

JAN 24 2018

S.B. NO. 3008

---

# A BILL FOR AN ACT

RELATING TO PAYDAY LENDING.

**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. Research has also shown that the  
9 conventional payday loan model is unaffordable for most  
10 borrowers, leads to repeat borrowing, and promotes indebtedness  
11 that is far longer than advertised.

12       The legislature further finds that there has been a shift  
13 in the payday industry toward small dollar installment loans,  
14 which are repayable over time and secured by access to the  
15 borrower's checking account. According to the Pew Charitable  
16 Trusts, national survey data indicates that seventy-nine per  
17 cent of payday borrowers prefer small dollar loans that are due



1 in installments, which only take a small share of each paycheck.  
2 However, in the absence of sensible regulatory safeguards, this  
3 type of lending, as well as the traditional deferred deposit  
4 lending market, can be harmful for consumers.

5 The legislature notes that there has been a growing trend  
6 around the country to provide more consumer protections, which  
7 benefit consumers and encourage responsible and transparent  
8 lending, for deferred deposit transactions and small dollar  
9 installment loans. Hawaii has not yet joined in these reform  
10 efforts.

11 The legislature acknowledges that there is a market for  
12 small dollar installment loans. However, the legislature  
13 concludes that if small dollar installment loans are going to be  
14 offered to Hawaii consumers, there must be appropriate consumer  
15 protections in place to ensure these loans contain reasonable  
16 terms and fees and do not trap borrowers in a cycle of high-  
17 interest debt.

18 Accordingly, the purpose of this Act is to encourage  
19 transparency and increase consumer protection in the payday  
20 lending industry by:



- (1) Transitioning from lump sum deferred deposit transactions to installment-based small dollar loan transactions;
- (2) Specifying various consumer protection requirements for small dollar loans;
- (3) Beginning January 1, 2019, requiring licensure for small dollar lenders that offer small dollar loans to consumers; and
- (4) Specifying licensing requirements for small dollar lenders.

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:

"Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied, first to the



1 accumulated finance charge, and any remainder is subtracted  
2 from, or any deficiency is added to, the unpaid balance of the  
3 amount financed.

4 "Annual percentage rate" means an annual percentage rate as  
5 determined pursuant to section 107 of the Truth in Lending Act,  
6 title 15 United States Code section 1606. For purposes of this  
7 definition, all finance charges shall be included in the  
8 calculation of the annual percentage rate.

9 "Arranger" means a provider of funds in the syndication of  
10 a debt.

11 "Branch office" means any location in this State that is  
12 identified by any means to the public or customers as a location  
13 at which the licensee holds itself out as a small dollar lender.

14 "Commissioner" means the commissioner of financial  
15 institutions.

16 "Consumer" means a natural person who is the buyer, lessee,  
17 or debtor to whom credit is granted in a transaction that is  
18 primarily for that natural person's personal, family, or  
19 household purposes.

20 "Control", in the context of control of an applicant or  
21 licensee, means ownership of, or the power to vote, twenty-five



1 per cent or more of the outstanding voting securities of a  
2 licensee or controlling person. For purposes of determining the  
3 percentage of an applicant or a licensee controlled by any  
4 person, there shall be aggregated with the controlling person's  
5 interest the interest of any other person controlled by the  
6 person, or by any spouse, parent, or child of the person.

7 "Controlling person" means any person in control of a  
8 licensee or applicant.

9 "Default" means a consumer's failure to repay a small  
10 dollar loan in compliance with the terms contained in a small  
11 dollar loan agreement.

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

14 "Division" means the division of financial institutions of  
15 the department of commerce and consumer affairs.

16 "Financial institution" means any bank, savings and loan  
17 association, financial services loan company, or credit union  
18 doing business in the State whose accounts are insured by the  
19 Federal Deposit Insurance Corporation, the National Credit Union  
20 Share Insurance Fund, or other similar or successor program of  
21 federal insurance.



1 "Instrument" means a personal check signed by the consumer  
2 and made payable to a person subject to this chapter. The term  
3 "instrument" does not include an electronic fund transfer or  
4 other electronic debit or credit to the customer's checking  
5 account.

6 "Licensee" means a person who is licensed or required to be  
7 licensed under this chapter.

8 "Loan amount" means the amount financed, as that term is  
9 defined in Regulation Z of the Truth in Lending Act, title 12  
10 Code of Federal Regulations, chapter X, part 1026, as amended,  
11 or supplemented by this chapter.

12 "NMLS" means a licensing system developed and maintained by  
13 the Conference of State Bank Supervisors and the American  
14 Association of Residential Mortgage Regulators for the state  
15 licensing and registration of state-licensed loan originators  
16 and other financial services providers, or any system provided  
17 by the Consumer Financial Protection Bureau.

18 "Person" means an individual, sole proprietorship,  
19 partnership, corporation, limited liability company, limited  
20 liability partnership, or other association of individuals,  
21 however organized.



1 "Place of business" means a location where small dollar  
2 loans are offered or made and includes each website through  
3 which a consumer may apply for a small dollar loan from a small  
4 dollar lender.

5 "Small dollar lender" or "lender" means any person who is  
6 in the business of offering or making a consumer loan, who  
7 arranges a consumer loan for a third party, or who acts as an  
8 agent for a third party, regardless of whether the third party  
9 is exempt from licensure under this chapter or whether approval,  
10 acceptance, or ratification by the third party is necessary to  
11 create a legal obligation for the third party, through any  
12 method including mail, telephone, the Internet, or any  
13 electronic means.

14 "Small dollar loan" means a loan made to a consumer whereby  
15 the small dollar lender, for a fee, finance charge, or other  
16 consideration, does the following:

17 (1) Accepts a dated instrument from the consumer as sole  
18 security for the loan and no other collateral;

19 (2) Agrees to hold an instrument for a period of time  
20 prior to negotiation or deposit of the instrument; and



(3) Pays to the consumer, credits to the consumer's account, or pays to another person on the consumer's behalf the amount of the instrument, less finance charges permitted under 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.

**§ -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 and shall set a date upon which the instrument may be deposited or negotiated;

(2) There shall be no minimum loan term;

(3) The maximum loan term shall be six months from the loan transaction date;

(4) The written agreement required under section -3 may require multiple installment payments or a single payment; provided that a small dollar lender may hold





no more than one instrument for each outstanding  
scheduled payment;

(5) 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;

(6) 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, regardless of  
whether the loan is structured to be repaid as a  
single installment loan or in multiple installments;

(7) The loan amount and accrued interest and fees shall be  
fully amortized over the term of the loan;

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

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



1           (b) The amount of the instrument or instruments held by a  
2 small dollar lender may be for a total of no more than the  
3 amount financed (the principal loan amount) and the finance  
4 charge permitted under this chapter. The interest rate of up to  
5 thirty-six per cent and the monthly maintenance fees are not  
6 finance charges, and shall not be included in the instrument.

7           (c) In a multiple installment small dollar loan, a lender  
8 may contract for a monthly payment of the entire installment  
9 due, including the applicable portion of the interest and earned  
10 monthly maintenance fee, but the lender shall not hold an  
11 instrument for those interest and fees.

12           (d) For each payment made by a consumer, a lender shall  
13 give the consumer a written receipt with the lender's name and  
14 address, payment date, amount paid, consumer's name, and  
15 sufficient information to identify the account to which the  
16 payment is applied. If a consumer partially prepays a single  
17 installment small dollar loan or makes additional voluntary  
18 payments on a multiple installment small dollar loan, the lender  
19 shall return the original instrument for one in the lower  
20 remaining amount due, so that the lender is not over-  
21 collateralized; provided that if the lender cannot easily obtain



1 a new payment instrument and deposits the original instrument,  
2 the lender shall immediately refund any overpayment to the  
3 consumer.

4 (e) Upon prepayment in full by the consumer, the lender  
5 shall refund:

6 (1) Any unearned portion of the interest rate, calculated  
7 on a pro-rata method; provided that the refund may not  
8 be calculated on the actuarial method; and

9 (2) Any unearned monthly maintenance fees;  
10 provided that the finance charge shall not be required to be  
11 refunded.

12 § -3 Written agreement; requirements; disclosure. (a)

13 Each small dollar loan transaction and renewal shall be  
14 documented by a written agreement signed by the small dollar  
15 lender and consumer. The written agreement shall contain the  
16 following information:

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

18 (2) The transaction date;

19 (3) The loan amount;

20 (4) The amount of the instrument;

21 (5) The annual percentage rate charged;



- (6) A statement of the total amount of finance charges charged, expressed as a dollar amount and an annual percentage rate;
- (7) The installment payment schedule setting out the amount due on specific due dates;
- (8) The name, address, and telephone number of any agent or arranger involved in the small dollar loan transaction;
- (9) The right to rescind the small dollar loan on or before the close of business on the next day of business at the location where the loan was originated;
- (10) A notice to the consumer that delinquency on one scheduled payment may result in a penalty of not more than \$25, acceleration of the small dollar loan, or both; and
- (11) A description of the methods by which small dollar loan payments may be made, which may include cash, check, or any additional method of loan payment authorized by this chapter or by rule adopted by the commissioner.



