



GOV. MSG. NO. 1156

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 16, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 16, 2021, the following bill was signed into law:

HB1192 HD1 SD2 CD1

RELATING TO CONSUMER PROTECTION
ACT 056(21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

ORIGINAL

on JUN 16 2021

ACT 056

HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

H.B. NO. 1192
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1 PART I

2 SECTION 1. The legislature finds that there has been a

3 shift in the market from deferred deposit agreements, commonly

4 referred to as payday loans, toward small dollar installment

5 loans, which are repayable over time and secured by access to

6 the borrower's checking account. Unfortunately, due to the

7 State's current deferred deposit laws, the payday lending

8 industry can engage in practices that trap consumers in

9 unsustainable cycles of debt. Payday lenders structure loans

10 with unrealistically short repayment terms, unaffordable

11 payments, and excessive fees, resulting in long-term, high-cost

12 debt and harm to the consumer. Lenders are also granted access

13 to the borrower's checking account to ensure that the lender

14 gets repaid, even if the borrower cannot cover rent, utilities,

15 and other basic living expenses. The Pew Charitable Trusts has

16 reported that the average Hawaii payday borrower incurs \$529 in

17 fees to borrow \$300 over five months. Research also shows that



1 this amount is nearly three times higher than what the same
2 lenders charge similarly situated consumers in other states.

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 installment loans
7 within the alternative financial service products industry.
8 Hawaii has not yet joined in these reform efforts. In 2017, the
9 Consumer Financial Protection Bureau released new rules that,
10 among other things, targeted loans with a thirty-six per cent
11 annual interest rate or higher and restricted payday lenders
12 from extracting money from the borrower's account, without
13 explicit consent, if they failed to repay twice in a row.
14 However, the Consumer Financial Protection Bureau also rescinded
15 the mandatory underwriting provisions of its payday lending
16 rules. It is critical that the State take action now to address
17 these harmful practices in light of this delay and the weakening
18 of the federal consumer protections for payday and similar
19 loans.

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



1 installment loans are going to be offered to Hawaii consumers,
2 there must be appropriate consumer protections in place to
3 ensure these loans contain reasonable terms and fees, provide
4 sufficient protections that allow borrowers to avoid extending
5 or adding additional loans, and allow borrowers to meet their
6 basic living expenses.

7 Accordingly, the purpose of this Act is to:

- 8 (1) Establish a framework for providing new, viable
9 installment loan transactions; and
10 (2) Repeal the statutory authorization for deferred
11 deposit transactions in the State.

12 PART II

13 SECTION 2. The Hawaii Revised Statutes is amended by
14 adding a new chapter to be appropriately designated and to read
15 as follows:

16 "CHAPTER

17 INSTALLMENT LOANS

18 PART I. GENERAL PROVISIONS

19 § -1 Definitions. As used in this chapter, unless the
20 context otherwise requires:



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

7 "Arranger" means a provider of funds in the syndication of
8 a debt.

9 "Branch office" means any location in the State that is
10 identified by any means to the public or consumers as a location
11 at which the licensee holds itself out as an installment lender.

12 "Commissioner" means the commissioner of financial
13 institutions.

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

18 "Control" means the power, either directly or indirectly,
19 to direct management or policies of a company, whether through
20 ownership of securities, by contract, or otherwise.



1 "Control person" means any person who directly or
2 indirectly exercises control of a licensee or applicant.

3 "Default" means a consumer's failure to repay an
4 installment loan in compliance with the terms contained in an
5 installment loan agreement.

6 "Department" means the department of commerce and consumer
7 affairs.

8 "Division" means the division of financial institutions of
9 the department of commerce and consumer affairs.

10 "Elder" means an individual who is sixty-two years of age
11 or older.

12 "Finance charges" means the cost of credit or cost of
13 borrowing, including the interest and other fees authorized by
14 this chapter.

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



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

10 "Installment loan" means a loan made pursuant to this
11 chapter.

