

JAN 17 2020

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# A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

PART I

1  
2 SECTION 1. The legislature finds that a 2019 survey of  
3 household financial health in Hawaii identified that sixty-nine  
4 per cent of households are experiencing moderate to severe  
5 financial stress. One in five households had total spending  
6 that exceeded their income. Alternative financial service  
7 products (AFS), which includes money orders, check cashing,  
8 payday loans and pawn shop or auto title loans services were  
9 used by twenty-one per cent of households at least once during  
10 the year, and this survey also found that five per cent of  
11 households are "unbanked" meaning that they do not have a  
12 checking or savings account, and an additional nineteen per cent  
13 are "underbanked" meaning they have at least one of these  
14 accounts but also rely on an AFS product. While the specific  
15 reasons for utilizing AFS products is unclear, it does suggest  
16 that there is demand for financial services that may offer quick  
17 access and convenience, but come with a heavy price tag.



1           The legislature further finds that a form of AFS known as  
2 deferred deposit agreements, commonly referred to as payday  
3 loans, are small, short term, unsecured loans that borrowers  
4 commit to repay from their next paycheck or a regular income  
5 payment. According to the Federal Reserve System's Report on  
6 the Economic Well-Being of U.S. Households in 2017, forty per  
7 cent of Americans would not be able to cover an unexpected  
8 expense of \$400 without having to sell something or borrow  
9 money. Another study conducted by The Pew Charitable Trusts  
10 found that the majority of borrowers use deferred deposit  
11 agreements for recurring expenses, rather than unexpected  
12 expenses or emergencies, because they live paycheck to paycheck.  
13 Additional research shows that approximately twelve million  
14 Americans utilize payday loans annually. The Consumer Financial  
15 Protection Bureau has reported that seventy per cent of those  
16 payday borrowers will end up taking out a second payday loan,  
17 and some lenders allow borrowers to roll the balance into a new  
18 larger loan with the same predatory fee schedule.

19           The legislature also finds that there has been a shift in  
20 the payday industry toward small dollar installment loans, which  
21 are repayable over time and secured by access to the borrower's



1 checking account. According to the Pew Charitable Trusts,  
2 national survey data indicates that seventy-nine per cent of  
3 payday borrowers prefer small dollar loans that are due in  
4 installments, which only take a small share of each paycheck.  
5 However, in the absence of sensible regulatory safeguards, this  
6 type of lending, as well as the traditional deferred deposit  
7 lending market, can be harmful to consumers.

8       Unfortunately, due to the State's current deferred deposit  
9 laws, the payday lending industry can engage in practices that  
10 trap consumers in unsustainable cycles of debt. Payday lenders  
11 structure loans with unrealistically short repayment terms,  
12 unaffordable payments, and excessive fees, resulting in long-  
13 term, high-cost debt and harm to the consumer. Lenders are also  
14 granted access to the borrower's checking account to ensure that  
15 the lender gets repaid, even if the borrower cannot cover rent,  
16 utilities, and other basic living expenses. The Pew Charitable  
17 Trusts has reported that the average Hawaii payday borrower  
18 incurs \$529 in fees to borrow \$300 over five months. Research  
19 also shows that this amount is nearly three times higher than  
20 what the same lenders charge similarly situated consumers in  
21 other states. Due to the high cost of living in the State,



1 these practices are likely to contribute to the current  
2 homelessness crisis.

3 The legislature notes that there has been a growing trend  
4 around the country to provide more consumer protections, which  
5 benefit consumers and encourage responsible and transparent  
6 lending, for deferred deposit transactions and small dollar  
7 installment loans within the payday lending industry. Hawaii  
8 has not yet joined in these reform efforts. In 2017, the  
9 Consumer Financial Protection Bureau released new rules that,  
10 among other things, target loans with a thirty-six per cent  
11 yearly interest rate or higher and restrict payday lenders from  
12 extracting money from the borrower's account, without explicit  
13 consent, if they failed to repay twice in a row. However, the  
14 current presidential administration has indicated that it will  
15 modify the rules before they go into effect, indefinitely  
16 rolling back many of the intended consumer protections. It is  
17 critical that the State take action now to address these harmful  
18 practices in light of this delay and the weakening of the  
19 federal consumer protections for payday and similar loans.

20 The legislature acknowledges that there is a market for  
21 small dollar installment loans. However, the legislature



1 concludes that if small dollar installment loans are going to be  
2 offered to Hawaii consumers, there must be appropriate consumer  
3 protections in place to ensure these loans contain reasonable  
4 terms and fees, do not trap borrowers in a cycle of  
5 high-interest debt, and do not further contribute to the  
6 homelessness crisis.

7 Accordingly, the purpose of this part is to encourage  
8 transparency, increase consumer protection in the payday lending  
9 industry, and improve the well-being of Hawaii consumers by:

- 10 (1) Transitioning the payday lending industry from lump  
11 sum deferred deposit transactions to installment-based  
12 small dollar loan transactions;
- 13 (2) Specifying various consumer protection requirements  
14 for small dollar loans;
- 15 (3) Beginning January 1, 2021, requiring licensure for  
16 small dollar lenders that offer small dollar loans to  
17 consumers, subject to the oversight of the division of  
18 financial institutions of the department of commerce  
19 and consumer affairs to protect against illegal  
20 offshore lending;



- 1           (4)   Specifying licensing requirements for small dollar  
2           lenders;
- 3           (5)   Capping interest at thirty-six per cent per annum and  
4           one simple maximum monthly maintenance fee tiered up  
5           to \$25;
- 6           (6)   Amortizing loans in full and renewing the loan while  
7           also permitting borrowers to choose to repay the loan  
8           without penalty;
- 9           (7)   Capping maximum allowable costs at fifty per cent of  
10          the principal loan amount, preventing a loan from  
11          being either too short or too long in duration;
- 12          (8)   Capping the maximum allowable loan size at \$1,000,  
13          providing more flexibility for lenders and borrowers  
14          than under the current law;
- 15          (9)   Requiring lenders to provide clear disclosures of the  
16          loan terms and total charges;
- 17          (10)  Prohibiting a lender from making more than one loan at  
18          a time to a consumer, preventing incentives for  
19          lenders to "split" loans and charge higher fees; and
- 20          (11)  Authorizing the division of financial institutions to  
21          establish and hire two full-time equivalent permanent



1 examiners to carry out the purposes of the small  
2 dollar installment loan program, funded via an  
3 increase to the ceiling of the compliance resolution  
4 fund.

5 SECTION 2. The Hawaii Revised Statutes is amended by  
6 adding a new chapter to title 25A to be appropriately designated  
7 and to read as follows:

8 "CHAPTER

9 SMALL DOLLAR INSTALLMENT LOANS

10 PART I. GENERAL PROVISIONS

11 § -1 Definitions. As used in this chapter, unless the  
12 context otherwise requires:

13 "Annual percentage rate" means an annual percentage rate as  
14 determined pursuant to section 107 of the Truth in Lending Act,  
15 title 15 United States Code section 1606. For the purposes of  
16 this definition, all fees and charges, including interest and  
17 monthly maintenance fees authorized by this chapter, shall be  
18 included in the calculation of the annual percentage rate.

19 "Arranger" means a provider of funds in the syndication of  
20 a debt.



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

4 "Commissioner" means the commissioner of financial  
5 institutions.

6 "Consumer" means a natural person who is the buyer, lessee,  
7 or debtor to whom credit is granted in a transaction that is  
8 primarily for that natural person's personal, family, or  
9 household purposes.

10 "Control", in the context of control of an applicant or  
11 licensee, means ownership of, or the power to vote, twenty-five  
12 per cent or more of the outstanding voting securities of a  
13 licensee or control person. For the purposes of determining the  
14 percentage of an applicant or a licensee controlled by any  
15 person, there shall be aggregated with the control person's  
16 interest the interest of any other person controlled by the  
17 person, or by any spouse, parent, or child of the person.

18 "Control person" means any person in control of a licensee  
19 or applicant.





1 "Default" means a consumer's failure to repay a small  
2 dollar loan in compliance with the terms contained in a small  
3 dollar loan agreement.

4 "Department" means the department of commerce and consumer  
5 affairs.

6 "Division" means the division of financial institutions of  
7 the department of commerce and consumer affairs.

8 "Elder" means a person who is sixty-two years of age or  
9 older.

10 "Finance charges" means the cost of credit or cost of  
11 borrowing, including the interest, monthly maintenance fees, and  
12 other fees authorized by this chapter.

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

19 "Instrument" means a personal check signed by the consumer  
20 and made payable to a person subject to this chapter. The term  
21 "instrument" does not include an electronic fund transfer or



1 other electronic debit or credit to the consumer's checking  
2 account.

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

5 "Loan amount" means the amount financed, as that term is  
6 defined in Truth in Lending (Regulation Z), title 12 Code of  
7 Federal Regulations, chapter X, part 1026, as amended, or  
8 supplemented by this chapter.

9 "Maintenance fee" means a monthly fee paid to a licensee to  
10 maintain a small dollar loan.

11 "NMLS" means the Nationwide Multistate Licensing System,  
12 which is a licensing system developed and maintained by the  
13 Conference of State Bank Supervisors for the state licensing and  
14 registration of state-licensed loan originators and other  
15 financial services providers, or any system provided by the  
16 Consumer Financial Protection Bureau.

17 "Person" means an individual, sole proprietorship,  
18 partnership, corporation, limited liability company, limited  
19 liability partnership, or other association of individuals,  
20 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 "Precomputed interest" means an interest method that uses  
6 the original payment schedule to calculate interest.

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

16 "Small dollar loan" means a loan made pursuant to this  
17 chapter.

18 "Truth in Lending Act" means the federal Truth in Lending  
19 Act, title 15 United States Code section 1601 et seq., as may be  
20 amended, and regulations adopted thereunder, as may be amended.



1 "Verified gross income" means evidence from a borrower of  
2 one or more paystubs or other written evidence of recurring  
3 income before taxes.

4 "Verified net income" means evidence from a borrower of one  
5 or more paystubs or other written evidence of recurring income  
6 after taxes and deductions.