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

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

	"SINGLE PAYMENT	MULTIPLE INSTALLMENT PAYMENT
9		
10		
11		
12		
13	Amount Financed	
14	Finance Charge	
15	Amount you will receive	
16	(\$500.00 Amount Financed,	
17	less \$75.00 Finance Charge)	
18		
19	Term (months)	
20		
21	36% Interest Rate	
22		
23	Monthly Maintenance Fee	
24		
25	Total of All Permitted Charges	
26		
27	Total You Will Pay for This Loan	
28	(Amount Financed, Finance Charge,	
29	Interest, and Monthly Maintenance Fee)	
30		
31	ANNUAL PERCENTAGE RATE	



1  
2 Payment Schedule"

3  
4 (d) The consumer shall sign and date each of two copies of  
5 the written disclosure, one of which shall be given to the  
6 consumer and the other of which shall be retained by the lender  
7 as part of its records of the small dollar loan. For purposes  
8 of preparing the written disclosure, the small dollar loan shall  
9 be structured on a precomputed basis (total of payments) with  
10 the assumption that all payments will be made as scheduled.

11 § -4 Notice to consumers. A small dollar lender shall  
12 provide the following notice on each loan agreement for a small  
13 dollar loan. The notice shall be in a prominent place and in at  
14 least twelve-point type:

15 "THIS SMALL DOLLAR LOAN IS NOT INTENDED TO MEET  
16 LONG-TERM FINANCIAL NEEDS.

17 THIS SMALL DOLLAR LOAN SHOULD BE USED ONLY TO  
18 MEET SHORT-TERM CASH NEEDS.

19 YOU HAVE THE RIGHT TO PREPAY THIS SMALL DOLLAR  
20 LOAN IN FULL OR IN PART WITHOUT A PENALTY.



1           RENEWING THIS SMALL DOLLAR LOAN RATHER THAN  
2           PAYING THE DEBT IN FULL WILL REQUIRE ADDITIONAL  
3           FINANCE CHARGES."

4           §   -5   **Authorized interest rate.** (a) Notwithstanding any  
5   provision to the contrary, a small dollar lender may contract  
6   for and receive interest, calculated according to the actuarial  
7   method, at a rate or rates not exceeding thirty-six per cent per  
8   year on that portion of the unpaid principal balance of the  
9   loan. A small dollar lender may contract for and receive  
10   interest at the single annual rate that would earn the same  
11   total interest at maturity of the small dollar loan, when the  
12   loan is paid according to its agreed terms, as would be earned  
13   by the application of the graduated rates set forth in this  
14   section. Loans shall be precomputed.

15           (b) For purposes of computation of precomputed loans,  
16   including but not limited to the calculation of interest, a  
17   month is considered one-twelfth of a year and a day is  
18   considered one three hundred sixty-fifth of a year when  
19   calculation is made for a fraction of a month.

20           (c) Loans shall be repayable in substantially equal and  
21   consecutive monthly installments of principal and interest



1 combined; provided that the first installment period may exceed  
2 one month by not more than fifteen days and the first  
3 installment payment amount may be larger than the remaining  
4 payments by the amount of interest charged for the extra days;  
5 provided further that monthly installment payment dates may be  
6 omitted to accommodate consumers with seasonal income.

7 (d) Payments may be applied to the combined total of  
8 principal and precomputed interest until maturity of the loan;  
9 provided that a lender may charge interest after the original or  
10 deferred maturity of a precomputed loan at the rate or rates  
11 provided in subsection (a) on all unpaid principal balances for  
12 the time outstanding.

13 (e) When any loan contract is paid in full by cash,  
14 renewal, refinancing, or a new loan, one month or more before  
15 the final installment due date, the lender shall refund, or  
16 credit the consumer with, the total of the applicable charges  
17 for all fully unexpired installment periods, as originally  
18 scheduled or as deferred, that follow the day of prepayment;  
19 provided that if:

20 (1) The prepayment is made other than on a scheduled  
21 installment due date, the nearest scheduled





1           installment due date shall be used in such  
2           computation;

3           (2) The prepayment occurs prior to the first installment  
4           due date, the lender may retain one-thirtieth of the  
5           applicable charge for a first installment period of  
6           one month for each day from date of loan to date of  
7           prepayment and shall refund, or credit the consumer  
8           with, the balance of the total interest contracted  
9           for;

10          (3) The maturity of the loan is accelerated for any reason  
11          and judgment is entered, the lender shall credit the  
12          consumer with the same refund as if prepayment in full  
13          had been made on the date the judgment is entered and  
14          may thereafter convert the small dollar loan to an  
15          interest-bearing loan at the same rate or rates of  
16          interest as provided in the loan contract; and

17          (4) The maturity of the small dollar loan is accelerated  
18          for any reason, the lender may convert the small  
19          dollar loan to an interest-bearing loan at the same  
20          rate or rates of interest as provided in the loan  
21          contract; provided that the lender shall credit the



1 consumer with the same refund on the precomputed loan  
2 as if prepayment in full had been made on the date of  
3 the conversion.

4 (f) If the parties agree in writing, either in the loan  
5 contract or in a subsequent agreement, to a deferment of wholly  
6 unpaid installments, a lender may grant a deferment and may  
7 collect a deferment charge as provided in this subsection;  
8 provided that:

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

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

16 (3) The deferment charge for a one-month period may not  
17 exceed the applicable charge for the installment  
18 period immediately following the due date of the last  
19 undeferred installment;

20 (4) A proportionate charge may be made for deferment for  
21 periods of more or less than one month;



(5) A deferment charge shall be earned pro rata during the deferment period and shall be fully earned on the last day of the deferment period; and

(6) If a small dollar loan is prepaid in full during a deferment period, the lender shall make, or credit to the consumer, a refund of the unearned deferment charge in addition to any other refund or credit made for prepayment of the loan in full.

(g) In addition to the interest and charges permitted under this section, no further or other amount shall be charged or required by the small dollar lender, except:

(1) The amounts of fees authorized by law to record, file, or release security interests on a loan or fees for credit reports; provided that these amounts may be included in the principal amount of the loan or collected at any time after the loan is made; and

(2) Costs and disbursements to which the lender may become entitled by law in connection with any suit to collect a loan or any lawful activity to realize on a security interest after default.



1           (h) A lender may charge and receive loan origination  
2 charges as follows:

3           (1) On loans in the principal amount of \$500 or less, the  
4 greater of \$15 or one per cent of the principal amount  
5 of the loan; and

6           (2) On each refinancing made more than six months after  
7 the original loan and any previous refinancing,  
8 charges not exceeding \$15.

9           (i) A lender may charge and receive check collection  
10 charges not greater than \$20 plus any amount passed on from  
11 other financial institutions for each check, negotiable order of  
12 withdrawal, share draft, or other negotiable instrument returned  
13 or dishonored for any reason.

14           (j) If provided in the loan contract, a lender may collect  
15 a default charge on any installment not paid in full within ten  
16 days after its due date. For this purpose, all installments are  
17 considered paid in the order in which they become due. The  
18 amount of the default charge shall not exceed the greater of  
19 five per cent of the scheduled installment or \$5.

20           § -6 Maximum loan amount; multiple transactions. (a) A  
21 lender shall not lend an amount greater than \$500 nor shall the



1 amount financed exceed \$500 by any one lender at any time to a  
2 consumer. Nothing in this section shall preclude a lender from  
3 making more than one loan to a consumer; provided that the total  
4 amount financed does not exceed \$500 at any one time and there  
5 is at least a thirty-day waiting period between loans..

6 (b) If a consumer obtains a small dollar loan voluntarily  
7 and separately from the consumer's spouse and the consumer's  
8 action is documented in writing, signed by the consumer, and  
9 retained by the lender, the transaction shall not be considered  
10 a violation of this section.

11 § -7 Right of rescission. (a) A consumer shall have  
12 the right to rescind a small dollar loan, on or before 5:00 p.m.  
13 on the next day of business at the location where the loan was  
14 originated, by returning the principal in cash, the original  
15 check or money order disbursed by the lender, or the other  
16 disbursement of loan proceeds from the lender to fund the loan.  
17 The lender shall not charge the consumer for rescinding the  
18 loan.

