
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 reported 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 or had inadequate liquid and long-term savings.

The survey also found that five per cent of households are "unbanked," meaning 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 also rely on an alternative financial services products. These products include money orders, check cashing, payday loans, and pawn shop or auto title loans services. Despite the high costs, the study found these types of products were used by twenty-one per cent of households at



1 least once during the year, as many found the convenience and
2 quick access to cash 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, consumers may use payday lending in a manner that traps
15 them in an unsustainable cycle of debt. Payday loans are
16 structured with short repayment terms and high payment amounts
17 and fees, which may harm the consumer if used irresponsibly.
18 Lenders are also granted access to the borrower's checking
19 account and may continue to debit the consumer's account after
20 the deferred deposit loan is repaid. The Pew Charitable Trusts
21 has reported that the average Hawaii payday borrower incurs \$529



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

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

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

16 (1) Effective July 1, 2023:

17 (A) Establishing small dollar loan transactions in
18 addition to enhanced deferred deposit
19 transactions;

20 (B) Specifying various consumer protection
21 requirements for small dollar loans;



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



- 1 (I) Requiring lenders to provide clear disclosures of
2 the loan terms and total charges; and
- 3 (J) Prohibiting a lender from making more than one
4 loan at a time to a consumer, preventing
5 incentives for lenders to split loans and charge
6 higher fees;
- 7 (2) Creating a licensure requirement for check cashers,
8 including those that enter into deferred deposit
9 transactions;
- 10 (3) Requiring a check casher to offer a voluntary payment
11 plan for deferred deposit transactions;
- 12 (4) Requiring check cashers to maintain records and create
13 reports related to their business activities;
- 14 (5) Requiring check cashers to take reasonable measures to
15 ensure that consumers are limited to one deferred
16 deposit transaction at a time;
- 17 (6) Requiring check cashers that enter deferred deposit
18 transactions to provide additional disclosures and
19 post notices; and
- 20 (7) Requiring the division of financial institutions of
21 the department of commerce and consumer affairs to



1 conduct an analysis of the implementation of the
2 regulation of payday lenders and deferred deposit
3 agreements and its impact on consumer protection in
4 the State.

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

8 **"PART . SMALL DOLLAR INSTALLMENT LOANS**

9 A. GENERAL PROVISIONS

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

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

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



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

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

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

16 "Control person" means any person in control of a licensee
17 or applicant.

18 "Default" means a consumer's failure to repay a small
19 dollar loan in compliance with the terms contained in a small
20 dollar loan agreement.



1 "Department" means the department of commerce and consumer
2 affairs.

3 "Finance charges" means the cost of credit or cost of
4 borrowing, including the interest, monthly maintenance fees, and
5 other fees authorized by this part.

6 "Instrument" means a method of payment, which may include a
7 debit card payment, automated clearing house transfer, e-check
8 or other forms of electronic transfers, money order, cash,
9 personal check signed by the consumer, or any other method of
10 loan payment authorized by this part or by rule adopted by the
11 commissioner pursuant to chapter 91 and made payable to a person
12 subject to this part. "Instrument" does not include an
13 electronic fund transfer or other electronic debit or credit to
14 the consumer's checking account.

15 "Interest" means all charges payable directly or indirectly
16 by a borrower to a licensee as a condition to a small dollar
17 loan, including fees, service charges, renewal charges, and any
18 ancillary product sold in connection with a small dollar loan,
19 but does not include the monthly maintenance fees and any check
20 collection charge.



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

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

6 "Maintenance fee" means a monthly fee paid to a licensee to
7 maintain a small dollar loan.

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

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

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

20 "Precomputed loan" means a loan in which the debt is a sum
21 comprising the principal amount and the amount of interest



1 computed in advance on the assumption that all scheduled
2 payments will be made when due.

3 "Renewal" means the refinancing of a small dollar loan that
4 occurs during the period between the original maturity date and
5 the preceding installment payment due date. "Renewal" does not
6 include the refinancing of a small dollar loan that occurs prior
7 to the penultimate installment payment due date.

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

17 "Small dollar loan" means a loan made pursuant to this
18 part.

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



1 **\$412:9-B Small dollar loans; requirements; payments. (a)**

2 Each small dollar loan transaction and renewal shall meet the
3 following requirements:

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

6 (2) The total amount of the small dollar loan shall not
7 exceed \$1,500 pursuant to section 412:9-E(a);

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

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

14 (A) \$10 on a loan of an original principal loan
15 amount up to \$299.99;

16 (B) \$15 on a loan of an original principal loan
17 amount of at least \$300.00 and up to \$599.99;

18 (C) \$25 on a loan of an original principal loan
19 amount of at least \$600.00 and up to \$799.99;



(D) \$40 on a loan of an original principal loan
amount of at least \$800.00 and up to \$1,000.00;
and

(E) \$50 on a loan of an original principal loan
amount of at least \$1,000.01 and up to \$1,500.00;
provided that the monthly maintenance fee shall not be
added to the loan balance upon which the interest is
charged; provided further that a small dollar lender
shall not charge, collect, or receive a monthly
maintenance fee if the consumer is a person on active
duty in the armed forces of the United States or a
dependent of that person;

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

(6) A small dollar loan shall have a minimum loan term of
four months and a maximum loan term of twenty-four
months;

(7) A small dollar lender shall accept prepayment in full
or in part from a consumer prior to the loan due date



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

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

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

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

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

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

19 (c) The lender shall inform the consumer in writing that
20 the lender shall cash the instrument, upon request of the
21 consumer, at no cost to the consumer.



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

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

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

9 (2) Any unearned monthly maintenance fees.

