

SB 3008

Measure Title: RELATING TO PAYDAY LENDING.

Report Title: Payday Lending; Small Dollar Loans; Small Dollar Lenders; Licensure; Requirements

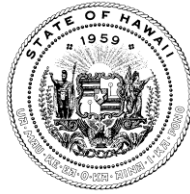
Description: Transitions from lump sum deferred deposit transactions to installment-based small dollar loan transactions. Specifies various consumer protection requirements for small dollar loans. Beginning January 1, 2019, requires licensure for small dollar lenders that offer small dollar loans to consumers. Specifies licensing requirements for small dollar lenders.

Companion: [HB2513](#)

Package: None

Current Referral: CPH, WAM

Introducer(s): BAKER, ESPERO, INOUYE, K. KAHELE, KIDANI, K. RHOADS, S. Chang, Dela Cruz, English, Harimoto, Ihara, Ruderman, Taniguchi



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TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, February 7, 2018
10:00 a.m.

TESTIMONY ON SENATE BILL NO. 3008, RELATING TO PAYDAY LOANS.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on S.B. 3008, Relating to Payday Loans. My name is Iris Ikeda, and I am the Commissioner of Financial Institutions (“Commissioner”) for the Department’s Division of Financial Institutions (“DFI”). The Department supports this bill with suggested amendments.

The purpose of this bill is to encourage transparency and increase consumer protection in the payday lending industry by: (1) repealing the lump sum deferred deposit transactions to installment-based small dollar loan transactions; (2) specifying various consumer protection requirements for small dollar loans; (3) beginning January 1, 2019, requiring licensure by DFI of small dollar lenders that offer small dollar loans to consumers; and (4) specifying licensing requirements for small dollar lenders. The bill would enact a new chapter of the Hawaii Revised Statutes (“HRS”), to be administered by DFI, entitled “Small Dollar Installment Loans” (“new chapter”).

This bill defines “small dollar loan” (“loan”) as a loan made to a consumer. The loan must be documented by a written agreement. The maximum loan amount is \$500, the maximum loan term is six months, and there is no minimum loan term. Interest may be charged on the unpaid principal balance at an annual rate not to exceed 36%. The loan must be repayable in substantially equal monthly installments. A lender that makes small dollar loans (“small dollar lender”) may finance no more than \$500 at any time for a consumer, and a thirty-day waiting period is required between loans. On a renewed loan, the small dollar lender may assess an additional finance charge provided the annual percentage rate on the renewed loan does not exceed 36%.

Small dollar lenders must be licensed with DFI. Licensure begins with submission of a completed application and a fee to DFI. The Commissioner investigates the applicant’s financial responsibility, character, and general fitness, and criminal background checks of the applicant’s key persons are reviewed for statutory disqualifiers. The applicant must meet all requirements of the new chapter, including bonding requirements and payment of fees.

The Commissioner issues a license to qualified applicants (“licensees”) through NMLS. A licensee must comply with all statutory requirements relating to business operations, supervision, locations, branches, sale or change of control of the licensee, and others. It must have a principal place of business in the State, with a qualified individual physically present there to oversee and manage it. Licensees may make small dollar loans online.

DFI may examine and investigate a licensee at the licensee’s expense. Books and records must be maintained for at least six years. There are restrictions on assignment and sale of instruments, as well as requirements for license surrender. A licensee must renew its license annually, submit an annual report and audited annual financial statement, disclose material changes in the business, and pay a license renewal fee.

The bill specifies powers of the Commissioner that include enforcement authority. Upon finding a specific violation, the Commissioner may deny an application for licensure, revoke or suspend a license, issue a cease and desist order, order the

licensee to refund excess charges to consumers, impose penalties and fines, and take other disciplinary action. If a violation injures an elder, an additional civil penalty may be imposed.

In the first year of the small dollar loan program, DFI would need funds to hire one additional staff to set up the program and process the applications. In the second year, DFI would need to hire another staff member for examinations and investigation. To maintain this new program, the program would need to generate revenues sufficient to cover the additional staff members. DFI is self-funded from fees paid by the licensees of its various programs.

The Department understands that S.B. 3008 is a work in progress and respectfully requests that it be clarified as attached.

Thank you for the opportunity to share the Department's comments.

A BILL FOR AN ACT

RELATING TO PAYDAY LENDING.

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

SECTION 1. The legislature finds that deferred deposit agreements, commonly referred to as payday loans, are small, short term, unsecured loans that borrowers commit to repay from their next paycheck or a regular income payment. According to a study by the Pew Charitable Trusts, the majority of borrowers use deferred deposit agreements for recurring expenses, rather than unexpected expenses or emergencies, because they live paycheck to paycheck. Research has also shown that the conventional payday loan model is unaffordable for most borrowers, leads to repeat borrowing, and promotes indebtedness that is far longer than advertised.

The legislature further finds that there has been a shift in the payday industry toward small dollar installment loans, which are repayable over time and secured by access to the borrower's checking account. According to the Pew Charitable Trusts, national survey data indicates that seventy-nine per cent of payday borrowers prefer small dollar loans that are due in installments, which only take a small share of each

paycheck. However, in the absence of sensible regulatory safeguards, this type of lending, as well as the traditional deferred deposit lending market, can be harmful for consumers.

The legislature notes that there has been a growing trend around the country to provide more consumer protections, which benefit consumers and encourage responsible and transparent lending, for deferred deposit transactions and small dollar installment loans. Hawaii has not yet joined in these reform efforts.

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

Accordingly, the purpose of this Act is to encourage transparency and increase consumer protection in the payday lending industry by:

- (1) Transitioning from lump sum deferred deposit transactions to installment-based small dollar loan transactions;
- (2) Specifying various consumer protection requirements for small dollar loans;
- (3) Beginning January 1, 2019, requiring licensure for small dollar lenders that offer small dollar loans to consumers; and
- (4) Specifying licensing requirements for small dollar lenders.

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

"CHAPTER

SMALL DOLLAR INSTALLMENT LOANS

PART I. GENERAL PROVISIONS

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

"Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied, first to the accumulated finance charge, and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

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

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

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

"Commissioner" means the commissioner of financial institutions.

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

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

"Controlling person" means any person in control of a licensee or applicant.

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

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

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

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

"Finance charges" means the cost of credit or cost of borrowing, which includes the interest, monthly maintenance fees and other fees authorized by this chapter.

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

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

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

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

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

"NMLS" means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the state licensing and registration of state-licensed loan originators

and other financial services providers, or any system provided by the Consumer Financial Protection Bureau.

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

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

"Precomputed interest" means an interest method which uses the original payment schedule to calculate interest.

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

"Small dollar loan" means a loan made pursuant to this chapter. ~~to a consumer whereby the small dollar lender, for a fee, finance charge, or other consideration, does the following:~~

~~—(1) Accepts a dated instrument from the consumer as sole security for the loan and no other collateral;~~

~~—(2) Agrees to hold an instrument for a period of time prior to negotiation or deposit of the instrument; and~~

~~—(3) Pays to the consumer, credits to the consumer's account, or pays to another person on the consumer's behalf the amount of the instrument, less finance charges permitted under this chapter.~~

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

§ -2 Small dollar loans; requirements;

payments. (a) Each small dollar loan transaction and renewal shall meet the following requirements:

(1) Any transaction and renewal shall be documented in a written agreement pursuant to section -3 ~~and shall set a date upon which the instrument may be deposited or negotiated;~~

~~(2) There shall be no minimum loan term;~~

(3) The maximum loan term shall be ~~six~~ twelve months from the loan transaction date;

(4) The written agreement required under section -3 may require multiple installment payments or a single payment; ~~provided that a small dollar lender may hold no more than one instrument for each outstanding scheduled payment;~~

(5) All repayment schedule due dates shall be dates on 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) The total amount of the loan does not exceed five hundred dollars;

(7) A monthly maintenance fee that does not exceed the lesser of five percent of the originally contracted loan amount or twenty dollars, provided that the fee is not added to the loan balance on which the interest is charged;

(8) A small dollar lender shall not charge, collect, or receive a monthly maintenance fee if the borrower is a person on active duty in the armed forces of the United States or a dependent of that person.

(9) The total monthly payment on the loan does not exceed an amount that is five per cent of the borrower's verified gross monthly income or six per cent of the borrower's verified net monthly income, whichever is greater;

(8) A small dollar lender shall accept prepayment in full or in part from a consumer prior to the loan due date and shall not charge the consumer a fee or penalty if the consumer opts to prepay the loan, regardless of whether the loan is structured to be repaid as a single installment loan or in multiple installments;

(9) The loan amount and accrued interest and fees shall be fully amortized over the term of the loan;

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

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

~~(b) The amount of the instrument or instruments held by a small dollar lender may be for a total of no more than the amount financed (the principal loan amount) and the finance charge permitted under this chapter. The interest rate of up to thirty-six per cent and the monthly maintenance fees are not finance charges, and shall not be included in the instrument.~~

(c) In a multiple installment small dollar loan, a lender may contract for a twice-monthly or monthly payment of the ~~entire~~ installment due, including the applicable portion of the interest and earned monthly maintenance fee, ~~but the lender shall not hold an instrument for those interest and fees.~~

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

address, payment date, amount paid, consumer's name, and sufficient information to identify the account to which the payment is applied. ~~If a consumer partially prepays a single installment small dollar loan or makes additional voluntary payments on a multiple installment small dollar loan, the lender shall return the original instrument for one in the lower remaining amount due, so that the lender is not over-collateralized; provided that if the lender cannot easily obtain a new payment instrument and deposits the original instrument, the lender shall immediately refund any overpayment to the consumer.~~

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

(1) Any unearned portion of the interest rate, ~~calculated on a pro-rata method; provided that the refund may not be calculated on the actuarial method;~~ and

(2) Any unearned monthly maintenance fees;

~~provided that the finance charge shall not be required to be refunded.~~

§ -3 Written agreement; requirements;

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

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

- (2) The transaction date;
- (3) The loan amount;
- ~~(4) The amount of the instrument;~~
- (5) The annual percentage rate charged;
- (6) A statement of the total amount of finance charges charged, expressed as a dollar amount and an annual percentage rate;
- (7) The installment payment schedule setting out the amount due on specific due dates;
- (8) The name, address, and telephone number of any agent or arranger involved in the small dollar loan transaction;
- (9) The right to rescind the small dollar loan on or before the close of business on the next day of business at the location where the loan was originated;
- (10) A notice to the consumer that delinquency on one scheduled payment may result in a penalty of not more than \$25, acceleration of the small dollar loan, or both; and
- (11) A description of the methods by which small dollar loan payments may be made, which may include cash, check, or any additional method of loan payment authorized by this chapter or by rule adopted by the commissioner.