19 (b) At the time of rescission, the lender shall refund any  
20 loan fees and interest received and shall return to the consumer



1 the originally signed loan agreement, clearly marked across the  
2 face:

3 "RESCINDED BY [lender's name; license number] ,  
4 [date] "

5 and below which the lender's authorized representative shall  
6 sign.

7 § -8 Multiple outstanding transactions prohibited; right  
8 to rescind; notice. A lender shall provide the following notice  
9 on each small dollar loan agreement, in a prominent place in at  
10 least twelve-point type:

11 "STATE LAW PROHIBITS THIS SMALL DOLLAR LOAN FROM  
12 EXCEEDING FIVE HUNDRED DOLLARS (\$500) TOTAL DEBT PLUS  
13 APPLICABLE FINANCE CHARGES AS PERMITTED BY LAW.  
14 EXCEEDING THIS AMOUNT MAY CREATE FINANCIAL HARDSHIPS  
15 FOR YOU AND YOUR FAMILY.

16 YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY  
17 5:00 P.M. [SPECIFY HERE THE CLOSE OF THE NEXT BUSINESS  
18 DAY BY DAY OF WEEK AND DATE] ."

19 § -9 Renewal; new loan requirements; consecutive loans;  
20 payment plan. (a) A small dollar loan may be renewed only  
21 once. After one renewal, the consumer shall pay the debt in



1 cash or its equivalent; provided that if the consumer does not  
2 pay the debt according to renewal terms, then the lender may  
3 deposit the consumer's instrument.

4 (b) Upon renewal of a small dollar loan, the lender may  
5 renew up to \$500 of the remaining unpaid balance. If the unpaid  
6 balance on renewal is more than \$500, the consumer may be  
7 required to pay the remaining balance; provided that the lender  
8 shall not finance any amount over \$500. The lender may assess  
9 an additional finance charge on the renewed loan, not to exceed  
10 an annual percentage rate of thirty-six per cent. If the small  
11 dollar loan is renewed prior to the maturity date, the lender  
12 shall refund to the consumer a prorated portion of the finance  
13 charge based upon the ratio of time left before maturity to the  
14 loan term.

15 (c) A small dollar loan transaction is completed when the  
16 lender presents the instrument for payment or the consumer  
17 redeems the instrument by paying the full amount of the  
18 instrument to the holder. Once the consumer has completed the  
19 small dollar loan transaction, the consumer may enter into a new  
20 small dollar loan agreement with the lender. If the consumer's  
21 instrument is dishonored by the payor financial institution



1 after the transaction is complete and, before the lender  
2 receives a notice of dishonor, if the lender makes a new loan  
3 that does not exceed the maximum allowable loan, the lender  
4 shall not be in violation of the maximum loan amount provisions  
5 under section -6.

6       **§ -10 Form of loan proceeds.** A small dollar lender may  
7 pay the proceeds from a small dollar loan to the consumer in the  
8 form of a monetary instrument, money order, or cash. The lender  
9 shall inform the consumer in writing that the lender will cash  
10 the monetary instrument or money order at no cost to the  
11 consumer.

12       **§ -11 Endorsement of instrument.** A small dollar lender  
13 shall not negotiate or present an instrument for payment unless  
14 the instrument is endorsed with the actual business name of the  
15 lender.

16       **§ -12 Redemption of instrument.** Prior to a small dollar  
17 lender negotiating or presenting the instrument, a consumer  
18 shall have the right to redeem any instrument held by the lender  
19 as a result of a small dollar loan if the consumer pays the full  
20 amount of the instrument to the lender.





1           §   -13 Delinquent small dollar loans; restrictions on  
2 collection by licensee or third party. (a) A small dollar  
3 lender shall comply with all applicable state and federal laws  
4 when collecting a delinquent small dollar loan. A lender may  
5 take civil action to collect principal, interest, fees, and  
6 costs allowed under this chapter. A lender may not threaten  
7 criminal prosecution as a method of collecting a delinquent  
8 small dollar loan or threaten to take any legal action against  
9 the consumer that is not otherwise permitted by law.

10           (b) Unless invited by the consumer, a lender shall not  
11 visit a consumer's residence or place of employment for the  
12 purpose of collecting a delinquent small dollar loan. A lender  
13 shall not impersonate a law enforcement officer or make any  
14 statements that might be construed as indicating an official  
15 connection with any federal, state, or county law enforcement  
16 agency or any other governmental agency while engaged in  
17 collecting a small dollar loan.

18           (c) A lender shall not communicate with a consumer in a  
19 manner intended to harass, intimidate, abuse, or embarrass a  
20 consumer, including but not limited to communication at an  
21 unreasonable hour, with unreasonable frequency, by threats of



1 force or violence, or by use of offensive language. A  
2 communication shall be presumed to have been made for the  
3 purposes of harassment if it is initiated by the lender for the  
4 purposes of collection and the communication is made:

5 (1) With a consumer, the consumer's spouse, or the  
6 consumer's domestic partner in any form, manner, or  
7 place, more than three times in a seven-day period;

8 (2) With a consumer at the consumer's place of employment  
9 more than one time in a seven-day period or to a  
10 consumer after the lender has been informed that the  
11 consumer's employer prohibits these communications;

12 (3) With the consumer, the consumer's spouse, or the  
13 consumer's domestic partner at the consumer's place of  
14 residence between the hours of 9:00 p.m. and 7:00  
15 a.m.; or

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



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

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

9 (f) For purposes of this section, "communication" includes  
10 any contact with a consumer, initiated by a lender, in person,  
11 by telephone, or in writing, including via electronic mail, text  
12 messages, or other electronic writing; provided that:

13 (1) The term "communication" shall occur at the time the  
14 lender initiates contact with a consumer, regardless  
15 of whether the communication is received or accessed  
16 by the consumer; provided further that a call to a  
17 number that the lender reasonably believes is the  
18 consumer's cellular telephone shall not constitute a  
19 communication with a consumer at the consumer's place  
20 of employment; and

21 (2) The term "communication" shall not include:



# S.B. NO. 3008

(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.

## § -14 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 small dollar loan, not to exceed \$25. The lender shall not collect any other fees as a result of default.

(b) A returned instrument charge shall not be allowed if the loan proceeds instrument is dishonored by the financial institution or the consumer places a stop-payment order due to forgery or theft.



1           §    -15   **Posting of charges.**   Any small dollar lender  
2   offering a small dollar loan shall conspicuously and  
3   continuously post at any place of business where small dollar  
4   loans are made the license required pursuant to this chapter and  
5   a notice of the fees and charges imposed for such small dollar  
6   loans.

7           §    -16   **Internet lending.**   (a)   A small dollar lender may  
8   advertise and accept applications for small dollar loans by any  
9   lawful medium, including but not limited to the Internet.

10           (b)   Small dollar lenders are prohibited from advertising  
11   or making small dollar loans via the Internet with first having  
12   obtained a license pursuant to part II of this chapter.

13           (c)   The unique identifier of any small dollar lender  
14   originating a small dollar loan, except a person who is exempt  
15   from licensure under this chapter, shall be clearly shown on all  
16   solicitations, including websites, and all other documents, as  
17   established by rule or order of the commissioner.

18           §    -17   **Notice on assignment or sale of instruments.**  
19   Prior to sale or assignment of instruments held by the small  
20   dollar lender as a result of a small dollar loan, the lender



1 shall place a notice on the instrument in at least twelve-point  
2 type that reads:

3 "SMALL DOLLAR LOAN

4 No licensee may pledge, negotiate, sell, or  
5 assign a small dollar loan, except to another licensee  
6 or to a bank, savings bank, trust company, savings and  
7 loan or building and loan association, or credit union  
8 organized under the laws of Hawaii or the laws of the  
9 United States."

10 § -18 Maintenance of books and records. (a) Every  
11 small dollar lender shall keep in a safe and secure place those  
12 books and records that directly relate to any small dollar loan  
13 made within this State, and such other books and records as may  
14 be necessary for the commissioner to ensure full compliance with  
15 the laws of this State.

16 (b) All books and records may be maintained as originals  
17 or photocopies, on microfilm or microfiche, on computer disks or  
18 tapes, or similar forms; provided that they are readily  
19 accessible and may be easily examined.



1 (c) All records, statements, and reports required or  
2 authorized by this chapter shall be made in writing in the  
3 English language.

4 (d) Every lender shall preserve all of its records for a  
5 minimum of six years or for such greater or lesser period as the  
6 commissioner may prescribe by rule.

7 **PART II. LICENSING**

8 § -31 **License required.** No person, unless exempt under  
9 this chapter, shall act as a small dollar lender in this State  
10 unless licensed to do so by the commissioner.