7 § -2 Small dollar loans; requirements; payments. (a)

8 Each small dollar loan transaction and renewal shall meet the  
9 following requirements:

10 (1) Any transaction and renewal shall be documented in a  
11 written agreement pursuant to section -3;

12 (2) The total amount of the small dollar loan shall not  
13 exceed \$1,000 pursuant to section -5(a);

14 (3) The total amount of fees and charges a small dollar  
15 lender may charge, collect, or receive in connection  
16 with a small dollar loan shall not exceed fifty per  
17 cent of the principal loan amount;

18 (4) A monthly maintenance fee may be charged by the  
19 lender, not to exceed the following:

20 (A) \$10 on a loan of an original principal loan  
21 amount up to \$300.00;



- 1 (B) \$15 on a loan of an original principal loan
- 2 amount of at least \$300.01 and up to \$600.00; and
- 3 (C) \$25 on a loan of an original principal loan
- 4 amount of at least \$600.01 and up to \$1,000.00;
- 5 provided that the monthly maintenance fee shall not be
- 6 added to the loan balance on which the interest is
- 7 charged; and provided further that a small dollar
- 8 lender shall not charge, collect, or receive a monthly
- 9 maintenance fee if the borrower is a person on active
- 10 duty in the armed forces of the United States or a
- 11 dependent of that person;
- 12 (5) The written agreement required under section -3 may
- 13 require multiple installment payments;
- 14 (6) All repayment schedule due dates shall be dates on
- 15 which a small dollar lender is open for business to
- 16 the public at the place of business where the small
- 17 dollar loan was made;
- 18 (7) A small dollar lender shall accept prepayment in full
- 19 or in part from a consumer prior to the loan due date
- 20 and shall not charge the consumer a fee or penalty if
- 21 the consumer opts to prepay the loan;



1 (8) The loan amount shall be fully amortized over the term  
2 of the loan, and maintenance fees shall be applied in  
3 arrears on a monthly basis;

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

6 (10) A small dollar lender shall not charge a consumer any  
7 direct or indirect fees for a small dollar loan, other  
8 than the fees permitted by this chapter; and

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

12 (b) In a multiple installment small dollar loan, a lender  
13 may contract for a twice-monthly or monthly payment of the loan  
14 balance due, including the applicable portion of the interest,  
15 and earned monthly maintenance fee.

16 (c) For each payment made by a consumer, a lender shall  
17 give the consumer a written receipt with the lender's name and  
18 address, payment date, amount paid, consumer's name, and  
19 sufficient information to identify the account to which the  
20 payment is applied.



1 (d) Upon prepayment in full by the consumer, the lender  
2 shall refund:

3 (1) Any unearned portion of the interest charged; and

4 (2) Any unearned monthly maintenance fees.

5 (e) Upon request from a consumer or a consumer's agent, a  
6 small dollar lender shall provide confirmation of the amount  
7 required to discharge the small dollar loan obligation in full.  
8 When responding to a request under this subsection, the small  
9 dollar lender, at a minimum, shall include a statement of the  
10 amount required to discharge the consumer's obligation fully as  
11 of the date the notice is provided and for each of the next  
12 three business days following that date. The small dollar  
13 lender shall make the information required under this subsection  
14 available verbally and in writing and shall provide it in an  
15 expeditious manner, but no later than two business days after  
16 receiving the request.

17 **§ -3 Written agreement; requirements; disclosure.** (a)

18 Each small dollar loan transaction and renewal shall be  
19 documented by a written agreement signed by the small dollar  
20 lender and consumer. The written agreement shall contain the  
21 following information:



- 1 (1) The name and address of the consumer and the lender;
- 2 (2) The transaction date;
- 3 (3) The loan amount;
- 4 (4) The annual percentage rate charged;
- 5 (5) The authorized interest rate;
- 6 (6) A statement of the total amount of finance charges
- 7 charged, expressed as a dollar amount and an annual
- 8 percentage rate;
- 9 (7) The installment payment schedule setting out the
- 10 amount due on specific due dates;
- 11 (8) The name, address, and telephone number of any agent
- 12 or arranger involved in the small dollar loan
- 13 transaction;
- 14 (9) The right to rescind the small dollar loan before
- 15 5:00 p.m. on the next day of business at the location
- 16 where the loan was originated;
- 17 (10) A notice to the consumer that a returned instrument
- 18 may result in a dishonored instrument charge, not to
- 19 exceed \$25; and
- 20 (11) A description of the methods by which small dollar
- 21 loan payments may be made, which may include cash,





1 check, or any additional method of loan payment  
 2 authorized by this chapter or by rule adopted by the  
 3 commissioner pursuant to chapter 91.

4 (b) The written agreement shall also comply with the  
 5 disclosure requirements of the Truth in Lending Act and any  
 6 regulation adopted thereunder.

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

**"MULTIPLE  
 INSTALLMENT  
 PAYMENT**

- 12 Amount Financed
- 13
- 14
- 15
- 16 Finance Charge
- 17
- 18 **Amount you will receive**
- 19 Term (months)
- 20
- 21 Authorized 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,



1 Interest, and Monthly Maintenance Fee)

2

3 ANNUAL PERCENTAGE RATE

4

5 Payment Schedule"

6

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

15 (e) The written agreement may include a demand feature  
16 that permits the lender or any other person, in the event the  
17 consumer fails to meet the repayment terms for any outstanding  
18 balance, to terminate the small dollar loan in advance of the  
19 original maturity date, but no earlier than ten days after  
20 repayment was due, and demand repayment of the entire  
21 outstanding balance. If the written agreement includes a demand  
22 feature and the demand feature is exercised, the lender shall be  
23 entitled to collect only the outstanding balance and a prorated  
24 portion of the unpaid interest and fees earned up to the date of



1 termination. For purposes of this subsection, the outstanding  
2 balance and prorated portion of the unpaid interest and fees  
3 shall be calculated as if the consumer had voluntarily prepaid  
4 the loan in full on the date of termination.

5       § -4 Authorized interest rate. (a) Subject to  
6 section -2(a)(4), a small dollar lender may contract for, and  
7 receive interest at, a rate not exceeding thirty-six per cent  
8 per 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 the purposes of computing precomputed loans,  
16 including but not limited to calculating interest, a month is  
17 considered one-twelfth of a year and a day is considered one  
18 three hundred sixty-fifth of a year when calculation is made for  
19 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 and provided further that monthly installment payment dates may  
6 be 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 (e) If a small dollar loan is prepaid in full or renewed  
10 prior to the loan's maturity date, the lender shall refund to  
11 the consumer a prorated portion of the interest and monthly  
12 maintenance fees based on a ratio of the number of days the loan  
13 was outstanding and the number of days for which the loan was  
14 originally contracted. For the purposes of this section, the  
15 monthly maintenance fee shall not be considered to be fully  
16 earned at the beginning of a month.

17 (f) If the parties agree in writing, either in the written  
18 agreement required under section -3 or in a subsequent  
19 agreement, to a deferment of wholly unpaid installments, a  
20 lender may grant one deferment; provided that:



- 1           (1) A deferment shall postpone the scheduled due date of  
2           the earliest unpaid installment and all subsequent  
3           installments as originally scheduled, or as previously  
4           deferred, for a period equal to the deferment period;
- 5           (2) The deferment period shall be that period during which  
6           no installment is scheduled to be paid by reason of  
7           the deferment; and
- 8           (3) The lender shall not charge or collect a deferment  
9           fee.
- 10          (g) Other than the interest and charges permitted under  
11 this section, no further or other amount shall be charged or  
12 required by the small dollar lender.
- 13          (h) A lender shall not charge or receive loan origination  
14 fees.
- 15          (i) A lender shall not collect a default charge on any  
16 installment not paid in full within ten days after its due date.  
17 For this purpose, all installments are considered paid in the  
18 order in which they become due.
- 19          § -5 Maximum loan amount; prohibition against multiple  
20 loans. (a) A lender shall not lend an amount greater than



1 \$1,000 nor shall the amount financed exceed \$1,000 by any one  
2 lender at any time to a consumer.

3 (b) Except as otherwise provided in section -8, no small  
4 dollar lender shall make a small dollar loan to a consumer if  
5 there exists an outstanding loan between that consumer and any  
6 of the following:

- 7 (1) The small dollar lender;
- 8 (2) A person related to the small dollar lender by common  
9 ownership or control;
- 10 (3) A person in whom the small dollar lender has any  
11 financial interest of ten per cent or more; or
- 12 (4) Any employee or agent of the small dollar lender.

13 (c) If a consumer obtains a small dollar loan voluntarily  
14 and separately from the consumer's spouse and the consumer's  
15 action is documented in writing, signed by the consumer, and  
16 retained by the lender, the transaction shall not be considered  
17 a violation of this section.

18 § -6 Right of rescission. (a) A consumer shall have  
19 the right to rescind a small dollar loan, on or before 5:00 p.m.  
20 on the next day of business at the location where the loan was  
21 originated, by returning the principal in cash, the original



1 check or money order disbursed by the lender, or the other  
2 disbursement of loan proceeds from the lender to fund the loan.  
3 The lender shall not charge the consumer for rescinding the  
4 loan.

5 (b) At the time of rescission, the lender shall refund any  
6 loan fees and interest received and shall return to the consumer  
7 the originally signed written agreement, clearly marked across  
8 the face:

9 "RESCINDED BY [lender's name; license number],  
10 [date]"

11 and below which the lender's authorized representative shall  
12 sign.

13 § -7 Notice to consumers; general requirements; right to  
14 prepay; loan limits; right to rescind. A small dollar lender  
15 shall provide the following notice on each written agreement for  
16 a small dollar loan. The notice shall be in a prominent place  
17 and in at least twelve-point type:

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

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



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

3           RENEWING THIS SMALL DOLLAR LOAN RATHER THAN  
4           PAYING THE DEBT IN FULL MAY REQUIRE ADDITIONAL FEES OR  
5           CHARGES.

6           STATE LAW PROHIBITS THIS SMALL DOLLAR LOAN FROM  
7           EXCEEDING ONE THOUSAND DOLLARS (\$1,000) IN TOTAL DEBT.  
8           EXCEEDING THIS AMOUNT MAY CREATE FINANCIAL HARDSHIPS  
9           FOR YOU AND YOUR FAMILY.

10           YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY  
11           5:00 P.M. [SPECIFY HERE THE CLOSE OF THE NEXT BUSINESS  
12           DAY BY DAY OF WEEK AND DATE]."

13           §   -8   **Renewal; new loan requirements; consecutive loans;**  
14           **payment plan.** (a) A small dollar loan may be renewed only  
15           once. After one renewal, the consumer shall pay the debt in  
16           cash or its equivalent.

17           (b) Upon renewal of a small dollar loan, the lender may  
18           renew up to \$1,000 of the remaining unpaid principal balance.  
19           If the unpaid balance on renewal is more than \$1,000, the  
20           consumer may be required to pay the remaining balance; provided  
21           that the lender shall not finance any amount over \$1,000. The





1 total amount of fees and charges for the renewed loan shall meet  
2 the requirements of section -2. If the small dollar loan is  
3 renewed prior to the maturity date, the lender shall refund to  
4 the consumer a prorated portion of the finance charge based upon  
5 the ratio of time left before maturity to the loan term.