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

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

"SINGLE PAYMENT	MULTIPLE
	INSTALLMENT

PAYMENT

Amount Financed

Finance Charge

Amount you will receive

~~(\$500.00 Amount Financed,
less \$75.00 Finance Charge)~~

Term (months)

Interest Rate

Monthly Maintenance Fee

Total of All Permitted Charges

Total You Will Pay for This Loan

(Amount Financed, ~~Finance Charge,~~
Interest, and Monthly Maintenance Fee)

ANNUAL PERCENTAGE RATE

Payment Schedule"

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

§ -4 Notice to consumers. A small dollar lender shall provide the following notice on each loan agreement for a small dollar loan. The notice shall be in a prominent place and in at least twelve-point type:

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

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

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

RENEWING THIS SMALL DOLLAR LOAN RATHER THAN PAYING THE DEBT IN FULL WILL REQUIRE ADDITIONAL FINANCE CHARGES."

§ -5 Authorized interest rate. (a) Notwithstanding any provision to the contrary, a small dollar lender may contract for and receive interest, ~~calculated according to the actuarial method,~~ at a rate ~~or rates~~ not exceeding thirty-six per cent per year on that portion of the unpaid principal balance of the loan. A small dollar lender may contract for and receive interest at the single annual rate that would earn the same total interest at maturity of the small dollar loan, when the loan is paid according to its agreed terms, as would be earned by the application of the graduated rates set forth in this section. Loans shall be precomputed.

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

(c) Loans shall be repayable in substantially equal and consecutive monthly installments of principal and interest

combined; provided that the first installment period may exceed one month by not more than fifteen days and the first installment payment amount may be larger than the remaining payments by the amount of interest charged for the extra days; provided further that monthly installment payment dates may be omitted to accommodate consumers with seasonal income.

(d) Payments may be applied to the combined total of principal and precomputed interest until maturity of the loan; provided that a lender may charge interest after the original or deferred maturity of a precomputed loan at the rate or rates provided in subsection (a) on all unpaid principal balances for the time outstanding.

(e) If a short-term loan is prepaid in full or renewed prior to the loan's maturity date, the licensee shall refund to the borrower a prorated portion of the interest and monthly maintenance fees based on a ratio of the number of days the loan was outstanding and the number of days for which the loan was originally contracted. For purposes of this section, the monthly maintenance fee is not considered to be fully earned at the beginning of a month. ~~When any loan contract is paid in full by cash, renewal, refinancing, or a new loan, one month or more before the final installment due date, the lender shall refund, or credit the consumer with, the total of the applicable charges for all fully unexpired installment periods, as originally scheduled or as deferred, that follow the day of prepayment; provided that if:~~

~~—(1) The prepayment is made other than on a scheduled installment due date, the nearest scheduled installment due date shall be used in such computation;~~

~~—(2) The prepayment occurs prior to the first installment due date, the lender may retain one thirtieth of the applicable charge for a first installment period of one month for each day from date of loan to date of prepayment and shall refund, or credit the consumer with, the balance of the total interest contracted for;~~

~~—(3) The maturity of the loan is accelerated for any reason and judgment is entered, the lender shall credit the consumer with the same refund as if prepayment in full had been made on the date the judgment is entered and may thereafter convert the small dollar loan to an interest bearing loan at the same rate or rates of interest as provided in the loan contract; and~~

~~—(4) The maturity of the small dollar loan is accelerated for any reason, the lender may convert the small dollar loan to an interest bearing loan at the same rate or rates of interest as provided in the loan contract; provided that the lender shall credit the consumer with the same refund on the precomputed loan as if prepayment in full had been made on the date of the conversion.~~

(f) If the parties agree in writing, either in the loan contract or in a subsequent agreement, to a deferment of wholly unpaid installments, a lender may grant a one deferment and may collect a deferment charge as provided in this subsection; provided that:

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

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

(3) The deferment charge for a one-month period may not exceed the applicable charge for the installment period immediately following the due date of the last undeferred installment;

(4) A proportionate charge may be made for deferment for periods of more or less than one month;

(5) A deferment charge shall be earned pro rata during the deferment period and shall be fully earned on the last day of the deferment period; and

(6) If a small dollar loan is prepaid in full during a deferment period, the lender shall make, or credit to the consumer, a refund of the unearned deferment charge in addition to any other refund or credit made for prepayment of the loan in full.

(g) In addition to the interest and charges permitted under this section, no further or other amount shall be charged or required by the small dollar lender, except:

(1) ~~The actual amounts of fees authorized by law to record, file, or release security interests on a loan or fees charged by the entity providing the~~ for credit reports; provided that ~~these~~ this amounts may be included in the principal amount of the loan ~~or collected at any time after~~ at the time the loan is made; and

(2) Costs and disbursements to which the lender may become entitled by law in connection with any suit to collect a loan or any lawful activity to realize on a security interest after default.

(h) A lender may charge and receive loan origination ~~charges~~ fees as follows:

~~(1) On loans in the principal amount of \$500 or less, the greater of not more than \$15. or one per cent of the principal amount of the loan; and~~

~~(2) On each refinancing made more than six months after the original loan and any previous refinancing, charges not exceeding \$15.~~

~~(i) A lender may charge and receive check collection charges not greater than \$20 plus any amount passed on from other financial institutions for each check, negotiable order of withdrawal, share draft, or other negotiable instrument returned or dishonored for any reason.~~

(j) If provided in the loan contract, a lender may collect a default charge on any installment not paid in full within ten days after its due date. For this purpose, all installments are considered paid in the order in which they become due. The amount of the default charge shall not exceed the greater of five per cent of the scheduled installment or \$5.

§ -6 Maximum loan amount; multiple transactions. (a) A lender shall not lend an amount greater than \$500 nor shall the amount financed exceed \$500 by any one lender at any time to a consumer. Nothing in this section shall preclude a lender from making more than one loan to a consumer; provided that the total amount financed does not exceed \$500 at any one time and there is at least a thirty-day waiting period between loans.

(b) 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, signed by the consumer, and retained by the lender, the transaction shall not be considered a violation of this section.

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

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

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

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

§ -8 ~~Multiple outstanding transactions prohibited; right to rescind; notice.~~ A lender shall provide the following notice on each small dollar loan agreement, in a prominent place in at least twelve-point type:

"STATE LAW PROHIBITS THIS SMALL DOLLAR LOAN FROM EXCEEDING FIVE HUNDRED DOLLARS (\$500) TOTAL DEBT PLUS APPLICABLE FINANCE CHARGES AS PERMITTED BY LAW. EXCEEDING THIS AMOUNT MAY CREATE FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY.

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

§ -9 ~~Renewal; new loan requirements; consecutive loans; payment plan.~~ (a) A small dollar loan may be renewed only once. After one renewal, the consumer shall pay the debt in cash or its equivalent; ~~provided that if the consumer does not pay the debt according to renewal terms, then the lender may deposit the consumer's instrument.~~

(b) Upon renewal of a small dollar loan, the lender may renew up to \$500 of the remaining unpaid balance. If the unpaid balance on renewal is more than \$500, the consumer may be required to pay the remaining balance; provided that the lender shall not finance any amount over \$500. The lender may assess an additional finance charge on the renewed loan, ~~not to exceed an annual percentage an interest rate of thirty-six per cent.~~ If the small dollar loan is renewed prior to the maturity date, the lender shall refund to the consumer a prorated portion of the finance charge based upon the ratio of time left before maturity to the loan term.

(c) A renewed loan fee of up to fifteen dollars may be charged to a consumer.

~~(c) A small dollar loan transaction is completed when the lender presents the instrument for payment or the consumer redeems the instrument by paying the full amount of the instrument to the holder. Once the consumer has completed paid off the small dollar loan transaction, the consumer may enter into a new small dollar loan agreement with the lender after the thirty day waiting period. If the consumer's instrument is dishonored by the payor financial institution after the transaction is complete and, before the lender receives a notice of dishonor, if the lender makes a new loan that does not exceed the maximum allowable loan, the lender shall not be in violation of the maximum loan amount provisions under section ~~6.~~~~

§ -10 Form of loan proceeds. A small dollar lender may pay the proceeds from a small dollar loan to the consumer in the

form of a monetary instrument, money order, or cash. The lender shall inform the consumer in writing that the lender will cash the monetary instrument or money order at no cost to the consumer.

§ -11 Endorsement of instrument. A small dollar lender shall not negotiate or present an instrument for payment unless the instrument is endorsed with the actual business name of the lender.

§ -12 Redemption of instrument. Prior to a small dollar lender negotiating or presenting the instrument, a consumer shall have the right to redeem any instrument held by the lender as a result of a small dollar loan if the consumer pays the full amount of the instrument to the lender.

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

(b) Unless invited by the consumer, a lender shall not visit a consumer's residence or place of employment for the purpose of collecting a delinquent small dollar loan. A lender shall not impersonate a law enforcement officer or make any statements that might be construed as indicating an official

connection with any federal, state, or county law enforcement agency or any other governmental agency while engaged in collecting a small dollar loan.

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

(1) With ~~a consumer~~, the consumer's spouse, or the consumer's domestic partner in any form, manner, or place, more than ~~three times in a seven-day period~~ one time;

(2) With a consumer at the consumer's place of employment more than one time ~~in a seven-day period or to a consumer after the lender has been informed that the consumer's employer prohibits these communications~~;

(3) With the consumer, the consumer's spouse, or the consumer's domestic partner at the consumer's place of residence between the hours of 9:00 p.m. and ~~7:00~~ 8:00 a.m.; or

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

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

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

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

(1) The term "communication" shall occur at the time the lender initiates contact with a consumer, regardless of whether the communication is received or accessed by the consumer; ~~provided further that a call to a number that the lender reasonably believes is the consumer's cellular telephone shall not constitute a communication with a consumer at the consumer's place of employment; and~~

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

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

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

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

§ -14 Authorized dishonored instrument

charge. (a) Regardless of the number of instruments that are returned unpaid, a small dollar lender may contract for and collect one returned instrument charge for each small dollar

loan, not to exceed \$25. The lender shall not collect any other fees as a result of ~~default~~ the dishonored presentment.

~~(b) A returned instrument charge shall not be allowed if the loan proceeds instrument is dishonored by the financial institution or the consumer places a stop payment order due to forgery or theft.~~ If the loan proceeds instrument from the small dollar lender is dishonored by the financial institution, the small dollar lender shall cover any fees and charges incurred by the borrower as a direct result of the dishonored loan proceeds instrument.

§ -15 Posting of 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 chapter and a notice of the fees and charges imposed for such small dollar loans.

§ -16 Internet lending. (a) A small dollar lender may advertise and accept applications for small dollar loans by any lawful medium, including but not limited to the Internet.

(b) Small dollar lenders are prohibited from advertising or making small dollar loans via the Internet with first having obtained a license pursuant to part II of this chapter.

