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**STATE OF HAWAII
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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Intrastate Commerce
Wednesday, March 12, 2020
9:30 a.m.
State Capitol, Conference Room 430**

**On the following measure:
S.B. 2587, S.D. 1, RELATING TO CONSUMER PROTECTION**

Chair Ohno and Members of the Committee:

My name is Iris Ikeda, and I am the Commissioner of the Department of Commerce and Consumer Affairs' (Department) Division of Financial Institutions (DFI). The Department appreciates the intent of and offers comments on this bill.

The purposes of this bill are to: (1) transition from lump sum deferred deposit transactions to installment-based small dollar loan transactions with specific consumer protection requirements for small dollar loans; (2) beginning 1/1/2022, require licensure for small dollar lenders that offer small dollar loans to consumers and specify licensing requirements for small dollar lenders; (3) authorize the DFI to appoint 2.0 full-time equivalent examiner positions, funded via the Compliance Resolution Fund, to carry out the purposes of the small dollar installment loan program; (4) require check cashers to be registered with the Department and offer a voluntary payment plan to customers under certain circumstances; (5) establish the terms of voluntary payment plans and clarify that a customer may only have one outstanding deferred deposit transaction from

any source; (6) amend notices to customers required of check cashers; (7) remove the exemption for persons engaged in the bona fide retail sale of goods or services; and (8) require the DFI to conduct an analysis of the regulation of payday lenders and deferred deposit agreements in the State.

For the Committee's information, according to the June 30, 2019, annual report filed by banks on their financial condition, five Hawaii chartered nondepository financial service loan companies currently offer small dollar consumer loans totaling \$119,362,396.

While the Department appreciates the bill's intent to regulate small dollar loan transactions, it notes that a consumer loan statutory scheme already exists in Hawaii Revised Statutes (HRS) chapter 412, article 9. The DFI has been working with the affected industry and would like to use this statutory scheme for licensing, supervision, and examinations. HRS article 9 offers, among other things: (1) precomputed consumer loans; (2) provisions on how to calculate the interest (not to exceed 24% a year); (3) types of fees that can be charged to consumers; (4) the circumstances under which a prepayment penalty can be charged; and (5) provisions on how refunds are calculated. Because this statutory scheme is part of the DFI's banking statutes, the DFI reviews nondepository financial service loan companies in the same manner as it reviews banks. The nondepository companies would be required to provide consumer disclosures, as required by federal law. If the Committee would like to consider this statutory scheme, the Department would be available to work with interested parties to determine if changes to HRS article 9 are necessary.

Thank you for the opportunity to testify on this bill.

To: Honorable Takashi Ohno, Chair
Honorable Dale Kobayashi, Vice Chair
The Committee on Intrastate Commerce

From: Pattiann Lacio, Senoir Branch Manager, PayDayHawaii Stadium Mall

March 10, 2020

Call for Amendment to SB 2587 Sec. 15

Not In Support of SB2587 SD1 or In Opposition.

My Name is Pattieann Lacio. I have 20 year's of experience with short-term credit under HRS 480F. I became the Manager of the Stadium Mall branch under Mr. Cash, Inc. brand in 2000 and Branch Manager under PayDayHawaii brand since 2007.

I urge the committee to **Amend Section 15** of this bill.

That the Analysis be conducted by The Hawaii State Auditor instead of the Department of Commerce and Consumer Affairs, Division of Financial Institutions.

It has been over 15 years since the last study was completed by the Hawaii State Auditor, Sunrise Analysis Report No. 05-11 back in December 2005, I ask for this study to be **Updated**. There is so much more up to date data for Hawaii as well as the impact created from the out of state internet lenders.

Sincerely,
Pattieann Lacio



74 Swedesford Road
Suite 150
Malvern, PA 19355
(610) 296-3400 Phone

LATE

March 11, 2020

Honorable Takashi Ohno, Chair
Honorable Dale T. Kobayashi, Vice Chair
House Intrastate Commerce Committee
Hawaii State Capital
415 S. Beretania Street
Honolulu, Hawaii 96813

Re: SENATE BILL NO. 2587 SD1, RELATING TO CONSUMER PROTECTION

Dear Chair Ohno, Vice Chair Kobayashi and Committee Members:

On behalf of Dollar Financial Group (“DFG”), we respectfully submit the following testimony relating to Senate Bill No. 2587 SD1 (SB 2587), which will be heard by your Committee on March 12, 2020. DFG **SUPPORTS** SB 2587, with the recommendations that will be described below.

We would like to begin by applauding both the Legislature and this Committee for considering the industry and consumer advocacy groups’ feedback related to prior proposed legislation on alternative financial service products for non-prime consumer borrowers in Hawaii, and drafting a bill that can place Hawaii at the forefront of alternative finance regulation. By building additional measures into Deferred Deposit Transactions and creating a solid statutory and economic framework for Small Dollar Installment Loans, SB 2587 provides consumers with a greater number of credit options that will be better suited to their situation and credit profiles, while at the same time helping them improve their credit history (which a viable installment lending product will enable them to do).