10 (f) Upon request from a consumer or a consumer's agent, a
11 small dollar lender shall provide confirmation of the amount
12 required to discharge the small dollar loan obligation in full.
13 When responding to a request under this subsection, the small
14 dollar lender, at a minimum, shall include a statement of the
15 amount required to discharge the consumer's obligation fully as
16 of the date the notice is provided and for each of the next
17 three business days following that date. The small dollar
18 lender shall make the information required under this subsection
19 available verbally and in writing and shall provide it in an
20 expeditious manner but no later than two business days after
21 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;
- (5) The authorized interest rate;
- (6) A statement of the total amount of finance charges charged, expressed as a dollar amount and an annual percentage rate;
- (7) A statement that a small dollar lender shall not require a consumer to purchase add-on products;
- (8) The installment payment schedule setting out the amount due on specific due dates;
- (9) The name, address, and telephone number of any agent involved in the small dollar loan transaction;



- 1 (10) The name, address, and telephone number of any
2 arranger involved in the small dollar loan
3 transaction;
- 4 (11) A notice clearly stating that the consumer has the
5 right to rescind the small dollar loan at or before
6 5:00 p.m. three business days following the loan
7 transaction, at the location where the loan was
8 originated, by returning the principal in cash, the
9 original check or money order disbursed by the lender,
10 or the other disbursement of loan proceeds from the
11 lender to fund the loan. The notice shall also state
12 that the lender shall not charge the consumer for
13 rescinding the loan;
- 14 (12) A notice to the consumer that a returned instrument
15 may result in a dishonored instrument charge, not to
16 exceed \$25;
- 17 (13) A statement that it shall not be considered a
18 violation of this part if a consumer obtains a small
19 dollar loan voluntarily and separately from the
20 consumer's spouse if the consumer documents the action



1 in writing, either in the written agreement or in a
2 subsequent agreement; and

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

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

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

18 "MULTIPLE

19 INSTALLMENT

20 PAYMENT



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

13 (d) The consumer shall sign and date each of two copies of
14 the written disclosure required pursuant to subsection (c), one
15 of which shall be given to the consumer and the other of which
16 shall be retained by the lender as part of its records of the
17 small dollar loan; provided that if the consumer is applying for
18 the small dollar loan over the Internet, this requirement shall
19 be satisfied by the consumer's electronic signature on an
20 electronic copy of the disclosure. For purposes of preparing
21 the written disclosure, the small dollar loan shall be



1 structured on a precomputed basis (total of payments) with the
2 assumption that all payments will be made as scheduled.

3 (e) The written agreement may include a demand feature
4 that permits the lender or any other person, if the consumer
5 fails to meet the repayment terms for any outstanding balance,
6 to terminate the small dollar loan in advance of the original
7 maturity date, but no earlier than ten days after the missed
8 payment, and demand repayment of the entire outstanding balance.

9 If the written agreement includes a demand feature and the
10 demand feature is exercised, the lender shall be entitled to
11 collect only the outstanding balance and a prorated portion of
12 the unpaid interest and fees earned up to the date of
13 termination. For purposes of this subsection, the outstanding
14 balance and prorated portion of the unpaid interest and fees
15 shall be calculated as if the consumer had voluntarily prepaid
16 the loan in full on the date of termination.

17 **§412:9-D Authorized interest rate.** (a) Subject to
18 section 412:9-B(a)(3), a small dollar lender may contract for
19 and receive interest at a rate not exceeding thirty-six per cent
20 per year on that portion of the unpaid principal balance of the
21 loan. Small dollar loans shall be precomputed.



1 (b) For the purposes of computing precomputed loans,
2 including calculating interest, a month shall be considered
3 one-twelfth of a year and a day shall be considered
4 one three hundred sixty-fifth of a year when calculation is made
5 for a fraction of a month.

6 (c) Small dollar loans shall be repayable in substantially
7 equal and consecutive monthly installments of principal and
8 interest combined; provided that the first installment period
9 may exceed one month by not more than fifteen days and the first
10 installment payment amount may be larger than the remaining
11 payments by the amount of interest charged for the extra days.

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

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



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

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

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

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

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

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

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



(i) A lender shall not collect a default charge on any installment not paid in full within ten days after its due date. For purposes of this subsection, all installments shall be considered paid in the order in which they become due.

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

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

(1) The small dollar lender;

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

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

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

(c) If a consumer obtains a small dollar loan voluntarily and separately from the consumer's spouse and the consumer's action is documented in writing, either in the written agreement



1 required under section 412:9-C or in a subsequent agreement,
2 signed by the consumer, and retained by the lender, the
3 transaction shall not be considered a violation of this section.

4 (d) Upon a consumer's payment in full of any small dollar
5 loan, a small dollar lender shall wait a period of three days
6 before the small dollar lender may make another small dollar
7 loan to the same consumer.

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

17 (b) At the time of rescission, the lender shall refund any
18 fees and interest received and shall return to the consumer the
19 originally signed written agreement, clearly marked across the
20 face:



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

2 which the lender's authorized representative shall sign.

3 **\$412:9-G Notice to consumers; general requirements; right**
4 **to prepay; loan limits; right to rescind.** A small dollar lender
5 shall provide the following notice in a prominent place on each
6 written agreement for a small dollar loan in at least twelve-
7 point type:

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

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

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

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

17 STATE LAW PROHIBITS THE PRINCIPAL OF THIS SMALL
18 DOLLAR LOAN FROM EXCEEDING ONE THOUSAND FIVE HUNDRED
19 DOLLARS (\$1,500). EXCEEDING THIS AMOUNT MAY CREATE
20 FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY.



