

JAN 24 2007

A BILL FOR AN ACT

RELATING TO PAYDAY LENDING.

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

1 SECTION 1. Chapter 480F, Hawaii Revised Statutes, is
2 amended by adding eight new sections to be appropriately
3 designated and to read as follows:

4 "§480F-A Licensed required. No check casher shall engage
5 in business without a license obtained under this chapter and
6 the rules of the director.

7 §480F-B Fees; biennial renewal; restoration. (a) No
8 applicant shall be examined under this chapter until the
9 appropriate fees have been paid.

10 (b) Every person holding a license under this chapter
11 shall register with the director and pay a biennial renewal fee
12 on or before June 30 of each even-numbered year. Failure to pay
13 the renewal fee shall constitute a forfeiture of the license as
14 of the date of expiration. Any license so forfeited may be
15 restored within one year after the expiration upon filing of an
16 application and payment of the renewal and restoration fees.

17 (c) All fees shall be as provided in rules adopted by the
18 director pursuant to chapter 91.



1 §480F-C Bond. Every check casher shall give and keep in
2 force a bond with the director in the penal sum of \$5,000 with
3 good and sufficient surety or sureties approved by the director,
4 conditioned that:

- 5 (1) The licensee shall not violate this chapter; and
6 (2) The licensee shall faithfully, promptly, and truly
7 refund all fees illegally or incorrectly obtained from
8 applicants to the director.

9 §480F-D Application for license. (a) Every individual,
10 partnership, corporation, or association seeking a license to
11 operate as a check casher shall file a written application with
12 the director that shall contain information and shall be in the
13 form as the director may prescribe; provided that in addition to
14 complying with all other requirements of this chapter, no
15 license shall be issued unless the applicant:

- 16 (1) Has passed a certified check casher examination as
17 designated by the director; or
18 (2) Has in the applicant's employ a principal agent.
19 (b) Every principal agent shall file a written application
20 with the director that shall contain the information and shall
21 be in the form as the director may prescribe and no license



1 shall be issued unless the applicant has passed a certified
2 check casher examination as designated by the director.

3 The examination shall cover the following:

4 (1) State statutes and rules relating to check cashers;

5 (2) Federal statutes and rules relating to check cashers;

6 and

7 (3) General principles of business law.

8 (c) A principal agent who does not engage in the check
9 casher business in the State during the succeeding year shall
10 not be required to pay the renewal fee as long as the principal
11 agent remains inactive. Should the principal agent wish to
12 resume work as a principal agent at some future time, the
13 principal agent shall notify the director and remit the renewal
14 fee for the current biennial period.

15 (d) Every applicant, including all officers, directors,
16 partners, members, or managers of the applicant, shall possess a
17 reputation for honesty, truthfulness, financial integrity, and
18 fair dealing and shall not have been convicted of a felony
19 directly related to the operation of a commercial employment
20 agency, unless the conviction has been expunged or annulled.

21 §480F-E Issuance of license. (a) Upon receipt of an
22 application for a license to conduct business as a check casher,



1 the director may issue the license if the applicant has met the
2 requirements of this chapter and chapter 436B.

3 (b) Every license issued shall be valid only as to the
4 check casher and any branch offices of the check casher.

5 (c) No license shall be issued to a check casher that
6 establishes or maintains a place of business in, or conducts
7 business from, a home, apartment, hotel room, or any other
8 location where the premises may be considered not in the public
9 interest, unless approved by the director.

10 (d) A license issued under this chapter shall not be
11 transferable.

12 **§480F-F** **Records and reports.** Every check casher shall
13 keep records and make reports with respect to the operation of
14 the business as the director by rule may prescribe. Any records
15 required by rule shall be preserved.

16 **§480F-G** **Payment plans.** (a) A payment plan option for
17 non-default customers may be up to ninety days. No interest may
18 be charged but a late administrative fee of \$30 may be added. A
19 thirty-day cooling off period is mandatory after completing a
20 payment plan.



1 (b) An interest free payment plan with a minimum term of
2 sixty days must be offered for customers in default. All
3 collection letters shall inform the customers of this option.

4 §480F-H Amounts not taxable. All fees paid and interest
5 earned from deferred deposit transactions are exempt from the
6 general excise tax under chapter 237."