Based on its recent experience providing both Deferred Deposit Transactions and small dollar installment loans throughout the United States and Canada, DFG strongly believes that the optimal regulatory framework is one that enables and encourages the delivery of appropriately priced products best suited to the needs of consumers, while at the same time creating an economically sustainable lending market. In this regard, it is important to realize that a new installment lending product will require a substantial capital investment prior to any lender being able offer such an installment loan in Hawaii. In testimony provided in connection with prior bills, local banks have validated this position and indicated that they were not inclined to make such an investment and enter this type of loan market.

Accordingly, DFG recommends a number of changes to SB 2587 to ensure that lenders will be incentivized to make such an investment in Hawaii and become licensed small dollar installment providers. It is essential that the regulatory terms enable a viable and sustainable non-prime, installment lending market to take hold in Hawaii for consumers to be able to move up the credit product ladder, with installment loans acting as a new and essential rung on that ladder. Our other recommendations seek to better align certain Deferred Deposit Transaction provisions with best practices we have recently seen implemented with success throughout North America. The most important of these limited changes are:

I. Small Dollar Installment Loans

1. Minimum and Maximum Loan Amounts: create a \$600 minimum loan amount and increase the maximum from \$1,000 to \$1,500
2. Monthly Fee Caps: change as follows
 - Loans between \$600 and \$699.99: \$40
 - Loans between \$700 and \$799.99: \$50
 - Loans of \$800 or more: \$60

II. Deferred Deposit Transactions

1. Voluntary Payment Plans

- a Number of Payments: decrease the amount of payments from 6 to 4
- b Maximum Allowable Payments: remove the 5% of a consumer's gross monthly income limit, and replace it with a 25% cap at the point of origination

Maximum and Minimum Loan Amount. DFG believes that shifting the allowable loan amount from \$1–\$1,000 to \$600–\$1,500 will allow for consumers to obtain the right amount of financing for their needs. Again, we applaud the legislature for recognizing the need for both small dollar installment loans and deferred deposit transactions to foster an environment of economic growth, and believe that differentiating the two products would help serve that goal better. Eliminating any potential overlap between the two credit products is advisable to help ensure that the consumer receives the financing option that is best for them and enhance the likelihood of a successful transition to a new installment lending product.

In maintaining the Deferred Deposit Transaction limit at \$600, while creating a new financial product for loans of \$600–\$1,500, SB 2587 would allow for both immediate short-term, smaller dollar financing (for short-term liquidity needs of the customer) and larger dollar, longer-term financing (for more capital intensive demands of the customer). DFG *firmly* believes that non-prime customers are capable of making rational and informed loan product choices that suit their particular requirements. By properly differentiating the Deferred Deposit Transaction and small dollar installment loan products lenders will be able to better provide the appropriate credit options based on the needs of the customers.

Our edits to SB 2587 also include a number of other recommendations, the reasons for which we hope are self-evident. For example, we created a definition for the term “Loan Charges” that explicitly lists allowable fees, rather than leave any ambiguity.

Monthly Fee Caps. It is undebatable that there is greater risk associated with lending in the non-prime credit market segment than in the prime or near-prime/market, and that longer-term credit products, like the installment loan proposed by SB 2587, will introduce even greater degrees of credit risk. Additionally, while both the existing Deferred Deposit Transactions and small dollar installment loans require operational infrastructure, the small dollar installment loan product requires substantial and extensive changes to those operational, compliance, IT, and customer service requirements to appropriately provide and continually service small dollar installment loans. We strongly recommend that the fee structure be altered to render the provision of an installment loan product viable for a responsible lender at the authorized interest rate of 36%. Based on DFG’s modeling and its loan loss experience with the non-prime market in Hawaii, the interest and fee revenue permitted under the current terms of SB 2587 would barely cover the loan loss reserve that would be necessary for this customer credit class in Hawaii. After accounting for the lender’s own cost of funds, its other operating costs and expenses and an expected level of early prepayments, with the proposed monthly maintenance fee limits, the current SB 2587 installment loan product becomes an unattractive product to any lender (whether a bank or a non-bank lender) in Hawaii, likely leaving the Hawaiian small dollar installment loan industry as a licensable activity with no installment lending volumes and probably no licensees.

Voluntary Payment Plan Number of Payments. DFG recognizes the strong protections that the legislature has created for consumers in Hawaii, and agrees that a voluntary payment plan would be an extremely beneficial addition to Section 480F. DFG currently offers voluntary payment plans to its customers throughout North America, including in Hawaii. Our current voluntary payment plan in Hawaii is modeled off of similar plan offerings we have successfully implemented throughout North America (including several Canadian provinces and U.S. states). Based on our experience, 4 equal monthly payments enables consumers to more readily extinguish their debt than does 6 monthly payments. At the same time, doing so creates greater efficiencies for a lender, making the provision of the voluntary payment plan more attractive and consistent with best practices being implemented in other jurisdictions. This consistency will significantly reduce operational costs and inefficiencies of dealing with different regulatory requirements and loan terms that do not enhance consumer protection while adding to the cost of doing business.

Voluntary Payment Plan Maximum Allowable Payments. As discussed above, DFG has extensive experience implementing voluntary payment plans throughout the United States and Canada. Forcing a voluntary repayment plan to extend beyond four months is not in the best interest of the consumer and limiting the allowable payment amount could cause a voluntary repayment plan to extend far beyond four months. This keeps the consumer in debt longer, and creates economic inefficiencies for lenders, making the prospect difficult for both parties.