1 YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION AT
2 OR BEFORE 5:00 P.M. THREE BUSINESS DAYS FOLLOWING THIS
3 TRANSACTION."

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

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



1 based upon the ratio of time left before maturity to the loan
2 term.

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

8 **§412:9-I Form of loan proceeds.** A small dollar lender may
9 pay the proceeds from a small dollar loan to the consumer in the
10 form of a monetary instrument, prepaid debit card, Automated
11 Clearing House transfer, e-check, other form of electronic
12 transfer, money order, or cash.

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

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



1 **§412:9-L Delinquent small dollar loans; restrictions on**
2 **collection by lender or third party.** (a) A small dollar lender
3 shall comply with all applicable state and federal laws when
4 collecting a delinquent small dollar loan. A lender may take
5 civil action to collect principal, interest, fees, and costs
6 allowed under this part. A lender shall not threaten criminal
7 prosecution as a method of collecting a delinquent small dollar
8 loan or threaten to take any legal action against the consumer
9 that is not otherwise permitted by law.

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

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



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

5 (1) With the consumer's spouse or the consumer's domestic
6 partner in any form, manner, or place, on more than
7 one occasion, except when:

8 (A) Calling a shared telephone number and asking to
9 speak to the consumer;

10 (B) Sending a text message to a shared telephone
11 number;

12 (C) Sending an electronic mail to a shared electronic
13 mail address; or

14 (D) Sending other electronic writing to a shared
15 electronic account;

16 (2) With a consumer at the consumer's place of employment
17 on more than one occasion;

18 (3) With the consumer, the consumer's spouse, or the
19 consumer's domestic partner at the consumer's place of
20 residence between the hours of 9:00 p.m. and
21 8:00 a.m.; or



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

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

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

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

19 (1) "Communication" includes initiated contact with a
20 consumer, regardless of whether the communication is
21 received or accessed by the consumer; and



1 (2) "Communication" does not include:

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

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

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

10 **§412:9-M Authorized dishonored instrument charge. (a)**

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

16 (b) If the loan proceeds instrument delivered by the small
17 dollar lender to the consumer is dishonored by the financial
18 institution, the small dollar lender shall cover any fees and
19 charges incurred by the consumer as a direct result of the
20 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 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 not advertise or make 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 from licensure under this part, shall be clearly and conspicuously shown on all solicitations, including websites, and all other documents, as established by rule or order of the commissioner.



1 **§412:9-P Notice on assignment or sale of contract. (a)**

2 No small dollar lender shall pledge, negotiate, sell, or assign
3 a small dollar loan, except to another small dollar lender or to
4 a bank, savings bank, trust company, savings and loan or
5 building and loan association, or credit union organized under
6 the laws of the State or the laws of the United States.

7 (b) Prior to sale or assignment of a small dollar loan
8 contract held by the small dollar lender, the lender shall place
9 a notice on the small dollar loan contract in at least twelve-
10 point type that reads:

11 "SMALL DOLLAR LOAN

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

18 (c) This section shall not apply to:

19 (1) The transfer of a small dollar loan to a company
20 affiliated with the small dollar lender that



1 securitizes the small dollar lender's loan
2 receivables; and

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

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

11 **§412:9-Q Maintenance of books and records.** (a) Every

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

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



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

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

7 **B. LICENSING**

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

11 **§412:9-S Exemptions.** This subpart shall not apply to the
12 following:

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

19 **§412:9-T License; application; issuance.** (a) The
20 commissioner shall require all licensees to register with NMLS.



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

4 (1) The legal name, trade names, and business address of:

5 (A) The applicant; and

6 (B) Every member, officer, principal, or director, if
7 the applicant is a partnership, association,
8 limited liability company, limited liability
9 partnership, or corporation;

10 (2) The principal place of business;

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

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

20 (c) To fulfill the purposes of this subpart, the
21 commissioner may enter into agreements or contracts with NMLS or



1 other entities to use NMLS to collect and maintain records and
2 process transaction fees or other fees related to licensees or
3 other persons subject to this subpart.

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

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

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



1 entities conducting the criminal history background
2 check; and

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

10 (A) An independent credit report from a consumer
11 reporting agency described in section 603(p) of
12 the Fair Credit Reporting Act, title 15 United
13 States Code section 1681a(p), as amended; 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 information from and distributing information to any
6 source identified by the commissioner.

7 (h) An applicant for licensure 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 subpart may be granted.

11 **§412:9-U License; grounds for denial.** (a) The
12 commissioner shall conduct an investigation of every applicant
13 to determine the applicant's financial responsibility,
14 character, and general fitness of the applicant. The
15 commissioner shall issue the applicant a license to engage in
16 the business of making small dollar loans if the commissioner
17 determines that the applicant or, in the case of an applicant
18 that is not an individual, each of the applicant's control
19 persons, executive officers, directors, general partners, and
20 managing members:



1 (1) Has not had a small dollar lender license revoked in
2 any jurisdiction within five years of the filing of
3 the present application; provided that a subsequent
4 formal vacation of a revocation shall not be deemed a
5 revocation;

6 (2) Has not been convicted of, pled guilty or nolo
7 contendere to, or been granted a deferred acceptance
8 of a guilty plea or nolo contendere plea under any
9 federal law or under chapter 853 to a felony in a
10 domestic, foreign, or military court either:

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) Has demonstrated sufficient financial responsibility,
20 good character, and general fitness to command the
21 confidence of a community and to warrant a



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

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

- 17 (4) Has not been convicted of, pled guilty or nolo
18 contendere to, or been granted a deferred acceptance
19 of a guilty plea under federal law or chapter 853 to
20 any misdemeanor involving an act of fraud, dishonesty,
21 breach of trust, or money laundering;



(5) Has satisfied all other licensing requirements of this part; and

(6) Has provided the bond required by section 412:9-V.

