

JAN 20 2017

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 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;



- 1 (6) Capping the annual percentage rate at thirty-six per
- 2 cent for deferred deposit of a personal check; and
- 3 (7) Permitting prepayment of deferred deposit agreements
- 4 with no additional fees.

5 SECTION 2. Chapter 480F, Hawaii Revised Statutes, is

6 amended by adding a new section to be appropriately designated

7 and to read as follows:

8 "§480F-A Right of rescission. (a) A customer shall have

9 the right to rescind a deferred deposit, on or before the close

10 of business on the next day of business at the location where

11 the deferred deposit was originated, by returning the principal

12 in cash or the original check disbursed by the check cashier to

13 fund the deferred deposit. The check cashier may not charge the

14 customer for rescinding the loan and shall return to the

15 customer any postdated check taken as collateral for the

16 deferred deposit or any electronic equivalent.

17 (b) The check cashier shall conspicuously disclose the

18 right of rescission to the customer in the written agreement

19 made pursuant to section 480F-4(b).

20 §480F-B Deferred deposit loan installment plan; terms;

21 restrictions. (a) If a customer notifies a check cashier that



1 the customer will be or is unable to repay the deferred deposit
2 prior to the maturity of the loan term in writing, the check
3 casher shall inform the customer that the customer may convert
4 the customer's deferred deposit to a loan installment plan
5 pursuant to subsection (d). The check casher shall convert the
6 deferred deposit to a loan installment plan if the customer
7 requests such conversion.

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

13 (c) The loan installment plan agreement shall provide
14 payment terms for the total amount due on the deferred deposit
15 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 the loan term is not longer than six months.



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

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

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

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



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

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

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

9 §480F-C Restrictions on collection by check casher or
10 third party. (a) A check casher may not threaten criminal
11 prosecution as a method of collecting a delinquent deferred
12 deposit or threaten to take any legal action against the
13 customer that is not otherwise permitted by law.

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



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

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

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

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

19 (4) To a party other than the customer, the customer's
20 attorney, the check casher's attorney, or a consumer
21 reporting agency if otherwise permitted by law except



1 for purposes of acquiring location or contact
2 information about the customer.

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

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

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

13 "Annual percentage rate" means the rate charged for
14 borrowing, expressed as a single percentage number that
15 represents the actual yearly cost of funds over the term of a
16 loan and includes any fees or additional costs associated with
17 the transaction. The annual percentage rate shall be determined
18 in accordance with the federal Truth in Lending Act for closed-
19 end loans."

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



1 "§480F-4 Deferred deposits, when allowed. (a) No check
2 cashier may defer the deposit of a check except as provided in
3 this section.

4 (b) Each deferred deposit shall be made pursuant to a
5 written agreement that has been signed by the customer and the
6 check cashier or an authorized representative of the check
7 cashier. The written agreement shall contain [a]:

- 8 (1) The name of the consumer;
9 (2) The transaction date;
10 (3) The principal amount of the deferred deposit;
11 (4) The annual percentage rate charged for the deferred
12 deposit;
13 (5) A statement of the total amount of any fees charged
14 for the deferred deposit, expressed both in United
15 States currency and as an annual percentage rate[-];
16 (6) The dollar amount of each periodic payment that is due
17 over the life of the deferred deposit;
18 (7) The name, address, and telephone number of any agent
19 or third-party assignee involved in the deferred
20 deposit;



1 (8) A notice that the customer has the right to rescind a
2 deferred deposit pursuant to the requirements of
3 section 480F-A; and

4 (9) A notice that the customer has the ability to convert
5 a deferred deposit into a loan installment plan
6 pursuant to the requirements of section 480F-B.

7 The written agreement shall authorize the check casher to
8 defer deposit of the personal check until a specific date not
9 later than thirty-two days from the date the written agreement
10 was signed. The written agreement shall not permit the check
11 casher to accept collateral~~[-]~~, except for the customer's
12 postdated personal check in an amount permitted by this chapter.

13 (c) The face amount of the check shall not exceed \$600 and
14 the deposit of a personal check written by a customer pursuant
15 to a deferred deposit transaction may be deferred for no more
16 than thirty-two days. A check casher may charge ~~[a fee for]~~ an
17 annual percentage rate of no more than thirty-six per cent for
18 deferred deposit of a personal check [in an amount not to exceed
19 fifteen per cent of the face amount of the check]. Any fees,
20 costs, and interest charged for deferred deposit of a personal



1 check in compliance with this [~~section~~] chapter shall be exempt
2 from chapter 478.

3 (d) The check casher shall not charge any penalty, fee, or
4 charge to the customer for prepayment of the deferred deposit by
5 the customer. If the customer prepays the deferred deposit
6 prior to the maturity of the loan term, the check casher shall
7 refund to the customer a prorated portion of any unearned cost
8 and fees, based upon the ratio of time left before maturity to
9 the loan term.

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

16 [~~(e)~~] (f) A check casher who enters into a deferred
17 deposit agreement and accepts a check passed on insufficient
18 funds, or any assignee of that check casher, shall not be
19 entitled to recover damages in any action brought pursuant to or
20 governed by chapter 490. Instead, the check casher may charge



1 and recover a fee for the return of a dishonored check in an
2 amount not greater than \$20.

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

7 SECTION 5. In codifying the new sections added by section
8 2 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

11 SECTION 6. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect upon its approval.
14

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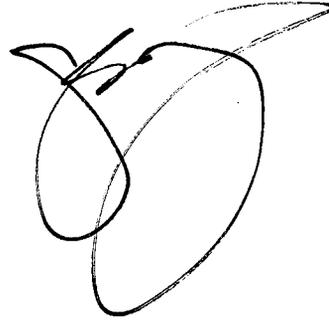
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S.B. NO. 286



S.B. NO. 286

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 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.