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

~~§ -17 Notice on assignment or sale of~~

~~instruments. Prior to sale or assignment of instruments held by the small dollar lender as a result of a small dollar loan, the lender shall place a notice on the instrument in at least twelve-point type that reads:~~

~~"SMALL DOLLAR LOAN~~

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

§ -18 Maintenance of books and records. (a) Every small dollar lender shall keep in a safe and secure place those books and records that directly relate to any small dollar loan made within this State, and such other books and records as may be necessary for the commissioner to ensure full compliance with the laws of this State.

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

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

(d) Every lender shall preserve all of its records for a minimum of six years or for such greater or lesser period as the commissioner may prescribe by rule.

PART II. LICENSING

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

§ -31.1 Exemptions. This chapter shall not apply to the following:

- (1) A financial institution that is authorized by the division to do business in the State; or
- (2) A nondepository financial service loan company authorized by the division to do business in the State.

§ -32 Registration with NMLS; license; application; issuance. (a) The commissioner may require all licensees to register with NMLS.

(b) Applicants for a license shall apply in a form as prescribed by NMLS or by the commissioner and shall contain, at a minimum, the following information:

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

(2) The location where the initial registered office of the applicant will be located principal place of business;

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

(4) Such other data, financial statements, and pertinent information as the commissioner may require with respect to the applicant, its members, principals, or officers.

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

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

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

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

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

(A) An independent credit report obtained from a consumer reporting agency described in section

603(p) of the Fair Credit Reporting Act, title 15
United States Code section 1681 et seq.; and

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

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

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

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

(h) An applicant for a license as a small dollar loan lender shall be registered with the business registration division of the department ~~of commerce and consumer affairs~~ to do business in this State before a license pursuant to this chapter shall be granted.

§ -33 Issuance of license; grounds for denial. (a) The commissioner shall conduct an investigation of every applicant to determine the financial responsibility, character, and general fitness of the applicant. The commissioner shall issue the applicant a license to engage in the business of making small dollar loans if the commissioner determines that:

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

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

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

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

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

(3) The applicant, or in the case of an applicant that is not an individual, each of the applicant's controlling persons, executive officers, directors, general partners, and managing members, has demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the applicant shall operate honestly, fairly, and efficiently pursuant to this chapter. For purposes of this paragraph, a person is not financially responsible when the person has shown a disregard in the management of the person's financial condition. A determination that a person has shown a disregard in the management of the person's financial condition may be based on:

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

(B) Current outstanding tax liens or other government liens and filings;

- (C) Foreclosures within the past three years; and
- (D) A pattern of seriously delinquent accounts within the past three years;

(4) The applicant, or in the case of an applicant that is not an individual, each of the applicant's controlling persons, executive officers, directors, general partners, and managing members, has not been convicted of, pled guilty or nolo contendere to, or been granted a deferred acceptance of a guilty plea under federal law or chapter 853 to any misdemeanor involving an act of fraud, dishonesty, breach of trust, or money laundering;

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

(6) The applicant has the bond required by section -34.

(b) The applicant, or in the case of an applicant that is not an individual, each of the applicant's controlling persons, executive officers, directors, general partners, and managers, shall submit authorization to the commissioner for the commissioner to conduct background checks to determine or verify the information in subsection (a) in each state where the person has conducted small dollar loan lending. 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 chapter, or any similar statute in any other jurisdiction, has been suspended or revoked within five years of the filing of the present application;

(2) Who has been banned from the industry by an administrative order issued by the commissioner or the commissioner's designee, for the period specified in the administrative order; or

(3) Who has advertised or made internet loans in violation of this chapter.

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

§ -34 Fees; bond. (a) A small dollar lender shall pay the following fees to the division to obtain and maintain a valid small dollar loan license:

- (1) Initial application fee of \$900;
- (2) Processing fee of \$35 for each control person;
- (3) Annual license renewal fee of \$600;
- (4) Applicable fee charged by the entities conducting the criminal history background check of the each of the applicant's control persons, executive officers, directors, general partners, and managing members for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive the fingerprints for a state, national, and international criminal history background check; and
- (5) Applicable fee charged by the entities conducting an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, title 15 United States Code section 1681 et seq.; and
- (6) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction; provided that the commissioner may use any information obtained pursuant to this subsection or through NMLS to determine an

applicant's demonstrated financial responsibility, character, and general fitness for licensure.

~~(b)(a)~~ A Each branch office shall pay the following fees to the division to obtain and maintain a valid small dollar loan license:

(1) Initial application fee of \$600; and

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

~~—(3) Criminal background check fee charged by the entities conducting the criminal history background check.~~

~~(b)~~ (c) The applicant shall file and maintain a surety bond, approved by the commissioner, executed by the applicant as obligor and by a surety company authorized to do a surety business in this State as surety, whose liability as a surety does not exceed, in the aggregate, the penal sum of the bond. The penal sum of the bond shall be a minimum of \$30,000 and a maximum of \$250,000, based on the annual dollar amount of loans originated.

~~(e)~~ (d) The bond required by subsection ~~(b)~~ (c) shall run to the State of Hawaii as obligee for the use and benefit of the State and of any person or persons who may have a cause of action against the obligor under this chapter. The bond shall be conditioned that:

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

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

§ -35 **Renewal of license; annual report.** (a) On or before December 31 of each year, each licensee shall pay a renewal fee of ~~\$450~~ -34.

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

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

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

(A) The number of small dollar loans made;

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

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

(D) The number of serviced loans in default; and

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

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

(4) A list of the places of business and locations, if any, within this State where business regulated by this chapter is being conducted by the licensee;

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

(6) Any other information the commissioner may require.

(c) A license may be renewed by continuing to meet the licensing requirements of -32, -33, and -34, filing a completed renewal statement on a form prescribed by NMLS or by the commissioner, and paying a renewal fee, and meeting the requirements of this section. ~~at least four weeks prior to the renewal date for licensure for the following year.~~

(d) A licensee that has not filed an annual report that has been deemed complete by the commissioner nor paid its annual renewal fee by the renewal filing deadline, and has not been granted an extension of time to do so by the commissioner, shall have its license suspended on the renewal date. The licensee shall have thirty days after its license is suspended to file an annual report and pay the annual renewal fee, plus a late filing fee of \$250 for each business day after suspension that the commissioner does not receive the annual report and the annual renewal fee. The commissioner, for good cause, may grant an extension of the renewal date or reduce or suspend the \$250 per day late filing fee.

§ -36 Enforcement authorities; violations; penalties. (a) To ensure the effective supervision and enforcement of this chapter, the commissioner may, pursuant to chapter 91, deny an application for a license or take

disciplinary action against a person licensed to make small dollar loans if the commissioner finds that:

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

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

(3) The applicant has failed to complete an application for licensure;

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

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

(6) The applicant or licensee is insolvent;

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

(8) The applicant, licensee, or any of its owners, members, managers, partners, officers, or directors have been convicted of or entered a plea of guilty or nolo contendere to a crime involving fraud or deceit, or to any similar crime under the jurisdiction of any federal court or court of another state;

(9) The applicant or licensee has failed to make, maintain, or produce records that comply with section -18 or any rule adopted by the commissioner;

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

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

(12) The applicant or licensee has failed to, in a timely manner as specified by the commissioner, take or provide proof of the corrective action required by the commissioner subsequent to an examination or investigation pursuant to section -42.

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

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

(2) Revoke the license;

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

(4) Issue an order to the licensee to cease and desist from such acts;

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

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

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

(c) The commissioner may issue a temporary cease and desist order if the commissioner makes a finding that the licensee or person is engaging, has engaged, or is about to engage in an illegal, unauthorized, unsafe, or unsound practice in violation by this chapter. Whenever the commissioner denies a license application or takes disciplinary action pursuant to this subsection, the commissioner shall enter an order to that effect and notify the licensee or ~~applicant~~ person of the denial or disciplinary action. The notification required by this subsection shall be given by personal service or by mail to the

last known address of the licensee or applicant as shown on the application, license, or as subsequently furnished in writing to the commissioner.

(d) The revocation, suspension, expiration, or surrender of a license shall not affect the licensee's liability for acts previously committed nor impair the commissioner's ability to issue a final agency order or impose discipline against the licensee.

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

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

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

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

(i) Notwithstanding section 480-13.5, any violation of this chapter that is directed toward, targets, or injures an elder, may be subject to an additional civil penalty not to exceed \$10,000 for each violation in addition to any other fines or penalties assessed for the violation.

§ -37 Voluntary surrender of license. (a) A licensee may voluntarily cease business and surrender its license by giving written notice to the commissioner of its intent to surrender its license. Prior to the surrender date of a license, the licensee shall have either completed all pending small dollar loan transactions or assigned each to another licensee.

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

- (1) The date of surrender;
- (2) The name, address, telephone number, facsimile number, and electronic mail address of a contact individual with knowledge and authority sufficient to communicate with the commissioner regarding all matters relating to the licensee during the period that it was licensed pursuant to this chapter;
- (3) The reason or reasons for surrender;
- (4) Total dollar amount of the licensee's outstanding small dollar loans sold in Hawaii and the individual amounts of each outstanding small dollar loans, and the name, address, and contact phone number of the licensee to which each outstanding small dollar loan was assigned;
- (5) A list of the licensee's Hawaii authorized branch offices, if any, as of the date of surrender; and

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

(7) Confirmation that the licensee has notified each of its small dollar borrowers, if any, that the small dollar loan is being transferred and the name, address, telephone number and any other contact information of the new small dollar lender.

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

§ -38 Sale or transfer of license; change of control. (a) No small dollar loan license shall be transferred, except as provided in this section.

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

(c) After review of a request for approval under subsection (b), the commissioner may require the licensee or person or group of persons requesting approval of a proposed change of control of the licensee, or both, to provide additional information concerning the persons who are to assume control of the licensee. The additional information shall be limited to similar information required of the licensee or persons in control of the licensee as part of its original

license or renewal application under sections -33 and -35. The information shall include the history of the material litigation and criminal convictions of each person who upon approval of the application for change of control will be a principal of the licensee, for the five-year period prior to the date of the application for change of control of the licensee, and authorizations necessary to conduct criminal history record checks of such persons, accompanied by the appropriate payment of the applicable fee for each record check.

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

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

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

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

(3) A person 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) A person who the commissioner, by rule or order, exempts in the public interest.

(f) Before filing a request for approval for a change in 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.

§ -39 Authorized places of business; principal office; branch offices; ~~qualified individuals~~; relocation. (a) Every small dollar lender licensed under this chapter shall have and maintain a principal place of business in the State.

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

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

be submitted through NMLS with a nonrefundable application fee as required by section -34.

(d) A small dollar lender shall not relocate any office in this State without the prior written approval of the commissioner. An application to relocate an office shall be submitted to the commissioner at least thirty days prior to relocating and shall set forth the reasons for the relocation, the street address of the proposed relocated office, and other information that may be required by the commissioner. An application to relocate an office pursuant to this subsection shall be submitted with a nonrefundable fee as required by section -34.

