instrument, a
3 consumer shall have the right to redeem any instrument held by
4 the lender as a result of a small dollar loan if the consumer
5 pays the full amount of the instrument to the lender.

6 **§412:9-L Delinquent small dollar loans; restrictions on**
7 **collection by lender or third party.** (a) A small dollar lender
8 shall comply with all applicable state and federal laws when
9 collecting a delinquent small dollar loan. A lender may take
10 civil action to collect principal, interest, fees, and costs
11 allowed under this part. A lender may not threaten criminal
12 prosecution as a method of collecting a delinquent small dollar
13 loan or threaten to take any legal action against the consumer
14 that is not otherwise permitted by law.

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



1 agency or any other governmental agency while engaged in
2 collecting a small dollar loan.

3 (c) A lender shall not communicate with a consumer in a
4 manner intended to harass, intimidate, abuse, or embarrass a
5 consumer, including but not limited to communication at an
6 unreasonable hour, with unreasonable frequency, by threats of
7 force or violence, or by use of offensive language. A
8 communication shall be presumed to have been made for the
9 purposes of harassment if it is initiated by the lender for the
10 purposes of collection and the communication is made:

11 (1) With the consumer's spouse or the consumer's domestic
12 partner in any form, manner, or place, more than once,
13 except when calling a shared telephone number and
14 asking to speak to the consumer, sending a text
15 message to a shared telephone number, sending an
16 electronic mail to a shared electronic mail address,
17 or other electronic writing to a shared electronic
18 account;

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



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

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

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

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

(f) For the purposes of this section, "communication" includes any attempted contact with a consumer, initiated by a lender, in person, by telephone, or in writing, including via



1 electronic mail, text message, or other electronic writing;

2 provided that:

3 (1) The term "communication" shall include the dates and
4 times the lender initiates contact with a consumer,
5 regardless of whether the communication is received or
6 accessed by the consumer; and

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

8 (A) Verbal communication with the consumer while the
9 consumer is physically present in the lender's
10 place of business;

11 (B) An unanswered telephone call in which no message,
12 other than a caller identification, is left; or

13 (C) An initial letter to the consumer that includes
14 disclosures under the federal Fair Debt
15 Collection Practices Act.

16 **§412:9-M Authorized dishonored instrument charge. (a)**

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



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

§412:9-N Posting of license and fees and charges. Any small dollar lender offering a small dollar loan shall conspicuously and continuously post at any place of business where small dollar loans are made, the license required pursuant to this part and a notice of the fees and charges imposed for small dollar loans.

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

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

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



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

5 **§412:9-P Notice on assignment or sale of contract. (a)**

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

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

15 "SMALL DOLLAR LOAN

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



(c) This provision 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 backed financing or similar lending facility of the small dollar lender;

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

§412:9-Q 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 the State, and other books and records as may be necessary for the commissioner to ensure full compliance with the laws of the 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 part shall be made in writing in the English
5 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 **B. LICENSING**

11 **§412:9-R License required.** No person, unless exempt under
12 this part, shall act as a small dollar lender in the State
13 unless licensed to do so by the commissioner.

14 **§412:9-S Exemptions.** This part 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, 15 United States Code section 1602(j); or
20 (4) A tax refund anticipation loan.



1 §412:9-T 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, every member,
10 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 part, the commissioner
2 may enter into agreements or contracts with NMLS or other
3 entities to use NMLS to collect and maintain records and process
4 transaction fees or other fees related to licensees or other
5 persons subject to this part.

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 part 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 part, 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 the State before a license
10 pursuant to this part shall be granted.

11 **§412:9-U Issuance of license; grounds for denial. (a)**

12 The commissioner shall conduct an investigation of every
13 applicant to determine the financial responsibility, character,
14 and general fitness of the applicant. The commissioner shall
15 issue the applicant a license to engage in the business of
16 making 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 conviction for which a pardon has
17 been granted shall not be deemed a conviction for the
18 purposes of this section;

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

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

- 20 (4) The applicant or, in the case of an applicant that is
21 not an individual, each of the applicant's control



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

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

10 (6) The applicant has the bond required by section
11 412:9-V.