6 (c) Once the consumer has paid off the small dollar loan  
7 transaction, the consumer may enter into a new small dollar loan  
8 agreement with the lender; provided that the lender shall not  
9 have more than one outstanding loan with a borrower at any one  
10 time, pursuant to section -5.

11 § -9 **Form of loan proceeds.** A small dollar lender may  
12 pay the proceeds from a small dollar loan to the consumer in the  
13 form of a monetary instrument, money order, or cash. The lender  
14 shall inform the consumer in writing that the lender shall cash  
15 the monetary instrument or money order, upon request of the  
16 consumer, at no cost to the consumer.

17 § -10 **Endorsement of instrument.** A small dollar lender  
18 shall not negotiate or present an instrument for payment unless  
19 the instrument is endorsed with the actual business name of the  
20 lender.



1           **§ -11 Redemption of instrument.** Prior to a small dollar  
2 lender negotiating or presenting the instrument, a consumer  
3 shall have the right to redeem any instrument held by the lender  
4 as a result of a small dollar loan if the consumer pays the full  
5 amount of the instrument to the lender.

6           **§ -12 Delinquent small dollar loans; restrictions on**  
7 **collection by lender or third party.** (a) A small dollar lender  
8 shall comply with all applicable state and federal laws when  
9 collecting a delinquent small dollar loan. A lender may take  
10 civil action to collect principal, interest, fees, and costs  
11 allowed under this chapter. A lender may not threaten criminal  
12 prosecution as a method of collecting a delinquent small dollar  
13 loan or threaten to take any legal action against the consumer  
14 that is not otherwise permitted by law.

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



1 agency or any other governmental agency while engaged in  
2 collecting a small dollar loan.

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

11 (1) With the consumer's spouse or the consumer's domestic  
12 partner in any form, manner, or place, more than once;

13 (2) With a consumer at the consumer's place of employment  
14 more than once;

15 (3) With the consumer, the consumer's spouse, or the  
16 consumer's domestic partner at the consumer's place of  
17 residence between the hours of 9:00 p.m. and  
18 8:00 a.m.; or

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



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

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

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

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

15          (1) The term "communication" shall include the time the  
16 lender initiates contact with a consumer, regardless  
17 of whether the communication is received or accessed  
18 by the consumer; and

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



- 1 (A) Verbal communication with the consumer while the
- 2 consumer is physically present in the lender's
- 3 place of business;
- 4 (B) An unanswered telephone call in which no message,
- 5 other than a caller identification, is left,
- 6 unless the telephone call is in violation of
- 7 subsection (c)(3); or
- 8 (C) An initial letter to the consumer that includes
- 9 disclosures under the federal Fair Debt
- 10 Collection Practices Act.

11 § -13 Authorized dishonored instrument charge. (a)

12 Regardless of the number of instruments that are returned  
13 unpaid, a small dollar lender may contract for and collect one  
14 returned instrument charge for each small dollar loan, not to  
15 exceed \$25. The lender shall not collect any other fees as a  
16 result of the dishonored presentment.

17 (b) If the loan proceeds instrument from the small dollar  
18 lender is dishonored by the financial institution, the small  
19 dollar lender shall cover any fees and charges incurred by the  
20 consumer as a direct result of the dishonored loan proceeds  
21 instrument.



1           **§ -14 Posting of license and fees and charges.** Any  
2 small dollar lender offering a small dollar loan shall  
3 conspicuously and continuously post at any place of business  
4 where small dollar loans are made, the license required pursuant  
5 to this chapter and a notice of the fees and charges imposed for  
6 small dollar loans.

7           **§ -15 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 subject to subsection (b).

11           (b) Small dollar lenders shall be prohibited from  
12 advertising or making small dollar loans via the Internet  
13 without first having obtained a license pursuant to part II of  
14 this chapter.

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

20           **§ -16 Notice on assignment or sale of contract.** (a) No  
21 licensee may pledge, negotiate, sell, or assign a small dollar



1 loan, except to another licensee or to a bank, savings bank,  
2 trust company, savings and loan or building and loan  
3 association, or credit union organized under the laws of Hawaii  
4 or the laws of the United States.

5 (b) Prior to sale or assignment of a small dollar loan  
6 contract held by the small dollar lender as a result of a small  
7 dollar loan, the lender shall place a notice on the small dollar  
8 loan contract in at least twelve-point type that reads:

9 "SMALL DOLLAR LOAN

10 No licensee may pledge, negotiate, sell, or  
11 assign a small dollar loan, except to another licensee  
12 or to a bank, savings bank, trust company, savings and  
13 loan or building and loan association, or credit union  
14 organized under the laws of Hawaii or the laws of the  
15 United States."

16 § -17 Maintenance of books and records. (a) Every  
17 small dollar lender shall keep in a safe and secure place those  
18 books and records that directly relate to any small dollar loan  
19 made within this State, and other books and records as may be  
20 necessary for the commissioner to ensure full compliance with  
21 the laws of this State.



1           (b) All books and records may be maintained as originals  
2 or photocopies, on microfilm or microfiche, on computer disks or  
3 tapes, or similar forms; provided that the books and records are  
4 readily accessible and may be easily examined.

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

8           (d) Every lender shall preserve all of its records for a  
9 minimum of six years or for a greater or lesser period as the  
10 commissioner may prescribe by rule adopted pursuant to  
11 chapter 91.

12   **PART II. LICENSING**

13           §   -31 **License required.** No person, unless exempt under  
14 this chapter, shall act as a small dollar lender in this State  
15 unless licensed to do so by the commissioner.

16           §   -32 **Exemptions.** This chapter shall not apply to the  
17 following:

- 18           (1) A financial institution;
- 19           (2) A nondepository financial service loan company;
- 20           (3) An "open end credit plan", as defined in the Truth in  
21           Lending Act, 15 United States Code section 1602(j); or





1           (4) A tax refund anticipation loan.

2           § -33 License; application; issuance. (a) The

3 commissioner shall require all licensees to register with NMLS.

4           (b) Applicants for a license shall apply in a form as

5 prescribed by NMLS or by the commissioner. The application

6 shall contain, at a minimum, the following information:

7           (1) The legal name, trade names, and business address of

8 the applicant and, if the applicant is a partnership,

9 association, limited liability company, limited

10 liability partnership, or corporation, of every

11 member, officer, principal, or director thereof;

12           (2) The principal place of business;

13           (3) The complete address of any other branch offices at

14 which the applicant currently proposes to engage in

15 making small dollar loans; and

16           (4) Other data, financial statements, and pertinent

17 information as the commissioner may require with

18 respect to the applicant or, if an applicant is not an

19 individual, each of the applicant's control persons,

20 executive officers, directors, general partners, and

21 managing members.



1 (c) To fulfill the purposes of this chapter, the  
2 commissioner may enter into agreements or contracts with NMLS or  
3 other entities to use NMLS to collect and maintain records and  
4 process transaction fees or other fees related to licensees or  
5 other persons subject to this chapter.

6 (d) For the purpose and to the extent necessary to  
7 participate in NMLS, the commissioner may waive or modify, in  
8 whole or in part, by rule or order, any or all of the  
9 requirements of this chapter and establish new requirements as  
10 reasonably necessary to participate in NMLS.

11 (e) In connection with an application for a license under  
12 this chapter, the applicant, at a minimum, shall furnish to NMLS  
13 information or material concerning the applicant's identity,  
14 including:

15 (1) Fingerprints of the applicant or, if an applicant is  
16 not an individual, each of the applicant's control  
17 persons, executive officers, directors, general  
18 partners, and managing members for submission to the  
19 Federal Bureau of Investigation and any governmental  
20 agency or entity authorized to receive the  
21 fingerprints for a state, national, and international



1 criminal history background check, accompanied by the  
2 applicable fee charged by the entities conducting the  
3 criminal history background check; and  
4 (2) Personal history and experience of the applicant or,  
5 if an applicant is not an individual, each of the  
6 applicant's control persons, executive officers,  
7 directors, general partners, and managing members in a  
8 form prescribed by NMLS, including the submission of  
9 authorization for NMLS and the commissioner to obtain:  
10 (A) An independent credit report obtained from a  
11 consumer reporting agency described in section  
12 603(p) of the Fair Credit Reporting Act, title 15  
13 United States Code section 1681a(p); and  
14 (B) Information related to any administrative, civil,  
15 or criminal findings by any governmental  
16 jurisdiction;  
17 provided that the commissioner may use any information obtained  
18 pursuant to this subsection or through NMLS to determine an  
19 applicant's demonstrated financial responsibility, character,  
20 and general fitness for licensure.



1 (f) The commissioner may use NMLS as an agent for  
2 requesting information from and distributing information to the  
3 United States Department of Justice or any governmental agency.

4 (g) The commissioner may use NMLS as an agent for  
5 requesting and distributing information to and from any source  
6 directed by the commissioner.

7 (h) An applicant for a license as a small dollar lender  
8 shall be registered with the business registration division of  
9 the department to do business in this State before a license  
10 pursuant to this chapter shall be granted.

11 **§ -34 Issuance of license; grounds for denial.** (a) The  
12 commissioner shall conduct an investigation of every applicant  
13 to determine the financial responsibility, character, and  
14 general fitness of the applicant. The commissioner shall issue  
15 the applicant a license to engage in the business of making  
16 small dollar loans if the commissioner determines that:

17 (1) The applicant or, in the case of an applicant that is  
18 not an individual, each of the applicant's control  
19 persons, executive officers, directors, general  
20 partners, and managing members, has never had a small  
21 dollar lender license revoked in any jurisdiction;



1 provided that a subsequent formal vacation of a  
2 revocation shall not be deemed a revocation;

3 (2) The applicant or, in the case of an applicant that is  
4 not an individual, each of the applicant's control  
5 persons, executive officers, directors, general  
6 partners, and managing members, has not been convicted  
7 of, pled guilty or nolo contendere to, or been granted  
8 a deferred acceptance of a guilty plea under federal  
9 law or under chapter 853 to a felony in a domestic,  
10 foreign, or military court:

11 (A) During the seven-year period preceding the date  
12 of the application for licensing; or

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

16 provided that any pardon of a conviction shall not be  
17 deemed a conviction for the purposes of this section;

18 (3) The applicant or, in the case of an applicant that is  
19 not an individual, each of the applicant's control  
20 persons, executive officers, directors, general  
21 partners, and managing members, has demonstrated



1 financial responsibility, character, and general  
2 fitness to command the confidence of the community and  
3 to warrant a determination that the applicant shall  
4 operate honestly, fairly, and efficiently, pursuant to  
5 this chapter. For the purposes of this paragraph, a  
6 person is not financially responsible when the person  
7 has shown a disregard in the management of the  
8 person's financial condition. A determination that a  
9 person has shown a disregard in the management of the  
10 person's financial condition may be based upon:

- 11 (A) Current outstanding judgments, except judgments  
12 solely as a result of medical expenses;
- 13 (B) Current outstanding tax liens or other government  
14 liens and filings, subject to applicable  
15 disclosure laws and administrative rules;
- 16 (C) Foreclosures within the past three years; and
- 17 (D) A pattern of seriously delinquent accounts within  
18 the past three years;

- 19 (4) The applicant or, in the case of an applicant that is  
20 not an individual, each of the applicant's control  
21 persons, executive officers, directors, general



1 partners, and managing members, has not been convicted  
2 of, pled guilty or nolo contendere to, or been granted  
3 a deferred acceptance of a guilty plea under federal  
4 law or chapter 853 to any misdemeanor involving an act  
5 of fraud, dishonesty, breach of trust, or money  
6 laundering;

7 (5) The applicant has satisfied the licensing requirements  
8 of this chapter; and

9 (6) The applicant has the bond required by section -35.