(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) A small dollar lender that maintains its principal office outside of the State shall:

(1) Designate a branch office in this State as its principal place of business in this State; and

(2) Apply for and obtain approval from the commissioner to designate a branch office as its principal place of business in this State pursuant to this section; ~~and~~

~~—(3) Designate a qualified individual to manage the principal place of business in this State.~~

~~(g) A small dollar lender that maintains its principal office in this State shall designate a qualified individual who is physically present in the principal place of business to oversee and manage that principal place of business. Such principal place of business shall not be considered a branch office.~~

(h) 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.

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

§ -40 Payment of fees. All fees collected pursuant to section -34, administrative fines, and other charges collected pursuant to this chapter 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.

§ -41 Powers of commissioner. (a) The commissioner may adopt rules pursuant to chapter 91 as the commissioner deems necessary for the administration of this chapter.

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

- (1) Administer and enforce the provisions and requirements of this chapter;
- (2) Adopt, amend, or repeal rules and issue declaratory rulings or informal nonbinding interpretations;
- (3) Investigate and conduct hearings regarding any violation of this chapter or any rule or order of, or agreement with, the commissioner;
- (4) Create fact-finding committees that may make recommendations to the commissioner for the commissioner's deliberations;
- (5) Require an applicant or any of its controlling persons, officers, directors, partners, members, managers, and agents to disclose their relevant criminal history and request a criminal history record check in accordance with chapter 846;
- (6) Contract with or employ qualified persons, including accountants, attorneys, investigators, examiners, ~~or~~ auditors, or other professionals who may be exempt from chapter 76 and who shall assist the commissioner in exercising the commissioner's powers and duties;
- (7) Require that all fees, fines, and charges collected by the commissioner under this chapter be deposited into the compliance resolution fund established pursuant to section 26-9(o);
- (8) Process and investigate complaints, subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including telephonic communications, and do any and all things necessary or incidental to the exercise of the commissioner's power and duties, including the authority to conduct contested case proceedings under chapter 91; and
- (9) Require a licensee to comply with any rule, guidance, guideline, statement, supervisory policy or any similar proclamation issued or adopted by the Federal Deposit Insurance Corporation to the same extent and in the same manner as a bank chartered by the State or in the alternative, any policy position of the Conference of State Bank Supervisors.
- (10) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(11) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this chapter;

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

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

§ -42 Investigation and examination authority. (a) In addition to any other authority under this chapter, the commissioner shall have the authority to conduct investigations and examinations in accordance with this section. The commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence that the commissioner deems relevant to the inquiry or investigation, regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to this chapter, as often as necessary to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of, and examine under oath, all persons whose testimony may be required about loans or the business or subject matter of any

examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

(c) Each licensee or person subject to this chapter shall provide to the commissioner upon request the books and records relating to the operations of the licensee or person subject to this chapter. The commissioner shall have access to the books and records and shall be permitted to interview the officers, principals, managers, employees, independent contractors, agents, and customers of the licensee or person subject to this chapter concerning their business.

(d) Each licensee or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:

- (1) Accounting compilations;
- (2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
- (3) Other information that the commissioner deems necessary to carry out the purposes of this section.

(e) In conducting any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records. During the

period of control, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee or person under examination or investigation have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

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

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

(h) The commissioner may charge an examination or investigation fee, payable to the commissioner, based upon the cost per hour per examiner for all licensees and persons subject to this chapter examined or investigated by the commissioner or the commissioner's staff. The hourly fee shall be \$60 or an amount as the commissioner shall establish by rule pursuant to chapter 91. In addition to the examination or investigation fee, the commissioner may charge any person who is examined or investigated by the commissioner or the commissioner's staff

pursuant to this section additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination or investigation, payable to the commissioner.

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

~~— (j) To carry out the purposes of this chapter, the commissioner may:~~

~~— (1) Retain accountants or other professionals and specialists, who may be exempt from chapter 76, as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;~~

~~— (2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;~~

~~— (3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this chapter;~~

~~— (4) Accept and rely on examination or investigation reports made by other government officials, within or without this State; and~~

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

§ -43 Confidentiality. (a) Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to NMLS, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material shall continue to apply to the information or material after the information or material has been disclosed to NMLS. The information and material may be shared with all state and federal regulatory officials with oversight authority over transactions subject to this chapter, without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

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

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

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

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by NMLS applicable to the information or material; provided that the person to whom the information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

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

(e) Notwithstanding any law to the contrary, the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of this section.

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

iris § -44 Prohibited practices. (a) It shall be a violation of this chapter for a licensee, its officers, directors, employees, or independent contractors, or any other person subject to this chapter to:

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

(2) Make a secured small dollar loan;

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

(4) Charge a prepayment fee to any consumer;

(5) Require a consumer to purchase add-on products, such as credit insurance;

(6) Charge any additional interest, fees, or charges, except those authorized by this chapter;

(7) Fail to make disclosures as required by this chapter and any other applicable state or federal law including rules or regulations adopted pursuant to state or federal law;

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

(9) Directly or indirectly engage in unfair or deceptive acts, practices, or advertising in connection with a small dollar loan toward any person;

(10) Directly or indirectly obtain property by fraud or misrepresentation;

(11) Make a small dollar loan to any person physically located in Hawaii through the use of the Internet, facsimile, telephone, kiosk, or other means without first obtaining a license under this chapter;

(12) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a small dollar loan, or engage in bait and switch advertising;

(13) Make any false statement or knowingly and wilfully make any omission of material fact in connection with any reports filed with the division by a licensee or in connection with any investigation conducted by the division;

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

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

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

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

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

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

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

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

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

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

"§478-5 Usury not recoverable. If a greater rate of interest than that permitted by law is contracted for with respect to any consumer credit transaction, any home business loan [or], any credit card agreement, or any small dollar loan as defined under chapter _____, the contract shall not, by reason thereof, be void. But if in any action on the contract proof is made that a greater rate of interest than that permitted by law has been directly or indirectly contracted for, the creditor shall only recover the principal and the debtor shall recover costs. If interest has been paid, judgment shall be for the principal less the amount of interest paid. This section shall not be held to apply, to loans made by financial services loan

companies and credit unions at the rates authorized under and pursuant to articles 9 and 10 of chapter 412, nor any small dollar loan as defined under chapter ."

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

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

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

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

SECTION 7. Section 480F-5, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§480F-5]] Exemptions.~~ This chapter shall not apply to:

[(1) Any] any person who is principally engaged in the bona fide retail sale of goods or services, and who, either as incident to or independent of the retail sale or 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 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 8. Section 480F-6, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) The department of human services or its designee on applicants to operate child care facilities, household members of the applicant, prospective employees of the applicant, and new employees and household members of the provider after

registration or licensure as provided by section 346-154, and persons subject to section 346-152.5;

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

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

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

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

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

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

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

(18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;

(19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;

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

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

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

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

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

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

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

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

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

- (A) Each principal of every non-corporate applicant for a money transmitter license;
- (B) Each person who upon approval of an application by a corporate applicant for a money transmitter license will be a principal of the licensee; and
- (C) Each person who upon approval of an application requesting approval of a proposed change in control of licensee will be a principal of the licensee,

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

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

(30) The Hawaii health systems corporation on:

- (A) Employees;
- (B) Applicants seeking employment;
- (C) Current or prospective members of the corporation board or regional system board; or
- (D) Current or prospective volunteers, providers, or contractors,

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

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

- (A) An applicant for a mortgage loan originator license, or license renewal; and
- (B) Each control person, executive officer, director, general partner, and managing member of an

applicant for a mortgage loan originator company
license or license renewal,

as provided by chapter 454F;

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

(33) The counties on prospective employees who work with children, vulnerable adults, or senior citizens in community-based programs;

(34) The counties on prospective employees for fire department positions which involve contact with children or vulnerable adults;

(35) The counties on prospective employees for emergency medical services positions which involve contact with children or vulnerable adults;

(36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;

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

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

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

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

- (A) Applicants for real estate appraiser licensure or certification as provided by chapter 466K;
- (B) Each person who owns more than ten per cent of an appraisal management company who is applying for registration as an appraisal management company, as provided by section 466L-7; and
- (C) Each of the controlling persons of an applicant for registration as an appraisal management company, as provided by section 466L-7;

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

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

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

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

- (A) Each of the controlling persons of the applicant for licensure as an escrow depository, and each of the officers, directors, and principals who will be in charge of the escrow depository's activities upon licensure; and
- (B) Each of the controlling persons of an applicant for proposed change in control of an escrow

depository licensee, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of such application,

as provided by chapter 449;

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

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

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

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

(49) The department of commerce and consumer affairs on each controlling person, executive officer, director, general partner, member, and manager of a small dollar loan licensee, or an applicant for a small dollar loan license as provided by chapter ; and

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

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

~~["**S480F-4** **Deferred deposits, when allowed.** (a) No check casher may defer the deposit of a check except as provided in this section.~~

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

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

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

~~(e) A check casher who enters into a deferred deposit agreement and accepts a check passed on insufficient funds, or~~

~~any assignee of that check casher, shall not be entitled to recover damages in any action brought pursuant to or governed by chapter 490. Instead, the check casher may charge and recover a fee for the return of a dishonored check in an amount not greater than \$20.~~

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

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 13. This Act shall take effect on July 1, 2018; provided that the licensing requirements for small dollar lenders established by section 2 of this Act shall take effect on January 1, 2019.

INTRODUCED BY: _____

Report Title:

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

Description:

Transitions from lump sum deferred deposit transactions to installment-based small dollar loan transactions. Specifies various consumer protection requirements for small dollar loans. Beginning January 1, 2019, requires licensure for small dollar lenders that offer small dollar loans to consumers. Specifies licensing requirements for small dollar lenders.

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

DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF TAXATION**

830 PUNCHBOWL STREET, ROOM 221
HONOLULU, HAWAII 96813

<http://tax.hawaii.gov/>
Phone: (808) 587-1540 / Fax: (808) 587-1560
Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Rosalyn H. Baker, Chair
and Members of the Senate Committee on Commerce, Consumer Protection, and
Health

Date: Wednesday, February 7, 2018
Time: 10:00 A.M.
Place: Conference Room 229, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 3008, Relating to Payday Lending

The Department of Taxation (Department) offers the following comments regarding S.B. 3008 for your consideration.

Among other things, S.B. 3008 provides that beginning on January 1, 2019, a person engaging in the business of a small dollar lender must be licensed by the Commissioner of Financial Institutions (Commissioner). Prior to approving licensure, the Commissioner must find that the person is "financially responsible." Among the factors that the Commissioner may consider is whether or not the person has any current outstanding tax liens. The measure is effective on July 1, 2018, with licensing being required beginning January 1, 2019.