11 § -32 **Registration with NMLS; license; application;**  
12 **issuance.** (a) The commissioner may require all licensees to  
13 register with NMLS.

14 (b) Applicants for a license shall apply in a form as  
15 prescribed by NMLS or by the commissioner and shall contain, at  
16 a minimum, the following information:

- 17 (1) The legal name, residence, and business address of the  
18 applicant and, if the applicant is a partnership,  
19 association, limited liability company, limited  
20 liability partnership, or corporation, of every  
21 member, officer, principal, or director thereof;



(2) The location where the initial registered office of the applicant will be located;

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

(4) Such other data, financial statements, and pertinent information as the commissioner may require with respect to the applicant, its members, principals, or officers.

(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 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.





1           (e) In connection with an application for a license under  
2 this chapter, the applicant, at a minimum, shall furnish to NMLS  
3 information concerning the applicant's identity, including:

4           (1) Fingerprints of the applicant or, if an applicant is  
5 not an individual, each of the applicant's controlling  
6 persons, executive officers, directors, general  
7 partners, and managing members for submission to the  
8 Federal Bureau of Investigation and any governmental  
9 agency or entity authorized to receive the  
10 fingerprints for a state, national, and international  
11 criminal history background check, accompanied by the  
12 applicable fee charged by the entities conducting the  
13 criminal history background check; and

14          (2) Personal history and experience of the applicant or,  
15 if an applicant is not an individual, each of the  
16 applicant's controlling persons, executive officers,  
17 directors, general partners, and managing members in a  
18 form prescribed by NMLS, including the submission of  
19 authorization for NMLS and the commissioner to obtain:

20           (A) An independent credit report obtained from a  
21 consumer reporting agency described in section



603(p) of the Fair Credit Reporting Act, title 15

United States Code section 1681 et seq.; 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  
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 loan  
lender shall be registered with the business registration  
division of the department of commerce and consumer affairs to  
do business in this State before a license pursuant to this  
chapter shall be granted.



1       §   -33   **Issuance of license; grounds for denial.**   (a)   The  
2   commissioner shall conduct an investigation of every applicant  
3   to determine the financial responsibility, character, and  
4   general fitness of the applicant.   The commissioner shall issue  
5   the applicant a license to engage in the business of making  
6   small dollar loans if the commissioner determines that:

7       (1)   The applicant, or in the case of an applicant that is  
8             not an individual, each of the applicant's controlling  
9             persons, executive officers, directors, general  
10            partners, and managing members, has never had a small  
11            dollar loan lender license revoked in any  
12            jurisdiction; provided that a subsequent formal  
13            vacation of a revocation shall not be deemed a  
14            revocation;

15       (2)   The applicant, or in the case of an applicant that is  
16             not an individual, each of the applicant's controlling  
17             persons, executive officers, directors, general  
18             partners, and managing members, has not been convicted  
19             of, or pled guilty or nolo contendere, or been granted  
20             a deferred acceptance of a guilty plea under federal



1 law or under chapter 853 to a felony in a domestic,  
2 foreign, or military court:

3 (A) During the seven-year period preceding the date  
4 of the application for licensing and  
5 registration; or

6 (B) At any time preceding the date of application, if  
7 the felony involved an act of fraud, dishonesty,  
8 breach of trust, or money laundering;

9 provided that any pardon of a conviction shall not be  
10 deemed a conviction for purposes of this section;

11 (3) The applicant, or in the case of an applicant that is  
12 not an individual, each of the applicant's controlling  
13 persons, executive officers, directors, general  
14 partners, and managing members, has demonstrated  
15 financial responsibility, character, and general  
16 fitness to command the confidence of the community and  
17 to warrant a determination that the applicant shall  
18 operate honestly, fairly, and efficiently pursuant to  
19 this chapter. For purposes of this paragraph, a  
20 person is not financially responsible when the person  
21 has shown a disregard in the management of the



1 person's financial condition. A determination that a  
2 person has shown a disregard in the management of the  
3 person's financial condition may be based on:

4 (A) Current outstanding judgments, except judgments  
5 solely as a result of medical expenses;

6 (B) Current outstanding tax liens or other government  
7 liens and filings;

8 (C) Foreclosures within the past three years; and

9 (D) A pattern of seriously delinquent accounts within  
10 the past three years;

11 (4) The applicant, or in the case of an applicant that is  
12 not an individual, each of the applicant's controlling  
13 persons, executive officers, directors, general  
14 partners, and managing members, has not been convicted  
15 of, pled guilty or nolo contendere to, or been granted  
16 a deferred acceptance of a guilty plea under federal  
17 law or chapter 853 to any misdemeanor involving an act  
18 of fraud, dishonesty, breach of trust, or money  
19 laundering;

20 (5) The applicant has satisfied the licensing requirements  
21 of this chapter; and



1           (6) The applicant has the bond required by section -34.

2           (b) The applicant, or in the case of an applicant that is  
3 not an individual, each of the applicant's controlling persons,  
4 executive officers, directors, general partners, and managers,  
5 shall submit authorization to the commissioner for the  
6 commissioner to conduct background checks to determine or verify  
7 the information in subsection (a) in each state where the person  
8 has conducted small dollar loan lending. Authorization pursuant  
9 to this subsection shall include consent to provide additional  
10 fingerprints, if necessary, to law enforcement or regulatory  
11 bodies in other states.

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

13          (1) Whose license to conduct business under this chapter,  
14 or any similar statute in any other jurisdiction, has  
15 been suspended or revoked within five years of the  
16 filing of the present application;

17          (2) Who has been banned from the industry by an  
18 administrative order issued by the commissioner or the  
19 commissioner's designee, for the period specified in  
20 the administrative order; or



(3) Who has advertised or made internet loans in violation of this chapter.

(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.

**§ -34 Fees; bond.** (a) A branch office shall pay the following fees to the division to obtain and maintain a valid small dollar loan license:

(1) Initial application fee of \$600;

(2) Annual license renewal fee of \$450; and

(3) Criminal background check fee charged by the entities conducting the criminal history background check.

(b) 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 do a surety business in this State as surety, 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 on the annual dollar amount of loans originated.



1           (c) The bond required by subsection (b) shall run to the  
2 State of Hawaii as obligee for the use and benefit of the State  
3 and of any person or persons who may have a cause of action  
4 against the obligor under this chapter. The bond shall be  
5 conditioned that:

6           (1) The obligor as licensee will faithfully conform to and  
7 abide by this chapter and all the rules adopted under  
8 this chapter; and

9           (2) The bond shall pay to the State and any person or  
10 persons having a cause of action against the obligor  
11 all moneys that may become due and owing to the State  
12 and those persons under and by virtue of this chapter.

13       § -35 **Renewal of license; annual report.** (a) On or  
14 before December 31 of each year, each licensee shall pay a  
15 renewal fee of \$450.

16           (b) The annual renewal fee shall be accompanied by a  
17 report, in a form prescribed by the commissioner, which shall  
18 include:

19           (1) A copy of the licensee's most recent audited annual  
20 financial statement, including balance sheets,  
21 statement of income or loss, statement of changes in





1 shareholder's equity, and statement of cash flows or,  
2 if a licensee is a wholly owned subsidiary of another  
3 corporation, the consolidated audited annual financial  
4 statement of the parent corporation in lieu of the  
5 licensee's audited annual financial statement;

6 (2) A report detailing the small dollar lender's  
7 activities in this State, including:

8 (A) The number of small dollar loans the lender is  
9 servicing;

10 (B) The type and characteristics of loans serviced in  
11 this State;

12 (C) The number of serviced loans in default; and

13 (D) Any other information that the commissioner may  
14 require;

15 (3) Any material changes to any of the information  
16 submitted by the licensee on its original application  
17 that have not previously been reported to the  
18 commissioner on any other report required to be filed  
19 under this chapter;



1           (4) A list of the places of business and locations, if  
2                   any, within this State where business regulated by  
3                   this chapter is being conducted by the licensee;

4           (5) Disclosure of any pending or final suspension,  
5                   revocation, or other enforcement action by any state  
6                   or governmental authority; and

7           (6) Any other information the commissioner may require.

8           (c) A license may be renewed by filing a renewal statement  
9           on a form prescribed by NMLS or by the commissioner and paying a  
10           renewal fee at least four weeks prior to the renewal date for  
11           licensure for the following year.