10 (b) The applicant or, in the case of an applicant that is  
11 not an individual, each of the applicant's control persons,  
12 executive officers, directors, general partners, and managing  
13 members shall submit authorization to the commissioner for the  
14 commissioner to conduct background checks to determine or verify  
15 the information in subsection (a) in each state where the person  
16 has conducted the lending of small dollar loans. Authorization  
17 pursuant to this subsection shall include consent to provide  
18 additional fingerprints, if necessary, to law enforcement or  
19 regulatory bodies in other states.

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



- 1 (1) Whose license to conduct business under this chapter,  
2 or any similar statute in any other jurisdiction, has  
3 been suspended or revoked within five years of the  
4 filing of the present application;
- 5 (2) Whose license to conduct business in the small dollar  
6 loan or payday industry has been revoked by an  
7 administrative order issued by the commissioner or the  
8 commissioner's designee, or the licensing authority of  
9 another state or jurisdiction, for the period  
10 specified in the administrative order;
- 11 (3) Who has advertised or made internet loans in violation  
12 of this chapter; or
- 13 (4) Who has failed to complete an application for  
14 licensure.
- 15 (d) A license issued in accordance with this chapter  
16 remains in force and effect until surrendered, suspended, or  
17 revoked, or until the license expires as a result of nonpayment  
18 of the annual license renewal fee as required by this chapter.
- 19 § -35 Fees; bond. (a) A small dollar lender shall pay  
20 the following fees to the division to obtain and maintain a  
21 valid license under this chapter:





- 1           (1) Initial application fee of \$900;
- 2           (2) Processing fee of \$35 for each control person;
- 3           (3) Annual license renewal fee of \$600;
- 4           (4) Applicable fee charged by the entities conducting the
- 5                 criminal history background check of each of the
- 6                 applicant's control persons, executive officers,
- 7                 directors, general partners, and managing members for
- 8                 submission to the Federal Bureau of Investigation and
- 9                 any governmental agency or entity authorized to
- 10                receive the fingerprints for a state, national, and
- 11                international criminal history background check; and
- 12           (5) Applicable fee charged by the entities conducting an
- 13                 independent credit report obtained from a consumer
- 14                 reporting agency described in section 603(p) of the
- 15                 Fair Credit Reporting Act, title 15 United States Code
- 16                 section 1681a(p).
- 17           (b) Each branch office shall pay the following fees to the
- 18   division to obtain and maintain a valid license under this
- 19   chapter:
- 20           (1) Nonrefundable initial application fee of \$600; and
- 21           (2) Annual license renewal fee of \$450.



1           (c) The applicant shall file and maintain a surety bond,  
2 approved by the commissioner, executed by the applicant as  
3 obligor and by a surety company authorized to operate as a  
4 surety in this State, whose liability as a surety does not  
5 exceed, in the aggregate, the penal sum of the bond. The penal  
6 sum of the bond shall be a minimum of \$30,000 and a maximum of  
7 \$250,000, based upon the annual dollar amount of loans  
8 originated.

9           (d) The bond required by subsection (c) shall run to the  
10 State of Hawaii as obligee for the use and benefit of the State  
11 and of any person or persons who may have a cause of action  
12 against the licensee as obligor under this chapter. The bond  
13 shall be conditioned upon the following:

14           (1) The licensee as obligor shall faithfully conform to  
15 and abide by this chapter and all the rules adopted  
16 under this chapter; and

17           (2) The bond shall pay to the State and any person or  
18 persons having a cause of action against the licensee  
19 as obligor all moneys that may become due and owing to  
20 the State and those persons under and by virtue of  
21 this chapter.



1 (e) Each small dollar lender shall pay a nonrefundable fee  
2 of \$ to the division for each office that is  
3 relocated.

4 § -36 **Renewal of license; annual report.** (a) On or  
5 before December 31 of each year, each licensee shall pay a  
6 renewal fee pursuant to section -35.

7 (b) The annual renewal fee shall be accompanied by a  
8 report, in a form prescribed by the commissioner, which shall  
9 include:

10 (1) A copy of the licensee's most recent audited annual  
11 financial statement, including balance sheets,  
12 statement of income or loss, statement of changes in  
13 shareholders' equity, and statement of cash flows or,  
14 if a licensee is a wholly owned subsidiary of another  
15 corporation, the consolidated audited annual financial  
16 statement of the parent corporation in lieu of the  
17 licensee's audited annual financial statement;

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

20 (A) The number of small dollar loans made;



- 1 (B) The number of small dollar loans the lender is
- 2 servicing;
- 3 (C) The type and characteristics of loans serviced in
- 4 this State;
- 5 (D) The number of small dollar serviced loans in
- 6 default; and
- 7 (E) Any other information that the commissioner may
- 8 require;
- 9 (3) Any material changes to any of the information
- 10 submitted by the licensee on its original application
- 11 that have not previously been reported to the
- 12 commissioner on any other report required to be filed
- 13 under this chapter;
- 14 (4) A list of the principal place of business and branch
- 15 locations, if any, within this State where business
- 16 regulated by this chapter is being conducted by the
- 17 licensee;
- 18 (5) Disclosure of any pending or final suspension,
- 19 revocation, or other enforcement action by any state
- 20 or governmental authority; and
- 21 (6) Any other information the commissioner may require.



1 (c) A license may be renewed by continuing to meet the  
2 licensing requirements of sections -33, -34, and -35,  
3 filing a completed renewal statement on a form prescribed by  
4 NMLS or by the commissioner, paying a renewal fee, and meeting  
5 the requirements of this section.

6 (d) A licensee that has not filed an annual report that  
7 has been deemed complete by the commissioner or paid its annual  
8 renewal fee by the renewal filing deadline, and has not been  
9 granted an extension of time to do so by the commissioner, shall  
10 have its license suspended on the renewal date. The licensee  
11 shall have thirty days after its license is suspended to file an  
12 annual report and pay the annual renewal fee, plus a late filing  
13 fee of \$250 for each business day after suspension that the  
14 commissioner does not receive the annual report and the annual  
15 renewal fee. The commissioner, for good cause, may grant an  
16 extension of the renewal date or reduce or suspend the \$250 per  
17 day late filing fee.

18 § -37 Enforcement authorities; violations; penalties.

19 (a) To ensure the effective supervision and enforcement of this  
20 chapter, the commissioner, pursuant to chapter 91, may take any



1 disciplinary action as specified in subsection (b) against an  
2 applicant or licensee if the commissioner finds that:

3 (1) The applicant or licensee has violated this chapter or  
4 any rule or order lawfully made pursuant to this  
5 chapter;

6 (2) Facts or conditions exist that would clearly have  
7 justified the commissioner in denying an application  
8 for licensure, had these facts or conditions been  
9 known to exist at the time the application was made;

10 (3) The applicant or licensee has failed to provide  
11 information required by the commissioner within a  
12 reasonable time, as specified by the commissioner;

13 (4) The applicant or licensee has failed to provide or  
14 maintain proof of financial responsibility;

15 (5) The applicant or licensee is insolvent;

16 (6) The applicant or licensee has made, in any document or  
17 statement filed with the commissioner, a false  
18 representation of a material fact or has omitted to  
19 state a material fact;

20 (7) The applicant, licensee, or, if an applicant or  
21 licensee is not an individual, each of the applicant's



1 or licensee's control persons, executive officers,  
2 directors, general partners, and managing members have  
3 been convicted of or entered a plea of guilty or nolo  
4 contendere to a crime involving fraud or deceit, or to  
5 any similar crime under the jurisdiction of any  
6 federal court or court of another state;

7 (8) The applicant or licensee has failed to make,  
8 maintain, or produce records that comply with  
9 section -17 or any rule adopted by the commissioner  
10 pursuant to chapter 91;

11 (9) The applicant or licensee has been the subject of any  
12 disciplinary action by any state or federal agency  
13 that resulted in revocation of a license;

14 (10) A final judgment has been entered against the  
15 applicant or licensee for violations of this chapter,  
16 any state or federal law concerning small dollar  
17 loans, deferred deposit loans, check cashing, payday  
18 loans, banking, mortgage loan originators, money  
19 transmitters, or any state or federal law prohibiting  
20 deceptive or unfair trade or business practices; or



1           (11) The applicant or licensee has failed, in a timely  
2           manner as specified by the commissioner, to take or  
3           provide proof of the corrective action required by the  
4           commissioner subsequent to an investigation or  
5           examination pursuant to section       -43.

6           (b) After a finding of one or more of the conditions under  
7           subsection (a), the commissioner may take any or all of the  
8           following actions:

- 9           (1) Deny an application for licensure, including an  
10           application for a branch office license;
- 11           (2) Revoke the license;
- 12           (3) Suspend the license for a period of time;
- 13           (4) Issue an order to the licensee to cease and desist  
14           from engaging in any act specified under subsection  
15           (a);
- 16           (5) Order the licensee to make refunds to consumers of  
17           excess charges under this chapter;
- 18           (6) Impose penalties of up to \$1,000 for each violation;
- 19           or





1           (7) Bar a person from applying for or holding a license  
2           for a period of five years following revocation of the  
3           person's license.

4           (c) The commissioner may issue a temporary cease and  
5 desist order if the commissioner makes a finding that the  
6 licensee, applicant, or person is engaging, has engaged, or is  
7 about to engage in an illegal, unauthorized, unsafe, or unsound  
8 practice in violation of this chapter. Whenever the  
9 commissioner denies a license application or takes disciplinary  
10 action pursuant to this subsection, the commissioner shall enter  
11 an order to that effect and notify the licensee, applicant, or  
12 person of the denial or disciplinary action. The notification  
13 required by this subsection shall be given by personal service  
14 or by mail to the last known address of the licensee or  
15 applicant as shown on the application, license, or as  
16 subsequently furnished in writing to the commissioner.