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

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

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

(2) Whose license to conduct business in the small dollar loan or payday industry has been revoked by an administrative order issued by the commissioner or the



1 commissioner's designee, or the licensing authority of
2 another state or jurisdiction, for the period
3 specified in the administrative order;

4 (3) Who has advertised or made internet loans in Hawaii
5 prior to obtaining a license under this part; or

6 (4) Who has failed to complete an application for
7 licensure.

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

12 **§412:9-V Fees; bond.** (a) A small dollar lender shall pay
13 the following fees to the division to obtain and maintain a
14 valid license under this part:

15 (1) An initial application fee of \$900;

16 (2) A processing fee of \$35 for each control person;

17 (3) An annual license renewal fee of \$600;

18 (4) Any applicable fee charged by the entities conducting
19 the criminal history background check for each of the
20 applicant's control persons, executive officers,
21 directors, general partners, and managing members for



1 submission to the Federal Bureau of Investigation and
2 any governmental agency or entity authorized to
3 receive the fingerprints for a state, national, and
4 international criminal history background check; and

5 (5) Any applicable fee charged by the entities obtaining
6 an independent credit report from a consumer reporting
7 agency as described in section 603(p) of the Fair
8 Credit Reporting Act, title 15 United States Code
9 section 1681a(p), as amended.

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

12 (1) A nonrefundable initial application fee of \$600; and

13 (2) An annual license renewal fee of \$450.

14 (c) The applicant shall file and maintain a surety bond
15 that is approved by the commissioner and executed by the
16 applicant as obligor and by a surety company authorized to
17 operate as a surety in the State, whose liability as a surety
18 does not exceed, in the aggregate, the penal sum of the bond.

19 The penal sum of the bond shall be a minimum of \$30,000 and a
20 maximum of \$250,000, based upon the annual dollar amount of
21 loans originated.



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

6 (1) The licensee as obligor shall faithfully conform to
7 and abide by this part and all rules adopted under
8 this part; and

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

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

16 **§412:9-W License renewal; annual report.** (a) On or
17 before December 31 of each year, each licensee shall pay an
18 annual license renewal fee pursuant to section 412:9-V.

19 (b) The annual license renewal fee shall be accompanied by
20 a report, in a form prescribed by the commissioner, which shall
21 include:



- 1 (1) A copy of the licensee's most recent audited annual
2 financial statement, including:
3 (A) Balance sheets;
4 (B) A statement of income or loss;
5 (C) A statement of changes in shareholders' equity;
6 and
7 (D) A statement of cash flows or, if a licensee is a
8 wholly owned subsidiary of another corporation,
9 the consolidated audited annual financial
10 statement of the parent corporation in lieu of
11 the licensee's audited annual financial
12 statement;
- 13 (2) A report detailing the small dollar lender's
14 activities in the State, including:
15 (A) The number of small dollar loans made;
16 (B) The number of small dollar loans the lender is
17 servicing;
18 (C) The type and characteristics of loans serviced in
19 the State;
20 (D) The number of small dollar serviced loans in
21 default; and



- 1 (E) Any other information the commissioner may
2 require;
- 3 (3) A report of any material changes to any of the
4 information submitted by the licensee on its original
5 application that have not previously been reported to
6 the commissioner on any other report required to be
7 filed under this part;
- 8 (4) A list of the principal place of business and branch
9 locations, if any, within the State where business
10 regulated by this part is being conducted by the
11 licensee;
- 12 (5) Disclosure of any pending or final suspension,
13 revocation, or other reinforcement action by any state
14 or governmental authority; and
- 15 (6) Any other information the commissioner may require.
- 16 (c) A licensee may renew by:
- 17 (1) Continuing to meet the licensing requirements of
18 sections 412:9-T, 412:9-U, and 412:9-V;
- 19 (2) Filing a completed renewal statement on a form
20 prescribed by NMLS or by the commissioner;
- 21 (3) Paying a renewal fee; and



1 (4) Meeting all other requirements of this section.

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

13 **§412:9-X Enforcement; violations; penalties.** (a) To
14 ensure the effective supervision and enforcement of this part,
15 the commissioner, pursuant to chapter 91, may take any
16 disciplinary action specified in subsection (b) against an
17 applicant or licensee if the commissioner finds that the
18 applicant or licensee:

19 (1) Has violated this part or any rule or order lawfully
20 made pursuant to this part;



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



1 any similar crime under the jurisdiction of any
2 federal court or court of another state;

3 (8) Has failed to make, maintain, or produce records that
4 comply with section 412:9-Q or any rule adopted by the
5 commissioner pursuant to chapter 91;

6 (9) Has been the subject of any disciplinary action by any
7 state or federal agency that resulted in revocation of
8 a license;

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

17 (11) Has failed to take or provide proof in a timely
18 manner, as specified by the commissioner, of taking
19 the corrective action required by the commissioner
20 subsequent to an investigation or examination pursuant
21 to section 412:9-DD.



1 (b) After finding the applicant or licensee has committed
2 one or more violations of subsection (a), the commissioner may
3 take any of the following actions:

4 (1) Deny an application for licensure, including an
5 application for a branch office license;

6 (2) Revoke the license;

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

8 (4) Issue an order to the licensee to cease and desist
9 from engaging in any act specified in subsection (a);

10 (5) Order the licensee to refund to consumers any excess
11 charges under this part;

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

14 (7) Bar a person from applying for or holding a license
15 for a period of five years following revocation of the
16 person's license.

