

JAN 17 2018

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, borrowers in Colorado
19 spent forty-two per cent less annually on deferred deposit
20 loans, while receiving more days of credit, after its 2010
21 payday lending reforms. Colorado also saw a decline in the



1 number of defaults per borrower and a decrease in the amount of
2 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 post a notice informing
17 customers that additional options may be available for
18 safe, regulated, lower-cost, small dollar loans;

19 (6) Requiring a check casher to provide a written
20 agreement to a customer that clearly discloses
21 specific information relating to the cost and fees



1 associated with the deferred deposit, among other
2 things;

3 (7) Capping the annual percentage rate at thirty-six per
4 cent for deferred deposit of a personal check; and

5 (8) Permitting prepayment of deferred deposit agreements
6 with no additional fees.

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

10 "§480F-A Right of rescission. (a) A customer shall have
11 the right to rescind a deferred deposit, on or before the close
12 of business on the next day of business at the location where
13 the deferred deposit was originated, by returning the principal
14 in cash or the original check disbursed by the check cashier to
15 fund the deferred deposit. The check cashier may not charge the
16 customer for rescinding the loan and shall return to the
17 customer any postdated check taken as collateral for the
18 deferred deposit or any electronic equivalent.

19 (b) The check cashier shall conspicuously disclose the
20 right of rescission to the customer in the written agreement
21 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 in
3 writing that the customer will be or is unable to repay the
4 deferred deposit prior to the maturity of the loan term, the
5 check casher shall inform the customer that the customer may
6 convert the customer's deferred deposit to a loan installment
7 plan pursuant to subsection (d). The check casher shall convert
8 the deferred deposit to a loan installment plan if the customer
9 requests such conversion.

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

15 (c) The loan installment plan agreement shall provide
16 payment terms for the total amount due on the deferred deposit
17 as follows:

18 (1) For a loan amount of \$400 or less, a period of at
19 least ninety days; provided that the loan term shall
20 not be longer than one hundred eighty days; and



1 (2) For a loan amount over \$400, a period of no more than
2 one hundred eighty days;

3 (d) Payments for the loan installment plan shall not
4 exceed five per cent of a customer's monthly gross income
5 calculated at the time of conversion from a deferred deposit to
6 a loan installment plan. The loan installment plan shall
7 provide for equal installment payments; provided that the final
8 loan installment payment may be a balance of the loan
9 installment plan.

10 (e) The customer shall provide proof of income at the time
11 of the conversion from a deferred deposit to a loan installment
12 plan; provided that if the customer fails to provide proof of
13 income or does not have income, the deferred deposit shall
14 become due and payable.

15 (f) All outstanding principal, costs, and fees allowed by
16 this chapter, associated with the deferred deposit loan
17 converted to a loan installment plan, shall be amortized over
18 the life of the loan installment plan.

19 (g) The customer may pay the balance of the loan
20 installment plan at any time. The check casher shall not charge
21 any penalty, fee, or charge to the customer for prepayment of



1 the loan installment plan by the customer. If the customer
2 prepays the loan installment prior to the maturity of the loan
3 installment term, the check casher shall refund to the customer
4 a prorated portion of the unearned cost and fees, based upon the
5 ratio of time left before maturity to the loan installment term.

6 (h) The check casher shall conspicuously disclose the
7 availability of a loan installment plan to the customer in the
8 written agreement made pursuant to section 480F-4(b).

9 (i) A check casher's violation of any of the requirements
10 for loan installment plans shall be a violation of this chapter.

11 **§480F-C Restrictions on collection by check casher or**

12 **third party.** (a) A check casher may not threaten criminal
13 prosecution as a method of collecting a delinquent deferred
14 deposit or threaten to take any legal action against the
15 customer that is not otherwise permitted by law.

16 (b) Unless invited by the customer, a check casher shall
17 not visit a customer's residence or place of employment for the
18 purpose of collecting a delinquent deferred deposit. A check
19 casher shall not impersonate a law enforcement officer or make
20 any statements that might be construed as indicating an official
21 connection with any federal, state, or county law enforcement



1 agency or any other governmental agency while engaged in
2 collecting a deferred deposit.

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

11 (1) With a customer or the customer's spouse in any form,
12 manner, or place, more than three times in a seven-day
13 period;

14 (2) With a customer at the customer's place of employment
15 more than one time in a seven-day period or to a
16 customer after the check casher has been informed that
17 the customer's employer prohibits such communications;

18 (3) With the customer or the customer's spouse at the
19 customer's place of residence between the hours of
20 9:00 p.m. and 7:30 a.m.; or



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

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

10 (e) This section shall apply to any employee, agent, or
11 third party assignee of a check casher, for purposes of
12 collection."

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

16 "Annual percentage rate" means the rate charged for
17 borrowing, expressed as a single percentage number that
18 represents the actual yearly cost of funds over the term of a
19 loan and includes any fees or additional costs associated with
20 the transaction. The annual percentage rate shall be determined



1 in accordance with the federal Truth in Lending Act for closed-
2 end loans."

3 SECTION 4. 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 (A) The fees charged for cashing a check, for selling
10 or issuing a money order, and for the initial
11 issuance of any membership or identification
12 cards; ~~and~~

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

19 (C) An acknowledgment that additional options may be
20 available for safe, regulated, lower-cost, small
21 dollar loans, and includes a statement



encouraging customers to explore all options for
small dollar loans;

(2) Provide written notice to each customer of the fees
 charged for cashing checks that is separate from and
 in addition to any posted notice;

(3) Obtain a written acknowledgment from the customer that
 written notice of the fees charged for cashing checks
 was provided; and

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

SECTION 5. 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 customer;

(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 third-party assignee involved in the deferred
- 11 deposit;
- 12 (8) A notice that the customer has the right to rescind a
- 13 deferred deposit pursuant to the requirements of
- 14 section 480F-A; and
- 15 (9) A notice that the customer has the ability to convert
- 16 a deferred deposit into a loan installment plan
- 17 pursuant to the requirements of section 480F-B.

18 The written agreement shall authorize the check casher to

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

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

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



1 casher to accept collateral[-], except for the customer's
2 postdated personal check in an amount permitted by this chapter.

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

13 (d) The check casher shall not charge any penalty, fee, or
14 charge to the customer for prepayment of the deferred deposit by
15 the customer. If the customer prepays the deferred deposit
16 prior to the maturity of the loan term, the check casher shall
17 refund to the customer a prorated portion of any unearned cost
18 and fees, based upon the ratio of time left before maturity to
19 the loan term.

20 ~~[(d)]~~ (e) A check casher shall not enter into an agreement
21 for deferred deposit with a customer during the period of time



1 that an earlier agreement for a deferred deposit for the same
2 customer is in effect. A deferred deposit transaction shall not
3 be repaid, refinanced, or consolidated by or with the proceeds
4 of another deferred deposit transaction.

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

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

16 SECTION 6. In codifying the new sections added by section
17 2 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 7. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



S.B. NO. 2028

1 SECTION 8. This Act shall take effect upon its approval.

2

INTRODUCED BY: 

Michelle Sidani

DAVE BOUTER

Mr. Dunning

James ...

John ...

Karl Rhoads

Michael ...

~~DC Keith Agan~~



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 post a notice informing customers that additional options may be available for safe, regulated, lower-cost, small dollar loans. 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 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.