17           (d) The revocation, suspension, expiration, or surrender  
18 of a license shall not affect the licensee's liability for acts  
19 previously committed or impair the commissioner's ability to  
20 issue a final agency order or impose discipline against the  
21 licensee.



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

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

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

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

19           (i) Any violation of this chapter that is directed toward,  
20 targets, or injures an elder may be subject to an additional  
21 civil penalty not to exceed \$10,000 for each violation in



1 addition to any other fines or penalties assessed for the  
2 violation.

3 § -38 Voluntary surrender of license. (a) A licensee  
4 may voluntarily cease business and surrender its license by  
5 giving written notice to the commissioner of its intent to  
6 surrender its license. Prior to the surrender date of a  
7 license, the licensee shall have either completed all pending  
8 small dollar loan transactions or assigned each pending small  
9 dollar loan transaction to another licensee.

10 (b) Notice pursuant to this section shall be provided at  
11 least thirty days before the surrender of the license and shall  
12 include:

- 13 (1) The date of surrender;
- 14 (2) The name, address, telephone number, facsimile number,  
15 and electronic mail address of a contact individual  
16 with knowledge and authority sufficient to communicate  
17 with the commissioner regarding all matters relating  
18 to the licensee during the period that it was licensed  
19 pursuant to this chapter;
- 20 (3) The reason or reasons for surrender;



- 1           (4) Total dollar amount of the licensee's outstanding  
2           small dollar loans sold in Hawaii and the individual  
3           amounts of each outstanding small dollar loans, and  
4           the name, address, and contact telephone number of the  
5           licensee to which each outstanding small dollar loan  
6           was assigned;
- 7           (5) A list of the licensee's Hawaii authorized branch  
8           offices, if any, as of the date of surrender;
- 9           (6) Confirmation that the licensee has notified each of  
10          its Hawaii authorized branch offices, if any, that the  
11          branch offices may no longer make small dollar loans  
12          on the licensee's behalf; and
- 13          (7) Confirmation that the licensee has notified each of  
14          its small dollar loan consumers, if any, that the  
15          small dollar loan is being transferred and the name,  
16          address, telephone number, and any other contact  
17          information of the licensee to whom the small dollar  
18          loan was assigned.
- 19          (c) Voluntary surrender of a license shall be effective  
20          upon the date of surrender specified on the written notice to  
21          the commissioner as required by this section; provided that the



1 licensee has met all the requirements of voluntary surrender and  
2 has returned the original license issued.

3       §   -39   **Sale or transfer of license; change of control.**

4       (a) No small dollar lender license shall be transferred, except  
5 as provided in this section.

6       (b) A person or group of persons requesting approval of a  
7 proposed change of control of a licensee shall submit to the  
8 commissioner an application requesting approval of a proposed  
9 change of control of the licensee, accompanied by a  
10 nonrefundable application fee of \$500.

11       (c) After review of a request for approval under  
12 subsection (b), the commissioner may require the licensee or  
13 person or group of persons requesting approval of a proposed  
14 change of control of the licensee, or both, to provide  
15 additional information concerning the persons who shall assume  
16 control of the licensee. The additional information shall be  
17 limited to similar information required of the licensee or  
18 persons in control of the licensee as part of its original  
19 license or renewal application under sections   -33 and   -36.  
20 The information shall include, for the five-year period prior to  
21 the date of the application for change of control of the



1 licensee, a history of material litigation and criminal  
2 convictions of each person who, upon approval of the application  
3 for change of control, will be a principal of the licensee.  
4 Authorization shall also be given to conduct criminal history  
5 record checks of those persons, accompanied by the appropriate  
6 payment of the applicable fee for each record check.

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

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

19 (1) A person who acts as a proxy for the sole purpose of  
20 voting at a designated meeting of the security holders



1 or holders of voting interests of a licensee or person  
2 in control of a licensee;

3 (2) A person who acquires control of a licensee by devise  
4 or descent;

5 (3) A person who acquires control as a personal  
6 representative, custodian, guardian, conservator,  
7 trustee, or as an officer appointed by a court of  
8 competent jurisdiction or by operation of law; or

9 (4) A person whom the commissioner, by rule or order,  
10 exempts in the public interest.

11 (f) Before filing a request for approval for a change of  
12 control, a person may request, in writing, a determination from  
13 the commissioner as to whether the person would be considered a  
14 person in control of a licensee upon consummation of a proposed  
15 transaction. If the commissioner determines that the person  
16 would not be a person in control of a licensee, the commissioner  
17 shall enter an order to that effect and the proposed person and  
18 transaction shall not be subject to subsections (b) through (d).

19 (g) Subsection (b) shall not apply to public offerings of  
20 securities.



1           §    -40   Authorized places of business; principal office;  
2   branch offices; relocation; closure. (a) Every small dollar  
3   lender licensed under this chapter shall have and maintain a  
4   principal place of business in the State, regardless of whether  
5   the small dollar lender maintains its principal office outside  
6   of the State.

7           (b) If a small dollar lender has more than one place of  
8   business, each additional place of business in Hawaii shall be  
9   licensed as a branch office with the commissioner. No business  
10   shall be conducted at a branch office until the branch office  
11   has been licensed by the commissioner.

12          (c) A small dollar lender shall not maintain any branch  
13   offices in the State in addition to its principal place of  
14   business without the prior written approval of the commissioner.  
15   An application to establish a branch office shall be submitted  
16   through NMLS with a nonrefundable application fee as required by  
17   section       -35.

18          (d) A small dollar lender shall not relocate any office in  
19   this State without the prior written approval of the  
20   commissioner. An application to relocate an office shall be  
21   submitted to the commissioner at least thirty days prior to





1 relocating and shall set forth the reasons for the relocation,  
2 the street address of the proposed relocated office, and other  
3 information that may be required by the commissioner. An  
4 application to relocate an office pursuant to this subsection  
5 shall be submitted with a nonrefundable fee as required by  
6 section -35.

7 (e) A small dollar lender shall give the commissioner  
8 notice of its intent to close a branch office at least thirty  
9 days prior to the closing. The notice shall:

10 (1) State the intended date of closing; and

11 (2) Specify the reasons for the closing.

12 (f) The principal place of business and each branch office  
13 of the small dollar lender shall be identified in NMLS to  
14 consumers as a location at which the licensee holds itself out  
15 as a small dollar lender.

16 (g) A license issued under this chapter shall be  
17 prominently displayed in the principal place of business and  
18 each branch office.

19 **§ -41 Payment of fees.** All fees collected pursuant to  
20 section -35, administrative fines, and other charges  
21 collected pursuant to this chapter shall be deposited into the



1 compliance resolution fund established pursuant to  
2 section 26-9(o) and shall be payable through NMLS, to the extent  
3 allowed by NMLS. Fees not eligible for payment through NMLS  
4 shall be deposited into a separate account within the compliance  
5 resolution fund for use by the division.

6 § -42 Powers of commissioner. (a) The commissioner may  
7 adopt rules pursuant to chapter 91 as the commissioner deems  
8 necessary for the administration of this chapter.

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

- 11 (1) Issue declaratory rulings or informal nonbinding  
12 interpretations;
- 13 (2) Investigate and conduct hearings regarding any  
14 violation of this chapter or any rule or order of, or  
15 agreement with, the commissioner;
- 16 (3) Create fact-finding committees that may make  
17 recommendations to the commissioner for the  
18 commissioner's deliberations;
- 19 (4) Require an applicant or any of its control persons,  
20 executive officers, directors, general partners, and  
21 managing members to disclose their relevant criminal



1 history and request a criminal history record check in  
2 accordance with chapter 846;

3 (5) Contract with or employ qualified persons, including  
4 accountants, attorneys, investigators, examiners,  
5 auditors, or other professionals who may be exempt  
6 from chapter 76 and who shall assist the commissioner  
7 in exercising the commissioner's powers and duties;

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

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



- 1           (8) Enter into agreements or relationships with other  
2           government officials or regulatory associations in  
3           order to improve efficiencies and reduce regulatory  
4           burden by sharing resources, standardized or uniform  
5           methods or procedures, and documents, records,  
6           information, or evidence obtained under this chapter;
- 7           (9) Use, hire, contract, or employ public or privately  
8           available analytical systems, methods, or software to  
9           investigate or examine a licensee or person subject to  
10          this chapter;
- 11          (10) Accept and rely on investigation or examination  
12          reports made by other government officials, within or  
13          without this State; and
- 14          (11) Accept audit reports made by an independent certified  
15          public accountant for the licensee or person subject  
16          to this chapter in the course of that part of the  
17          examination covering the same general subject matter  
18          as the audit and may incorporate the audit report in  
19          the report of the examination, report of  
20          investigation, or other writing of the commissioner.



1           §   -43   Investigation and examination authority. (a) In  
2 addition to the authority granted under section   -42(b), the  
3 commissioner shall have the authority to conduct investigations  
4 and examinations in accordance with this section. The  
5 commissioner may access, receive, and use any books, accounts,  
6 records, files, documents, information, or evidence that the  
7 commissioner deems relevant to the investigation or examination,  
8 regardless of the location, possession, control, or custody of  
9 the documents, information, or evidence.

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



1           (c) Each licensee or person subject to this chapter shall  
2 provide to the commissioner, upon request, the books and records  
3 relating to the operations of the licensee or person subject to  
4 this chapter. The commissioner shall have access to the books  
5 and records and shall be permitted to interview the control  
6 persons, executive officers, directors, general partners,  
7 managing members, principals, managers, employees, independent  
8 contractors, agents, and consumers of the licensee or person  
9 subject to this chapter concerning their business.

10           (d) Each licensee or person subject to this chapter shall  
11 make or compile reports or prepare other information, as  
12 directed by the commissioner, to carry out the purposes of this  
13 section, including:

- 14           (1) Accounting compilations;
- 15           (2) Information lists and data concerning loan  
16                 transactions in a format prescribed by the  
17                 commissioner; or
- 18           (3) Other information that the commissioner deems  
19                 necessary.

20           (e) In conducting any investigation or examination  
21 authorized by this chapter, the commissioner may control access



1 to any documents and records of the licensee or person under  
2 investigation or examination. The commissioner may take  
3 possession of the documents and records or place a person in  
4 exclusive charge of the documents and records. During the  
5 period of control, no person shall remove or attempt to remove  
6 any of the documents and records except pursuant to a court  
7 order or with the consent of the commissioner. Unless the  
8 commissioner has reasonable grounds to believe the documents or  
9 records of the licensee or person under investigation or  
10 examination have been, or are at risk of being, altered or  
11 destroyed for the purposes of concealing a violation of this  
12 chapter, the licensee or owner of the documents and records  
13 shall have access to the documents or records as necessary to  
14 conduct its ordinary business affairs.