12           (d) A licensee that has not filed an annual report that  
13           has been deemed complete by the commissioner nor paid its annual  
14           renewal fee by the renewal filing deadline, and has not been  
15           granted an extension of time to do so by the commissioner, shall  
16           have its license suspended on the renewal date. The licensee  
17           shall have thirty days after its license is suspended to file an  
18           annual report and pay the annual renewal fee, plus a late filing  
19           fee of \$250 for each business day after suspension that the  
20           commissioner does not receive the annual report and the annual  
21           renewal fee. The commissioner, for good cause, may grant an



1 extension of the renewal date or reduce or suspend the \$250 per  
2 day late filing fee.

3       §   -36   **Enforcement authorities; violations; penalties.**

4   (a) To ensure the effective supervision and enforcement of this  
5 chapter, the commissioner may, pursuant to chapter 91, deny an  
6 application for a license or take disciplinary action against a  
7 person licensed to make small dollar loans if the commissioner  
8 finds that:

9       (1) The applicant or licensee has violated this chapter or  
10           any rule or order lawfully made pursuant to this  
11           chapter;

12       (2) Facts or conditions exist that would clearly have  
13           justified the commissioner in denying an application  
14           for licensure, had these facts or conditions been  
15           known to exist at the time the application for  
16           licensure was made;

17       (3) The applicant has failed to complete an application  
18           for licensure;

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



- 1       (5)   The applicant or licensee has failed to provide or
- 2           maintain proof of financial responsibility;
- 3       (6)   The applicant or licensee is insolvent;
- 4       (7)   The applicant or licensee has made, in any document or
- 5           statement filed with the commissioner, a false
- 6           representation of a material fact or has omitted to
- 7           state a material fact;
- 8       (8)   The applicant, licensee, or any of its owners,
- 9           members, managers, partners, officers, or directors
- 10          have been convicted of or entered a plea of guilty or
- 11          nolo contendere to a crime involving fraud or deceit,
- 12          or to any similar crime under the jurisdiction of any
- 13          federal court or court of another state;
- 14       (9)   The applicant or licensee has failed to make,
- 15          maintain, or produce records that comply with section
- 16          -18 or any rule adopted by the commissioner;
- 17       (10)   The applicant or licensee has been the subject of any
- 18          disciplinary action by any state or federal agency
- 19          which resulted in revocation of a license;
- 20       (11)   A final judgment has been entered against the
- 21          applicant or licensee for violations of this chapter,



1 any state or federal law concerning small dollar  
2 loans, deferred deposit loans, check cashing, payday  
3 loans, banking, mortgage loan originators, money  
4 transmitters, or any state or federal law prohibiting  
5 deceptive or unfair trade or business practices; or

6 (12) The applicant or licensee has failed to, in a timely  
7 manner as specified by the commissioner, take or  
8 provide proof of the corrective action required by the  
9 commissioner subsequent to an examination or  
10 investigation pursuant to section -42.

11 (b) After a finding of one or more of the conditions under  
12 subsection (a), the commissioner may take any or all of the  
13 following actions:

14 (1) Deny an application for licensure, including an  
15 application for a branch office license;

16 (2) Revoke the license;

17 (3) Suspend the license for a period of time;

18 (4) Issue an order to the licensee to cease and desist  
19 from such acts;

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



(6) Impose penalties of up to a \$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 is engaging, has engaged, or is about to engage in an  
illegal, unauthorized, unsafe, or unsound practice. 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 or applicant 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 nor impair the commissioner's ability to



1 issue a final agency order or impose discipline against the  
2 licensee.

3 (e) No revocation, suspension, or surrender of a license  
4 shall impair or affect the obligation of any preexisting lawful  
5 contract between the licensee and any consumer.

6 (f) The commissioner may reinstate a license, terminate a  
7 suspension, or grant a new license to a person whose license has  
8 been revoked or suspended if no fact or condition then exists  
9 that clearly would have justified the commissioner in revoking,  
10 suspending, or refusing to grant a license.

11 (g) The commissioner may impose an administrative fine on  
12 a licensee or person subject to this chapter if the commissioner  
13 finds on the record after notice and opportunity for hearing  
14 that the licensee or person subject to this chapter has violated  
15 or failed to comply with any requirement of this chapter or any  
16 rule prescribed by the commissioner under this chapter or order  
17 issued under the authority of this chapter.

18 (h) Each violation or failure to comply with any directive  
19 or order of the commissioner shall be a separate and distinct  
20 violation.



(i) Notwithstanding section 480-13.5, 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.

**§ -37 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 to another licensee.

(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 phone 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; and

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

(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.



§ -38 Sale or transfer of license; change of control.

(a) No small dollar loan 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 are to 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 -35. The information shall include the history of the 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, for the five-year period prior to the



1 date of the application for change of control of the licensee,  
2 and authorizations necessary to conduct criminal history record  
3 checks of such persons, accompanied by the appropriate payment  
4 of the applicable fee for each record check.

5 (d) The commissioner shall approve a request for change of  
6 control under subsection (b) if, after investigation, the  
7 commissioner determines that the person or group of persons  
8 requesting approval has the competence, experience, character,  
9 and general fitness to control the licensee or person in control  
10 of the licensee in a lawful and proper manner, and that the  
11 interests of the public will not be jeopardized by the change of  
12 control.

13 (e) The following persons are exempt from the requirements  
14 of subsection (b), but the licensee regardless, shall notify the  
15 commissioner when a change in control results in the following:

16 (1) A person who acts as a proxy for the sole purpose of  
17 voting at a designated meeting of the security holders  
18 or holders of voting interests of a licensee or person  
19 in control of a licensee;

20 (2) A person who acquires control of a licensee by devise  
21 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 who the commissioner, by rule or order, exempts in the public interest.

(f) Before filing a request for approval for a change in 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.

**§ -39 Authorized places of business; principal office; branch offices; qualified individuals; relocation.** (a) Every small dollar lender licensed under this chapter shall have and maintain a principal place of business in the State.



1           (b) If a small dollar lender has more than one place of  
2 business, it shall license each additional place of business in  
3 Hawaii as a branch office with the commissioner. No business  
4 shall be conducted at a branch office until the branch office  
5 has been licensed by the commissioner.

6           (c) A small dollar lender shall not maintain any branch  
7 offices in the State in addition to its principal place of  
8 business without the prior written approval of the commissioner.  
9 An application to establish a branch office shall be submitted  
10 through NMLS with a nonrefundable application fee as required by  
11 section -34.

12          (d) A small dollar lender shall not relocate any office in  
13 this State without the prior written approval of the  
14 commissioner. An application to relocate an office shall be  
15 submitted to the commissioner at least thirty days prior to  
16 relocating and shall set forth the reasons for the relocation,  
17 the street address of the proposed relocated office, and other  
18 information that may be required by the commissioner. An  
19 application to relocate an office pursuant to this subsection  
20 shall be submitted with a nonrefundable fee as required by  
21 section -34.



(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) A small dollar lender that maintains its principal office outside of the State shall:

(1) Designate a branch office in this State as its principal place of business in this State;

(2) Apply for and obtain approval from the commissioner to designate a branch office as its principal place of business in this State pursuant to this section; and

(3) Designate a qualified individual to manage the principal place of business in this State.

(g) A small dollar lender that maintains its principal office in this State shall designate a qualified individual who is physically present in the principal place of business to oversee and manage that principal place of business. Such principal place of business shall not be considered a branch office.



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

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

8           §   -40   **Payment of fees.** All fees collected pursuant to  
9 section       -34, administrative fines, and other charges  
10 collected pursuant to this chapter shall be deposited into the  
11 compliance resolution fund established pursuant to section 26-  
12 9(o) and shall be payable through NMLS, to the extent allowed by  
13 NMLS. Fees not eligible for payment through NMLS shall be  
14 deposited into a separate account within the compliance  
15 resolution fund for use by the division.

16          §   -41   **Powers of commissioner.** (a) The commissioner may  
17 adopt rules pursuant to chapter 91 as the commissioner deems  
18 necessary for the administration of this chapter.