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



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

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

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

12 (3) Who has advertised or made internet loans prior to
13 obtaining a license under this part; or

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

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



1 **§412:9-V 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 part:

- 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).

20 (b) Each branch office shall pay the following fees to the
21 division to obtain and maintain a valid license under this part:



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

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

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

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

16 (1) The licensee as obligor shall faithfully conform to
17 and abide by this part and all the rules adopted under
18 this part; and

19 (2) The bond shall pay to the State and any person or
20 persons having a cause of action against the licensee
21 as obligor all moneys that may become due and owing to



1 the State and those persons under and by virtue of
2 this part.

3 (e) Each small dollar lender shall pay a nonrefundable fee
4 of \$100 to the division for each office that is relocated.

5 **§412:9-W Renewal of license; annual report.** (a) On or
6 before December 31 of each year, each licensee shall pay a
7 renewal fee pursuant to section 412:9-V.

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

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

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

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



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



1 (c) A license may be renewed by continuing to meet the
2 licensing requirements of sections 412:9-T, 412:9-U, and
3 412:9-V, filing a completed renewal statement on a form
4 prescribed by NMLS or by the commissioner, paying a renewal fee,
5 and meeting the requirements of this section.

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

18 **§412:9-X Enforcement authorities; violations; penalties.**

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



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

- 3 (1) The applicant or licensee has violated this part or
4 any rule or order lawfully made pursuant to this part;
- 5 (2) Facts or conditions exist that would clearly have
6 justified the commissioner in denying an application
7 for licensure, had these facts or conditions been
8 known to exist at the time the application was made;
- 9 (3) The applicant or licensee has failed to provide
10 information required by the commissioner within a
11 reasonable time, as specified by the commissioner;
- 12 (4) The applicant or licensee has failed to provide or
13 maintain proof of financial responsibility;
- 14 (5) The applicant or licensee is insolvent;
- 15 (6) The applicant or licensee has made, in any document or
16 statement filed with the commissioner, a false
17 representation of a material fact or has omitted to
18 state a material fact;
- 19 (7) The applicant, licensee, or, if an applicant or
20 licensee is not an individual, each of the applicant's
21 or licensee's control persons, executive officers,



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

6 (8) The applicant or licensee has failed to make,
7 maintain, or produce records that comply with section
8 412:9-Q or any rule adopted by the commissioner
9 pursuant to chapter 91;

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

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



1 (11) The applicant or licensee has failed, in a timely
2 manner as specified by the commissioner, to take or
3 provide proof of the corrective action required by the
4 commissioner subsequent to an investigation or
5 examination pursuant to section 412:9-DD.

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

9 (1) Deny an application for licensure, including an
10 application for a branch office license;

11 (2) Revoke the license;

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

13 (4) Issue an order to the licensee to cease and desist
14 from engaging in any act specified under subsection
15 (a);

16 (5) Order the licensee to make refunds to consumers of
17 excess charges under this part;

18 (6) Impose penalties of up to \$1,000 for each violation;
19 or



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

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

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



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

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

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

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

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



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

3 **§412:9-Y Voluntary surrender of license.** (a) A licensee
4 may voluntarily cease business and surrender its license by
5 giving written notice to the commissioner of its intent to
6 surrender its license. Prior to the surrender date of a
7 license, the licensee shall have either completed all pending
8 small dollar loan transactions or assigned each pending small
9 dollar loan transaction to another licensee, bank, savings bank,
10 trust company, savings and loan or building and loan
11 association, or credit union organized under the laws of the
12 State or the laws of the United States.