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

19 (g) No licensee or person subject to investigation or  
20 examination under this section may knowingly withhold, abstract, .



1 remove, mutilate, destroy, or secrete any books, records,  
2 computer records, or other information.

3 (h) The commissioner may charge an investigation or  
4 examination fee, payable to the commissioner, based upon the  
5 cost per hour per examiner for all licensees and persons subject  
6 to this chapter investigated or examined by the commissioner or  
7 the commissioner's staff. The hourly fee shall be \$60 or an  
8 amount as the commissioner shall establish by rule pursuant to  
9 chapter 91. In addition to the investigation or examination  
10 fee, the commissioner may charge any person who is examined or  
11 investigated by the commissioner or the commissioner's staff  
12 pursuant to this section additional amounts for travel, per  
13 diem, mileage, and other reasonable expenses incurred in  
14 connection with the investigation or examination, payable to the  
15 commissioner.

16 (i) Any person having reason to believe that this chapter  
17 or the rules adopted under this chapter have been violated, or  
18 that a license issued under this chapter should be suspended or  
19 revoked, may file a written complaint with the commissioner,  
20 setting forth the details of the alleged violation or grounds  
21 for suspension or revocation.





1           §   -44 Confidentiality. (a) Except as otherwise  
2 provided in title 12 United States Code section 5111, the  
3 requirements under any federal or state law regarding the  
4 privacy or confidentiality of any information or material  
5 provided to NMLS, and any privilege arising under federal or  
6 state law, including the rules of any federal or state court,  
7 with respect to the information or material shall continue to  
8 apply to the information or material after the information or  
9 material has been disclosed to NMLS. The information and  
10 material may be shared with all state and federal regulatory  
11 officials with oversight authority over transactions subject to  
12 this chapter, without the loss of privilege or the loss of  
13 confidentiality protections provided by federal or state law.

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

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



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

5           (2) Subpoena or discovery, or admission into evidence, in  
6           any private civil action or administrative process,  
7           unless any privilege is determined by NMLS to be  
8           applicable to the information or material; provided  
9           that the person to whom the information or material  
10          pertains waives, in whole or in part, in the  
11          discretion of the person, that privilege.

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

16          (e) In the event of a conflict between this section and  
17          any other section of law relating to the disclosure of  
18          privileged or confidential information or material, this section  
19          shall control.

20          (f) This section shall not apply to information or  
21          material relating to the employment history of, and publicly



1 adjudicated disciplinary and enforcement actions against, any  
2 persons that are included in NMLS for access by the public.

3       **§ -45 Prohibited practices.** (a) It shall be a  
4 violation of this chapter for a licensee, its control persons,  
5 executive officers, directors, general partners, managing  
6 members, employees, or independent contractors, or any other  
7 person subject to this chapter to:

- 8       (1) Engage in any act that limits or restricts the  
9           application of this chapter, including making a small  
10          dollar loan disguised as a leaseback transaction or a  
11          personal property, personal sales, or automobile title  
12          loan, or by disguising loan proceeds as cash rebates  
13          for the pretextual installment sale of goods and  
14          services;
- 15       (2) Make a secured small dollar loan;
- 16       (3) Use a consumer's account number to prepare, issue, or  
17          create a check on behalf of the consumer;
- 18       (4) Charge, collect, or receive, directly or indirectly,  
19          credit insurance premiums, charges for negotiating  
20          forms of loan proceeds other than cash, charges for  
21          brokering or obtaining loans, prepayment fees, or any



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



- 1 fees, or other financing terms or conditions for a  
2 small dollar loan, or engage in bait and switch  
3 advertising;
- 4 (11) Make any false statement or knowingly and wilfully  
5 make any omission of material fact in connection with  
6 any reports filed with the division by a licensee or  
7 in connection with any investigation conducted by the  
8 division;
- 9 (12) Advertise any rate of interest without conspicuously  
10 disclosing the annual percentage rate implied by that  
11 rate of interest or otherwise fail to comply with any  
12 requirement of the Truth in Lending Act, or any other  
13 applicable state or federal laws or regulations;
- 14 (13) Make small dollar loans from any unlicensed location;
- 15 (14) Draft funds from any depository financial institution  
16 without written approval of the consumer; provided  
17 that nothing in this paragraph shall prohibit the  
18 conversion of a negotiable instrument into an  
19 electronic form for processing through the Automated  
20 Clearing House or similar system;



- 1       (15) Attempt to collect from a consumer's account after two
- 2             consecutive attempts have failed, unless the licensee
- 3             obtains new written authorization from the consumer to
- 4             transfer or withdraw funds from the account;
- 5       (16) Make a loan to a consumer that includes a demand
- 6             feature that was not clearly disclosed in the written
- 7             agreement pursuant to section -3 or collect or
- 8             demand repayment of any outstanding balance or unpaid
- 9             interest or fees except as provided in section -3;
- 10       (17) Fail to comply with all applicable state and federal
- 11             laws relating to the activities governed by this
- 12             chapter; or
- 13       (18) Fail to pay any fee, assessment, or moneys due to the
- 14             department.

15       (b) In addition to any other penalties provided for under  
16 this chapter, any small dollar loan transaction in violation of  
17 subsection (a) shall be void and unenforceable."

18                                   PART II

19       SECTION 3. Section 478-4, Hawaii Revised Statutes, is  
20 amended by amending subsection (d) to read as follows:



1           "(d) The rate limitations contained in subsections (a) and  
2 (b) of this section and section 478-11.5 shall not apply to any  
3 [~~credit~~]:

4           (1) Credit transaction authorized by, and entered into in  
5 accordance with the provisions of, articles 9 and 10  
6 of chapter 412 or chapter 476 [~~-~~]; or

7           (2) Small dollar loan transaction authorized by, and  
8 entered into in accordance with, chapter \_\_\_\_\_."

9           SECTION 4. Section 478-5, Hawaii Revised Statutes, is  
10 amended to read as follows:

11           "**§478-5 Usury not recoverable.** If a greater rate of  
12 interest than that permitted by law is contracted for with  
13 respect to any consumer credit transaction, any home business  
14 loan or any credit card agreement, the contract shall not, by  
15 reason thereof, be void. But if in any action on the contract  
16 proof is made that a greater rate of interest than that  
17 permitted by law has been directly or indirectly contracted for,  
18 the creditor shall only recover the principal and the debtor  
19 shall recover costs. If interest has been paid, judgment shall  
20 be for the principal less the amount of interest paid. This  
21 section shall not be held to apply [~~, to loans~~] to:



- 1       (1) Loans made by financial services loan companies and
- 2               credit unions at the rates authorized under and
- 3               pursuant to articles 9 and 10 of chapter 412[-]; or
- 4       (2) Any small dollar loan regulated under chapter ."

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

7       "**§478-6 Usury; penalty.** Any person who directly or  
 8 indirectly receives any interest or finance charge at a rate  
 9 greater than that permitted by law or who, by any method or  
 10 device whatsoever, receives or arranges for the receipt of  
 11 interest or finance charge at a greater rate than that permitted  
 12 by law on any credit transaction shall be guilty of usury and  
 13 shall be fined not more than \$250, unless a greater amount is  
 14 allowed by law, or imprisoned not more than one year, or both."

15       SECTION 6. Section 480F-3, Hawaii Revised Statutes, is  
 16 amended to read as follows:

17       "~~[+] §480F-3 [+]~~ **Authorized fees.** ~~[Except as provided in~~  
 18 ~~section 480F-4, no]~~ No check casher shall charge fees in excess  
 19 of the following amounts:

- 20       (1) Five per cent of the face amount of the check or \$5,
- 21               whichever is greater;





1           (2) Three per cent of the face amount of the check or \$5,  
2           whichever is greater, if the check is the payment of  
3           any kind of state public assistance or federal social  
4           security benefit payable to the bearer of the check;

5           (3) Ten per cent of the face amount of a personal check or  
6           money order, or \$5, whichever is greater; or

7           (4) No more than \$10 to set up an initial account and  
8           issue an optional membership or identification card,  
9           and no more than \$5 for a replacement optional  
10          identification card.

11 The fees allowed in this section shall not be assessed in any  
12 transaction or agreement in which the check casher defers  
13 deposit of the check."

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

16          "**§480F-6 Penalties.** (a) Any person who violates this  
17 chapter shall be deemed to have engaged in an unfair or  
18 deceptive act or practice in the conduct of any trade or  
19 commerce within the meaning of section 480-2(a). Aggrieved  
20 consumers may seek those remedies set forth in section 480-  
21 13(b) .



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

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

10          ~~[(d) A customer who enters into a written deferred deposit  
11 agreement and offers a personal check to a check-casher pursuant  
12 to that agreement shall not be subject to any criminal penalty  
13 for failure to comply with the terms of that agreement unless  
14 the check is dishonored because the customer closed the account  
15 or stopped payment on the check.] "~~

16          SECTION 8. Section 846-2.7, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

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

19           (1) The department of health or its designee on operators  
20           of adult foster homes for individuals with  
21           developmental disabilities or developmental



1 disabilities domiciliary homes and their employees, as  
2 provided by section 321-15.2;

3 (2) The department of health or its designee on  
4 prospective employees, persons seeking to serve as  
5 providers, or subcontractors in positions that place  
6 them in direct contact with clients when providing  
7 non-witnessed direct mental health or health care  
8 services as provided by section 321-171.5;

9 (3) The department of health or its designee on all  
10 applicants for licensure or certification for,  
11 operators for, prospective employees, adult  
12 volunteers, and all adults, except adults in care, at  
13 healthcare facilities as defined in section 321-15.2;

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

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



- 1           (6) The county liquor commissions on applicants for liquor  
2           licenses as provided by section 281-53.5;
- 3           (7) The county liquor commissions on employees and  
4           prospective employees involved in liquor  
5           administration, law enforcement, and liquor control  
6           investigations;
- 7           (8) The department of human services on operators and  
8           employees of child caring institutions, child placing  
9           organizations, and foster boarding homes as provided  
10          by section 346-17;
- 11          (9) The department of human services on prospective  
12          adoptive parents as established under section  
13          346-19.7;
- 14          (10) The department of human services or its designee on  
15          applicants to operate child care facilities, household  
16          members of the applicant, prospective employees of the  
17          applicant, and new employees and household members of  
18          the provider after registration or licensure as  
19          provided by section 346-154, and persons subject to  
20          section 346-152.5;