12 "Instrument" means a method of payment that may include a
13 debit card payment, Automated Clearing House transfer,
14 electronic check or other forms of electronic transfers, money
15 order, cash, personal check signed by the consumer, or any other
16 method of loan payment authorized by this part or by rule
17 adopted by the commissioner pursuant to chapter 91 and made
18 payable to a person subject to this chapter.

19 "Interest" means all charges payable directly or indirectly
20 by a borrower to a licensee as a condition to a loan or an
21 application for a loan, however denominated. "Interest" does



1 not include default charges, deferment charges, insurance
2 charges or premiums, court costs, loan origination charges,
3 check collection charges, credit line charges, credit report
4 charges, or other fees and charges specifically authorized by
5 law.

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

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

12 "Loan charges" means the total of all charges made in
13 connection with a loan except for insufficient funds charges
14 authorized by section -11 and default charges authorized by
15 section -4(i).

16 "Maintenance fee" means a monthly fee paid to a licensee to
17 maintain an installment loan.

18 "NMLS" means the Nationwide Multistate Licensing System and
19 Registry, which is a licensing system developed and maintained
20 by the Conference of State Bank Supervisors for the state
21 licensing and registration of state-licensed loan originators



1 and other financial services providers, or any system provided
2 by the Consumer Financial Protection Bureau.

3 "Nonprofit organization" means an organization that:

4 (1) Has the status of a tax-exempt organization under
5 section 501(c)(3) of the Internal Revenue Code
6 of 1986, as amended;

7 (2) Conducts its activities in a manner that serves public
8 or charitable purposes, rather than commercial
9 purposes;

10 (3) Receives funding, revenue, and charge fees in a manner
11 that does not incentivize its organization or its
12 employees to act other than in the best interests of
13 its clients; and

14 (4) Compensates its employees in a manner that does not
15 incentivize employees to act other than in the best
16 interests of its clients.

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 installment
2 loans are offered or made and includes each website through
3 which a consumer may apply for an installment loan from an
4 installment lender.

5 "Precomputed interest" means an interest method that uses
6 the original payment schedule to calculate interest.

7 "Renewal" means the refinancing of an installment loan that
8 occurs during the period between the original maturity date and
9 the immediately preceding installment payment due date.

10 "Renewal" does not include the refinancing of an installment
11 loan that occurs prior to the penultimate installment payment
12 due date.

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

16 **§ -2 Installment loans; requirements; payments. (a)**

17 Each installment loan transaction and renewal shall meet the
18 following requirements:

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



- 1 (2) The total amount of the installment loan shall not be
- 2 greater than \$1,500 pursuant to section -5(a);
- 3 (3) The total amount of loan charges an installment lender
- 4 may charge, collect, or receive in connection with an
- 5 installment loan shall not exceed fifty per cent of
- 6 the principal loan amount;
- 7 (4) Subject to paragraph (3), a monthly maintenance fee
- 8 may be charged by the lender, not to exceed the
- 9 following:
- 10 (A) \$25 on a loan of an original principal loan
- 11 amount up to \$299.99;
- 12 (B) \$30 on a loan of an original principal loan
- 13 amount of at least \$300.00 and up to \$699.99; and
- 14 (C) \$35 on a loan of an original principal loan
- 15 amount of at least \$700.00 and greater;
- 16 provided that the monthly maintenance fee shall not be
- 17 added to the loan balance upon which the interest is
- 18 charged; provided further that an installment lender
- 19 shall not charge, collect, or receive a monthly
- 20 maintenance fee if the borrower is a person on active



- 1 duty in the armed forces of the United States or a
2 dependent of that person;
- 3 (5) The minimum contracted repayment term of the
4 installment loan shall be two months if the contracted
5 loan amount is \$500 or less, or four months if the
6 contracted loan amount is \$500.01 or more; provided
7 that, for purposes of meeting the required minimum
8 contracted repayment term, an installment lender may
9 calculate one month as twenty-eight days or longer;
- 10 (6) All repayment schedule due dates shall be dates upon
11 which an installment lender is open for business to
12 the public at the place of business where the
13 installment loan was made;
- 14 (7) An installment lender shall accept prepayment in full
15 or in part from a consumer prior to the loan due date
16 and shall not charge the consumer a fee or penalty if
17 the consumer opts to prepay the loan; provided that to
18 make a prepayment, all past due interest and fees
19 shall be paid first;