The Department notes that there are two types of tax liens: the statutory lien and the notice lien. The statutory lien arises automatically whenever a tax debt is owed to the State by virtue of Hawaii Revised Statutes (HRS) section 231-33(b), which provides in relevant part:

Any state tax which is due and unpaid is a debt due the State and constitutes a lien in favor of the State upon all property and rights to property, whether real or personal, belonging to any person liable for the tax.

This lien is sometimes referred to as a secret lien, because it is known only to the taxpayer and the Department. If the taxpayer transfers property to a good faith third party purchaser for fair value, the statutory lien does not encumber the transferred property.

A notice lien occurs when the Department files a notice of State tax lien in the Bureau of Conveyances in Honolulu, or if the lien is to encumber a motor vehicle, with the county director of finance where the taxpayer resides. Once filed, the tax lien is public knowledge, and it cannot be defeated by a good faith third party purchaser. This type of tax lien is normally picked up and

reported by a credit reporting agency.

If the intent is to include statutory liens, the Department requests authority to release such information to the Commissioner. Otherwise, such information is considered confidential taxpayer information, and disclosure of any such information is strictly prohibited under HRS section 235-116.

Thank you for the opportunity to provide comments.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Commerce, Consumer Protection, and Health

From: Cheryl Kakazu Park, Director

Date: February 7, 2018, 10:00 a.m.
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 3008
Relating to Payday Lending

Thank you for the opportunity to submit testimony on this bill, which would set out a regulatory scheme for payday lenders. The Office of Information Practices (“OIP”) takes **no position on the substance of this bill, but seeks either clarification or deletion of a confusing subsection (e) of the confidentiality provision at bill pages 63-65.**

OIP does not have concerns with most of the proposed confidentiality provision. This bill proposes that Hawaii would share regulatory information about payday lenders with other states through the NMLS. As OIP understands it, subsection (a) would provide that information that was confidential or privileged in the state submitting it to the NMLS would remain confidential or privileged in the hands of the NMLS; subsection (b) would authorize Hawaii’s participation in information sharing through the NMLS; subsection (c) would provide that the confidential or privileged information from (a) could not be disclosed either under another law or in litigation; subsection (d) would provide confidentiality for the Commissioner’s examination of a regulated business’s books under proposed section __-42; and subsection (f) would clarify that this payday lender confidentiality

provision would not apply to the NMLS's information relating to mortgage servicers. **It is subsection (e) that OIP finds confusing.**

Subsection (e) provides that "Notwithstanding any law to the contrary, the disclosure of . . . information . . . that is inconsistent with subsection (a) shall be superseded by the requirements of this section." It is not entirely clear what it means for a disclosure of information to be superseded by a confidentiality statute; possibly the subsection is missing a phrase or was changed from an original model stating that "any law to the contrary requiring the disclosure of . . . information . . . that is inconsistent with subsection (a) shall be superseded by the requirements of this section." If so, however, that would mean that subsection (e) was essentially restating subsection (c)(1), which already provides that information confidential under subsection (a) is not subject to disclosure under any federal or state open record law. Under the current language, OIP would be hard pressed to interpret subsection (e) in an appeal under the Uniform Information Practices Act, chapter 92F, HRS.

OIP therefore recommends that this Committee delete subsection (e), if indeed it serves no purpose other than to reiterate subsection (c)(1) by providing that information confidential under subsection (a) is not required to be disclosed under the UIPA or other open record laws. Alternatively, if subsection (e) was intended to have some other meaning, OIP recommends that this Committee amend its language to make that other meaning clear.

Thank you for the opportunity to testify.



74 Swedesford Road
Suite 150
Malvern, PA 19355
610-889-1817 Phone

February 7, 2018

Chairwoman Senator Rosalyn Baker
Commerce, Consumer Protection, Health Committee
Hawaii State Capitol, Room 230
Honolulu, Hawaii 96813

RE: Written Testimony on Senate Bill 3008

Thank you, Chairwoman Baker, for the opportunity to submit testimony regarding Senate Bill 3008. I represent Dollar Financial Group, Inc. Our company operates eight (8) Money Mart locations in Hawaii and is the largest payday lender in terms of number of loans and dollar volume in Hawaii. We operate in strict compliance with federal and Hawaii law and regulation. We offer a range of accessible, alternative financial services products to over 10 million unbanked and underbanked customers with approximately 1,300 locations and 5,000 employees throughout the world. We are proud to provide customers in our locations with convenient access to liquidity and other financial services in a respectful, compliant, and customer-focused way.

We support the enactment of House Bill 2609 in its current form and Senate Bill 3008 with a few modifications as follows.

Our company has modeled loan and portfolio performance utilizing the requirements in Senate Bill 3008 and determined that Senate Bill 3008 is not viable as written from a profitability standpoint. The Bill is ambiguous in Section 9 (b) regarding the all in APR. Further, clarification of no finance charge inclusion as currently proposed in new Section 5 on page 15 of the Bill is essentially a prohibition on small dollar lending to the existing customer base. We assume these are simply drafting errors and not intended.

First, as articulate above, we recommend a revision to provide for the inclusion of finance charge language that contemplates all in APR's in a manner stated in House Bill 2609.

Second, we recommend the consideration of an increase in the maximum amount of the monthly maintenance fee.

Third, in proposed new HRS Section 6, we suggest giving lenders the flexibility to make larger loans. In our experience, many consumers want and would benefit from larger loans, up to \$2,000 or \$2,500 loans. It is notable that as a practical matter, the percentage of the gross monthly income will act as an effective limiting governor on loan size.

Fourth, in Section 10, Senate Bill 3008 is drafted to repeal and replace the existing payday legislation. Given that this model is yet untested in the marketplace, we believe it prudent to leave the existing payday legislation in place for a period of time, and allow the DFI to collect and analyze the data of performance under either the new House Bill 2609 or Revised Senate Bill 3008 loan models and the current payday legislation. This will ensure that loans originated under House Bill 2609 or Revised Senate Bill 3008 will actually perform as anticipated and are suitable to all consumer needs. We believe that we should seek to do no harm to the provision of liquidity currently afforded to

consumers, and should wait until actual loan performance data will support a determination of the viability of the new product to be offered pursuant to House Bill 2609 or Revised Senate Bill 3008.

We welcome the opportunity to expand our product set in Hawaii to make credit available on terms that are transparent and competitive, with a clear and rational law in place. Both House Bill 2609 and a Revised Senate Bill 3008 will induce a more transparent, competitive and efficient market, enabling your constituents to access credit when they need it and keep more of their money.

Thank you for your consideration. At the Committee's request, I would be pleased to provide additional information or make myself available to answer any follow-up questions you may have.

Respectfully submitted,

Lester Wm. Firstenberger
Senior Vice President,
Regulatory and Compliance



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February 3, 2018

Senate Committee on Commerce, Consumer Protection, and Health
Wednesday, February 7, 2018, 10:00am
Conference Room 229

SB3008 – Relating to Payday Lending

Aloha Chair Baker, Vice-Chair Tokuda, and Committee Members:

I am submitting testimony on behalf of Hawaiian Community Assets (HCA), the State's largest HUD-approved housing counseling agency and its Department of Treasury certified nonprofit Community Development Financial Institution, Hawaii Community Lending, to **SUPPORT SB3008 WITH AMENDMENTS**. SB3008 closes the loophole that created unaffordable payday loans in 1999 and establishes a regulatory structure for small dollar installment loans with the goal of ensuring affordable monthly payments for our residents, keeping more money in the pockets of our workers and families for rent and mortgage payments.

Currently, payday loans charge borrowers 459% APR. This means that \$105 of every \$600 borrowed goes toward interest and fees that often leave our State economy as profits for off-shore payday lenders. Less money in our economy leaves less funds for our homeless services, affordable housing, and critical public programs that have been instrumental in keeping our workers and families in permanent housing. With public programs forming a safety net to prevent homelessness, a statewide Coordinated Homeless Entry System providing emergency grants, a robust credit union network offering low-interest loans, and nonprofit loan funds combining financial education with small dollar loans, it is time to close the loophole on payday loans and save our economy and our people money for affordable housing.

Amendments: Make Installment Loans Affordable for Your Constituents

While SB3008 defines a regulatory structure for installment loans in Hawaii, the current language does not ensure installment loans will be affordable for your constituents.

We STRONGLY RECOMMEND amending SB3008 to require lenders to qualify borrowers based on their income AND debt, cap a borrower's maximum debt-to-income ratio at 60%, and require lenders to offer loss mitigation options in the event of financial hardship.

Qualify a Borrower Based on Income AND Debt

It is an industry standard for banks, credit unions, and community development financial institutions to determine a borrower's affordable monthly loan payment by calculating their income and debt. Debt includes a borrower's monthly housing payment and monthly loan and

credit card payments. Housing payments are confirmed with landlords/property managers and loan and credit card payments confirmed with a credit report. Failure to consider a person's monthly debt leads to high default rates and unnecessary fees on consumers – a situation that is detrimental to both the lender and the borrower.

Cap a Borrower's Maximum Debt-to-Income at 60%

It is also an industry standard for banks, credit unions, and community development financial institutions to have loan policies and procedures that place a cap on the maximum debt-to-income ratio a borrower can have in order to be approved for a loan. Debt-to-income ratio is calculated by taking a borrower's gross monthly income divided by the total monthly debt, including the new small dollar installment loan AND its interest and fees. Failure to conduct this type of due diligence when providing a loan leads to new loans that are unaffordable for the borrower and unnecessarily place them in financial hardship that can lead to homelessness.

The mortgage crisis in 2008 is an example of how important this type of due diligence and standards for debt-to-income ratios are for both lenders and borrowers. Prior to the mortgage crisis, there were no Federal standards that capped debt-to-income ratios when qualifying borrowers for mortgages. After more than 9,000 foreclosures and the loss of \$4.16 billion in home value and property taxes in Hawaii alone, the Consumer Financial Protection Bureau implemented, for the first time in United States' history, caps on a borrower's maximum debt-to-income ratio for mortgage qualification. This has since protected lenders, borrowers, and communities from the rampant foreclosures we experienced between 2008 and 2011.

Require Lenders to Offer a Variety of Loss Mitigation Options

As we witnessed during the mortgage crisis as well, borrowers must have a variety of loss mitigation options in the event of sudden financial hardship such as loss of a job, reduced work hours, or increased housing payments and living expenses. Loss mitigation options, including forbearance, repayment plans, interest rate reductions, loan term adjustments, and principal reduction helped save lenders, borrowers, and our entire economy billions of dollars in unnecessary foreclosures.

These same loss mitigation options should be available to our workers and families who borrow small dollar installment loans. Furthermore, these loss mitigation options should be available to borrowers who provide a statement of financial hardship and documentation for the lender to offer the appropriate option for relief.