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

- 16 (1) The date of surrender;
- 17 (2) The name, address, telephone number, facsimile number,
18 and electronic mail address of a contact individual
19 with knowledge and authority sufficient to communicate
20 with the commissioner regarding all matters relating



1 to the licensee during the period that it was licensed
2 pursuant to this part;

3 (3) The reason or reasons for surrender;

4 (4) Total dollar amount of the licensee's outstanding
5 small dollar loans sold in the State and the
6 individual amounts of each outstanding small dollar
7 loans, and the name, address, and contact telephone
8 number of the licensee to which each outstanding small
9 dollar loan was assigned;

10 (5) A list of the licensee's authorized branch offices in
11 the State, if any, as of the date of surrender;

12 (6) Confirmation that the licensee has notified each of
13 its authorized branch offices in the State, if any,
14 that the branch offices may no longer make small
15 dollar loans on the licensee's behalf; and

16 (7) Confirmation that the licensee has notified each of
17 its small dollar loan consumers, if any, that the
18 small dollar loan is being transferred and the name,
19 address, telephone number, and any other contact
20 information of the licensee, bank, savings bank, trust
21 company, savings and loan or building and loan



1 association, or credit union organized under the laws
2 of the State or the laws of the United States to whom
3 the small dollar loan was assigned.

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

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

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

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

17 (c) After review of a request for approval under
18 subsection (b), the commissioner may require the licensee or
19 person or group of persons requesting approval of a proposed
20 change of control of the licensee, or both, to provide
21 additional information concerning the persons who shall assume



1 control of the licensee. The additional information shall be
2 limited to similar information required of the licensee or
3 persons in control of the licensee as part of its original
4 license or renewal application under sections 412:9-T and
5 412:9-W. The information shall include, for the five-year
6 period prior to the date of the application for change of
7 control of the licensee, a history of material litigation and
8 criminal convictions of each person who, upon approval of the
9 application for change of control, will be a principal of the
10 licensee. Authorization shall also be given to conduct criminal
11 history record checks of those persons, accompanied by the
12 appropriate payment of the applicable fee for each record check.

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



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

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

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

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

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

17 (f) Before filing a request for approval for a change of
18 control, a person may request, in writing, a determination from
19 the commissioner as to whether the person would be considered a
20 person in control of a licensee upon consummation of a proposed
21 transaction. If the commissioner determines that the person



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

4 (g) Subsection (b) shall not apply to public offerings of
5 securities.

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

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

17 (c) A small dollar lender shall not maintain any branch
18 offices in the State in addition to its principal place of
19 business without the prior written approval of the commissioner.
20 An application to establish a branch office shall be submitted



1 through NMLS with a nonrefundable application fee as required by
2 section 412:9-V.

3 (d) A small dollar lender shall not relocate any office in
4 the State without the prior written approval of the
5 commissioner. An application to relocate an office shall be
6 submitted to the commissioner at least thirty days prior to
7 relocating and shall set forth the reasons for the relocation,
8 the street address of the proposed relocated office, and other
9 information that may be required by the commissioner. An
10 application to relocate an office pursuant to this subsection
11 shall be submitted with a nonrefundable fee as required by
12 section 412:9-V.

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

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

17 (2) Specify the reasons for the closing.

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



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

§412:9-BB Payment of fees. All fees collected pursuant to section 412:9-V, administrative fines, and other charges collected pursuant to this part shall be deposited into the compliance resolution fund established pursuant to section 26-9(o) and shall be payable through NMLS, to the extent allowed by NMLS. Fees not eligible for payment through NMLS shall be deposited into a separate account within the compliance resolution fund for use by the division.

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

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

(1) Issue declaratory rulings or informal nonbinding interpretations;

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



- 1 (3) Create fact-finding committees that may make
2 recommendations to the commissioner for the
3 commissioner's deliberations;
- 4 (4) Require an applicant or any of its control persons,
5 executive officers, directors, general partners, and
6 managing members to disclose their relevant criminal
7 history and request a criminal history record check in
8 accordance with chapter 846;
- 9 (5) Contract with or employ qualified persons, including
10 accountants, attorneys, investigators, examiners,
11 auditors, or other professionals who may be exempt
12 from chapter 76 and who shall assist the commissioner
13 in exercising the commissioner's powers and duties;
- 14 (6) Process and investigate complaints, subpoena witnesses
15 and documents, administer oaths, and receive
16 affidavits and oral testimony, including telephonic
17 communications, and do any and all things necessary or
18 incidental to the exercise of the commissioner's power
19 and duties, including the authority to conduct
20 contested case proceedings under chapter 91;