7 SECTION 2. Section 237-24, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§237-24 Amounts not taxable.** This chapter shall not
10 apply to the following amounts:

- 11 (1) Amounts received under life insurance policies and
12 contracts paid by reason of the death of the insured;
- 13 (2) Amounts received (other than amounts paid by reason of
14 death of the insured) under life insurance, endowment,
15 or annuity contracts, either during the term or at
16 maturity or upon surrender of the contract;
- 17 (3) Amounts received under any accident insurance or
18 health insurance policy or contract or under workers'
19 compensation acts or employers' liability acts, as
20 compensation for personal injuries, death, or
21 sickness, including also the amount of any damages or
22 other compensation received, whether as a result of



- 1 action or by private agreement between the parties on
2 account of the personal injuries, death, or sickness;
- 3 (4) The value of all property of every kind and sort
4 acquired by gift, bequest, or devise, and the value of
5 all property acquired by descent or inheritance;
- 6 (5) Amounts received by any person as compensatory damages
7 for any tort injury to the person, or to the person's
8 character reputation, or received as compensatory
9 damages for any tort injury to or destruction of
10 property, whether as the result of action or by
11 private agreement between the parties (provided that
12 amounts received as punitive damages for tort injury
13 or breach of contract injury shall be included in
14 gross income);
- 15 (6) Amounts received as salaries or wages for services
16 rendered by an employee to an employer;
- 17 (7) Amounts received as alimony and other similar payments
18 and settlements;
- 19 (8) Amounts collected by distributors as fuel taxes on
20 "liquid fuel" imposed by chapter 243, and the amounts
21 collected by such distributors as a fuel tax imposed
22 by any Act of the Congress of the United States;



- 1 (9) Taxes on liquor imposed by chapter 244D on dealers
2 holding permits under that chapter;
- 3 (10) The amounts of taxes on cigarettes and tobacco
4 products imposed by chapter 245 on wholesalers or
5 dealers holding licenses under that chapter and
6 selling the products at wholesale;
- 7 (11) Federal excise taxes imposed on articles sold at
8 retail and collected from the purchasers thereof and
9 paid to the federal government by the retailer;
- 10 (12) The amounts of federal taxes under chapter 37 of the
11 Internal Revenue Code, or similar federal taxes,
12 imposed on sugar manufactured in the State, paid by
13 the manufacturer to the federal government;
- 14 (13) An amount up to, but not in excess of, \$2,000 a year
15 of gross income received by any blind, deaf, or
16 totally disabled person engaging, or continuing, in
17 any business, trade, activity, occupation, or calling
18 within the State; a corporation all of whose
19 outstanding shares are owned by an individual or
20 individuals who are blind, deaf, or totally disabled;
21 a general, limited, or limited liability partnership,
22 all of whose partners are blind, deaf, or totally



1 disabled; or a limited liability company, all of whose
2 members are blind, deaf, or totally disabled;

3 (14) Amounts received by a producer of sugarcane from the
4 manufacturer to whom the producer sells the sugarcane,
5 where:

6 (A) The producer is an independent cane farmer, so
7 classed by the Secretary of Agriculture under the
8 Sugar Act of 1948 (61 Stat. 922, Chapter 519) as
9 the Act may be amended or supplemented;

10 (B) The value or gross proceeds of sale of the sugar,
11 and other products manufactured from the
12 sugarcane, is included in the measure of the tax
13 levied on the manufacturer under section 237-
14 13(1) or (2);

15 (C) The producer's gross proceeds of sales are
16 dependent upon the actual value of the products
17 manufactured therefrom or the average value of
18 all similar products manufactured by the
19 manufacturer; and

20 (D) The producer's gross proceeds of sales are
21 reduced by reason of the tax on the value or sale
22 of the manufactured products;



1 (15) Money paid by the State or eleemosynary child-placing
2 organizations to foster parents for their care of
3 children in foster homes; and

4 (16) Amounts received by a cooperative housing corporation
5 from its shareholders in reimbursement of funds paid
6 by such corporation for lease rental, real property
7 taxes, and other expenses of operating and maintaining
8 the cooperative land and improvements; provided that
9 such a cooperative corporation is a corporation:

10 (A) Having one and only one class of stock
11 outstanding;

12 (B) Each of the stockholders of which is entitled
13 solely by reason of the stockholder's ownership
14 of stock in the corporation, to occupy for
15 dwelling purposes a house, or an apartment in a
16 building owned or leased by the corporation; and

17 (C) No stockholder of which is entitled (either
18 conditionally or unconditionally) to receive any
19 distribution not out of earnings and profits of
20 the corporation except in a complete or partial
21 liquidation of the corporation[+];



1 (17) Amounts received as fees paid or interest earned from
2 deferred deposit transactions under chapter 480F."

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

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

7 (1) Post in a conspicuous place in every location at which
8 the person does business a notice that sets forth[+]
9 in point type:

10 (A) The fees and annual percentage rate, where
11 applicable, charged for cashing a check, for a
12 deferred deposit transaction, for selling or
13 issuing a money order, and for the initial
14 issuance of any membership or identification
15 cards; [~~and~~]

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



- 1 (C) That deferred deposit transactions are not
- 2 suitable for long-term borrowing;
- 3 (D) That only one deferred deposit transaction can be
- 4 open from all sources;
- 5 (E) Provide information on where to obtain financial
- 6 education and credit counseling; and
- 7 (F) Include a copy of the license to do business as a
- 8 check cashier.