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



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

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

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

17 (f) The commissioner may reinstate a license, terminate a
18 suspension, or grant a new license to a person whose license has
19 been revoked or suspended if no fact or condition then exists
20 that clearly would justify the commissioner in revoking
21 suspending, or refusing to grant a license.



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

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

10 (i) Any violation of this part that is directed toward,
11 targets, or injures an elder may be subject to an additional
12 civil penalty not to exceed \$10,000 for each violation in
13 addition to any other fines or penalties assessed for the
14 violation. For purposes of this subsection, "elder" has the
15 same meaning as defined in section 356D-1.

16 **§412:9-Y Voluntary surrender of license.** (a) A licensee
17 may voluntarily cease business and surrender its license by
18 giving written notice to the commissioner of its intent to
19 surrender its license. Prior to the surrender date, the
20 licensee shall have either completed all pending small dollar
21 loan transactions or assigned each pending small dollar loan



1 transaction to another licensee, bank, savings bank, trust
2 company, savings and loan or building and loan association, or
3 credit union organized under the laws of the State or the laws
4 of the United States.

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

8 (1) The date of surrender;

9 (2) The name, address, telephone number, facsimile number,
10 and electronic mail address of a contact individual
11 with knowledge and authority sufficient to communicate
12 with the commissioner regarding all matters relating
13 to the licensee during the period that it was licensed
14 pursuant to this part;

15 (3) The reason or reasons for surrender;

16 (4) The total dollar amount of the licensee's outstanding
17 small dollar loans sold in the State and the
18 individual amounts of each outstanding small dollar
19 loan, and the name, address, and contact telephone
20 number of the licensee to which each outstanding small
21 dollar loan was assigned;



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

3 (6) Confirmation that the licensee has notified each of
4 its authorized branch offices in the State, if any,
5 that the branch offices shall no longer make small
6 dollar loans on the licensee's behalf; and

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

16 (c) Voluntary surrender of a license shall be effective
17 upon the date of surrender specified on the written notice to
18 the commissioner as required by this section; provided that the
19 licensee has met all the requirements of voluntary surrender and
20 has returned the original license issued.



1 **§412:9-Z Sale or transfer of license; change of control.**

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

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

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



1 control, will be a principal of the licensee. Authorization
2 shall also be given to conduct criminal history record checks of
3 those persons, accompanied by the appropriate payment of the
4 applicable fee for each record check.

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

13 (e) The following persons shall be exempt from the
14 requirements of subsection (b); provided that the licensee shall
15 notify the commissioner when control is assumed by a person:

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

20 (2) Who acquires control of a licensee by devise or
21 descent;



(3) Who acquires control as a personal representative, custodian, guardian, conservator, trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law; or

(4) Whom the commissioner, by rule or order, exempts in the public interest.

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

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

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



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

3 (b) A small dollar lender shall not maintain any branch
4 offices in the State in addition to its principal place of
5 business without the prior written approval of the commissioner.
6 No business shall be conducted at a branch office until the
7 branch office has been licensed by the commissioner.

8 (c) An application to establish a branch office shall be
9 submitted through NMLS with a nonrefundable application fee as
10 required by section 412:9-V.

11 (d) A small dollar lender shall not relocate any office in
12 the State without the prior written approval of the
13 commissioner. An application to relocate an office shall be
14 submitted to the commissioner at least thirty days prior to
15 relocation and shall set forth the reasons for the relocation,
16 street address of the proposed relocated office, and any other
17 information required by the commissioner. An application to
18 relocate an office pursuant to this subsection shall be
19 submitted with a nonrefundable fee as required by
20 section 412:9-V.



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

(1) State the intended date of closing; and

(2) Specify the reasons for the closing.

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



1 **§412:9-CC Commissioner; general powers.** (a) The
2 commissioner may adopt rules pursuant to chapter 91 that the
3 commissioner deems necessary for the administration of this
4 part.

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

7 (1) Issue declaratory rulings or informal nonbinding
8 interpretations;

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

12 (3) Create fact-finding committees to make recommendations
13 for the commissioner's consideration;

14 (4) Require an applicant or any of its control persons,
15 executive officers, directors, general partners, and
16 managing members to disclose their relevant criminal
17 history and request a criminal history record check in
18 accordance with chapter 846;

19 (5) Contract with or employ qualified persons, including
20 accountants, attorneys, investigators, examiners,
21 auditors, or other professionals who may be exempt



1 from chapter 76 and who shall assist the commissioner
2 in exercising the commissioner's powers and duties;

3 (6) Process and investigate complaints; subpoena witnesses
4 and documents; administer oaths; receive affidavits
5 and oral testimony, including telephonic
6 communications; and do any and all things necessary or
7 incidental to the exercise of the commissioner's power
8 and duties, including conducting contested case
9 proceedings under chapter 91;

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

17 (8) Enter into agreements or relationships with other
18 government officials or regulatory associations in
19 order to improve efficiencies and reduce regulatory
20 burden by sharing resources; standardized or uniform



1 methods or procedures; and documents, records,
2 information, or evidence obtained under this part;

3 (9) Use, hire, contract, or employ public or privately
4 available analytical systems, methods, or software to
5 investigate or examine a licensee or person subject to
6 this part;

7 (10) Accept and rely on investigation or examination
8 reports made by other government officials, within or
9 without the State; and

10 (11) Accept audit reports made by an independent certified
11 public accountant for the licensee or person subject
12 to this part in the course of an examination covering
13 the same general subject matter as the audit. The
14 commissioner may incorporate the audit report in the
15 commissioner's report of the examination, report of
16 investigation, or other writing.