# S.B. NO. 2587

- 1       (11) The department of human services on persons exempt  
2           pursuant to section 346-152 to be eligible to provide  
3           child care and receive child care subsidies as  
4           provided by section 346-152.5;
- 5       (12) The department of health on operators and employees of  
6           home and community-based case management agencies and  
7           operators and other adults, except for adults in care,  
8           residing in community care foster family homes as  
9           provided by section 321-15.2;
- 10       (13) The department of human services on staff members of  
11           the Hawaii youth correctional facility as provided by  
12           section 352-5.5;
- 13       (14) The department of human services on employees,  
14           prospective employees, and volunteers of contracted  
15           providers and subcontractors in positions that place  
16           them in close proximity to youth when providing  
17           services on behalf of the office or the Hawaii youth  
18           correctional facility as provided by section 352D-4.3;
- 19       (15) The judiciary on employees and applicants at detention  
20           and shelter facilities as provided by section 571-34;



- 1           (16) The department of public safety on employees and  
2           prospective employees who are directly involved with  
3           the treatment and care of persons committed to a  
4           correctional facility or who possess police powers  
5           including the power of arrest as provided by section  
6           353C-5;
- 7           (17) The board of private detectives and guards on  
8           applicants for private detective or private guard  
9           licensure as provided by section 463-9;
- 10          (18) Private schools and designated organizations on  
11          employees and prospective employees who may be in  
12          positions that necessitate close proximity to  
13          children; provided that private schools and designated  
14          organizations receive only indications of the states  
15          from which the national criminal history record  
16          information was provided pursuant to section 302C-1;
- 17          (19) The public library system on employees and prospective  
18          employees whose positions place them in close  
19          proximity to children as provided by section  
20          302A-601.5;



# S.B. NO. 2587

- 1       (20) The State or any of its branches, political  
2           subdivisions, or agencies on applicants and employees  
3           holding a position that has the same type of contact  
4           with children, vulnerable adults, or persons committed  
5           to a correctional facility as other public employees  
6           who hold positions that are authorized by law to  
7           require criminal history record checks as a condition  
8           of employment as provided by section 78-2.7;
- 9       (21) The department of health on licensed adult day care  
10          center operators, employees, new employees,  
11          subcontracted service providers and their employees,  
12          and adult volunteers as provided by section 321-15.2;
- 13       (22) The department of human services on purchase of  
14          service contracted and subcontracted service providers  
15          and their employees serving clients of the adult  
16          protective and community services branch, as provided  
17          by section 346-97;
- 18       (23) The department of human services on foster grandparent  
19          program, senior companion program, and respite  
20          companion program participants as provided by section  
21          346-97;



- 1           (24) The department of human services on contracted and  
2                   subcontracted service providers and their current and  
3                   prospective employees that provide home and  
4                   community-based services under section 1915(c) of the  
5                   Social Security Act, title 42 United States Code  
6                   section 1396n(c), or under any other applicable  
7                   section or sections of the Social Security Act for the  
8                   purposes of providing home and community-based  
9                   services, as provided by section 346-97;
- 10          (25) The department of commerce and consumer affairs on  
11                   proposed directors and executive officers of a bank,  
12                   savings bank, savings and loan association, trust  
13                   company, and depository financial services loan  
14                   company as provided by section 412:3-201;
- 15          (26) The department of commerce and consumer affairs on  
16                   proposed directors and executive officers of a  
17                   nondepository financial services loan company as  
18                   provided by section 412:3-301;
- 19          (27) The department of commerce and consumer affairs on the  
20                   original chartering applicants and proposed executive





1           officers of a credit union as provided by section  
2           412:10-103;

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

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

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

9           (C) Each person who upon approval of an application  
10          requesting approval of a proposed change in  
11          control of licensee will be a principal of the  
12          licensee,

13          as provided by sections 489D-9 and 489D-15;

14       (29) The department of commerce and consumer affairs on  
15          applicants for licensure and persons licensed under  
16          title 24;

17       (30) The Hawaii health systems corporation on:

18           (A) Employees;

19           (B) Applicants seeking employment;

20           (C) Current or prospective members of the corporation  
21          board or regional system board; or



1 (D) Current or prospective volunteers, providers, or  
2 contractors,  
3 in any of the corporation's health facilities as  
4 provided by section 323F-5.5;

5 (31) The department of commerce and consumer affairs on:

6 (A) An applicant for a mortgage loan originator  
7 license, or license renewal; and

8 (B) Each control person, executive officer, director,  
9 general partner, and managing member of an  
10 applicant for a mortgage loan originator company  
11 license or license renewal,

12 as provided by chapter 454F;

13 (32) The state public charter school commission or public  
14 charter schools on employees, teacher trainees,  
15 prospective employees, and prospective teacher  
16 trainees in any public charter school for any position  
17 that places them in close proximity to children, as  
18 provided in section 302D-33;

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



- 1       (34) The counties on prospective employees for fire  
2           department positions which involve contact with  
3           children or vulnerable adults;
- 4       (35) The counties on prospective employees for emergency  
5           medical services positions which involve contact with  
6           children or vulnerable adults;
- 7       (36) The counties on prospective employees for emergency  
8           management positions and community volunteers whose  
9           responsibilities involve planning and executing  
10          homeland security measures including viewing,  
11          handling, and engaging in law enforcement or  
12          classified meetings and assisting vulnerable citizens  
13          during emergencies or crises;
- 14      (37) The State and counties on employees, prospective  
15          employees, volunteers, and contractors whose position  
16          responsibilities require unescorted access to secured  
17          areas and equipment related to a traffic management  
18          center;
- 19      (38) The State and counties on employees and prospective  
20          employees whose positions involve the handling or use  
21          of firearms for other than law enforcement purposes;



- 1           (39) The State and counties on current and prospective  
2           systems analysts and others involved in an agency's  
3           information technology operation whose position  
4           responsibilities provide them with access to  
5           proprietary, confidential, or sensitive information;
- 6           (40) The department of commerce and consumer affairs on:
- 7           (A) Applicants for real estate appraiser licensure or  
8           certification as provided by chapter 466K;
- 9           (B) Each person who owns more than ten per cent of an  
10          appraisal management company who is applying for  
11          registration as an appraisal management company,  
12          as provided by section 466L-7; and
- 13          (C) Each of the controlling persons of an applicant  
14          for registration as an appraisal management  
15          company, as provided by section 466L-7;
- 16          (41) The department of health or its designee on all  
17          license applicants, licensees, employees, contractors,  
18          and prospective employees of medical cannabis  
19          dispensaries, and individuals permitted to enter and  
20          remain in medical cannabis dispensary facilities as



- 1 provided under sections 329D-15(a)(4) and  
2 329D-16(a)(3);
- 3 (42) The department of commerce and consumer affairs on  
4 applicants for nurse licensure or license renewal,  
5 reactivation, or restoration as provided by sections  
6 457-7, 457-8, 457-8.5, and 457-9;
- 7 (43) The county police departments on applicants for  
8 permits to acquire firearms pursuant to section 134-2  
9 and on individuals registering their firearms pursuant  
10 to section 134-3;
- 11 (44) The department of commerce and consumer affairs on:
- 12 (A) Each of the controlling persons of the applicant  
13 for licensure as an escrow depository, and each  
14 of the officers, directors, and principals who  
15 will be in charge of the escrow depository's  
16 activities upon licensure; and
- 17 (B) Each of the controlling persons of an applicant  
18 for proposed change in control of an escrow  
19 depository licensee, and each of the officers,  
20 directors, and principals who will be in charge



1                   of the licensee's activities upon approval of  
2                   such application,  
3                   as provided by chapter 449;  
4       (45) The department of taxation on current or prospective  
5           employees or contractors who have access to federal  
6           tax information in order to comply with requirements  
7           of federal law, regulation, or procedure, as provided  
8           by section 231-1.6;  
9       (46) The department of labor and industrial relations on  
10          current or prospective employees or contractors who  
11          have access to federal tax information in order to  
12          comply with requirements of federal law, regulation,  
13          or procedure, as provided by section 383-110;  
14       (47) The department of human services on current or  
15          prospective employees or contractors who have access  
16          to federal tax information in order to comply with  
17          requirements of federal law, regulation, or procedure,  
18          as provided by section 346-2.5;  
19       (48) The child support enforcement agency on current or  
20          prospective employees, or contractors who have access  
21          to federal tax information in order to comply with



1 federal law, regulation, or procedure, as provided by  
2 section 576D-11.5; [~~and~~]  
3 (49) The department of commerce and consumer affairs on  
4 each control person, executive officer, director,  
5 general partner, and managing member of a small dollar  
6 loan licensee, or an applicant for a small dollar loan  
7 license as provided by chapter \_\_\_\_\_ ; and  
8 [~~(49)~~] (50) Any other organization, entity, or the State,  
9 its branches, political subdivisions, or agencies as  
10 may be authorized by state law."

11 SECTION 9. There is appropriated out of the compliance  
12 resolution fund the sum of \$ \_\_\_\_\_ or so much thereof as may  
13 be necessary for fiscal year 2020-2021 to establish and hire two  
14 full-time equivalent (2.0 FTE) permanent examiners, without  
15 regard to chapter 76, Hawaii Revised Statutes, to carry out the  
16 purposes of the small dollar installment loan program  
17 established by section 2 of this Act; provided that the  
18 positions may be added to the position count for the division of  
19 financial institutions of the department of commerce and  
20 consumer affairs.



1 The sum appropriated shall be expended by the department of  
2 commerce and consumer affairs for the purposes of this part.

3 PART III

4 SECTION 10. Chapter 480F, Hawaii Revised Statutes, is  
5 amended by adding five new sections to be appropriately  
6 designated and to read as follows:

7 "S480F- Registration required. (a) No check casher  
8 shall conduct business in the State, including deferred deposit  
9 transactions, without first registering with the department  
10 under this chapter.

11 (b) The director shall prescribe the form of the  
12 application for registration. Each application shall be  
13 accompanied by the appropriate fee as prescribed by the director  
14 by rules adopted pursuant to chapter 91.

15 (c) Check casher registration shall be updated annually  
16 and shall include the following:

17 (1) The address of the principal office of the check  
18 casher;

19 (2) The name and address of the check casher's agent for  
20 service of process in the State; and





1       (3) Payment of the appropriate registration fees, as  
2       established by the director under rules adopted  
3       pursuant to chapter 91.

4       §480F- Voluntary payment plans. (a) At the time of  
5       origination of a third consecutive deferred deposit transaction  
6       made to a customer by a check casher, and at the time of  
7       origination of any subsequent consecutive deferred deposit  
8       transactions, the check casher shall offer the customer in  
9       writing the option to participate in a voluntary payment plan.  
10      Should the customer be in financial hardship, a voluntary  
11      payment plan may be requested by the customer and arranged by  
12      the customer and the check casher at any time.