- 1 (7) Require a licensee to comply with any rule, guidance,
2 guideline, statement, supervisory policy or any
3 similar proclamation issued or adopted by the Federal
4 Deposit Insurance Corporation to the same extent and
5 in the same manner as a bank chartered by the State
6 or, in the alternative, any policy position of the
7 Conference of State Bank Supervisors;
- 8 (8) Enter into agreements or relationships with other
9 government officials or regulatory associations in
10 order to improve efficiencies and reduce regulatory
11 burden by sharing resources, standardized or uniform
12 methods or procedures, and documents, records,
13 information, or evidence obtained under this part;
- 14 (9) Use, hire, contract, or employ public or privately
15 available analytical systems, methods, or software to
16 investigate or examine a licensee or person subject to
17 this part;
- 18 (10) Accept and rely on investigation or examination
19 reports made by other government officials, within or
20 without the State; and



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

§412:9-DD Investigation and examination authority. (a)

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

(b) For the purposes of investigating violations or complaints arising under this part, or for the purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to this part as often as necessary to carry out the purposes of this part. The



1 commissioner may direct, subpoena, or order the attendance of,
2 and examine under oath, all persons whose testimony may be
3 required about loans or the business or subject matter of any
4 examination or investigation and may direct, subpoena, or order
5 the person to produce books, accounts, records, files, and any
6 other documents the commissioner deems relevant to the inquiry.

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

16 (d) Each licensee or person subject to this part shall
17 make or compile reports or prepare other information, as
18 directed by the commissioner, to carry out the purposes of this
19 section, including:

20 (1) Accounting compilations;



1 (2) Information lists and data concerning loan
2 transactions in a format prescribed by the
3 commissioner; or

4 (3) Other information that the commissioner deems
5 necessary.

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



1 (f) The authority of this section shall remain in effect,
2 whether a licensee or person subject to this part acts or claims
3 to act under any licensing or registration law of the State, or
4 claims to act without that authority.

5 (g) No licensee or person subject to investigation or
6 examination under this section shall knowingly withhold,
7 abstract, remove, mutilate, destroy, or secrete any books,
8 records, computer records, or other information.

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



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

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

20 (b) For the purposes of this section, the commissioner is
21 authorized to enter into agreements or sharing arrangements with



1 other governmental agencies, the Conference of State Bank
2 Supervisors, or other associations representing governmental
3 agencies as established by rule or order of the commissioner.

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

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

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

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



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

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

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

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

(2) Make a secured small dollar loan;



- 1 (3) Use a consumer's account number to prepare, issue, or
2 create a check on behalf of the consumer;
- 3 (4) Charge, collect, or receive, directly or indirectly,
4 mandatory credit insurance premiums, charges for
5 negotiating forms of loan proceeds other than cash,
6 charges for brokering or obtaining loans, prepayment
7 fees, or any fees, interest, or charges in connection
8 with a small dollar loan except those explicitly
9 authorized in this part;
- 10 (5) Fail to make disclosures as required by this part and
11 any other applicable state or federal law, including
12 rules or regulations adopted pursuant to state or
13 federal law;
- 14 (6) Directly or indirectly employ any scheme, device, or
15 artifice to defraud or mislead any consumer, lender,
16 or person;
- 17 (7) Directly or indirectly engage in unfair or deceptive
18 acts, practices, or advertising in connection with a
19 small dollar loan toward any person;
- 20 (8) Directly or indirectly obtain property by fraud or
21 misrepresentation;



- 1 (9) Make a small dollar loan to any person physically
2 located in the State through the use of the Internet,
3 facsimile, telephone, kiosk, or other means without
4 first obtaining a license under this part;
- 5 (10) Make, in any manner, any false or deceptive statement
6 or representation, including with regard to the rates,
7 fees, or other financing terms or conditions for a
8 small dollar loan, or engage in bait and switch
9 advertising;
- 10 (11) Make any false statement or knowingly and wilfully
11 make any omission of material fact in connection with
12 any reports filed with the division by a licensee or
13 in connection with any investigation conducted by the
14 division;
- 15 (12) Advertise any rate of interest without conspicuously
16 disclosing the annual percentage rate implied by that
17 rate of interest or otherwise fail to comply with any
18 requirement of the Truth in Lending Act, or any other
19 applicable state or federal laws or regulations;
- 20 (13) Make small dollar loans from any unlicensed location;