As an alternative, DFG recommends eliminating the 5% of the consumer's gross monthly income cap on the voluntary payment plans, and instead institute a stronger and more robust protection for consumers by capping their initial allowable deferred deposit transaction at 25% of their gross monthly income. We are using this 25% income limit with good results for our consumers in several jurisdictions, including Hawaii. This will help ensure that fewer consumers ever need to enter into voluntary repayment plans and has the effect of capping voluntary repayment plan payments, since the consumer's initial deferred deposit transaction could never be "too high."

In summary, we believe that with the regulatory modifications we have suggested, both short-term single payment loans and larger, longer-term, installment loans can be established in Hawaii and serve as superior credit options for Hawaii's non-prime consumers than what is presently provided for under current regulations. The introduction of a new installment loan product, in particular, will be beneficial in enabling non-prime consumers to improve their credit histories and hopefully gain access to a wider range of loan products. With our recommended alterations, SB 2587 can create stronger protections for the consumer and provide the efficiencies and economics necessary for a viable non-prime installment lending market to take hold in Hawaii. A more effective non-prime lending market can help these borrowers by providing better tailored credit products, enabling them to repair or improve their credit histories, lowering their cost of credit and, most importantly, providing them with continued access to much needed credit to deal with the demands of their daily lives.

Thank you for your consideration of our testimony.

Very truly yours,

DOLLAR FINANCIAL GROUP

A handwritten signature in blue ink, appearing to read "James Odell", is written over the printed name.

James Odell
General Counsel and Executive Vice President

LATE

THE SENATE
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

S.B. NO.

2587
[S.D. 1](#)

A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

PART I

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

The legislature further finds that a form of ~~AFS~~[alternative financial services](#) known as 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 the Federal Reserve System's Report on the Economic Well-Being of ~~U.S.~~[United States](#) Households in 2017, forty per cent of Americans would not be able to cover an unexpected expense of \$400 without having to sell something or borrow money. Another study conducted by The Pew Charitable Trusts found that the majority of borrowers use deferred deposit agreements for recurring expenses, rather than unexpected expenses or emergencies,

because they live paycheck to paycheck. Additional research shows that approximately twelve million Americans utilize payday loans annually. The Consumer Financial Protection Bureau has reported that seventy per cent of those payday borrowers will end up taking out a second payday loan, and some lenders allow borrowers to roll the balance into a new larger loan with the same ~~predatory~~problematic fee schedule.

The legislature also 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 to consumers.

Unfortunately, due to the State's current deferred deposit laws, the payday lending industry can engage in practices that trap consumers in unsustainable cycles of debt. Payday lenders structure loans with unrealistically short repayment terms, unaffordable payments, and excessive fees, resulting in long-term, high-cost debt and harm to the consumer. Lenders are also granted access to the borrower's checking account to ensure that the lender gets repaid, even if the borrower cannot cover rent, utilities, and other basic living expenses. The Pew Charitable Trusts has reported that the average Hawaii payday borrower incurs \$529 in fees to borrow \$300 over five months. Research also shows that this amount is nearly three times higher than what the same lenders charge similarly situated consumers in other states. Due to the high cost of living in the State, these practices are likely to contribute to the current homelessness crisis.

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 within the payday lending industry. Hawaii has not yet joined in these reform efforts. In 2017, the Consumer Financial Protection Bureau released new rules that, among other things, target loans with a thirty-six per cent yearly interest rate or higher and restrict payday lenders from extracting money from the borrower's account, without explicit consent, if they failed to repay twice in a row. However, the current presidential administration has indicated that it will modify the rules before they go into effect, indefinitely rolling back many of the intended consumer protections. It is critical that the State take action now to address these harmful practices in light of this delay and the weakening of the federal consumer protections for payday and similar loans.

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, do not trap borrowers in a cycle of high-interest debt, and do not further contribute to the homelessness crisis.

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

(1) ~~Transitioning the payday lending industry from lump sum deferred deposit transactions to~~Providing for new viable installment-based small dollar loan transactions in addition to enhanced deferred deposit transactions;

(2) Specifying various consumer protection requirements for small dollar loans;

(3) Beginning January 1, ~~2021~~2022, requiring licensure for small dollar lenders that offer small dollar loans to consumers, subject to the oversight of the division of financial institutions of the department of commerce and consumer affairs to protect against illegal offshore lending;

(4) Specifying licensing requirements for small dollar lenders;

(5) Capping interest at thirty-six per cent per annum and one simple maximum monthly maintenance fee tiered up to ~~\$25~~50;

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

(7) Capping maximum allowable costs at ~~fifty~~sixty per cent of the principal loan amount, preventing a loan from being either too short or too long in duration;

(8) Capping the maximum allowable loan size at ~~\$1,000~~1,500.00 and setting the minimum allowable loan size at \$600.01, providing more flexibility for lenders and borrowers than under the current law;

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

(10) Prohibiting a lender from making more than one loan at a time to a consumer, preventing incentives for lenders to "split" loans and charge higher fees; ~~and~~

(11) Authorizing the division of financial institutions to establish and hire two full-time equivalent permanent examiners to carry out the purposes of the small dollar installment loan program, funded via an increase to the ceiling of the compliance resolution fund;