13      (b) The voluntary payment plan shall be structured to pay  
14      the existing debt, both the principal and the fee, in at least  
15      six equal payments of no more than five per cent of the  
16      customer's monthly pretax paycheck that coincide with the  
17      customer's periodic pay dates or the date the customer is  
18      scheduled to receive benefits, unless the customer requests  
19      different payment due dates. The payments made pursuant to the  
20      voluntary payment plan shall be applied directly to the existing  
21      debt, and the lender shall not charge the customer any



1 additional fee other than an administration fee not to exceed  
2 \$30 for participation in the voluntary payment plan. The  
3 administration fee charged for a voluntary payment plan in  
4 compliance with this section shall be exempt from chapter 478.

5 (c) The check casher shall provide a written copy of the  
6 voluntary payment plan agreement to the customer. The check  
7 casher shall be prohibited from engaging in collection  
8 activities while the customer continues to make payments in  
9 accordance with the payment plan. The check casher is  
10 prohibited from making any additional deferred deposit  
11 transactions to the customer prior to the completion of the  
12 payments under the voluntary payment plan.

13 (d) The check casher may require the customer to provide a  
14 post-dated check or electronic authorization for funds  
15 transferred for each payment under the voluntary payment plan.  
16 If any check or electronic authorization accepted by the check  
17 casher as payment for a voluntary payment plan is dishonored,  
18 the check casher shall not charge the customer a fee for the  
19 dishonored instrument.

20 (e) If the customer fails to make payments in accordance  
21 with a voluntary payment plan, the check casher is entitled to



1 take action as otherwise allowed under this chapter to collect  
2 the remaining funds due and may charge the customer a one-time  
3 default fee of \$30.

4 §480F- Single deferred deposit transaction limitation.

5 A check casher shall take reasonable measure to ensure that no  
6 customer has more than one deferred deposit transaction  
7 outstanding at a time from all sources. Check cashers shall  
8 receive written confirmation from each customer that the  
9 customer does not have any outstanding deferred deposit  
10 transactions as of the date the customer enters into a deferred  
11 deposit transaction with the check casher.

12 §480F- Records and reports. Every check casher shall  
13 keep records and make reports with respect to the operation of  
14 business as provided in rules adopted by the director pursuant  
15 to chapter 91.

16 §480F- Rules. The director shall adopt rules necessary  
17 to implement this chapter pursuant to chapter 91."

18 SECTION 11. Section 480F-1, Hawaii Revised Statutes, is  
19 amended by adding three new definitions to be appropriately  
20 inserted and to read as follows:



1 "Department" means the department of commerce and consumer  
2 affairs.

3 "Director" means the director of commerce and consumer  
4 affairs.

5 "Financial hardship" means any hardship from loss of  
6 income, reduced work hours, increased living costs, or other  
7 hardships outside of the control of the customer at the  
8 discretion of the check casher and evidenced with  
9 documentation."

10 SECTION 12. Section 480F-2, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[+]§480F-2[+] Posting and notice of fees charged. Any  
13 person who cashes one or more checks for a fee shall:

14 (1) Post in a conspicuous place in every location at which  
15 the person does business a notice that sets forth[+]  
16 in no smaller than thirty-eight point type:

17 (A) The fees charged for cashing a check, for selling  
18 or issuing a money order, and for the initial  
19 issuance of any membership or identification  
20 cards; and



1 (B) That consumer complaints about the check cashing  
 2 business may be filed with the department [~~of~~  
 3 ~~commerce and consumer affairs~~], and includes and  
 4 identifies the telephone number and address of  
 5 the consumer information service of the  
 6 department [~~of commerce and consumer affairs~~];

7 (2) Provide written notice to each customer [~~of the fees~~  
 8 ~~charged for cashing checks~~] in no smaller than twelve-  
 9 point type that is separate from and in addition to  
 10 any posted notice[+] the following information:

11 (A) The fees charged for cashing checks; and

12 (B) That consumer complaints about the check cashing  
 13 business may be filed with the department,  
 14 including and identifying the telephone number  
 15 and address of the consumer information service  
 16 of the department;

17 (3) Obtain a written acknowledgment from the customer that  
 18 written notice [~~of the fees charged for cashing~~  
 19 ~~checks~~] as required by paragraph (2) was provided[+]  
 20 to the customer; and



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

3 SECTION 13. Section 480F-4, Hawaii Revised Statutes, is  
4 amended to read as follows:

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

8 (b) In addition to the notice required by section 480F-2,  
9 a check cashier that defers the deposit of any checks shall post  
10 in a conspicuous place in every location at which the check  
11 cashier does business a notice that sets forth in no smaller than  
12 thirty-eight point type:

13 (1) The total amount of any fees charged for the deferred  
14 deposit, expressed both in United States currency and  
15 as an annual percentage rate;

16 (2) That customers have a right to rescind a deferred  
17 deposit transaction within twenty-four hours of the  
18 transaction;

19 (3) That deferred deposit transactions are not suitable  
20 for long-term borrowing;



- 1        (4) That a customer may have no more than one outstanding  
2        deferred deposit transaction from all sources;
- 3        (5) Information on available financial education services,  
4        including contact information for an approved budget  
5        and credit counselor or an approved housing counselor;  
6        and
- 7        (6) A copy of the registration to do business as a check  
8        cashier as required by this chapter.

9        [~~(b)~~] (c) Each deferred deposit shall be made pursuant to  
10 a written agreement that has been signed by the customer and the  
11 check cashier or an authorized representative of the check  
12 cashier. The written agreement shall contain a statement of the  
13 following:

- 14        (1) The total amount of any fees charged for the deferred  
15        deposit, expressed both in United States currency and  
16        as an annual percentage rate[-]; and
- 17        (2) Notices stating that:
- 18        (A) The customer has a right to rescind a deferred  
19        deposit transaction within twenty-four hours of  
20        the transaction;



- 1           (B) The customer may have no more than one
- 2           outstanding deferred deposit transaction from all
- 3           sources;
- 4           (C) Deferred deposit transactions are not suitable
- 5           for long-term borrowing; and
- 6           (D) The customer may enter into a voluntary payment
- 7           plan if the customer:
- 8           (i) Is experiencing financial hardship; or
- 9           (ii) Has entered into three or more consecutive
- 10           transactions with the same check casher; and
- 11        (3) A declaration that financial education services are
- 12        available and include contact information for an
- 13        approved budget and credit counselor or an approved
- 14        housing counselor.

15 The written agreement shall authorize the check casher to defer  
16 deposit of the personal check until a specific date not later  
17 than thirty-two days from the date the written agreement was  
18 signed. The written agreement shall not permit the check casher  
19 to accept collateral.

20        ~~[(e)]~~ (d) The face amount of the check shall not exceed  
21 \$600 and the deposit of a personal check written by a customer





1 pursuant to a deferred deposit transaction may be deferred for  
2 no more than thirty-two days. A check casher may charge a fee  
3 for deferred deposit of a personal check in an amount not to  
4 exceed fifteen per cent of the face amount of the check. Any  
5 fees charged for deferred deposit of a personal check in  
6 compliance with this section shall be exempt from chapter 478.

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

13 ~~[(e)]~~ (f) A check casher who enters into a deferred  
14 deposit agreement and accepts a check passed on insufficient  
15 funds, or any assignee of that check casher, shall not be  
16 entitled to recover damages in any action brought pursuant to or  
17 governed by chapter 490. No additional interest may be  
18 collected except the ten per cent allowed by law on uncollected  
19 judgments. Instead, the check casher may charge and recover a  
20 fee for the return of a dishonored check in an amount not



1 greater than [~~\$20.~~] the fee incurred by the check casher from  
2 its financial institution.

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

7 (h) For the purposes of this section:

8 "Approved budget and credit counselor" and "approved  
9 housing counselor" shall have the same meaning as those terms  
10 are defined in section 667-1."

11 SECTION 14. Section 480F-5, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "~~[§] 480F-5 [§]~~ **Exemptions.** This chapter shall not apply  
14 to~~[-~~

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



1       ~~(2) Any~~ any person authorized to engage in business as a  
2           bank, trust company, savings bank, savings and loan  
3           association, financial services loan company, or  
4           credit union under the laws of the United States, any  
5           state or territory of the United States, or the  
6           District of Columbia."

7           SECTION 15. (a) The division of financial institutions of  
8           the department of commerce and consumer affairs shall conduct an  
9           analysis of the regulation of payday lenders and deferred  
10          deposit agreements and its impact on consumer protection in the  
11          State as part of its implementation of the purposes of this Act.

12          (b) In conducting the analysis, the division of financial  
13          institutions of the department of commerce and consumer affairs  
14          shall examine the following:

- 15           (1) The increasing impact of out-of-state internet lenders  
16           who operate in the State;
- 17           (2) Data regarding consumer complaints;
- 18           (3) The impact of chapter 480F, Hawaii Revised Statutes,  
19           on consumers within the State over the past fifteen  
20           years; and



1 (4) Any further measures necessary for increased consumer  
2 protection in the State.

3 (c) The division of financial institutions of the  
4 department of commerce and consumer affairs shall submit a  
5 report of findings and recommendations, including any proposed  
6 legislation, to the legislature no later than twenty days prior  
7 to the convening of the regular session of 2021.

8 PART IV




9 SECTION 16. This Act does not affect rights and duties  
10 that matured, penalties that were incurred, and proceedings that  
11 were begun before its effective date.

12 SECTION 17 Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 18. This Act shall take effect on July 1, 2021;  
15 provided that the licensing requirements for small dollar  
16 lenders established by section 2 of this Act shall take effect  
17 on January 1, 2022.

18

INTRODUCED BY:



# S.B. NO. 2587

**Report Title:**

Payday Lending; Small Dollar Loans; Small Dollar Lenders;  
Licensure; Requirements; Appropriation; Check Cashers;  
Registration; Voluntary Payment Plans; Notices

**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 1/1/2022, requires licensure for small dollar lenders that offer small dollar loans to consumers. Specifies licensing requirements for small dollar lenders. Authorizes the division of financial institutions to appoint 2.0 FTE examiner positions, funded via the compliance resolution fund, to carry out the purposes of the small dollar installment loan program. Requires check cashers to be registered with DCCA and to offer a voluntary payment plan to customers under certain circumstances. Establishes the terms of voluntary payment plans. Clarifies that a customer may only have one outstanding deferred deposit transaction from any source. Amends notices to customers required of check cashers. Removes the exemption for persons engaged in the bona fide retail sale of goods or services. Requires the division of financial institutions of the department of commerce and consumer affairs to conduct an analysis of the regulation of payday lenders and deferred deposit agreements in the State. Effective July 1, 2021.

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