- 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) An installment lender shall not charge a consumer any
7 loan charges for an installment loan, other than the
8 fees permitted by this chapter;
- 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; and
- 12 (12) The maximum contracted repayment term of the
13 installment loan shall be twelve months.
- 14 (b) In an installment loan, a lender may contract for a
15 once-every-two-weeks, twice-monthly, or monthly payment of the
16 loan balance due, including the applicable portion of the
17 interest, and earned monthly maintenance fee.
- 18 (c) For each payment made by a consumer, a lender shall
19 give the consumer a written receipt with the lender's name and
20 address, payment date, amount paid, consumer's name, and



1 sufficient information to identify the account to which the
2 payment is applied.

3 (d) Upon prepayment in full by the consumer, the lender
4 shall refund:

5 (1) Any unearned and unaccrued portion of the interest
6 charged; and

7 (2) Any unearned monthly maintenance fees.

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

20 § -3 Written agreement; requirements; disclosure. (a)

21 Each installment loan transaction and renewal shall be



1 documented by a written agreement signed by the installment
2 lender and consumer. The written agreement shall contain the
3 following information:

- 4 (1) The name and address of the consumer and the lender;
- 5 (2) The transaction date;
- 6 (3) The loan amount;
- 7 (4) The authorized interest rate;
- 8 (5) A statement of the total amount of finance charges
9 charged, expressed as a dollar amount and an annual
10 percentage rate;
- 11 (6) The installment payment schedule setting out the
12 amount due on specific due dates;
- 13 (7) A statement that an installment lender shall not
14 require a consumer to purchase add-on products;
- 15 (8) The name, address, electronic mail address, and
16 telephone number of any agent or arranger involved in
17 the installment loan transaction;
- 18 (9) A notice to the consumer that the consumer has the
19 right to rescind the installment loan before
20 5:00 p.m., Hawaii-Aleutian Standard Time, by the
21 third business day after the date the loan was



1 originated and at the location where the loan was
2 originated;

3 (10) A statement that it shall not be considered a
4 violation of law if the consumer obtains an
5 installment loan voluntarily and separately from the
6 consumer's spouse if the consumer documents the action
7 in writing, either in the written agreement or in a
8 subsequent agreement;

9 (11) A notice to the consumer that a returned instrument
10 may result in a dishonored instrument charge, not to
11 exceed \$25; and

12 (12) A description of the methods by which installment loan
13 payments may be made, which may include a debit card
14 payment, Automated Clearing House transfer, electronic
15 check, other forms of electronic transfers, money
16 order, cash, check, or any additional method of loan
17 payment authorized by this chapter or by rule adopted
18 by the commissioner pursuant to chapter 91.

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



1 (c) The installment lender shall provide to the consumer a
2 printed written disclosure prior to signing the written
3 agreement that accurately discloses the types of information in
4 the chart below, in at least twelve-point type:

5 **"MULTIPLE**

6 **INSTALLMENT**

7 **LOAN PAYMENT**

8 Amount Financed
9 Term (months)
10 Authorized Interest Rate
11 Monthly Maintenance Fee
12 Total of All Permitted Charges
13 Total You Will Pay for This Loan If Paid on Time
14 (Amount Financed, Interest, and Monthly Maintenance Fee)
15 ANNUAL PERCENTAGE RATE
16 Payment Schedule"
17 Included in the chart above, an installment lender may include
18 any other information the lender believes will benefit the
19 consumer, such as an explanation of annual percentage rate and
20 how it is calculated.