17 **§412:9-DD Commissioner; investigation and examination**

18 **authority.** (a) In addition to the authority granted under
19 section 412:9-CC(b), the commissioner may conduct investigations
20 and examinations in accordance with this section. The
21 commissioner may access, receive, and use any books, accounts,



1 records, files, documents, information, or evidence that the
2 commissioner deems relevant to the investigation or examination,
3 regardless of the location, possession, control, or custody of
4 the documents, information, or evidence.

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

17 (c) Each licensee or person subject to this part shall
18 provide to the commissioner, upon request, the books and records
19 relating to the operations of the licensee or person subject to
20 this part. The commissioner shall have access to the books and
21 records and shall be permitted to interview the control persons,



1 executive officers, directors, general partners, managing
2 members, principals, managers, employees, independent
3 contractors, agents, and consumers of the licensee, or person
4 subject to this part concerning their business practices.

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

9 (1) Accounting compilations;

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

13 (3) Any other information the commissioner deems
14 necessary.

15 (e) In conducting any investigation or examination
16 authorized by this part, the commissioner may control access to
17 any documents and records of the licensee or person under
18 investigation or examination. The commissioner may take
19 possession of the documents and records or place a person in
20 exclusive charge of the documents and records. During the
21 period of control, no person shall remove or attempt to remove



1 any of the documents and records except pursuant to a court
2 order or with the consent of the commissioner. Unless the
3 commissioner has reasonable grounds to believe the documents or
4 records of the licensee or person under investigation or
5 examination have been, or are at risk of being, altered or
6 destroyed for the purposes of concealing a violation of this
7 part, the licensee or owner of the documents and records shall
8 have access to the documents or records as necessary to conduct
9 its ordinary business affairs.

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

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

18 (h) The commissioner may charge an investigation or
19 examination fee, payable to the commissioner, based upon the
20 cost per hour, per examiner, for each licensee or person subject
21 to this part investigated or examined by the commissioner or the



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

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

16 **§412:9-EE Confidentiality.** (a) Except as otherwise
17 provided in title 12 United States Code section 5111, the
18 requirements under any federal or state law regarding the
19 privacy or confidentiality of any information or material
20 provided to NMLS and any privilege arising under federal or
21 state law, including the rules of any federal or state court,



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

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

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

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

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



1 (A) Any privilege is determined by NMLS to be
2 inapplicable to the information or material; or

3 (B) The person to whom the information or material
4 pertains waives that privilege in whole or in
5 part.

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

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

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

18 **§412:9-FF Prohibited practices.** (a) It shall be a
19 violation of this part for a licensee or its control persons,
20 executive officers, directors, general partners, managing



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

3 (1) Engage in any act that limits or restricts the
4 application of this part, including:

5 (A) Disguising a small dollar loan as a leaseback
6 transaction or a personal property, personal
7 sales, or automobile title loan; or

8 (B) Disguising loan proceeds as cash rebates for the
9 pretextual installment sale of goods and
10 services;

11 (2) Make a secured small dollar loan;

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

14 (4) Charge, collect, or receive, directly or indirectly:

15 (A) Mandatory credit insurance premiums;

16 (B) Charges for negotiating forms of loan proceeds
17 other than cash;

18 (C) Charges for brokering or obtaining loans;

19 (D) Prepayment fees; or



1 (E) Any fees, interest, or charges in connection with
2 a small dollar loan except those explicitly
3 authorized in this part;

4 (5) Fail to make disclosures as required by this part or
5 any other applicable state or federal law, including
6 rules or regulations adopted pursuant to state or
7 federal law;

8 (6) Directly or indirectly employ any scheme, device, or
9 artifice to defraud or mislead any consumer, lender,
10 or person;

11 (7) Directly or indirectly engage in unfair or deceptive
12 acts, practices, or advertising in connection with a
13 small dollar loan;

14 (8) Directly or indirectly obtain property by fraud or
15 misrepresentation;

16 (9) Make a small dollar loan to any person physically
17 located in the State through the use of the Internet,
18 facsimile, telephone, kiosk, or other means without
19 first obtaining a license under this part;

20 (10) Make, in any manner, any false or deceptive statement
21 or representation, including with regard to the rates,



1 fees, or other financing terms or conditions for a
2 small dollar loan, or engage in bait and switch
3 advertising;

4 (11) Make any false statement or knowingly and wilfully
5 omit any material fact in connection with any reports
6 filed with the division by a licensee or in connection
7 with any investigation conducted by the division;

8 (12) Advertise any rate of interest without conspicuously
9 disclosing the annual percentage rate implied by that
10 rate of interest or otherwise fail to comply with any
11 requirement of the Truth in Lending Act, or any other
12 applicable state or federal laws or regulations;

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

14 (14) Draft funds from any depository financial institution
15 without written approval of the consumer; provided
16 that nothing in this paragraph shall prohibit the
17 conversion of a negotiable instrument into an
18 electronic form for processing through the Automated
19 Clearing House or similar system;

20 (15) Attempt to collect from a consumer's account after two
21 consecutive attempts have failed, unless the licensee



1 obtains new written authorization from the consumer to
2 transfer or withdraw funds from the account;

3 (16) Make a loan to a consumer that includes a demand
4 feature that was not clearly disclosed in the written
5 agreement pursuant to section 412:9-C or collect or
6 demand repayment of any outstanding balance or unpaid
7 interest or fees except as provided in
8 section 412:9-C;

9 (17) Fail to comply with any applicable state or federal
10 law relating to the activities governed by this part;
11 or

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

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

17 PART II

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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



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



1 the provider after registration or licensure as
2 provided by section 346-154, and persons subject to
3 section 346-152.5;