(12) Creating a registration requirement for check cashers, and including Deferred Deposit Transactions Providers within this requirement;

(13) Creating a "Voluntary Payment Plan" for deferred deposit transactions;

(14) Requiring check cashers to maintain records and create reports related to their business activities;

(15) Reiterating that a consumer is limited to one deferred deposit transaction at a time; and

(16) Requiring Deferred Deposit Transaction Providers to provide additional disclosures and post notices;

(17) Creating various other changes to the legislative schema to permit the above enumerated purposes; and

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

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:

"Annual percentage rate" means an annual percentage rate as determined pursuant to section 107 of the Truth in Lending Act, title 15 United States Code section 1606. For the purposes of this definition, all fees and charges, including interest and monthly maintenance fees authorized by this chapter, 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 control person. For the purposes of determining the percentage of an applicant or a licensee controlled by any person, there shall be aggregated with the control person's interest the interest of any other person controlled by the person, or by any spouse, parent, or child of the person.

"Control 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, including 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 consumer'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 Truth in Lending (Regulation Z), 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 a licensee to maintain a small dollar loan.

"NMLS" means the Nationwide Multistate Licensing System [and Registry](#), which is a licensing system developed and maintained by the Conference of State Bank Supervisors 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 that uses the original payment schedule to calculate interest.

["Renewal" means the refinancing of a small dollar loan that occurs during the period between the original maturity date and the preceding installment payment due date. The term "renewal" does not include the refinancing of a small dollar loan that occurs prior to the penultimate installment payment due date.](#)

"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.

"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.

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

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

§ -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;

(2) The total amount of the small dollar loan shall not be less than \$600.01 or exceed \$1,000.00 pursuant to section -5(a);

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

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

(A) ~~\$10~~40 on a loan of an original principal loan amount up to ~~\$300.00~~699.99;

(B) ~~\$15~~50 on a loan of an original principal loan amount of at least ~~\$300.01~~700.00 and up to ~~\$600.00~~799.99; and

(C) ~~\$25~~60 on a loan of an original principal loan amount of at least ~~\$600.01~~800 and up to ~~\$1,000.00~~1,500.00;

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

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

(6) 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;

(7) 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, provided that in order to make a prepayment all past due interest and fees must first be paid;

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

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

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

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

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

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

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

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

(2) Any unearned monthly maintenance fees.

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

§ -3 Written agreement; requirements; disclosure. (a) Each small dollar loan transaction and renewal shall be documented by a written agreement signed by the small dollar lender and consumer. The written agreement shall contain the following information:

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

(2) The transaction date;

(3) The loan amount;

~~(4) The annual percentage rate charged;~~

(54) The authorized interest rate;

(65) A statement of the total amount of finance charges charged, expressed as a dollar amount and an annual percentage rate;

(76) The installment payment schedule setting out the amount due on specific due dates;

(87) The name, address, and telephone number of any agent or arranger involved in the small dollar loan transaction;

(98) The right to rescind the small dollar loan before 5:00 p.m. on the next day of business at the location where the loan was originated;

(109) A notice to the consumer that a returned instrument may result in a dishonored instrument charge, not to exceed \$25; and

(1110) A description of the methods by which small dollar loan payments may be made, which may include [a debit card payment, Automated Clearing House transfer, e-check, other forms of electronic transfers, money order](#), cash, check, or any additional method of loan payment authorized by this chapter or by rule adopted by the commissioner pursuant to chapter 91.

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

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

**"MULTIPLE
INSTALLMENT
PAYMENT**

Amount Financed

Finance Charge

Amount you will receive

Term (months)

Authorized Interest Rate

Monthly Maintenance Fee

Total of All Permitted Charges

Total You Will Pay for This Loan
(Amount Financed,
Interest, and Monthly Maintenance Fee)

ANNUAL PERCENTAGE RATE

Payment Schedule"

(d) The consumer shall sign and date each of two copies of the written disclosure required pursuant to subsection (c), 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. [This requirement may also be accomplished by electronically signing an electronic copy of the disclosure and making the disclosure electronically available to the consumer, if the consumer is applying for the loan over the Internet.](#) 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.

(e) The written agreement may include a demand feature that permits the lender or any other person, in the event the consumer fails to ~~meet the repayment terms for any outstanding balance~~[make any payment when due](#), to terminate the small dollar loan in advance of the original maturity date, but no earlier than ten days after ~~repayment was due~~[the missed payment](#), and demand repayment of the entire outstanding balance. If the written agreement includes a demand feature and the demand feature is exercised, the lender shall be entitled to collect only the outstanding balance and a prorated portion of the unpaid interest and fees earned up to the date of termination. For purposes of this subsection, the outstanding balance and prorated portion of the unpaid interest and fees shall be calculated as if the consumer had voluntarily prepaid the loan in full on the date of termination.

§ -4 Authorized interest rate. (a) Subject to section -2(a)(4), a small dollar lender may contract for, and receive interest at, a rate 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 the purposes of computing precomputed loans, including but not limited to calculating 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; and provided further that monthly installment payment dates may be omitted [if the parties agree in writing, either in the written agreement required under section -3 or in a subsequent agreement](#), to accommodate consumers ~~with~~[having](#) seasonal income.