HCA recommends these amendments based on the performance of its loan fund administered by HCL over the last 3 years¹. As of September 30, 2017, the loan fund had made 184 small dollar loans totaling \$337,654 in capital across the state while maintaining a less than 0.5% default rate. These results confirm for HCA that affordable small dollar installment loans can be offered if (1) the lender considers income AND debt, including monthly housing payments, when approving a loan, (2) caps a borrower's maximum debt-to-income ratio at 60%, including the new small dollar installment loan AND its interest and fees, and (3) provides loss mitigation options to borrowers in financial hardship.

¹ [Small Dollar Loan Pilot Results](#). Hawaiian Community Assets and Hawaii Community Lending. Dec 5, 2017

At a time when Hawaii reports the highest homeless rate per capita of any state in the nation and 57.6% of our renters pay more than 30% of their monthly income toward housing, it is critical that small dollar installment lenders be required to consider a borrower's income AND debt and have policies and procedures in place to cap the maximum debt-to-income ratio a borrower can have when being approved for a loan. **Without these types of requirements in place, there is no way to ensure small dollar installment loans will be affordable for your constituents.**

Furthermore, we must require small dollar lenders be prepared to address sudden financial hardships that borrowers will inevitably face by having policies and procedures in place to make loss mitigation options available to borrowers that will keep monthly payments affordable throughout the life of the loan.

Our affordable housing crisis is too dire to allow any more money to go from the pockets of our workers and families to 459% APR payday loans or unaffordable long-term small dollar installment loans. Close the loophole that created unaffordable payday loans in 1999, establish a regulatory structure and common lending standards that ensure installment loans are affordable for our residents, and keep more money in the pockets of our workers and families for rent and mortgage payments.

Bottom-line: Payday loan reform is an affordable housing issue. Support affordable housing.

PASS SB3008 WITH AMENDMENTS.

Mahalo for your time, leadership and consideration. Please contact me directly at 808.587.7653 or jeff@hawaiiancommunity.net should you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Jeff Gilbreath". The signature is written in a cursive, slightly slanted style.

Jeff Gilbreath
Executive Director

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON CONSUMER PROTECTION AND HEALTH

Sen. Rosalyn Baker, Chair

Sen. Jill Tokuda, Vice Chair

Wednesday, February 7, 2018

10:00 am

Room 229

SB 3008 – RE: PAYDAY LENDING - SUPPORT w AMENDMENTS

Aloha Chair Baker, Vice Chair Tokuda and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the approximately 5,500 Hawai`i individuals living behind bars or under the “care and custody” of the Department of Public Safety on any given day. We are always mindful that approximately 1,600 of Hawai`i’s imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

SB 3005 transitions from lump sum deferred deposit transactions to installment-based small dollar loan transactions and specifies various consumer protection requirements for small dollar loans. Beginning January 1, 2019, the bill requires licensure for small dollar lenders that offer small dollar loans to consumers and specifies licensing requirements for small dollar lenders.

Community Alliance on Prisons supports this measure with the amendments suggested by Hawaiian Community Assets. Payday loans were first created through a loophole in Hawaii’s 480-F statute in 1999, which has primarily benefitted the profit margins of off-shore businesses that are not regulated, nor certified by any government agency.

This bill seeks to rein in this industry that preys on people struggling to make ends meet, such as those recently released from correctional facilities.

Payday loans charge Hawaii borrowers 459% APR. This means that \$105 of every \$600 borrowed goes toward interest and fees that often leave our State economy as profits for off-shore payday lenders. Less money in our economy leaves less funds for our homeless services, affordable housing, and critical public programs that have been instrumental in keeping our workers and families in permanent housing. This begs the question: Cui Bono? Who Benefits? It doesn’t seem that the people who need emergency funds benefit in the long run as they get sucked further down the debt spiral.

Consumers who borrow payday loans “are being set up to fail with loan payments that they are unable to repay. Faced with unaffordable payments, cash-strapped consumers must choose between defaulting, re-borrowing, or skipping other financial obligations like rent.” That is why we support amending the bill to require lenders to qualify borrowers based on their income AND debt, cap a borrower’s maximum debt-to-income ratio at 60%, and require lenders to offer loss mitigation options in the event of financial hardship.

An article entitled, *Being Poor Is More Expensive Than You'd Think*,¹ highlights how the payday lending industry exploits some of the most vulnerable people in our communities.

Payday lending is one of the most sinister ways that large corporations exploit poor people. For those who are not familiar, payday lending goes something like this: People who are running short on money but who have a verified record of regular income (whether it be Social Security, SSI, payroll, etc.) are able to go to payday lenders and receive a cash loan to be repaid on payday. Often, borrowers are unable to repay their full loan balances and simply “roll over” their loan until a future payday, accruing all sorts of fees and additional interest. The annualized interest rate on these loans is often in the triple digits. Yes, that’s right. Sometimes the annual interest rate is over one hundred percent.

In defense of this practice, many payday lenders and their high-dollar lobbyists argue that they are simply offering a service to poor borrowers that said borrowers cannot obtain anywhere else. This is partially true. The poorest members of society have no access to traditional forms of credit. Some even lack access to checking accounts because of low credit scores or a history of financial missteps.

(...)

When poor people have little option but to do business with discount retailers who charge cash-back fees, rent-to-own retailers who charge inflated prices, and payday lenders who mire their customers neck-deep in impossible-to-pay-back high-interest loans, they are even less likely to ever escape poverty. The stark reality is that poor people often pay substantially more for essentials – bedding, appliances, housing – than would those of us with means.

Community Alliance on Prisons urges the committee to accept Hawaiian Community Assets’ amendment and pass an amended version of this bill. Mahalo for this opportunity to testify.

*"An imbalance between rich and poor
is the oldest and most fatal ailment of all republics."*

*Plutarch
Greek historian*

¹ Being Poor Is More Expensive Than You'd Think, By Joshua Wilkey / This Appalachian Life, August 8, 2017.
<http://www.alternet.org/economy/being-poor-more-expensive-you-d-think>

Helping Hawai'i Live Well

To: Senator Rosalyn Baker, Chair, Senator Stanley Chang, Vice Chair, Members, Senate Committee on Consumer Protection and Health

From: Trisha Kajimura, Executive Director

Re: TESTIMONY IN SUPPORT OF SB 3008 RELATING TO PAYDAY LENDING, with amendments

Hearing: February 7, 2018, 10:00 AM, CR 229

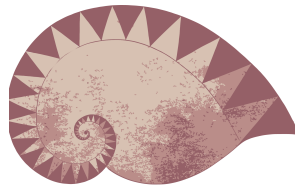
Thank you for hearing our testimony **in support of Senate Bill 3008 (with amendments)**, which closes the loophole that created unaffordable payday loans in 1999 and establishes a regulatory structure for small dollar installment loans with the goal of ensuring affordable monthly payments for our residents, keeping more money in the pockets of our workers and families for rent and mortgage payments.

Mental Health America of Hawaii is a 501(c)3 organization founded in Hawai'i 76 years ago, that serves the community by promoting mental health through advocacy, education and service. Payday loans under our current law prey on economically vulnerable workers in our state and trap them in cycles of unaffordable debt that cause enormous stress on individuals and families. Stress at these toxic levels can harm or worsen mental health. Since we have better options for small personal loans in our community, there is no reason to allow this practice to continue.

In alignment with our advocacy partner, Hawaiian Community Assets, we request that the bill is amended to:

1. require lenders to qualify borrowers based on their income AND debt,
2. cap a borrower's maximum debt-to-income ratio at 60%, and
3. require lenders to offer loss mitigation options in the event of financial hardship.

Thank you for considering my **testimony in support of HB SB 2988**. Please contact me at trisha.kajimura@mentalhealthhawaii.org or (808)521-1846 if you have any questions.



Pono Hawai'i Initiative

Josh Frost - President • Kau'i Pratt-Aquino - Secretary • Patrick Shea - Treasurer
Kristin Hamada • Nelson Ho • Summer Starr

Wednesday, February 7, 2018

Relating to Senate Bill 3008
Testifying in Support

Aloha, Chair Baker, Vice-Chair Tokuda, and Members of the Senate Committee on Commerce, Consumer Protection, and Health,

The Pono Hawai'i Initiative (PHI) **supports the intent SB3008 Relating to Payday Lending**, which transitions from lump-sum deferred deposit transactions to installment-based small dollar loan transactions and specifies various consumer protection requirements for small dollar loans. Also, beginning on January 1, 2019, the bill requires licensure for small dollar lenders that offer small dollar loans to consumers. Finally, it specifies licensing requirements for small dollar lenders.

This bill closes a 1999 loophole that allowed the creation of unaffordable payday loans and establishes a regulatory structure for small dollar installment loans. This would ensure more affordable payday loans with monthly payments for our residents, allowing them to keep more money in their pockets for rent, food, mortgage payments, etc.

Currently, payday loans charge borrowers up to 459% APR. This means for every \$600 loaned the borrower currently pays \$105 just in interest and fees! And too often that money leaves our State economy as profits for off-shore payday lenders. This benefits no one in Hawai'i. It is time to close the loophole on payday lenders.

Though this bill is laudable, we believe it could be improved in the following ways:

- ***Qualify a Borrower Based on Income and Debt***

It is an industry standard for banks, credit unions, and community development financial institutions to determine a borrower's affordable monthly loan payment by calculating their income and debt. Failure to consider a person's monthly debt leads to high default rates and unnecessary fees on consumers – a situation that is detrimental to both the lender and the borrower.

- ***Cap a Borrower's Maximum Debt-to-Income at 60%***

It is also an industry standard for banks, credit unions, and community development financial institutions to have loan policies and procedures that place a cap on the maximum debt-to-income ratio a borrower can have in order to be approved for a loan. Failure to conduct this type of due diligence when providing a loan leads to new

loans that are unaffordable for the borrower and unnecessarily place them in financial hardship that can lead to homelessness.

- ***Require Lenders to Offer a Variety of Loss Mitigation Options***

As we witnessed during the mortgage crisis as well, borrowers must have a variety of loss mitigation options in the event of sudden financial hardship such as loss of a job, reduced work hours, or increased housing payments and living expenses. Loss mitigation options, including forbearance, repayment plans, interest rate reductions, loan term adjustments, and principal reduction helped save lenders, borrowers, and our entire economy billions of dollars in unnecessary foreclosures.

These same loss mitigation options should be available to our workers and families who borrow small dollar installment loans. Furthermore, these loss mitigation options should be available to borrowers who provide a statement of financial hardship and documentation for the lender to offer the appropriate option for relief.

At a time when Hawai'i reports the highest homeless rate per capita of any state in the nation and 57.6% of our renters pay more than 30% of their monthly income toward housing, it is critical that small dollar installment lenders be required to consider a borrower's income and debt and have policies and procedures in place to cap the maximum debt-to-income ratio a borrower can have when being approved for a loan.