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

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

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

16 (14) The department of human services on employees,
17 prospective employees, and volunteers of contracted
18 providers and subcontractors in positions that place
19 them in close proximity to youth when providing
20 services on behalf of the office or the Hawaii youth
21 correctional facility as provided by section 352D-4.3;



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



1 proximity to children as provided by

2 section 302A-601.5;

3 (20) The State or any of its branches, political
4 subdivisions, or agencies on applicants and employees
5 holding a position that has the same type of contact
6 with children, vulnerable adults, or persons committed
7 to a correctional facility as other public employees
8 who hold positions that are authorized by law to
9 require criminal history record checks as a condition
10 of employment as provided by section 78-2.7;

11 (21) The department of health on licensed adult day care
12 center operators, employees, new employees,
13 subcontracted service providers and their employees,
14 and adult volunteers as provided by section 321-15.2;

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

20 (23) The department of human services on foster grandparent
21 program, senior companion program, and respite



1 companion program participants as provided by
2 section 346-97;

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

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

17 (26) The department of commerce and consumer affairs on
18 proposed directors and executive officers of a
19 nondepository financial services loan company as
20 provided by section 412:3-301;



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

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

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

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

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

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

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

19 (30) The Hawaii health systems corporation on:

20 (A) Employees;

21 (B) Applicants seeking employment;



1 (C) Current or prospective members of the corporation
2 board or regional system board; or

3 (D) Current or prospective volunteers, providers, or
4 contractors,

5 in any of the corporation's health facilities as
6 provided by section 323F-5.5;

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

8 (A) An applicant for a mortgage loan originator
9 license, or license renewal; and

10 (B) Each control person, executive officer, director,
11 general partner, and managing member of an
12 applicant for a mortgage loan originator company
13 license or license renewal,

14 as provided by chapter 454F;

15 (32) The state public charter school commission or public
16 charter schools on employees, teacher trainees,
17 prospective employees, and prospective teacher
18 trainees in any public charter school for any position
19 that places them in close proximity to children, as
20 provided in section 302D-33;



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



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



1 dispensaries, and individuals permitted to enter and
2 remain in medical cannabis dispensary facilities as
3 provided under sections 329D-15(a)(4)
4 and 329D-16(a)(3);

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

9 (43) The county police departments on applicants for
10 permits to acquire firearms pursuant to section 134-2
11 and on individuals registering their firearms pursuant
12 to section 134-3;

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

14 (A) Each of the controlling persons of the applicant
15 for licensure as an escrow depository, and each
16 of the officers, directors, and principals who
17 will be in charge of the escrow depository's
18 activities upon licensure; and

19 (B) Each of the controlling persons of an applicant
20 for proposed change in control of an escrow
21 depository licensee, and each of the officers,



1 directors, and principals who will be in charge
2 of the licensee's activities upon approval of
3 such application,

4 as provided by chapter 449;

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

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

15 (47) The department of human services on current or
16 prospective employees or contractors who have access
17 to federal tax information in order to comply with
18 requirements of federal law, regulation, or procedure,
19 as provided by section 346-2.5;

20 (48) The child support enforcement agency on current or
21 prospective employees, or contractors who have access



1 to federal tax information in order to comply with
2 federal law, regulation, or procedure, as provided by
3 section 576D-11.5; ~~and~~

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

10 ~~[(49)]~~ (50) Any other organization, entity, or the State,
11 its branches, political subdivisions, or agencies as
12 may be authorized by state law."

13 PART III

14 SECTION 7. Chapter 480F, Hawaii Revised Statutes, is
15 amended by adding six new sections to be appropriately
16 designated and to read as follows:

17 "§480F- License required. (a) No check casher shall
18 conduct business in the State, including deferred deposit
19 transactions, without first being licensed by the department
20 under this chapter.



1 (b) The director shall prescribe the form of the
2 application for licensure. Each application shall be
3 accompanied by a fee of \$900 or other appropriate fee as may be
4 prescribed by the director by rules adopted pursuant to
5 chapter 91.

6 (c) Check casher licensure shall be updated annually and
7 shall include the following:

8 (1) The address of the principal office of the check
9 casher;

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

12 (3) Payment of the appropriate licensure fees, as
13 established by the director under rules adopted
14 pursuant to chapter 91.

15 **\$480F- Voluntary payment plans.** (a) At the time of
16 origination of a third consecutive deferred deposit transaction
17 made to a customer by a check casher, and at the time of
18 origination of any subsequent consecutive deferred deposit
19 transactions, the check casher shall offer the customer, in
20 writing, the option to participate in a voluntary payment plan.
21 Should the customer be in financial hardship, a voluntary



1 payment plan may be requested by the customer and arranged by
2 the customer and the check casher at any time.

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

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



1 (d) The check casher may require the customer to provide a
2 post-dated check or electronic authorization for funds
3 transferred for each payment under the voluntary payment plan.
4 If any check or electronic authorization accepted by the check
5 casher as payment for a voluntary payment plan is dishonored,
6 the check casher shall charge the customer a fee for the
7 dishonored instrument not to exceed \$25.

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

13 **\$480F- Single deferred deposit transaction limitation.**

14 A check casher shall take reasonable measures to ensure that no
15 customer has more than one deferred deposit transaction
16 outstanding at a time from all sources. A check casher that
17 receives written or electronic confirmation from each customer
18 that the customer does not have any outstanding deferred deposit
19 transactions as of the date the customer enters into a deferred
20 deposit transaction with the check casher shall be deemed to
21 have met the requirements of this section.



1 **\$480F- Fees; relation to usury.** Any fee charged in
2 compliance with this chapter shall be exempt from chapter 478.