1 (d) The consumer shall sign and date each of two copies of
2 the written disclosure required pursuant to subsection (c), one
3 of which shall be given to the consumer and the other of which
4 shall be retained by the lender as part of its records of the
5 installment loan. This requirement may also be accomplished by
6 electronically signing an electronic copy of the disclosure and
7 making the disclosure electronically available to the consumer
8 if the consumer is applying for the loan over the Internet. For
9 purposes of preparing the written disclosure, the installment
10 loan shall be structured on a precomputed basis (total of
11 payments) with the assumption that all payments will be made as
12 scheduled.

13 (e) The written agreement may include a demand feature
14 that permits the lender or any other person, if the consumer
15 fails to make any payment when due, to terminate the installment
16 loan in advance of the original maturity date, but no earlier
17 than ten days after the missed payment, and demand repayment of
18 the entire outstanding balance. If the written agreement
19 includes a demand feature and the demand feature is exercised,
20 the lender shall be entitled to collect only the outstanding
21 balance and a prorated portion of the unpaid interest and fees



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

6 **§ -4 Authorized interest rate.** (a) Subject to
7 section -2(a)(3), an installment lender may contract for and
8 receive interest at a rate not exceeding thirty-six per cent per
9 year on that portion of the unpaid principal balance of the
10 installment loan. Loans shall be precomputed. Any loan charges
11 assessed in compliance with this chapter shall be exempt from
12 chapter 478.

13 (b) For the purposes of computing precomputed loans,
14 including calculating interest, a month shall be considered
15 one-twelfth of a year and a day shall be considered one
16 three hundred sixty-fifth of a year when calculation is made for
17 a fraction of a month.

18 (c) Subject to section -2(b), installment loans shall
19 be repayable in substantially equal and consecutive installments
20 of principal and interest combined; provided that the first
21 installment period may exceed one month by not more than



1 fifteen days, and the first installment payment amount may be
2 larger than the remaining payments by the amount of interest
3 charged for the extra days; provided further that monthly
4 installment payment dates may be omitted if the parties agree in
5 writing, either in the written agreement required under
6 section -3 or in a subsequent agreement, to accommodate
7 consumers with seasonal income.

8 (d) Payments may be applied to the combined total of
9 principal and precomputed interest until maturity of the
10 installment loan, with priority given to any past due interest
11 before applying payments to loan charges and then to the
12 principal.

13 (e) If an installment loan is prepaid in full or renewed
14 prior to the loan's maturity date, the lender shall refund to
15 the consumer a prorated portion of the unearned and unaccrued
16 interest and monthly maintenance fees based on a ratio of the
17 number of days the loan was outstanding and the number of days
18 for which the loan was originally contracted.

19 (f) The parties may agree in writing, either in the
20 written agreement required under section -3 or in a



1 subsequent agreement, to a deferment of wholly unpaid
2 installments; provided that:

3 (1) A deferment shall postpone the scheduled due date of
4 the earliest unpaid installment and all subsequent
5 installments as originally scheduled, or as previously
6 deferred, for a period equal to the deferment period;

7 (2) The deferment period shall be that period during which
8 no installment is scheduled to be paid by reason of
9 the deferment; and

10 (3) The lender shall not charge or collect a deferment
11 fee.

12 (g) Other than the interest and loan charges permitted
13 under this section, no further or other amount shall be charged
14 or required by the installment lender.

15 (h) A lender shall not charge or receive loan origination
16 fees.

17 (i) A lender shall not collect a default charge on any
18 installment not paid in full within ten days after its due date.
19 A lender may charge a default charge of \$30 on an installment
20 not paid in full after ten days have passed since its due date.



1 For purposes of this subsection, all installments shall be
2 considered paid in the order in which they become due.

3 **§ -5 Maximum loan amount; prohibition against multiple**
4 **loans.** (a) A lender shall not lend an amount greater than
5 \$1,500 nor shall the amount financed exceed \$1,500 by any one
6 lender at any time to a consumer.

7 (b) Except as otherwise provided in section -8, an
8 installment lender shall take reasonable measures to ensure that
9 no consumer has more than one installment loan outstanding at a
10 time from any of the following:

- 11 (1) The installment lender;
12 (2) A person related to the installment lender by common
13 ownership or control;
14 (3) A person in whom the installment lender has any
15 financial interest of ten per cent or more; or
16 (4) Any employee or agent of the installment lender.