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

(e) If a small dollar loan is prepaid in full or renewed prior to the loan's maturity date, the lender shall refund to the consumer a prorated portion of the unearned 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 the purposes of this section, the monthly maintenance fee shall not be considered to be fully earned at the beginning of a month.~~

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

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

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

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

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

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

(i) A lender shall not collect a default charge on any installment not paid in full within ten days after its due date. A lender may charge a default charge of \$30. For this purpose, all installments are considered paid in the order in which they become due.

§ -5 Maximum and Minimum loan amount amounts; prohibition against multiple loans. (a) A lender shall not lend an amount less \$600.01 or greater than ~~\$1,000~~1,500.00 nor shall the amount financed exceed ~~\$1,000~~1,500.00 by any one lender at any time to a consumer.

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

(1) The small dollar lender;

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

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

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

(c) If a consumer obtains a small dollar loan voluntarily and separately from the consumer's spouse and the consumer's action is documented in writing, [either in the written agreement required under section -3 or in a subsequent agreement](#), signed by the consumer, and retained by the lender, the transaction shall not be considered a violation of this section.

§ -6 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 written agreement, clearly marked across the face:

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

§ -7 Notice to consumers; general requirements; right to prepay; loan limits; right to rescind. A small dollar lender shall provide the following notice on each written 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 MAY REQUIRE ADDITIONAL FEES OR CHARGES.
STATE LAW PROHIBITS THIS SMALL DOLLAR LOAN FROM EXCEEDING ONE THOUSAND [FIVE HUNDRED](#) DOLLARS (~~\$1,000~~[1,500](#)) IN TOTAL DEBT. 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]."

§ -8 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.

(b) Upon renewal of a small dollar loan, the lender may renew up to ~~\$1,000~~[1,500.00](#) of the remaining unpaid principal balance. If the unpaid balance on renewal is more than ~~\$1,000~~[1,500.00](#), the consumer may be required to pay the remaining balance; provided that the lender shall not finance any amount over ~~\$1,000~~[1,500.00](#). The total amount of fees and charges for the renewed loan shall meet the requirements of section -2, [with the understanding that the total amount of fees and charges a small dollar lender may charge, collect, or receive in connection with the renewal of a small dollar loan shall not exceed sixty per cent of the renewal principal loan amount](#). 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) Once the consumer has paid off the small dollar loan transaction, the consumer may enter into a new small dollar loan agreement with the lender; provided that the lender shall not have more than one outstanding loan with a borrower at any one time, pursuant to section —5.~~

§ -9 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, [prepaid debit cards](#), [Automated Clearing House transfers](#), [e-checks](#), [other forms of electronic transfers](#), money order, or cash. ~~The lender shall inform the consumer in writing that the lender shall cash the monetary instrument or money order, upon request of the consumer, at no cost to the consumer.~~

§ -10 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. [The lender shall cash any monetary instrument or money order, upon request of the consumer, at no cost to the consumer.](#)

~~—§ -11 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.~~

§ -12 Delinquent small dollar loans; restrictions on collection by lender 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 the consumer's spouse or the consumer's domestic partner in any form, manner, or place, more than once; [excluding calling a shared phone number and asking to speak to the consumer, sending a text message to a shared phone number, sending an electronic mail to a shared electronic mail address, or other electronic writing to a shared electronic account;](#)

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

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

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

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

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

(f) For the 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 message, or other electronic writing; provided that:

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

§ -13 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 [payment due on a](#) small dollar loan, not to exceed \$25. The lender shall not collect any other fees as a result of the dishonored presentment.

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

§ -14 Posting of license and fees and charges. Any small dollar lender offering a small dollar loan shall conspicuously and continuously post at any place of business where small dollar loans are made, the license required pursuant to this chapter and a notice of the fees and charges imposed for small dollar loans.

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

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

§ -16 Notice on assignment or sale of contract. (a) No [licensees small dollar lender](#) may pledge, negotiate, sell, or assign a [current and performing](#) small dollar loan, except to another [licensees small dollar lender](#) 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.

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

"SMALL DOLLAR LOAN

No [licensees small dollar lender](#) may pledge, negotiate, sell, or assign a small dollar loan, except to another [licensees small dollar lender](#) 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."

(c) This provision does not apply to (1) the transfer of a small dollar loan to a company affiliated with the small dollar lender that securitizes the small dollar lender's loan receivables, and (2) the pledge or other granting of a security interest in the small dollar loan to a financial institution in connection with asset back financing or similar lending facility of the small dollar lender, provided that in either scenario, the small dollar lender does not pledge, negotiate, sell, assign, or otherwise relinquish its servicing rights and requirements on the small dollar loan.

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

(b) All books and records may be maintained as originals or photocopies, on microfilm or microfiche, on computer disks or tapes, or similar forms; provided that the books and records 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 a greater or lesser period as the commissioner may prescribe by rule adopted pursuant to chapter 91.

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.

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

- (1) A financial institution;

(2) A nondepository financial service loan company;

(3) An "open end credit plan", as defined in the Truth in Lending Act, 15 United States Code section 1602(j); or

(4) A tax refund anticipation loan.