- 1 (14) Draft funds from any depository financial institution
2 without written approval of the consumer; provided
3 that nothing in this paragraph shall prohibit the
4 conversion of a negotiable instrument into an
5 electronic form for processing through the automated
6 clearing house or similar system;
- 7 (15) Attempt to collect from a consumer's account after two
8 consecutive attempts have failed, unless the licensee
9 obtains new written authorization from the consumer to
10 transfer or withdraw funds from the account;
- 11 (16) Make a loan to a consumer that includes a demand
12 feature that was not clearly disclosed in the written
13 agreement pursuant to section 412:9-C or collect or
14 demand repayment of any outstanding balance or unpaid
15 interest or fees except as provided in section
16 412:9-C;
- 17 (17) Fail to comply with any applicable state and federal
18 law relating to the activities governed by this part;
19 or
- 20 (18) Fail to pay any fee, assessment, or moneys due to the
21 department.



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

4 PART II

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

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

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

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

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

18 "**§478-5 Usury not recoverable.** If a greater rate of
19 interest than that permitted by law is contracted for, with
20 respect to any consumer credit transaction, any home business
21 loan, or any credit card agreement, the contract shall not ~~[, by~~



1 ~~reason thereof,~~] be void[~~—But~~]; provided that if in any action
2 on the contract proof is made that a greater rate of interest
3 than that permitted by law has been directly or indirectly
4 contracted for, the creditor shall only recover the principal
5 and the debtor shall recover costs. If interest has been paid,
6 judgment shall be for the principal less the amount of interest
7 paid. This section shall not [~~be held to~~] apply[~~, to loans~~] to:

- 8 (1) Loans made by financial services loan companies and
9 credit unions at the rates authorized under and
10 pursuant to articles 9 and 10 of chapter 412[~~—~~]; or
11 (2) Any small dollar loan regulated under part _____,
12 article 9, chapter 412."

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

15 "**§478-6 Usury; penalty.** Any person who directly or
16 indirectly receives any interest or finance charge at a rate
17 greater than that permitted by law or who, by any method or
18 device whatsoever, receives or arranges for the receipt of
19 interest or finance charge at a greater rate than that permitted
20 by law on any credit transaction shall be guilty of usury and



1 shall be fined not more than \$250, unless a greater amount is
2 allowed by law, or imprisoned not more than one year, or both."

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

5 [~~"Deferred deposit" means a transaction in which a check~~
6 ~~casher refrains from depositing a personal check written by a~~
7 ~~customer until a date after the transaction date, pursuant to a~~
8 ~~written agreement."~~]

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

11 **"§480F-4 Deferred deposits**~~[, when]~~ **not allowed.** [~~(a) No~~
12 ~~check casher may defer the deposit of a check except as provided~~
13 ~~in this section.~~

14 ~~(b) Each deferred deposit shall be made pursuant to a~~
15 ~~written agreement that has been signed by the customer and the~~
16 ~~check casher or an authorized representative of the check~~
17 ~~casher. The written agreement shall contain a statement of the~~
18 ~~total amount of any fees charged for the deferred deposit,~~
19 ~~expressed both in United States currency and as an annual~~
20 ~~percentage rate. The written agreement shall authorize the~~
21 ~~check casher to defer deposit of the personal check until a~~



~~specific date not later than thirty two days from the date the written agreement was signed. The written agreement shall not permit the check casher to accept collateral.~~

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

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

~~(e) A check casher who enters into a deferred deposit agreement and accepts a check passed on insufficient funds, or any assignee of that check casher, shall not be entitled to recover damages in any action brought pursuant to or governed by~~



~~chapter 490. Instead, the check casher may charge and recover a fee for the return of a dishonored check in an amount not greater than \$20.~~