17 (c) An installment lender that receives written or
18 electronic confirmation from each consumer that the consumer
19 does not have any outstanding installment loans from the
20 entities listed in subsection (b) as of the date the consumer



1 enters into an installment loan with the installment lender
2 shall be deemed to have met the requirements of this section.

3 (d) If a consumer's spouse obtains an installment loan
4 voluntarily and separately from the consumer, and subsequently
5 the consumer obtains an installment loan voluntarily and
6 separately from the consumer's spouse, where neither the
7 consumer nor the consumer's spouse are coborrowers with each
8 other on either loan, and the consumer's action is documented in
9 writing, either in the written agreement required under
10 section -3 or in a subsequent agreement, signed by the
11 consumer, and retained by the lender, the secondary transaction
12 shall not be considered a violation of this section.

13 (e) Upon a consumer's payment in full of any installment
14 loan, an installment lender shall wait a period of three days
15 before the lender may make another installment loan to the same
16 consumer.

17 § -6 Right of rescission. (a) A consumer shall have
18 the right to rescind an installment loan, at or before
19 5:00 p.m., Hawaii-Aleutian Standard Time, on the third business
20 day after the date the loan was originated and at the location
21 where the loan was originated, by returning the principal in



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

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

9 "RESCINDED BY [lender's name; license number], [date]"
10 and below which the lender's authorized representative shall
11 sign.

12 § -7 Notice to consumers; general requirements; right to
13 prepay; loan limits; right to rescind. An installment lender
14 shall provide the following notice on each written agreement for
15 an installment loan. The notice shall be in a prominent place
16 and in at least twelve-point type:

17 "THIS INSTALLMENT LOAN IS NOT INTENDED TO MEET
18 LONG-TERM FINANCIAL NEEDS.

19 THIS INSTALLMENT LOAN SHOULD BE USED ONLY TO MEET
20 SHORT-TERM CASH NEEDS.



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

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

6 STATE LAW PROHIBITS THE PRINCIPAL OF THIS
7 INSTALLMENT LOAN FROM EXCEEDING ONE THOUSAND FIVE
8 HUNDRED DOLLARS (\$1,500). EXCEEDING THIS AMOUNT MAY
9 CREATE FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY.

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

13 **\$ -8 Renewal; new loan requirements; consecutive loans;**
14 **payment plan.** (a) An installment 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 an installment loan, the lender may
18 renew up to \$1,500 of the remaining unpaid principal balance.
19 If the unpaid balance on renewal is more than \$1,500, the
20 consumer may be required to pay the remaining balance; provided
21 that the lender shall not finance any amount over \$1,500. The



1 total amount of loan charges for the renewed loan shall meet the
2 requirements of section -2, with the understanding that the
3 total amount of loan charges an installment lender may charge,
4 collect, or receive in connection with the renewal of an
5 installment loan shall not exceed fifty per cent of the renewal
6 principal loan amount. If the installment loan is renewed prior
7 to the maturity date, the lender shall refund to the consumer a
8 prorated portion of the finance charge based upon the ratio of
9 time left before maturity to the loan term.

10 **§ -9 Form of loan proceeds; endorsement of instrument;**

11 **redemption of instrument.** (a) An installment lender may pay
12 the proceeds from or otherwise fund an installment loan to the
13 consumer in the form of a monetary instrument, prepaid debit
14 card, Automated Clearing House transfer, electronic check, other
15 form of electronic transfer, money order, or cash.

16 (b) An installment lender shall not negotiate or present
17 an instrument for payment unless the instrument is endorsed with
18 the actual business name of the lender.

19 (c) Prior to an installment lender negotiating or
20 presenting the instrument, a consumer may redeem any instrument



1 held by the lender as a result of an installment loan if the
2 consumer pays the full amount of the instrument to the lender.