§ -33 License; application; issuance. (a) The commissioner shall 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. The application shall contain, at a minimum, the following information:

(1) The legal name, trade names, 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 principal place of business;

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

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

(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 to 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 or material concerning the applicant's identity, including:

(1) Fingerprints of the applicant or, if an applicant is not an individual, 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, 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 control 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 1681a(p); 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 United States 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 lender shall be registered with the business registration division of the department to do business in this State before a license pursuant to this chapter shall be granted.

§ -34 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 control persons, executive officers, directors, general partners, and managing members, has never had a small dollar 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 control 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 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; 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 [for which a pardon has been granted](#) shall not be deemed a conviction for the purposes of this section;

(3) The applicant or, in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has demonstrated financial responsibility, character, and general fitness to command the confidence of ~~the~~a community and to warrant a determination that the applicant shall operate honestly, fairly, and efficiently, pursuant to this chapter. For the purposes of this paragraph, a person is not financially responsible ~~whenif~~ 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 upon:

- (A) Current outstanding judgments, except judgments solely as a result of medical expenses;
- (B) Current outstanding tax liens or other government liens and filings, subject to applicable disclosure laws and administrative rules;
- (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 control 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~~all other licensing requirements of this chapter; and

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

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

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

(1) Whose license to conduct business under this 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) Whose license to conduct business in the small dollar loan or payday industry has been revoked by an administrative order issued by the commissioner or the commissioner's designee, or the licensing authority of another state or jurisdiction, for the period specified in the administrative order;

(3) Who has advertised [directly and purposefully to Hawaiian consumers](#) or made internet loans ~~in violation of~~ [prior to obtaining a license under](#) this chapter; or

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

(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.

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

(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 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 1681a(p).

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

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

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

(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 operate as a surety in this State, 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 upon the annual dollar amount of loans originated.

(d) The bond required by subsection (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 licensee as obligor under this chapter. The bond shall be conditioned upon the following:

(1) The licensee as obligor shall 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 licensee as obligor all moneys that may become due and owing to the State and those persons under and by virtue of this chapter.

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

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

(b) The annual renewal fee shall be accompanied by a report, in a form prescribed by the commissioner, 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 shareholders' 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 small dollar 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 principal place of business and branch 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 sections -33, -34, and -35, filing a completed renewal statement on a form prescribed by NMLS or by the commissioner, paying a renewal fee, and meeting the requirements of this section.

(d) A licensee that has not filed an annual report that has been deemed complete by the commissioner or 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.

§ -37 Enforcement authorities; violations; penalties. (a) To ensure the effective supervision and enforcement of this chapter, the commissioner, pursuant to chapter 91, may take any disciplinary action as specified in subsection (b) against an applicant or licensee 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 was made;

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

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

(5) The applicant or licensee is insolvent;

(6) 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;

(7) The applicant, licensee, or, if an applicant or licensee is not an individual, each of the applicant's or licensee's control persons, executive officers, directors, general partners, and managing members 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;

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

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

(10) 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

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

(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 engaging in any act specified under subsection (a);

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

(6) Impose penalties of up to \$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, applicant, or person is engaging, has engaged, or is about to engage in an illegal, unauthorized, unsafe, or unsound practice in violation of 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,

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

§ -38 Voluntary surrender of license. (a) A licensee may voluntarily cease business and surrender its license by giving written notice to the commissioner of its intent to surrender its license. Prior to the surrender date of a license, the licensee shall have either completed all pending small dollar loan transactions or assigned each pending small dollar loan transaction to another licensee [or entity described in section -16](#).

(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 telephone 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;

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

(7) Confirmation that the licensee has notified each of its small dollar loan consumers, if any, that the small dollar loan is being transferred and the name, address, telephone number, and any other contact information of the licensee or other entity, as described in section -16, to whom the small dollar loan was assigned.

(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.

§ -39 Sale or transfer of license; change of control. (a) No small dollar lender 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 shall 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 -36. The information shall include, for the five-year period prior to the date of the application for change of control of the licensee, a history of 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. Authorization shall also be given to conduct criminal history record checks of those 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 shall be exempt from the requirements of subsection (b), but the licensee regardless shall notify the commissioner when a change of 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 whom the commissioner, by rule or order, exempts in the public interest.

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

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

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

(b) If a small dollar lender has more than one place of business, each additional place of business in Hawaii shall be licensed 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 -35.

(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 -35.

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

(1) State the intended date of closing; and

(2) Specify the reasons for the closing.

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

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

§ -41 Payment of fees. All fees collected pursuant to section -35, 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.

§ -42 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~~may:

- (1) Issue declaratory rulings or informal nonbinding interpretations;
- (2) Investigate and conduct hearings regarding any violation of this chapter or any rule or order of, or agreement with, the commissioner;
- (3) Create fact-finding committees that may make recommendations to the commissioner for the commissioner's deliberations;
- (4) Require an applicant or any of its control persons, executive officers, directors, general partners, and managing members to disclose their relevant criminal history and request a criminal history record check in accordance with chapter 846;
- (5) Contract with or employ qualified persons, including accountants, attorneys, investigators, examiners, 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;
- (6) 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;
- (7) 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;

(8) 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 chapter;

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

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

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

(b) For the purposes of investigating violations or complaints arising under this 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 control persons, executive officers, directors, general partners, managing members, principals, managers, employees, independent contractors, agents, and consumers 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, 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.

