

JAN 22 2016

A BILL FOR AN ACT

RELATING TO CHECK CASHING.

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

1 SECTION 1. The legislature finds that deferred deposit
2 agreements, commonly referred to as payday loans, are small,
3 short term, unsecured loans that borrowers commit to repay from
4 their next paycheck or a regular income payment. According to a
5 study by the Pew Charitable Trusts, the majority of borrowers
6 use deferred deposit agreements for recurring expenses, rather
7 than unexpected expenses or emergencies, because they live
8 paycheck to paycheck. Furthermore, deferred deposit agreements
9 often last well beyond a borrower's next paycheck. When fees
10 are included, a typical deferred deposit loan payment may take
11 one-third of a borrower's next paycheck, an amount that most
12 consumers who turn to deferred deposit lenders cannot afford.
13 According to Pew, the average deferred deposit loan borrower is
14 in debt for almost six months a year and pays an average of \$520
15 in fees for \$375 in credit.

16 The legislature further finds that existing state law
17 permits check cashers to charge a fee of fifteen per cent of the



1 face value of a check and lend up to a maximum of \$600. This
2 fee can amount to an annual percentage rate of four hundred
3 fifty-nine per cent, which can trap Hawaii borrowers in a cycle
4 of high interest loans. The legislature notes that there is a
5 growing trend around the country to provide more consumer
6 protections for deferred deposit loans. According to the
7 Consumer Federation of America, the nationwide trend is toward
8 an annual percentage rate cap at thirty-six per cent or less on
9 these types of small loans. The thirty-six per cent cap also
10 follows precedent established by the federal government, who in
11 2006 made it illegal to charge more than a thirty-six per cent
12 annual percentage rate on payday loans to active-duty service
13 members and their families.

14 The legislature additionally finds that deferred deposit
15 loans can be regulated to address certain problems within the
16 industry without denying customers access to these loans. The
17 legislature notes that Colorado and Washington have enacted
18 certain payday reform laws. For example, in Colorado, borrowers
19 now spend forty-two per cent less annually on deferred deposit
20 loans, while receiving more days of credit. Colorado has also



1 seen a decline in the number of defaults per borrower and a
2 decrease in the amount of fees for returned checks.

3 Accordingly, the purpose of this Act is to increase certain
4 consumer protection aspects of the deferred deposit loan
5 industry by:

6 (1) Specifying that a customer has the right to rescind a
7 deferred deposit by returning the principal amount
8 used to fund the deferred deposit within a specified
9 time frame;

10 (2) Permitting customers to convert a deferred deposit
11 into an installment loan plan in certain circumstances
12 and specifying requirements for the installment loan
13 plan;

14 (3) Protecting against harmful collection practices;

15 (4) Adding a definition for annual percentage rate;

16 (5) Requiring a check casher to provide a written
17 agreement to a customer that clearly discloses
18 specific information relating to the cost and fees
19 associated with the deferred deposit, among other
20 things;



(6) Capping the annual percentage rate at no more than thirty-six per cent for deferred deposit of a personal check; and

(7) Permitting prepayment of deferred deposit agreements with no additional fees.

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

"§480F-A Right of rescission. (a) A customer shall have the right to rescind a deferred deposit, on or before the close of business on the next day of business at the location where the deferred deposit was originated, by returning the principal in cash or the original check disbursed by the check casher to fund the deferred deposit. The check casher may not charge the customer for rescinding the loan and shall return to the customer any postdated check taken as security for the deferred deposit or any electronic equivalent.

(b) The check casher shall conspicuously disclose the right of rescission to the customer in the written agreement made pursuant to section 480F-4(b).



1 \$480F-B Deferred deposit loan installment plan; terms;
2 restrictions. (a) If a customer notifies a check casher that
3 the customer will be or is unable to repay the deferred deposit
4 prior to the maturity of the loan term, the check casher shall
5 inform the customer that the customer may convert the customer's
6 deferred deposit to a loan installment plan. The check casher
7 shall convert the deferred deposit to a loan installment plan if
8 the customer requests such conversion.

9 (b) Each agreement for a loan installment plan shall be in
10 writing and acknowledged by both the customer and the check
11 casher. The check casher shall not assess any other fee,
12 interest charge, or other charge on the customer as a result of
13 converting the deferred deposit into a loan installment plan.

14 (c) The loan installment plan shall provide for the total
15 of payments due on the deferred deposit as follows:

16 (1) For a loan amount of \$400 or less, a period of at
17 least ninety days; and

18 (2) For a loan amount over \$400, a period of at least one
19 hundred eighty days;

20 provided that payments for the loan installment plan shall not
21 exceed five per cent of a customer's monthly gross income;



1 provided further that all costs associated with the loan,
2 including any fees charged and the annual percentage rate, shall
3 be earned evenly over the life of the loan.

4 (d) The customer may pay the total of installments due on
5 the loan installment plan at any time. The check casher shall
6 not charge any penalty, fee, or charge to the customer for
7 prepayment of the loan installment plan by the customer. If the
8 customer prepays the loan installment prior to the maturity of
9 the loan installment term, the check casher shall refund to the
10 customer a prorated portion of the annual percentage rate, based
11 upon the ratio of time left before maturity to the loan
12 installment term.

13 (e) The check casher shall conspicuously disclose the
14 availability of a loan installment plan to the customer in the
15 written agreement made pursuant to section 480F-4(b).

16 (f) A check casher's violation of any of the requirements
17 for loan installment plans entered into pursuant to this section
18 shall be a violation of this chapter.