19          (b) In addition to any other powers provided by law, the  
20 commissioner shall have the authority to:



- 1       (1) Administer and enforce the provisions and requirements  
2           of this chapter;
- 3       (2) Adopt, amend, or repeal rules and issue declaratory  
4           rulings or informal nonbinding interpretations;
- 5       (3) Investigate and conduct hearings regarding any  
6           violation of this chapter or any rule or order of, or  
7           agreement with, the commissioner;
- 8       (4) Create fact-finding committees that may make  
9           recommendations to the commissioner for the  
10          commissioner's deliberations;
- 11      (5) Require an applicant or any of its controlling  
12          persons, officers, directors, partners, members,  
13          managers, and agents to disclose their relevant  
14          criminal history and request a criminal history record  
15          check in accordance with chapter 846;
- 16      (6) Contract with or employ qualified persons, including  
17          investigators, examiners, or auditors who may be  
18          exempt from chapter 76 and who shall assist the  
19          commissioner in exercising the commissioner's powers  
20          and duties;





1       (7) Require that all fees, fines, and charges collected by  
2       the commissioner under this chapter be deposited into  
3       the compliance resolution fund established pursuant to  
4       section 26-9(o);

5       (8) Process and investigate complaints, subpoena witnesses  
6       and documents, administer oaths, and receive  
7       affidavits and oral testimony, including telephonic  
8       communications, and do any and all things necessary or  
9       incidental to the exercise of the commissioner's power  
10      and duties, including the authority to conduct  
11      contested case proceedings under chapter 91; and

12      (9) Require a licensee to comply with any rule, guidance,  
13      guideline, statement, supervisory policy or any  
14      similar proclamation issued or adopted by the Federal  
15      Deposit Insurance Corporation to the same extent and  
16      in the same manner as a bank chartered by the State or  
17      in the alternative, any policy position of the  
18      Conference of State Bank Supervisors.

19      §   -42   Investigation and examination authority.   (a) In  
20   addition to any other authority under this chapter, the  
21   commissioner shall have the authority to conduct investigations



1 and examinations in accordance with this section. The  
2 commissioner may access, receive, and use any books, accounts,  
3 records, files, documents, information, or evidence that the  
4 commissioner deems relevant to the inquiry or investigation,  
5 regardless of the location, possession, control, or custody of  
6 the documents, information, or evidence.

7 (b) For the purposes of investigating violations or  
8 complaints arising under this chapter, or for the purposes of  
9 examination, the commissioner may review, investigate, or  
10 examine any licensee or person subject to this chapter, as often  
11 as necessary to carry out the purposes of this chapter. The  
12 commissioner may direct, subpoena, or order the attendance of,  
13 and examine under oath, all persons whose testimony may be  
14 required about loans or the business or subject matter of any  
15 examination or investigation and may direct, subpoena, or order  
16 the person to produce books, accounts, records, files, and any  
17 other documents the commissioner deems relevant to the inquiry.

18 (c) Each licensee or person subject to this chapter shall  
19 provide to the commissioner upon request the books and records  
20 relating to the operations of the licensee or person subject to  
21 this chapter. The commissioner shall have access to the books



1 and records and shall be permitted to interview the officers,  
2 principals, managers, employees, independent contractors,  
3 agents, and customers of the licensee or person subject to this  
4 chapter concerning their business.

5 (d) Each licensee or person subject to this chapter shall  
6 make or compile reports or prepare other information as directed  
7 by the commissioner in order to carry out the purposes of this  
8 section, including:

9 (1) Accounting compilations;

10 (2) Information lists and data concerning loan  
11 transactions in a format prescribed by the  
12 commissioner; or

13 (3) Other information that the commissioner deems  
14 necessary to carry out the purposes of this section.

15 (e) In conducting any examination or investigation  
16 authorized by this chapter, the commissioner may control access  
17 to any documents and records of the licensee or person under  
18 examination or investigation. The commissioner may take  
19 possession of the documents and records or place a person in  
20 exclusive charge of the documents and records. During the  
21 period of control, no person shall remove or attempt to remove



1 any of the documents and records except pursuant to a court  
2 order or with the consent of the commissioner. Unless the  
3 commissioner has reasonable grounds to believe the documents or  
4 records of the licensee or person under examination or  
5 investigation have been, or are at risk of being, altered or  
6 destroyed for purposes of concealing a violation of this  
7 chapter, the licensee or owner of the documents and records  
8 shall have access to the documents or records as necessary to  
9 conduct its ordinary business affairs.

10 (f) The authority of this section shall remain in effect,  
11 whether a licensee or person subject to this chapter acts or  
12 claims to act under any licensing or registration law of this  
13 State, or claims to act without such authority.

14 (g) No licensee or person subject to investigation or  
15 examination under this section may knowingly withhold, abstract,  
16 remove, mutilate, destroy, or secrete any books, records,  
17 computer records, or other information.

18 (h) The commissioner may charge an examination or  
19 investigation fee, payable to the commissioner, based upon the  
20 cost per hour per examiner for all licensees and persons subject  
21 to this chapter examined or investigated by the commissioner or



1 the commissioner's staff. The hourly fee shall be \$60 or an  
2 amount as the commissioner shall establish by rule pursuant to  
3 chapter 91. In addition to the examination or investigation  
4 fee, the commissioner may charge any person who is examined or  
5 investigated by the commissioner or the commissioner's staff  
6 pursuant to this section additional amounts for travel, per  
7 diem, mileage, and other reasonable expenses incurred in  
8 connection with the examination or investigation, payable to the  
9 commissioner.

10 (i) Any person having reason to believe that this chapter  
11 or the rules adopted pursuant thereto have been violated, or  
12 that a license issued under this chapter should be suspended or  
13 revoked, may file a written complaint with the commissioner  
14 setting forth the details of the alleged violation or grounds  
15 for suspension or revocation.

16 (j) To carry out the purposes of this chapter, the  
17 commissioner may:

18 (1) Retain accountants or other professionals and  
19 specialists, who may be exempt from chapter 76, as  
20 examiners, auditors, or investigators to conduct or



1           assist in the conduct of examinations or  
2           investigations;

3           (2) Enter into agreements or relationships with other  
4           government officials or regulatory associations in  
5           order to improve efficiencies and reduce regulatory  
6           burden by sharing resources, standardized or uniform  
7           methods or procedures, and documents, records,  
8           information, or evidence obtained under this section;

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

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

16          (5) Accept audit reports made by an independent certified  
17          public accountant for the licensee or person subject  
18          to this chapter in the course of that part of the  
19          examination covering the same general subject matter  
20          as the audit and may incorporate the audit report in



1           the report of the examination, report of  
2           investigation, or other writing of the commissioner.

3           §   -43   Confidentiality. (a) Except as otherwise  
4 provided in Public Law 110-289, section 1512, the requirements  
5 under any federal or state law regarding the privacy or  
6 confidentiality of any information or material provided to NMLS,  
7 and any privilege arising under federal or state law, including  
8 the rules of any federal or state court, with respect to the  
9 information or material shall continue to apply to the  
10 information or material after the information or material has  
11 been disclosed to NMLS. The information and material may be  
12 shared with all state and federal regulatory officials with  
13 oversight authority over transactions subject to this chapter,  
14 without the loss of privilege or the loss of confidentiality  
15 protections provided by federal or state law.

16           (b) For these purposes, the commissioner is authorized to  
17 enter into agreements or sharing arrangements with other  
18 governmental agencies, the Conference of State Bank Supervisors,  
19 or other associations representing governmental agencies as  
20 established by rule or order of the commissioner.



1           (c) Information or material that is subject to a privilege  
2 or confidentiality under subsection (a) shall not be subject to:

3           (1) Disclosure under any federal or state law governing  
4 the disclosure to the public of information held by an  
5 officer or an agency of the federal government or a  
6 state; or

7           (2) Subpoena or discovery, or admission into evidence, in  
8 any private civil action or administrative process,  
9 unless with respect to any privilege held by NMLS  
10 applicable to the information or material; provided  
11 that the person to whom the information or material  
12 pertains waives, in whole or in part, in the  
13 discretion of such person, that privilege.

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

18          (e) Notwithstanding any law to the contrary, the  
19 disclosure of confidential supervisory information or any  
20 information or material described in subsection (a) that is





1 inconsistent with subsection (a) shall be superseded by the  
2 requirements of this section.

3 (f) This section shall not apply to information or  
4 material relating to the employment history of, and publicly  
5 adjudicated disciplinary and enforcement actions against,  
6 mortgage servicers that are included in NMLS for access by the  
7 public.