(e) In conducting any investigation or examination authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under investigation or examination. 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 investigation or examination have been, or are at risk of being, altered or destroyed for the 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~~that 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 investigation or examination fee, payable to the commissioner, based upon the cost per hour per examiner for all licensees and persons subject to this chapter investigated or examined 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 investigation or examination 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 investigation or examination, payable to the commissioner.

(i) Any person having reason to believe that this chapter or the rules adopted under this chapter 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.

§ -44 Confidentiality. (a) Except as otherwise provided in title 12 United States Code section 5111, 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~~having 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 the purposes of this section, 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 any privilege is determined by NMLS to be 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 the person, that privilege.

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

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

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

§ -45 Prohibited practices. (a) It shall be a violation of this chapter for a licensee, its control persons, executive officers, directors, general partners, managing members, 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 leaseback transaction or a personal property, personal sales, or automobile title loan, or by disguising loan proceeds as cash rebates for the pretextual installment sale of goods and services;

(2) Make a secured small dollar loan;

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

(4) Charge, collect, or receive, directly or indirectly, mandatory credit insurance premiums, charges for negotiating forms of loan proceeds other than cash, charges for

brokering or obtaining loans, prepayment fees, or any fees, interest, or charges in connection with a small dollar loan except those explicitly authorized in this chapter;

(5) 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;

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

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

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

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

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

(11) 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;

(12) 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 laws or regulations;

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

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

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

(16) Make a loan to a consumer that includes a demand feature that was not clearly disclosed in the written agreement pursuant to section 478-3 or collect or demand repayment of any outstanding balance or unpaid interest or fees except as provided in section 478-3;

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

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

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

PART II

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

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

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

(2) Small dollar loan transaction authorized by, and entered into in accordance with, chapter 476."

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, 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~~] to:

(1) 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[-]; or

(2) Any small dollar loan regulated under chapter 476."

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-3, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

SECTION 7. 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 8. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

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

(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 control person, executive officer, director, general partner, and managing member 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 9. There is appropriated out of the compliance resolution fund the sum of \$ or so much thereof as may be necessary for fiscal year 2020-2021 to establish and hire two full-time equivalent (2.0 FTE) permanent examiners, without regard to chapter 76, Hawaii Revised Statutes, to carry out the purposes of the small dollar installment loan program established by section 2 of this Act; provided that the positions may be added to the position count for the division of financial institutions of the department of commerce and consumer affairs.

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

PART III

SECTION 10. Chapter 480F, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

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

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

(c) Check casher registration shall be updated annually and shall include the following:

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

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

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

§480F- Voluntary payment plans. (a) At the time of origination of a third consecutive deferred deposit transaction made to a customer by a check casher, and at the time of origination of any subsequent consecutive deferred deposit transactions, the check casher shall offer the customer in writing the option to participate in a voluntary payment plan. Should the customer be in financial hardship, a voluntary payment plan may be requested by the customer and arranged by the customer and the check casher at any time.

(b) The voluntary payment plan shall be structured to pay the existing debt, both the principal and the fee, in at least ~~six~~four equal payments ~~of no more than five per cent of the customer's monthly pretax paycheck~~ that coincide with the customer's periodic pay dates or the date the customer is scheduled to receive benefits, unless the customer requests different payment due dates. The payments made pursuant to the voluntary payment plan shall be applied directly to the existing debt, and the lender shall not charge the customer any additional fee other than an administration fee not to exceed \$30 for participation in the voluntary payment plan. The administration fee charged for a voluntary payment plan in compliance with this section shall be exempt from chapter 478.

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

(d) The check casher may require the customer to provide a post-dated check or electronic authorization for funds transferred for each payment under the voluntary payment plan. If any check or electronic authorization accepted by the check casher as payment for a voluntary payment plan is dishonored, the check casher may charge the customer a fee for the dishonored instrument not to exceed \$20. The fee charged for a dishonored check or electronic authorization in compliance with this section shall be exempt from chapter 478.

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

§480F- Single deferred deposit transaction limitation. A check casher shall take reasonable ~~measure~~measures to ensure that no customer has more than one deferred deposit transaction outstanding at a time from all sources. It shall be sufficient for check cashers ~~shall~~to receive written confirmation from each customer that the customer does not have any outstanding deferred deposit transactions as of the date the customer enters into a deferred deposit transaction with the check casher in order to satisfy this requirement.

§480F- Records and reports. Every check casher shall keep records and make reports with respect to the operation of business as provided in rules adopted by the director pursuant to chapter 91.

§480F- Rules. The director shall adopt rules necessary to implement this chapter pursuant to chapter 91."

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

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

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

"Financial hardship" means any hardship from loss of income, reduced work hours, increased living costs, or other hardships outside of the control of the customer to be determined at the discretion of the check casher and evidenced with documentation."