3 **§ -10 Delinquent installment loans; restrictions on**
4 **collection by lender or third party.** (a) An installment lender
5 shall comply with all applicable state and federal laws when
6 collecting a delinquent installment loan. A lender may take
7 civil action to collect principal, interest, fees, and costs
8 allowed under this chapter. A lender shall not threaten
9 criminal prosecution as a method of collecting a delinquent
10 installment loan or threaten to take any legal action against
11 the consumer that is not otherwise permitted by law.

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

20 (c) A lender shall not communicate with a consumer in a
21 manner intended to harass, intimidate, abuse, or embarrass a



1 consumer, including communication at an unreasonable hour, with
2 unreasonable frequency, by threats of force or violence, or by
3 use of offensive language. A communication shall be presumed to
4 have been made for the purposes of harassment if it is initiated
5 by the lender for the purposes of collection and the
6 communication is made:

7 (1) With the consumer's spouse or the consumer's domestic
8 partner in any form, manner, or place, on more than
9 one occasion, except when:

10 (A) Calling a shared phone number and asking to speak
11 to the consumer;

12 (B) Sending a text message to a shared phone number;

13 (C) Sending an electronic mail to a shared electronic
14 mail address; or

15 (D) Sending any other electronic writing to a shared
16 electronic account;

17 (2) With a consumer at the consumer's place of employment
18 on more than one occasion;

19 (3) With the consumer, the consumer's spouse, or the
20 consumer's domestic partner at the consumer's place of



1 residence between the hours of 9:00 p.m. and
2 8:00 a.m., Hawaii-Aleutian Standard Time; or

3 (4) To a party other than the consumer, the consumer's
4 attorney, the lender's attorney, or a consumer credit
5 reporting agency if otherwise permitted by law, except
6 for the purposes of acquiring location or contact
7 information about the consumer.

8 (d) A lender shall maintain, in accordance with applicable
9 law, an accurate and complete communication log of all telephone
10 and written communications with a consumer initiated by the
11 lender regarding any collection efforts, including date, time,
12 and the nature of each communication.

13 (e) For purposes of collecting a dishonored check, this
14 section shall apply to any employee, arranger, or third-party
15 assignee of a lender.

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

20 (1) "Communication" includes the time the lender initiates
21 contact with a consumer, regardless of whether the



1 communication is received or accessed by the consumer;
2 and

3 (2) "Communication" does not include:

4 (A) Verbal communication with the consumer while the
5 consumer is physically present in the lender's
6 place of business;

7 (B) An unanswered telephone call in which no message,
8 other than a caller identification, is left,
9 unless the telephone call is in violation of
10 subsection (c) (3); or

11 (C) An initial letter to the consumer that includes
12 disclosures under the federal Fair Debt
13 Collection Practices Act.

14 **§ -11 Authorized insufficient funds charge. (a)**

15 Regardless of the number of instances where a consumer's payment
16 is rejected due to insufficient funds, an installment lender may
17 contract for and collect one insufficient funds charge for each
18 payment due on an installment loan, not to exceed \$25. The
19 lender shall not collect any other fees as a result of the
20 insufficient funds of the consumer.



1 (b) If the loan proceeds instrument delivered by the
2 installment lender to the consumer is dishonored by the
3 financial institution, the installment lender shall cover any
4 fees and charges incurred by the consumer as a direct result of
5 the dishonored loan proceeds instrument.

6 § -12 Posting of license and loan charges. Any
7 installment lender offering an installment loan shall
8 conspicuously and continuously post, at any place of business
9 where installment loans are made, the license required pursuant
10 to this chapter and a notice of the loan charges imposed for
11 installment loans.

12 § -13 Internet lending. (a) An installment lender may
13 advertise and accept applications for installment loans by any
14 lawful medium, including the Internet, and shall provide all
15 required notices and disclosures via the Internet, and the
16 consumer may provide a valid electronic signature on the
17 disclosures and loan agreement, subject to subsection (b).

18 (b) Installment lenders shall not advertise or make
19 installment loans via the Internet without first having obtained
20 a license pursuant to part II of this chapter.