Furthermore, we must require small dollar lenders be prepared to address sudden financial hardships that borrowers will inevitably face by having policies and procedures in place to make loss mitigation options available to borrowers that will keep monthly payments affordable throughout the life of the loan.

Our affordable housing crisis is too dire to allow any more money to go from the pockets of our workers and families to outrageous interest rates and fees for payday loans or unaffordable long-term small dollar installment loans. Close the loophole that created unaffordable payday loans, establish a regulatory structure and common lending standards that ensure installment loans are affordable for our residents, and keep more money in the pockets of our workers and families for rent and mortgage payments.

For all these reasons, we urge you to move this bill forward with the recommended amendments.

Mahalo,
Gary Hooser
Executive Director
Pono Hawai'i Initiative, an organization member of the Common Good Coalition



Building strength and stability through shelter

February 5, 2018

Senate Committee on Commerce, Consumer Protection, and Health
Wednesday, February 7, 2018, 10:00am
Conference Room 229

SB3008 – Relating to Payday Lending

Aloha Chair Baker, Vice-Chair Tokuda, and Committee Members:

I am submitting testimony on behalf of Hawaii Habitat for Humanity and six locally-based Habitat organizations across the state. Habitat for Humanity is only one of very few nonprofit organizations that offer homeownership opportunities to low-income residents in Hawaii. Hawaii Habitat for Humanity is a Department of Treasury certified nonprofit Community Development Financial Institution (CDFI). I write to **SUPPORT SB3008 WITH AMENDMENTS.**

Habitat organizations are 501 (c)(3) nonprofit charitable organizations that provide first-time homeownership opportunities to low income families who earn 30-to-80 percent of the area median income to ensure that they have the stability, strength and self-reliance to thrive. However, predatory lending has always undermined those efforts. Without strong lending standards, payday lending threatens the housing security of families by unfairly increasing their debt and placing them into a continuous cycle of financial distress. Habitat homebuyers and potential homebuyers are representative of the population that is inundated with payday lenders because they are low-income and have greater economic instability. Because outstanding payday loan debts are rarely reported and virtually invisible in credit reporting systems, some Habitat homeowners enter into their mortgages with outstanding payday loan debt. This debt undermines Habitat's family selection and underwriting process and threatens the homeowners' ability to repay their mortgages.

SB3008 closes the loophole that created unaffordable payday loans in 1999 and establishes a regulatory structure for small dollar installment loans with the goal of ensuring affordable monthly payments for our residents, keeping more money in the pockets of our workers and families for rent and mortgage payments. While we commend the strides this bill makes in closing that loophole, we also have concerns about protecting the borrowers. We recommend the following amendments:

- Qualify a borrower based on income AND debt, as is common procedure within the lending industry
- Cap a borrower's maximum debt-to-income at 60% -- again placing a cap is common in lenders' policies and procedures

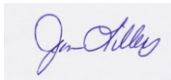
- Require lenders to offer a variety of loss mitigation options – in our own experience as lenders to Hawaii’s low income families, these options can make a world of difference for a family in a financial crisis.
- Lower the maximum interest rate to a 25% maximum, but should be based on the borrower’s ability to pay.

Hawaii’s low income families are struggling more than ever. As one of the highest cost of living states in the Country, housing, health care and education are taking its toll on families who are unable to stabilize their financial situation. While these loans are not always an ideal option, they are options that struggling families will consider in order to get by.

We support SB3008 with the listed amendments to protect Hawaii’s low-income families and specifically providing options that will not jeopardize their ability to afford decent homes.

Mahalo for your time, leadership and consideration. Please contact me at 808-847-7676 or jean@hawaiihabitat.org should you have any questions or need additional information.

Sincerely,



Jean Lilley
Executive Director

Habitat for Humanity Hawaii Island
Habitat for Humanity Leeward Oahu
Habitat for Humanity Maui
Honolulu Habitat for Humanity
Kauai Habitat for Humanity
Molokai Habitat for Humanity



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai'i Appleseed Center for Law and Economic Justice
Supporting SB 3008 -- Relating to Payday Lending
Senate Committee on Commerce, Consumer Protection, and Health
Scheduled for Hearing on Wednesday, February 7, 2018, 10:00 AM, Conference Room 229

Dear Chair Baker, Vice Chair Tokuda, and members of the Committee:

Thank you for the opportunity to testify in SUPPORT of **SB 3008**, which would transition the structure of small dollar loan transactions, specify various consumer protection requirements for such loans, require licensure for small dollar lenders beginning January 1, 2019, and specifies licensing requirements for such lenders.

Payday loans in Hawai'i were first allowed through a loophole in the law that was created in 1999. Most of the profits of from these small-dollar loans are flowing out of our state's economy to unregulated and uncertified out-of-state payday lenders.

This bill would close the payday loan loophole and establish a regulatory structure for small-dollar installment loans, ultimately giving our workers and families more money to make rent and mortgage payments as well as support the local economy.

Estimates are that payday loans in Hawai'i charge borrowers an astounding 459 percent interest rate. Research by the Consumer Financial Protection Bureau finds that "that more than four out of five payday loans are re-borrowed within a month... The majority of short-term loans are borrowed by consumers who take out a least 10 loans in a row, with the borrower paying far more in fees than they received in credit."

In other words, most people who take out paydays loans face repayment terms that set them up to fail. When they are faced with unaffordable payments, they are forced to choose between terrible options, such as taking out more unfair loans to pay off the first one, defaulting on their loan, falling behind on rent and other bills, or declaring bankruptcy. This is not good for them, nor for our overall economy.

While SB 3008 defines a regulatory structure for installment loans in Hawai'i, the current language does not ensure that they will be affordable. We request that the bill be amended to require lenders to qualify borrowers based on both their income and debt, cap a borrower's maximum debt-to-income ratio at 60 percent, and require lenders to offer loss mitigation options in the event of financial hardship.

These amendments will help keep more money in the pockets of our local workers, families, and businesses by ensuring that small-dollar installment loans are affordable even if borrowers face a loss of income or increased expenses.

We appreciate your consideration of this testimony.

Hawai'i Appleseed Center for Law and Economic Justice Hawai'i Appleseed is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.



CATHOLIC CHARITIES HAWAII

TESTIMONY IN SUPPORT OF SB 3008: RELATING TO PAYDAY LENDING

TO: Senator Rosalyn Baker, Chair, Senator Jill Tokuda, Vice Chair, and Members,
Committee on Commerce, Consumer Protection and Health
FROM: Terrence L. Walsh, Jr., President and Chief Executive Officer
HEARING: **Wednesday, 2/7/18; 10:00 am; Conf. Rm. 229**

Thank you for the opportunity to provide **testimony in support of SB 3008**, which places a cap on the interest for payday loans and other consumer protections. I am Terry Walsh, with Catholic Charities Hawai'i.

Catholic Charities Hawai'i (CCH) is a tax exempt, non-profit agency that has been providing social services in Hawai'i for over 60 years. CCH has programs serving individuals, elders, children, developmentally disabled, homeless and immigrants. Our mission is to provide services and advocacy for the most vulnerable in Hawai'i. CCH's advocacy priority is reducing poverty in Hawai'i and this bill would help with that goal by making the interest rate cap on payday loans more manageable for consumers, thereby helping them to avoid a debt trap.

In 2006 the U.S. Department of Defense made it illegal to make loans with interest rates greater than 36% APR to active-duty service members and their families. Currently, 17 other states have adopted this policy and protected their consumers while allowing affordable small loans. At this rate of interest, borrowers are more likely to be able to pay back their loans without rolling them over into another loan and accruing more debt.

Clearly it is the poor who are using this type of financial product and in Hawai'i many people are struggling with the high cost of living. People living below the poverty line are especially hard hit in Hawaii, with the highest cost of shelter in the country. A family of four in Hawaii pays 68% more for food than families on the mainland¹. The January 2018 report from the Aloha United Way found that nearly half of isle households do not earn enough to cover basic needs, much less save for an emergency. This population is frequently teetering at the brink of homelessness. Any change to their financial situation like a decrease in wages or increase in rent will tip them over into homelessness. It is in situations like those that they may use a payday loan to get by. It is critical that they are protected from unreasonable rates and fees that will accumulate to create a greater problem for them.

With no cap on interest for these loans or other protections, these borrowers may find the debt overwhelming and be unable to pay rent and basic living costs. This pathway INTO homelessness must stop.

Thank you for your support. We appreciate this opportunity to discuss one of the challenges faced by people living with low incomes. Please contact our Legislative Liaison, Betty Lou Larson, at 373-0356 or bettylou.larson@catholiccharitieshawaii.org, if you have any questions.

¹ Based on the U.S. Department of Agriculture's Thrifty Food Plan, which is used as the basis for Supplemental Nutrition Assistance Program benefits. See <http://www.cnpp.usda.gov/usdafoodplanscostoffood.htm>.



Maui Loan Inc.

February 6, 2018

Senator Rosalyn H. Baker, Chair

Senator Jill N. Tokuda, Vice Chair

And Members of the Senate Committee on Commerce, Consumer Protection, and
Health

Hawaii State Legislature

Honolulu, HI 96813

FROM: Richard Dan, Operations Manager, Maui Loan Inc.

Dear Chair Baker, Vice Chair Tokuda and Members of the Senate Committee on
Commerce, Consumer Protection, and Health

SUBJECT: **SB 3008 – RELATING TO PAYDAY LENDING**

(Hearing Date: Wednesday, February 7, 2018; Room 229)

My name is Richard Dan and for many years I have provided loans to Hawaii's working families. Folks come to us because they need small loans for a short time. Banks don't care to make small loans; and credit cards – when customers can qualify for one – are extremely risky for borrowers because fees, high interest rates, and late charges can be piled onto the principal.

I **oppose** this bill, and find some of its provisions alarming. Broadly speaking, I do not see what advantage borrowers are supposed to gain from a system like this, which reminds me of my Mom's charge-a-plate in the '50s, where she paid a finance charge on a declining monthly balance. In this bill, a very high rate of 36%, more than banks dare to charge on credit cards.

SB 3008 – RELATING TO PAYDAY LENDING

February 6, 2018

Page 2

From the point of view of the lenders, the additional apparatus would be burdensome, but that appears to be part of the plan of the drafters, who want to drive local lenders out of business.

In past years, I have cautioned the Legislature to be careful about straying outside its area of competence. This bill purports to extend licensure to Internet lenders. I do not believe that will work, and believe even less that the State of Hawaii would expend the resources to try to enforce its laws against shadowy Internet lenders whose very geographical location is unknown.

Behind the various revisions proposed to the payday lending law over the years has been a claim that payday lenders engage in customer abuse.