SECTION 12. Section 480F-2, Hawaii Revised Statutes, is amended to read as follows:

"[H]§480F-2[H] Posting and notice of fees charged. Any person who cashes one or more checks for a fee shall:

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

- (A) The fees charged for cashing a check, for selling or issuing a money order, and for the initial issuance of any membership or identification cards; and
- (B) That consumer complaints about the check cashing business may be filed with the department [~~of commerce and consumer affairs~~], and includes and identifies the telephone number and address of the consumer information service of the department [~~of commerce and consumer affairs~~];

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

- (A) The fees charged for cashing checks; and
- (B) That consumer complaints about the check cashing business may be filed with the department, including and identifying the telephone number and address of the consumer information service of the department;

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

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

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

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

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

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

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

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

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

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

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

~~(b)~~ (c) 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 following:

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

(2) Notices stating that:

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

- (B) The customer may have no more than one outstanding deferred deposit transaction from all sources;
 - (C) Deferred deposit transactions are not suitable for long-term borrowing; and
 - (D) The customer may enter into a voluntary payment plan if the customer:
 - (i) Is experiencing financial hardship; or
 - (ii) Has entered into three or more consecutive transactions with the same check casher;
- and

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

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.

~~[(e)]~~ (d) The face amount of the check shall not exceed \$600, or twenty five per cent of the customer's gross monthly income, whichever is less 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)]~~ (e) 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)]~~ (f) 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. No additional interest may be collected except the ten per cent allowed by law pursuant to section 478-3 on uncollected judgments. Instead, the check casher may charge and recover a fee for the return of a dishonored check in an amount not greater than \$20[\$20.] the fee incurred by the check casher from its financial institution.

~~[(f)]~~ (g) 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.

(h) For the purposes of this section:

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

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

"~~[(h)]~~**§480F-5** Exemptions. This chapter shall not apply to[=

~~(1) 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] 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 15. (a) The division of financial institutions of the department of commerce and consumer affairs shall conduct an analysis of the regulation of payday lenders and deferred deposit agreements and its impact on consumer protection in the State as part of its implementation of the purposes of this Act.

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

- (1) The increasing impact of out-of-state internet lenders who operate in the State;
- (2) Data regarding consumer complaints;
- (3) The impact of chapter 480F, Hawaii Revised Statutes, on consumers within the State over the past fifteen years; and
- (4) Any further measures necessary for increased consumer protection in the State.

(c) The division of financial institutions of the department of commerce and consumer affairs shall submit a report of findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2021.

PART IV

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

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

SECTION 18. This Act shall take effect on July 1, ~~2021~~2050; provided that the licensing requirements for small dollar lenders established by section 2 of this Act shall take effect on January 1, 2022.

Summary report:	
Litera® Change-Pro for Word 10.2.0.10 Document comparison done on 3/11/2020 5:12:37 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: SB 2587 SD1.docx	
Modified filename: SB 2587 SD1 REDLINE NEW.docx	
Changes:	
Add	81
Delete	48
Move From	4
Move To	4
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	137

TESTIMONY IN SUPPORT OF SB2587, SD1 RELATING TO CONSUMER PROTECTION

TO: Representative Takashi Ohno, Chair
Representative Dale Kobayashi, Vice Chair
Members of the House Committee on Intrastate Commerce



FR: Mike Mohr, Ohana Holdings, LLC

HEARING: Thursday March 12, 2020, 9:30am, Room 430

Chair Ohno, Vice Chair Kobayashi & Members of the Intrastate Commerce Committee:

Thank you for the opportunity to testify in **strong support of SB2587, SD1**, Relating to Consumer Protection, which provides a solid framework of consumer protection requirements for small dollar loans. My name is Mike Mohr, and I am with Ohana Holdings, LLC.

SB2587 seeks to close a loophole in our laws that have allowed payday lenders to charge excessive interest rates as high as 459%, creating a vicious cycle of dependency and debt among Hawaii's most vulnerable individuals and families.

Recent findings released in the Hawaii Financial Health Pulse found that a large majority, **69% of Hawaii residents, are struggling financially**. 54% say their spending equals or exceeds their income, and more than a third do not have enough savings to cover three months of living expenses and have volatile incomes that vary from month to month. One in five have indicated they have trouble paying their mortgage and rent. As we just begin to understand the economic impact and estimated job losses due to COVID-19, our workers and families that are already struggling are particularly vulnerable.

To cope with this income volatility and Hawaii's high cost of living, about one fifth (21%) use alternative financial services such as payday loans and check-cashing services, which is significantly higher than 15% at the national level.

With excessive fees and interest rates placed on these small dollar loans, studies have shown that four out of five borrowers end up defaulting on their loan or renewing them within the first two weeks. In many cases, borrowers find themselves paying more in fees than they received in credit. To protect active duty members of the military and their families from falling victim to these kinds of lending practices, the Military Lending Act (MLA) provides consumer protection regulations including capping the APR at 36%. SB2587 would apply a similar 36% cap on APR, providing these same protections to all Hawaii residents.

In listening to the testimony presented before previous committees, we are supportive of efforts to also consider other regulatory structures to manage small dollar loans.

The Hawaii State Legislature is to be applauded for its focus this session on affordability and cost of living for all our residents and families. Ensuring that there are safe, non-predatory means by which individuals can bridge the financial gap that inevitably comes up in our daily lives compliments these efforts to improve the financial health and quality of life for all Hawaii residents.

Thank you for considering my testimony in **strong support of SB2587, SD1** and we stand ready and available to work with you on this important piece of legislation.