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

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

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

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

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



- 1 (3) The department of health or its designee on all
2 applicants for licensure or certification for,
3 operators for, prospective employees, adult
4 volunteers, and all adults, except adults in care, at
5 healthcare facilities as defined in section 321-15.2;
- 6 (4) The department of education on employees, prospective
7 employees, and teacher trainees in any public school
8 in positions that necessitate close proximity to
9 children as provided by section 302A-601.5;
- 10 (5) The counties on employees and prospective employees
11 who may be in positions that place them in close
12 proximity to children in recreation or child care
13 programs and services;
- 14 (6) The county liquor commissions on applicants for liquor
15 licenses as provided by section 281-53.5;
- 16 (7) The county liquor commissions on employees and
17 prospective employees involved in liquor
18 administration, law enforcement, and liquor control
19 investigations;
- 20 (8) The department of human services on operators and
21 employees of child caring institutions, child placing



1 organizations, and foster boarding homes as provided
2 by section 346-17;

3 (9) The department of human services on prospective
4 adoptive parents as established under section
5 346-19.7;

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

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

17 (12) The department of health on operators and employees of
18 home and community-based case management agencies and
19 operators and other adults, except for adults in care,
20 residing in community care foster family homes as
21 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,



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

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

8 (23) The department of human services on foster grandparent
9 program, senior companion program, and respite
10 companion program participants as provided by section
11 346-97;

12 (24) The department of human services on contracted and
13 subcontracted service providers and their current and
14 prospective employees that provide home and community-
15 based services under section 1915(c) of the Social
16 Security Act, title 42 United States Code section
17 1396n(c), or under any other applicable section or
18 sections of the Social Security Act for the purposes
19 of providing home and community-based services, as
20 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 part , article 9, chapter
21 412; and



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

4 SECTION 9. There is appropriated out of the compliance
5 resolution fund the sum of \$ or so much thereof as may
6 be necessary for fiscal year 2021-2022 and the same sum or so
7 much thereof as may be necessary for fiscal year 2022-2023 to
8 establish and hire two full-time equivalent (2.0 FTE) permanent
9 examiners, without regard to chapter 76, Hawaii Revised
10 Statutes, to carry out the purposes of the small dollar
11 installment loan program established by section 2 of this Act;
12 provided that the positions may be added to the position count
13 for the division of financial institutions of the department of
14 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 10. This Act does not affect rights and duties
19 that matured, penalties that were incurred, and proceedings that
20 were begun before its effective date.



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

5 SECTION 12. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 13. This Act, upon its approval, shall take effect
8 on July 1, 2022; provided that the licensing requirements for
9 small dollar lenders established by section 2 of this Act shall
10 take effect on January 1, 2023.

11

INTRODUCED BY: 



S.B. NO. 974

Report Title:

Department of Commerce and Consumer Affairs; Payday Lending; Small Dollar Loans; Small Dollar Lenders; Licensure; Requirements; Check Cashers; Registration; Voluntary Payment Plans; Notices; Appropriation

Description:

Provides for a new viable installment-based small dollar loan transactions in addition to enhanced deferred deposit transactions. Specifies various consumer protection requirements for small dollar loans. Beginning 1/1/23, requires licensure for small dollar lenders that offer small dollar loans to consumers, subject to the oversight of the division of financial institutions of the department of commerce and consumer affairs to protect against illegal lending. Specifies licensing requirements for small dollar lenders. Caps interest at thirty-six per cent per annum and one simple maximum monthly maintenance fee tiered up to \$50.00. Amortizes loans in full and renewing the loan while also permitting borrowers to choose to repay the loan without penalty. Caps maximum allowable costs at sixty per cent of the principal loan amount, preventing a loan from being either too short or too long in duration. Caps the maximum allowable loan size at \$1,500, providing more flexibility for lenders and borrowers than under the current law. Requires lenders to provide clear disclosures of the loan terms and total charges. Prohibits a lender from making more than one loan at a time to a consumer, preventing incentives for lenders to "split" loans and charge higher fees. Repeals section 480F-4, Hawaii Revised Statutes, relating to deferred deposits, to provide further protection to Hawaii's consumers from harmful lending practices. Effective 7/1/22; provided that the licensing requirements established by section 2 shall take effect on 1/1/23.

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