I acknowledge this happens on the Mainland, but Hawaii's deferred deposit law includes many safeguards.

The principle one is that the borrower must repay the entire amount within 32 days. If he cannot, then the lender can only seek a judgment for the original amount. There is no way a Hawaii payday lender can force a borrower into a cycle of debt.

That's a myth, and opponents of Hawaii's law have never provided an example of it happening here. At least under today's law, you know who is in business and where. Your DCCA inspectors can drop by any time.

Try that with an Internet lender.

I note that Section 486-6 would create a usury violation although Hawaii does not have a general usury statute. I think it is unwise to take such a step through the back door.

Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health

SB 3008 – RELATING TO PAYDAY LENDING

February 6, 2018

Page 3

I also note that the proposed penalty — up to a year in prison — is excessive.

Also, there is this mysterious provision: “Any person who is not a consumer and is injured by a willful violation of this chapter may bring an action for the recovery of damages.” This appears to open the way for people who have never been a customer to sue.

Ove the years, I have proposed recommendations for strengthening Hawaii’s payday lending law, such as a 3-day waiting period after one loan is paid off before another can be requested. The Legislature has not reacted to that. But this law would overturn what I believe is the best in the country from the borrowers’ standpoint and replace it with a complicated measure that promises more than it can deliver and does not offer any genuine additional protections to borrowers.

These are just a few comments leading to my **opposition** of this eighty-eight page proposal. If I can be of assistance in crafting more equitable, accountable and safe legislation as it related to the matter of small short-term loans and/or payday lending, please contact me at Tel: (808) 242-5555.

Sincerely,

Richard Dan

Richard Dan

Maui Loan Inc.



Board Members

President
Jason Okuhama
Managing Partner,
Commercial & Business Lending

Secretary
Marcus Kawatachi
Deputy Director,
Hawai'i Civil Rights Commission

Trina Orimoto
Clinical & Research Psychologist

Kaipo Kukahiko
Executive Director,
KEY Project

Miwa Tamanaha
Deputy Director,
Kua'āina Ulu 'Auamo

HACBED Staff

Brent N. Kakesako
Executive Director

Keoki Noji
Chief Operating Officer

Athena T. Esene
Bookkeeper & Office Manager

Will Simmons
Food Systems Specialist

Foley Pfalzgraf
AmeriCorps VISTA

Alex Narrajos
AmeriCorps VISTA

Date: February 6, 2018

To: Senator Rosalyn H. Baker, Chair, Senator Jill N. Tokuda, Vice-Chair, and members of the Committee on Commerce, Consumer Protection and Health

From: Brent Kakesako, Hawai'i Alliance for Community-Based Economic Development (HACBED)

Re: Support for SB 3008 with Amendments

Aloha Chair Baker, Vice-Chair Tokuda, and Committee Members,

The Hawai'i Alliance for Community-Based Economic Development (HACBED) supports SB3008 with amendments. SB3008 closes the payday loan loophole and establishes a regulatory structure for these loans, but needs to further be amended to ensure small dollar installment loans are affordable for everyday local families by requiring lenders to qualify borrowers based on their income *and* debt, cap a borrower's maximum debt-to-income ratio at 60%, and require lenders to offer loss mitigation options in the event of financial hardship.

HACBED was established in 1992 as a nonprofit statewide intermediary to address social, economic, and environmental justice concerns through community-based economic development and asset building strategies. It advances its mission with core competencies in the areas of community and organizational capacity building, community and economic development planning, and asset policy development and advocacy. HACBED played a facilitating role in the State Asset Policy Task Force and was a key contributor to the State Asset Policy Road Map. HACBED also facilitated the Family & Individual Self-Sufficiency Program (FISSP), which administers the Internal Revenues Services' Volunteer Income Tax Assistance (VITA) program as a part of its larger asset building and financial education initiatives for needy families. As such, HACBED supports the proposed bill if amended, that would provide a number of critical consumer protections for those who take out payday or small dollar installment loans.

Through HACBED's efforts with providing VITA services, we have heard countless stories of the negative effects that payday lending has on families, in many cases acting as a debt trap from which they cannot escape. These stories are corroborated by statistical findings at both the state and national level. In fact, the Consumer Financial Protection Bureau in a 2017 analysis found that four out of five payday loans are rolled over or renewed, meaning that the borrower was not able to repay the loan by the agreed upon date and was left with no other recourse than another high interest payday loan, despite having already experienced the difficulties of repaying these loans. It is due to this revolving door of debt that the average payday loan borrower remains in debt for more than six months, which is twice the length of indebtedness recommended by the FDIC. Due to high rates and frequent rollovers, three out of five payday loans are made to borrowers whose fees exceed the amount that they have actually borrowed. SB3008 if amended would provide a

number of critical protections to make short-term loans affordable for the everyday local family:

- *Qualify a borrower based on income and debt* – it is an industry standard among, banks, credit unions and community development financial institutions to calculate a borrower’s affordable monthly loan payment by taking into account both income and debt, which includes monthly housing payments as well as monthly loan and credit card payments.
- *Cap a borrower’s maximum debt to income ration at 60%* – is also industry standard for banks, credit unions, and community development financial institutions to have policies in place which cap a borrower’s debt to income ratio. This due diligence ratio is calculated by dividing gross monthly income by total monthly debt—including new small dollar installment loan and its interest and fees—to ensure the loan will be affordable for the borrower and will not place them into financial hardship that can lead to homelessness.
- *Require lenders to offer a variety of loss mitigation options* – loss mitigation options such as forbearance, repayment plans, interest rate reductions, loan term adjustments, and principal reduction to prevent unnecessary foreclosures.

All recent statistics indicate that changes must be made to the payday lending industry in order to provide Hawai‘i’s families with choice and control over their financial lives. There are a number of safe, regulated, lower-cost alternatives to payday loans that can be found throughout Hawai‘i and these should also be better promoted and marketed. As such, we support the passage of SB3008 with amendments.

Mahalo for this opportunity to testify,

Brent N. Kakesako
Executive Director
Hawai‘i Alliance for Community-Based Economic Development

TESTIMONY IN SUPPORT OF SB 3008: RELATING TO PAYDAY LENDING

TO: Senator Rosalyn Baker, Chair, Senator Jill Tokuda, Vice Chair, and Members,
Committee on Commerce, Consumer Protection and Health
FROM: Toni Symons
HEARING: **Wednesday, 2/7/18; 10:00 am; Conf. Rm. 229**

Thank you for the opportunity to provide **testimony in support of SB 3008**, which places a cap on the interest for payday loans and other consumer protections.

My name is Toni Symons and I am the Program Director at Na Kahua Hale O Ulu Wini. We are the only transitional housing program for homeless families in West Hawaii. We also offer services to the very low-income families who reside in the units under a Section 8 project-based voucher. In my work I have heard frightening stories from our tenants who have been preyed upon by these businesses. It has been especially problematic for our COFA families who have little to no understanding of these businesses. In the financial classes we offer to our residents, we spend a lot of time talking about predatory lenders and how it can affect their housing. 98% of our residents are SNAP recipients and many are barely making it.

In 2006 the U.S. Department of Defense made it illegal to make loans with interest rates greater than 36% APR to active-duty service members and their families. Currently, 17 other states have adopted this policy and protected their consumers while allowing affordable small loans. At this rate of interest, borrowers are more likely to be able to pay back their loans without rolling them over into another loan and accruing more debt.

Clearly it is the poor who are using this type of financial product and in Hawai'i many people are struggling with the high cost of living. People living below the poverty line are especially hard hit in Hawaii, with the highest cost of shelter in the country. A family of four in Hawaii pays 68% more for food than families on the mainland¹. This population is frequently teetering at the brink of homelessness. Any change to their financial situation like a decrease in wages or increase in rent will tip them over into homelessness. It is in situations like those that they may use a payday loan to get by. It is critical that they are protected from unreasonable rates and fees that will accumulate to create a greater problem for them.

With no cap on interest for these loans or other protections, these borrowers may find the debt overwhelming and be unable to pay rent and basic living costs. This pathway INTO homelessness must stop.

Thank you for your supporting this effort to protect Hawai'i's citizens.

¹ Based on the U.S. Department of Agriculture's Thrifty Food Plan, which is used as the basis for Supplemental Nutrition Assistance Program benefits. See <http://www.cnpp.usda.gov/usdafoodplanscostoffood.htm>.

To: Senator Rosalyn H Baker, Chair
Senator Jill N. Tokuda, Vice Chair
Committee on Commerce, Consumer Protection, and Health

From: R. Craig Schafer, President,
Money Service Centers of Hawaii, Inc.

February 7, 2018

In opposition to SB3008

Money Service Centers of Hawaii, Inc. is a locally owned and operated money service business (MSB) headquartered in Kapaa, Kauai. We operate fee-based money service centers throughout the State under the trade name PayDayHawaii. Over the past 18 years we have provided check cashing services to over 44,000 Hawaii residents.

We oppose SB3008 because the bill is confusing and contradictory. It attempts to replace deferred deposit transactions authorized under the check cashing law, HRS480F, with an unproven installment loan scheme that is expensive for the State to administer and enforce. The rationale for this complete overhaul of the existing law relies on out-of-state data.

The preamble of the bill cites a study by the Pew Charitable Trust. The Pew Charitable Trust has never studied check cashing businesses operating in Hawaii. Often people will take a report from somewhere else. Oregon, North Carolina, and other states. They will try to impose that same situation on Hawaii. It's important to be specific to our State with a different law and different outcomes. We need to look at what is happening in our community from a provable standpoint and not jump to conclusions based on data from the mainland.

The only study on deferred deposit transactions based on Hawaii, was completed by the State Auditor in 2005* and found no evidence of harm to Hawaii consumers. Before considering any legislation that would substantially change HRS480F, the legislature should authorize another audit so that we have more up-to-date data for Hawaii. SB3008 should not be passed based on unsubstantiated anecdotal evidence and studies from other states which do not have the consumer protections we have in our check cashing law.

** Sunrise Analysis: Check Cashing and Deferred Deposit Agreements (Payday Loans). A Report to the Governor and the Legislature of the State of Hawai'i, Report No. 05-11, December 2005.*

Sincerely,

R. Craig Schafer

President. Money Service Centers of Hawaii, Inc.

SB-3008

Submitted on: 2/5/2018 10:25:28 AM

Testimony for CPH on 2/7/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez		Support	No

Comments:

SB-3008

Submitted on: 2/7/2018 9:46:32 AM

Testimony for CPH on 2/7/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi		Support	No

Comments:

I sent my testimony in earlier but evidently it did not process.

The people the lenders feed on cannot get above water because of their exorbitant interest rates/fees. At the end of the month, they are in the same situation so the endless cycle goes on while they get deeper in debt. At this point, could they possibly turn to some criminal activity or give up on life?