8 § -44 Prohibited practices. (a) It shall be a  
9 violation of this chapter for a licensee, its officers,  
10 directors, employees, or independent contractors, or any other  
11 person subject to this chapter to:

12 (1) Engage in any act that limits or restricts the  
13 application of this chapter, including making a small  
14 dollar loan disguised as a personal property, personal  
15 sales, leaseback transaction, or automobile title  
16 loan, or by disguising loan proceeds as cash rebates  
17 for the pretextual installment sale of goods and  
18 services;

19 (2) Make a secured small dollar loan;

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



- 1           (4) Charge a prepayment fee to any consumer;
- 2           (5) Require a consumer to purchase add-on products, such
- 3               as credit insurance;
- 4           (6) Charge any additional interest, fees, or charges,
- 5               except those authorized by this chapter;
- 6           (7) Fail to make disclosures as required by this chapter
- 7               and any other applicable state or federal law
- 8               including rules or regulations adopted pursuant to
- 9               state or federal law;
- 10          (8) Directly or indirectly employ any scheme, device, or
- 11               artifice to defraud or mislead any consumer, any
- 12               lender, or any person;
- 13          (9) Directly or indirectly engage in unfair or deceptive
- 14               acts, practices, or advertising in connection with a
- 15               small dollar loan toward any person;
- 16          (10) Directly or indirectly obtain property by fraud or
- 17               misrepresentation;
- 18          (11) Make a small dollar loan to any person physically
- 19               located in Hawaii through the use of the Internet,
- 20               facsimile, telephone, kiosk, or other means without
- 21               first obtaining a license under this chapter;



1       (12) Make, in any manner, any false or deceptive statement  
2           or representation, including with regard to the rates,  
3           points, or other financing terms or conditions for a  
4           small dollar loan, or engage in bait and switch  
5           advertising;

6       (13) Make any false statement or knowingly and wilfully  
7           make any omission of material fact in connection with  
8           any reports filed with the division by a licensee or  
9           in connection with any investigation conducted by the  
10          division;

11      (14) Advertise any rate of interest without conspicuously  
12          disclosing the annual percentage rate implied by that  
13          rate of interest or otherwise fail to comply with any  
14          requirement of the Truth in Lending Act, or any other  
15          applicable state or federal statutes or regulations;

16      (15) Make small dollar loans from any unlicensed location;

17      (16) Fail to comply with all applicable state and federal  
18          statutes relating to the activities governed by this  
19          chapter; or

20      (17) Fail to pay any fee, assessment, or moneys due to the  
21          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 uncollectable and unenforceable."

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, the provisions of chapter \_\_\_\_\_."

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, or any small dollar loan as defined under chapter \_\_\_\_\_, the contract shall not, by reason



1 thereof, be void. But if in any action on the contract proof is  
2 made that a greater rate of interest than that permitted by law  
3 has been directly or indirectly contracted for, the creditor  
4 shall only recover the principal and the debtor shall recover  
5 costs. If interest has been paid, judgment shall be for the  
6 principal less the amount of interest paid. This section shall  
7 not be held to apply, to loans made by financial services loan  
8 companies and credit unions at the rates authorized under and  
9 pursuant to articles 9 and 10 of chapter 412."

10 SECTION 5. Section 478-6, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "§478-6 Usury; penalty. Any person who directly or  
13 indirectly receives any interest or finance charge at a rate  
14 greater than that permitted by law or who, by any method or  
15 device whatsoever, receives or arranges for the receipt of  
16 interest or finance charge at a greater rate than that permitted  
17 by law on any credit transaction shall be guilty of usury and  
18 shall be fined not more than \$250, unless a greater amount is  
19 allowed by law, or imprisoned not more than one year, or both."

20 SECTION 6. Section 480F-1, Hawaii Revised Statutes, is  
21 amended by deleting the definition of "deferred deposit".



1       ~~["Deferred deposit" means a transaction in which a check~~  
2 ~~easher refrains from depositing a personal check written by a~~  
3 ~~customer until a date after the transaction date, pursuant to a~~  
4 ~~written agreement."]~~

5       SECTION 7. Section 480F-5, Hawaii Revised Statutes, is  
6 amended to read as follows:

7       "~~[f]~~ §480F-5~~[f]~~ Exemptions. This chapter shall not apply  
8 to:

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

16       ~~-(2) Any person authorized to engage in business as a bank,~~  
17 ~~trust company, savings bank, savings and loan~~  
18 ~~association, financial services loan company, or~~  
19 ~~credit union under the laws of the United States, any~~  
20 ~~state or territory of the United States, or the~~  
21 ~~District of Columbia]. "~~



1       SECTION 8. Section 480F-6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "**§480F-6 Penalties.** (a) Any person who violates this  
4 chapter shall be deemed to have engaged in an unfair or  
5 deceptive act or practice in the conduct of any trade or  
6 commerce within the meaning of section 480-2(a). Aggrieved  
7 consumers may seek those remedies set forth in section 480-  
8 13(b).

9       (b) Any person who is not a consumer and is injured by a  
10 wilful violation of this chapter may bring an action for the  
11 recovery of damages, a proceeding to restrain and enjoin those  
12 violations, or both. If judgment is for the plaintiff, the  
13 plaintiff shall be awarded a sum not less than \$1,000 or  
14 threefold damages, whichever sum is greater, and reasonable  
15 attorneys' fees together with the costs of suit.

16       (c) A wilful violation of this chapter shall be punishable  
17 by a fine of up to \$500 and up to thirty days imprisonment.

18       ~~[(d) A customer who enters into a written deferred deposit~~  
19 ~~agreement and offers a personal check to a check casher pursuant~~  
20 ~~to that agreement shall not be subject to any criminal penalty~~  
21 ~~for failure to comply with the terms of that agreement unless~~



1 ~~the check is dishonored because the customer closed the account~~  
2 ~~or stopped payment on the check.] "~~

3 SECTION 9. Section 846-2.7, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

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

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

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

17 (3) The department of health or its designee on all  
18 applicants for licensure or certification for,  
19 operators for, prospective employees, adult  
20 volunteers, and all adults, except adults in care, at  
21 healthcare facilities as defined in section 321-15.2;





1       (4) The department of education on employees, prospective  
2       employees, and teacher trainees in any public school  
3       in positions that necessitate close proximity to  
4       children as provided by section 302A-601.5;

5       (5) The counties on employees and prospective employees  
6       who may be in positions that place them in close  
7       proximity to children in recreation or child care  
8       programs and services;

9       (6) The county liquor commissions on applicants for liquor  
10      licenses as provided by section 281-53.5;

11      (7) The county liquor commissions on employees and  
12      prospective employees involved in liquor  
13      administration, law enforcement, and liquor control  
14      investigations;

15      (8) The department of human services on operators and  
16      employees of child caring institutions, child placing  
17      organizations, and foster boarding homes as provided  
18      by section 346-17;

19      (9) The department of human services on prospective  
20      adoptive parents as established under section  
21      346-19.7;



1       (10) The department of human services or its designee on  
2       applicants to operate child care facilities, household  
3       members of the applicant, prospective employees of the  
4       applicant, and new employees and household members of  
5       the provider after registration or licensure as  
6       provided by section 346-154, and persons subject to  
7       section 346-152.5;

8       (11) The department of human services on persons exempt  
9       pursuant to section 346-152 to be eligible to provide  
10      child care and receive child care subsidies as  
11      provided by section 346-152.5;

12      (12) The department of health on operators and employees of  
13      home and community-based case management agencies and  
14      operators and other adults, except for adults in care,  
15      residing in community care foster family homes as  
16      provided by section 321-15.2;

17      (13) The department of human services on staff members of  
18      the Hawaii youth correctional facility as provided by  
19      section 352-5.5;

20      (14) The department of human services on employees,  
21      prospective employees, and volunteers of contracted



1 providers and subcontractors in positions that place  
2 them in close proximity to youth when providing  
3 services on behalf of the office or the Hawaii youth  
4 correctional facility as provided by section 352D-4.3;

5 (15) The judiciary on employees and applicants at detention  
6 and shelter facilities as provided by section 571-34;

7 (16) The department of public safety on employees and  
8 prospective employees who are directly involved with  
9 the treatment and care of persons committed to a  
10 correctional facility or who possess police powers  
11 including the power of arrest as provided by section  
12 353C-5;

13 (17) The board of private detectives and guards on  
14 applicants for private detective or private guard  
15 licensure as provided by section 463-9;

16 (18) Private schools and designated organizations on  
17 employees and prospective employees who may be in  
18 positions that necessitate close proximity to  
19 children; provided that private schools and designated  
20 organizations receive only indications of the states



1 from which the national criminal history record  
2 information was provided pursuant to section 302C-1;

3 (19) The public library system on employees and prospective  
4 employees whose positions place them in close  
5 proximity to children as provided by section  
6 302A-601.5;

7 (20) The State or any of its branches, political  
8 subdivisions, or agencies on applicants and employees  
9 holding a position that has the same type of contact  
10 with children, vulnerable adults, or persons committed  
11 to a correctional facility as other public employees  
12 who hold positions that are authorized by law to  
13 require criminal history record checks as a condition  
14 of employment as provided by section 78-2.7;

15 (21) The department of health on licensed adult day care  
16 center operators, employees, new employees,  
17 subcontracted service providers and their employees,  
18 and adult volunteers as provided by section 321-15.2;

19 (22) The department of human services on purchase of  
20 service contracted and subcontracted service providers  
21 and their employees serving clients of the adult



1 protective and community services branch, as provided  
2 by section 346-97;

3 (23) The department of human services on foster grandparent  
4 program, senior companion program, and respite  
5 companion program participants as provided by section  
6 346-97;