19 **§480F-C Restrictions on collection by check casher or**
20 **third party.** (a) A check casher may not threaten criminal
21 prosecution as a method of collecting a delinquent deferred



1 deposit or threaten to take any legal action against the
2 customer that is not otherwise permitted by law.

3 (b) Unless invited by the customer, a check casher shall
4 not visit a customer's residence or place of employment for the
5 purpose of collecting a delinquent deferred deposit. A check
6 casher shall not impersonate a law enforcement officer or make
7 any statements which might be construed as indicating an
8 official connection with any federal, state, or county law
9 enforcement agency or any other governmental agency while
10 engaged in collecting a deferred deposit.

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

19 (1) With a customer or the customer's spouse in any form,
20 manner, or place, more than three times in a seven day
21 period;



1 (2) With a customer at the customer's place of employment
2 more than one time in a seven day period or made to a
3 customer after the check casher has been informed that
4 the customer's employer prohibits such communications;

5 (3) With the customer or the customer's spouse at the
6 customer's place of residence between the hours of
7 9:00 p.m. and 7:30 a.m.; or

8 (4) To a party other than the customer, the customer's
9 attorney, the check casher's attorney, or a consumer
10 reporting agency if otherwise permitted by law except
11 for purposes of acquiring location or contact
12 information about the customer.

13 (d) A check casher shall maintain a communication log of
14 all telephone and written communications with a customer
15 initiated by the check casher regarding any collection efforts,
16 including date, time, and the nature of each communication.

17 (e) This section shall apply to any third party assignee
18 of a check casher, for purposes of the third party collection of
19 the dishonored check."



SECTION 3. Section 480F-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Annual percentage rate" means the annual rate of finance charge for a transaction, expressed as a single percentage number that represents the actual yearly cost of funds over the term of a loan and includes any fees or additional costs associated with the transaction. The annual percentage rate shall be determined in accordance with the federal Truth in Lending Act."

SECTION 4. 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) 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]:

(1) The name of the consumer;

(2) The transaction date;



- 1 (3) The principal amount of the deferred deposit;
- 2 (4) The annual percentage rate charged for the deferred
- 3 deposit;
- 4 (5) A statement of the total amount of any fees charged
- 5 for the deferred deposit, expressed both in United
- 6 States currency and as an annual percentage rate[-];
- 7 (6) The dollar amount of each periodic payment that is due
- 8 over the life of the deferred deposit;
- 9 (7) The name, address, and telephone number of any agent
- 10 or arranger involved in the deferred deposit; and
- 11 (8) A notice that the customer has the right to rescind a
- 12 deferred deposit pursuant to the requirements of
- 13 section 480F-A; and
- 14 (9) A notice that the customer has the ability to convert
- 15 a deferred deposit into an installment plan pursuant
- 16 to the requirements of section 480F-B.

17 The written agreement shall authorize the check casher to

18 defer deposit of the personal check until a specific date not

19 later than thirty-two days from the date the written agreement

20 was signed. The written agreement shall not permit the check

21 casher to accept collateral.



1 (c) The face amount of the check shall not exceed \$600 and
2 the deposit of a personal check written by a customer pursuant
3 to a deferred deposit transaction may be deferred for no more
4 than thirty-two days. A check casher may charge ~~[a fee for]~~ an
5 annual percentage rate of no more than thirty-six per cent for
6 deferred deposit of a personal check ~~[in an amount not to exceed~~
7 ~~fifteen per cent of the face amount of the check]~~. Any fees
8 charged for deferred deposit of a personal check in compliance
9 with this section shall be exempt from chapter 478.

10 (d) The check casher shall not charge any penalty, fee, or
11 charge to the customer for prepayment of the deferred deposit by
12 the customer. If the customer prepays the deferred deposit
13 prior to the maturity of the loan term, the check casher shall
14 refund to the customer a prorated portion of the annual
15 percentage rate, based upon the ratio of time left before
16 maturity to the loan term.

17 ~~[(d)]~~ (e) A check casher shall not enter into an agreement
18 for deferred deposit with a customer during the period of time
19 that an earlier agreement for a deferred deposit for the same
20 customer is in effect. A deferred deposit transaction shall not



1 be repaid, refinanced, or consolidated by or with the proceeds
2 of another deferred deposit transaction.

3 ~~[(e)]~~ (f) A check casher who enters into a deferred
4 deposit agreement and accepts a check passed on insufficient
5 funds, or any assignee of that check casher, shall not be
6 entitled to recover damages in any action brought pursuant to or
7 governed by chapter 490. Instead, the check casher may charge
8 and recover a fee for the return of a dishonored check in an
9 amount not greater than \$20.

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

14 SECTION 5. In codifying the new sections added by section
15 2 of this Act, the revisor of statutes shall substitute
16 appropriate section numbers for the letters used in designating
17 the new sections in this Act.

18 SECTION 6. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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S.B. NO. 2679

1 SECTION 7. This Act shall take effect upon its approval.

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S.B. NO. 2679

Report Title:

Check Cashing; Deferred Deposit Agreements; Fees; Annual Percentage Rate; Right to Rescind; Installment Loan Plan; Collection Practices

Description:

Specifies a customer has the right to rescind a deferred deposit by returning the principal amount used to fund the deferred deposit within a specified time frame. Permits customers to convert a deferred deposit into an installment loan plan in certain circumstances and specifies requirements for the installment loan plan. Protects against harmful collection practices. Defines annual percentage rate. Requires a check casher to provide a written agreement to a customer that clearly discloses specific information relating to the cost and fees associated with the deferred deposit, among other things. Caps the annual percentage rate at no more than thirty-six per cent for deferred deposit of a personal check. Permits prepayment of deferred deposit agreements with no additional fees.

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