9 (2) Provide written notice in point type to each
10 customer [~~of the fees charged for cashing checks~~] that
11 is separate from and in addition to any posted
12 notice[+] that contains the following information:

13 (A) The fees and annual percentage rate to be charged
14 for cashing a check, for a deferred deposit
15 transaction, for selling or issuing a money
16 order, or for the initial issuance of any
17 membership or identification cards;

18 (B) That consumer complaints about the check cashing
19 business may be filed with the department of
20 commerce and consumer affairs, and includes and
21 identifies the telephone number and address of



- 1 the consumer information service of the
2 department of commerce and consumer affairs;
- 3 (C) That deferred deposit transactions are not
4 suitable for long-term borrowing;
- 5 (D) That only one deferred deposit transaction can be
6 open from all sources;
- 7 (E) That a payment plan option is available after
8 four or more consecutive back-to-back
9 transactions within twenty-four hours;
- 10 (F) The right to rescind a deferred deposit
11 transaction within twenty-four hours of the
12 transaction; and
- 13 (G) Provide information on where to obtain financial
14 education and credit counseling.
- 15 (3) Obtain a written acknowledgment from the customer that
16 written notice of [~~the fees charged for cashing~~
17 ~~checks~~] all of the information contained in subsection
18 (2) was provided; and
- 19 (4) Provide each customer a receipt documenting any and
20 all fees charged."



1 SECTION 4. Section 480F-4, Hawaii Revised Statutes, is
2 amended by amending subsections (c), (d), and (e) to read as
3 follows:

4 "(c) The face amount of the check shall not exceed \$600
5 and the deposit of a personal check written by a customer
6 pursuant to a deferred deposit transaction may be deferred for
7 no more than thirty-two days. A check casher may charge a fee
8 for deferred deposit of a personal check in an amount not to
9 exceed fifteen per cent of the face amount of the check. The
10 total amount of a transaction, including principal and fees, may
11 not exceed twenty-five per cent of the customer's gross monthly
12 income. Any fees charged for deferred deposit of a personal
13 check in compliance with this section shall be exempt from
14 chapter 478.

15 (d) A check casher shall not enter into an agreement for
16 deferred deposit with a customer during the period of time that
17 an earlier agreement for a deferred deposit for the same
18 customer is in effect[+] from any source. A deferred deposit
19 transaction shall not be repaid, refinanced, or consolidated by
20 or with the proceeds of another deferred deposit transaction.

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



1 any assignee of that check casher, shall not be entitled to
2 recover damages in excess of principal, interest and out of
3 pocket legal or court costs in any action brought pursuant to or
4 governed by chapter 490. No additional interest may be
5 collected except the ten per cent allowed by law on uncollected
6 judgments. Instead, the check casher may charge and recover a
7 fee for the return of a dishonored check in an amount not
8 greater than [~~\$20~~] \$30."

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

11 "[~~+~~]**\$480F-5**[~~+~~] **Exemptions.** This chapter shall not apply
12 to[~~+~~

13 ~~(1) Any person who is principally engaged in the bona fide~~
14 ~~retail sale of goods or services, and who, either as~~
15 ~~incident to or independent of the retail sale or~~
16 ~~service, from time to time cashes items for a fee or~~
17 ~~other consideration, where not more than \$2, or two~~
18 ~~per cent of the amount of the check, whichever is~~
19 ~~greater, is charged for the service, or~~

20 ~~(2) Any~~ any person authorized to engage in business as a
21 bank, trust company, savings bank, savings and loan association,
22 financial services loan company, or credit union under the laws



1 of the United States, any state or territory of the United
2 States, or the District of Columbia."

3 SECTION 6. Section 480F-6, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) A [~~wilful~~] violation of this chapter shall be
6 punishable by a fine of up to \$500 and up to thirty days
7 imprisonment."

8 SECTION 7. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$, or so much
10 thereof as may be necessary for fiscal year 2007-2008, and the
11 same sum, or so much thereof as may be necessary for fiscal year
12 2008-2009, for establishing a financial literacy education
13 program for consumers.

14 The sums appropriated shall be expended by the department
15 of commerce of consumer affairs for the purposes of this Act.

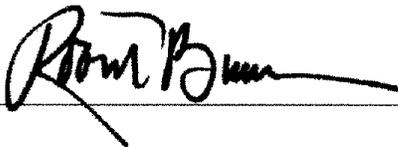
16 SECTION 8. In codifying the new sections added by section
17 1 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

20 SECTION 9. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 10. This Act shall take effect on July 1, 2007.

2

INTRODUCED BY: 



Report Title:

Payday Lending; Financial Literacy Education Program

Description:

Requires the department of commerce and consumer affairs to regulate the payday lending industry through licensing. Appropriates funds to establish a financial literacy education program.