7 (24) The department of human services on contracted and  
8 subcontracted service providers and their current and  
9 prospective employees that provide home and community-  
10 based services under section 1915(c) of the Social  
11 Security Act, title 42 United States Code section  
12 1396n(c), or under any other applicable section or  
13 sections of the Social Security Act for the purposes  
14 of providing home and community-based services, as  
15 provided by section 346-97;

16 (25) The department of commerce and consumer affairs on  
17 proposed directors and executive officers of a bank,  
18 savings bank, savings and loan association, trust  
19 company, and depository financial services loan  
20 company as provided by section 412:3-201;



1       (26) The department of commerce and consumer affairs on  
2           proposed directors and executive officers of a  
3           nondepository financial services loan company as  
4           provided by section 412:3-301;

5       (27) The department of commerce and consumer affairs on the  
6           original chartering applicants and proposed executive  
7           officers of a credit union as provided by section  
8           412:10-103;

9       (28) The department of commerce and consumer affairs on:

10           (A) Each principal of every non-corporate applicant  
11           for a money transmitter license;

12           (B) Each person who upon approval of an application  
13           by a corporate applicant for a money transmitter  
14           license will be a principal of the licensee; and

15           (C) Each person who upon approval of an application  
16           requesting approval of a proposed change in  
17           control of licensee will be a principal of the  
18           licensee,

19           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;



1       (32) The state public charter school commission or public  
2       charter schools on employees, teacher trainees,  
3       prospective employees, and prospective teacher  
4       trainees in any public charter school for any position  
5       that places them in close proximity to children, as  
6       provided in section 302D-33;

7       (33) The counties on prospective employees who work with  
8       children, vulnerable adults, or senior citizens in  
9       community-based programs;

10      (34) The counties on prospective employees for fire  
11      department positions which involve contact with  
12      children or vulnerable adults;

13      (35) The counties on prospective employees for emergency  
14      medical services positions which involve contact with  
15      children or vulnerable adults;

16      (36) The counties on prospective employees for emergency  
17      management positions and community volunteers whose  
18      responsibilities involve planning and executing  
19      homeland security measures including viewing,  
20      handling, and engaging in law enforcement or





1           classified meetings and assisting vulnerable citizens  
2           during emergencies or crises;

3       (37)   The State and counties on employees, prospective  
4           employees, volunteers, and contractors whose position  
5           responsibilities require unescorted access to secured  
6           areas and equipment related to a traffic management  
7           center;

8       (38)   The State and counties on employees and prospective  
9           employees whose positions involve the handling or use  
10          of firearms for other than law enforcement purposes;

11       (39)   The State and counties on current and prospective  
12           systems analysts and others involved in an agency's  
13           information technology operation whose position  
14           responsibilities provide them with access to  
15           proprietary, confidential, or sensitive information;

16       (40)   The department of commerce and consumer affairs on:

17           (A)   Applicants for real estate appraiser licensure or  
18           certification as provided by chapter 466K;

19           (B)   Each person who owns more than ten per cent of an  
20           appraisal management company who is applying for



1 registration as an appraisal management company,

2 as provided by section 466L-7; and

3 (C) Each of the controlling persons of an applicant

4 for registration as an appraisal management

5 company, as provided by section 466L-7;

6 (41) The department of health or its designee on all

7 license applicants, licensees, employees, contractors,

8 and prospective employees of medical cannabis

9 dispensaries, and individuals permitted to enter and

10 remain in medical cannabis dispensary facilities as

11 provided under sections 329D-15(a)(4) and

12 329D-16(a)(3);

13 (42) The department of commerce and consumer affairs on

14 applicants for nurse licensure or license renewal,

15 reactivation, or restoration as provided by sections

16 457-7, 457-8, 457-8.5, and 457-9;

17 (43) The county police departments on applicants for

18 permits to acquire firearms pursuant to section 134-2

19 and on individuals registering their firearms pursuant

20 to section 134-3;

21 (44) The department of commerce and consumer affairs on:



1           (A) Each of the controlling persons of the applicant  
2           for licensure as an escrow depository, and each  
3           of the officers, directors, and principals who  
4           will be in charge of the escrow depository's  
5           activities upon licensure; and

6           (B) Each of the controlling persons of an applicant  
7           for proposed change in control of an escrow  
8           depository licensee, and each of the officers,  
9           directors, and principals who will be in charge  
10          of the licensee's activities upon approval of  
11          such application,

12          as provided by chapter 449;

13       (45) The department of taxation on current or prospective  
14       employees or contractors who have access to federal  
15       tax information in order to comply with requirements  
16       of federal law, regulation, or procedure, as provided  
17       by section 231-1.6;

18       (46) The department of labor and industrial relations on  
19       current or prospective employees or contractors who  
20       have access to federal tax information in order to



1           comply with requirements of federal law, regulation,  
2           or procedure, as provided by section 383-110;

3       (47) The department of human services on current or  
4           prospective employees or contractors who have access  
5           to federal tax information in order to comply with  
6           requirements of federal law, regulation, or procedure,  
7           as provided by section 346-2.5;

8       (48) The child support enforcement agency on current or  
9           prospective employees, or contractors who have access  
10          to federal tax information in order to comply with  
11          federal law, regulation, or procedure, as provided by  
12          section 576D-11.5; ~~and~~

13       (49) The department of commerce and consumer affairs on  
14       each controlling person, executive officer, director,  
15       general partner, member, and manager of a small dollar  
16       loan licensee, or an applicant for a small dollar loan  
17       license as provided by chapter       ; and

18       ~~[(49)]~~ (50) Any other organization, entity, or the State,  
19           its branches, political subdivisions, or agencies as  
20           may be authorized by state law."



1       SECTION 10. Section 480F-4, Hawaii Revised Statutes, is  
2 repealed.

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

6       ~~(b) Each deferred deposit shall be made pursuant to a~~  
7 ~~written agreement that has been signed by the customer and the~~  
8 ~~check casher or an authorized representative of the check~~  
9 ~~casher. The written agreement shall contain a statement of the~~  
10 ~~total amount of any fees charged for the deferred deposit,~~  
11 ~~expressed both in United States currency and as an annual~~  
12 ~~percentage rate. The written agreement shall authorize the~~  
13 ~~check casher to defer deposit of the personal check until a~~  
14 ~~specific date not later than thirty two days from the date the~~  
15 ~~written agreement was signed. The written agreement shall not~~  
16 ~~permit the check casher to accept collateral.~~

17       ~~(c) The face amount of the check shall not exceed \$600 and~~  
18 ~~the deposit of a personal check written by a customer pursuant~~  
19 ~~to a deferred deposit transaction may be deferred for no more~~  
20 ~~than thirty two days. A check casher may charge a fee for~~  
21 ~~deferred deposit of a personal check in an amount not to exceed~~



1 ~~fifteen per cent of the face amount of the check. Any fees~~  
2 ~~charged for deferred deposit of a personal check in compliance~~  
3 ~~with this section shall be exempt from chapter 478.~~

4 ~~(d) A check casher shall not enter into an agreement for~~  
5 ~~deferred deposit with a customer during the period of time that~~  
6 ~~an earlier agreement for a deferred deposit for the same~~  
7 ~~customer is in effect. A deferred deposit transaction shall not~~  
8 ~~be repaid, refinanced, or consolidated by or with the proceeds~~  
9 ~~of another deferred deposit transaction.~~

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

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



## S.B. NO. 3008

1 SECTION 11. This Act does not affect rights and duties  
 2 that matured, penalties that were incurred, and proceedings that  
 3 were begun before its effective date.

4 SECTION 12. Statutory material to be repealed is bracketed  
 5 and stricken. New statutory material is underscored.

6 SECTION 13. This Act shall take effect on July 1, 2018;  
 7 provided that the licensing requirements for small dollar  
 8 lenders established by section 2 of this Act shall take effect  
 9 on January 1, 2019.

10

INTRODUCED BY:

Randy H. Bork

John G. Bork  
John G. Bork

Michelle Sidani  
Michelle Sidani  
BTG

Thomas G. Bork  
Karl Bork  
John G. Bork

Paul E. Bork  
W. J. Bork  
Bruce Bork  
Will Bork



# S.B. NO. 3008

**Report Title:**

Payday Lending; Small Dollar Loans; Small Dollar Lenders;  
Licensure; Requirements

**Description:**

Transitions from lump sum deferred deposit transactions to installment-based small dollar loan transactions. Specifies various consumer protection requirements for small dollar loans. Beginning January 1, 2019, requires licensure for small dollar lenders that offer small dollar loans to consumers. Specifies licensing requirements for small dollar lenders.

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