3 **\$480F- Records and reports.** Every check casher shall
4 keep records and make reports with respect to the operation of
5 business as provided in rules adopted by the director pursuant
6 to chapter 91.

7 **\$480F- Rules.** The director shall adopt rules necessary
8 to implement this chapter pursuant to chapter 91."

9 SECTION 8. Section 480F-1, Hawaii Revised Statutes, is
10 amended by adding three new definitions to be appropriately
11 inserted and to read as follows:

12 "Department" means the department of commerce and consumer
13 affairs.

14 "Director" means the director of commerce and consumer
15 affairs.

16 "Financial hardship" means any hardship from loss of
17 income, reduced work hours, increased living costs, or other
18 hardships outside of the control of the customer at the
19 reasonable discretion of the check casher and evidenced with
20 documentation."



SECTION 9. Section 480F-2, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

(2) Provide written notice to each customer ~~[of the fees charged for cashing checks]~~ in no smaller than twelve-point type that is separate from and in addition to any posted notice~~[+]~~ the following information:



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

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

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

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

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

15 "[+] **S480F-3** [+] **Authorized fees.** Except as provided in
16 ~~[section 480F-4,~~ this chapter for check cashers that enter into
17 deferred deposit transactions, no check casher shall charge fees
18 in excess of the following amounts:

19 (1) Five per cent of the face amount of the check or \$5,
20 whichever is greater;



(2) Three per cent of the face amount of the check or \$5, whichever is greater, if the check is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the check;

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

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

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

SECTION 11. Section 480F-4, Hawaii Revised Statutes, is amended to read as follows:

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

(b) In addition to the notice required by section 480F-2, a check casher that defers the deposit of any checks shall post in a conspicuous place in every location at which the check



1 casher does business a notice that sets forth in no smaller than
2 thirty-eight point type:

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

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

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

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

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

17 (6) A copy of the license to do business as a check casher
18 as required by this chapter.

19 ~~[(b)]~~ (c) Each deferred deposit shall be made pursuant to
20 a written agreement that has been signed by the customer and the
21 check casher or an authorized representative of the check



1 cashier. Both the written agreement and the corresponding
2 customer signature may be provided through electronic means when
3 initiating the deferred deposit transaction over the Internet.

4 The written agreement shall contain a statement of the
5 following:

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

9 (2) Notices stating that:

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

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

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

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



- 1 (i) Is experiencing financial hardship; or
2 (ii) Has entered into three or more consecutive
3 transactions with the same check casher; and
4 (3) A declaration that financial education services are
5 available and include contact information for an
6 approved budget and credit counselor or an approved
7 housing counselor.

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

13 ~~[(e)]~~ (d) The face amount of the check shall not exceed
14 \$600 [and the] or twenty-five per cent of the customer's gross
15 monthly income, as demonstrated by documentation of the income,
16 including but not limited to the customer's most recent pay
17 stub, receipt reflecting payment of government benefits, or
18 other official documentation, whichever is less.

19 Notwithstanding anything in this section to the contrary, a
20 check casher may rely upon the customer's written statement or
21 other written information provided by the customer in those



1 cases where the customer is self-employed or employed in
2 seasonal work. The deposit of a personal check written by a
3 customer pursuant to a deferred deposit transaction may be
4 deferred for no more than thirty-two days. A check casher may
5 charge a fee for deferred deposit of a personal check in an
6 amount not to exceed fifteen per cent of the face amount of the
7 check. Any fees charged for deferred deposit of a personal
8 check in compliance with this section shall be exempt from
9 chapter 478.

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

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



1 judgments. Instead, the check casher may charge and recover a
2 fee for the return of a dishonored check in an amount not
3 greater than [~~\$20.~~] \$25.

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

8 (h) For purposes of this section:

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

12 "Official documentation" includes tax returns and
13 documentation prepared by the source of the income."

14 SECTION 12. Section 480F-5, Hawaii Revised Statutes, is
15 amended to read as follows:

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

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



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

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

SECTION 13. (a) The division of financial institutions of
the department of commerce and consumer affairs shall conduct an
analysis of the regulation of payday lenders and deferred
deposit agreements and its impact on consumer protection in the
State as part of its implementation of the purposes of this Act.

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

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

(2) Data regarding consumer complaints;



1 (3) The impact of chapter 480F, Hawaii Revised Statutes,
2 on consumers within the State over the past fifteen
3 years;

4 (4) The feasibility of small payday lenders to transition
5 to small dollar lenders; and

6 (5) Any further measures necessary for increased consumer
7 protection in the State.

8 (c) The division of financial institutions of the
9 department of commerce and consumer affairs shall submit a
10 report of findings and recommendations, including any proposed
11 legislation, to the legislature no later than twenty days prior
12 to the convening of the regular session of 2023.

13 PART IV

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

17 SECTION 15. In codifying the new sections added by
18 section 2 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 the new sections in this Act.



1 SECTION 16. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 17. This Act shall take effect on July 1, 2050;
4 provided that part II and part III take effect on July 1, 2023.



Report Title:

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

Description:

Beginning 7/1/2023: provides for new viable installment-based small dollar loan transactions; specifies various consumer protection requirements for small dollar loans; requires licensure for small dollar lenders, subject to the oversight of the division of financial institutions of the department of commerce and consumer affairs; specifies licensing requirements for small dollar lenders; and caps the maximum allowable loan size at \$1,500. Amends requirements for check cashers, including requiring check cashers to be licensed with the department of commerce and consumer affairs, to offer voluntary payment plans to consumers, and make various notice and disclosure requirements. Requires the division of financial institutions to conduct an analysis of the regulation of payday lenders and deferred deposit agreements and report to the legislature. Effective 7/1/2050. (HD1)

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