1 (c) The unique identifier of any installment lender
2 originating an installment loan, except a person who is exempt
3 from licensure under this chapter, shall be clearly shown on all
4 solicitations, including websites, and all other documents, as
5 established by rule or order of the commissioner.

6 § -14 Notice on assignment or sale of contract. (a) No
7 licensee shall pledge, negotiate, sell, or assign a current and
8 performing installment loan, except to another licensee or to a
9 bank, savings bank, trust company, financial services loan
10 company, or credit union organized under the laws of this State
11 or the laws of the United States.

12 (b) Prior to sale or assignment of a current and
13 performing installment loan contract held by the installment
14 lender, the lender shall place a notice on the installment loan
15 contract in at least twelve-point type that reads:

16 "INSTALLMENT LOAN

17 No licensee shall pledge, negotiate, sell, or
18 assign an installment loan, except to another licensee
19 or to a bank, savings bank, trust company, financial
20 services loan company, or credit union organized under
21 the laws of Hawaii or the laws of the United States."



1 (c) This section shall not apply to:

2 (1) The transfer of an installment loan to a company
3 affiliated with the installment lender that
4 securitizes the installment lender's loan receivables;
5 and

6 (2) The pledge or other granting of a security interest in
7 the installment loan to a financial institution in
8 connection with asset back financing or similar
9 lending facility of the installment lender.

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

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



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

4 (d) Every lender shall preserve all of its records for a
5 minimum of six years or for a period the commissioner may
6 prescribe by rules adopted pursuant to chapter 91.

7 **PART II. LICENSING**

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

11 (b) Any loan made in violation of this section is void,
12 and no person shall have the right to collect, receive, or
13 retain any principal, interest, fees, or other charges in
14 connection with the loan.

15 **§ -32 Exemptions; relation to other laws.** (a) This
16 chapter shall not apply to the following:

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



1 (4) A tax refund anticipation loan.

2 (b) Persons licensed under this chapter shall not be
3 subject to chapter 443B.

4 § -33 License; application; issuance. (a) The
5 commissioner shall require all licensees to register with NMLS.

6 (b) Applicants for a license shall apply in a form
7 prescribed by NMLS or by the commissioner. The application
8 shall contain, at a minimum, the following information:

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

10 (A) The applicant; and

11 (B) Every member, officer, principal, or director
12 thereof, if the applicant is a partnership,
13 association, limited liability company, limited
14 liability partnership, or corporation;

15 (2) The principal place of business;

16 (3) The complete address of any other branch offices at
17 which the applicant proposes to engage in making
18 installment loans; and

19 (4) Any other data, financial statements, and pertinent
20 information the commissioner may require with respect
21 to the applicant or, if an applicant is not an



1 individual, each of the applicant's control persons,
2 executive officers, directors, general partners, and
3 managing members.

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

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

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

18 (1) Fingerprints of the applicant or, if an applicant is
19 not an individual, fingerprints of each of the
20 applicant's control persons, executive officers,
21 directors, general partners, and managing members for



1 submission to the Federal Bureau of Investigation and
2 any governmental agency or entity authorized to
3 receive the fingerprints for a state, national, and
4 international criminal history background check,
5 accompanied by the applicable fee charged by the
6 entities conducting the criminal history background
7 check; and

8 (2) Information verifying the personal history and
9 experience of the applicant or, if an applicant is not
10 an individual, the personal history and experiences of
11 each of the applicant's control persons, executive
12 officers, directors, general partners, and managing
13 members in a form prescribed by NMLS, including
14 authorization for NMLS and the commissioner to obtain:

15 (A) An independent credit report from a consumer
16 reporting agency described in section 603(p) of
17 the Fair Credit Reporting Act, title 15 United
18 States Code section 1681a(p); and

19 (B) Information related to any administrative, civil,
20 or criminal findings by any governmental
21 jurisdiction;



1 provided that the commissioner may use any information obtained
2 pursuant to this subsection or through NMLS to determine an
3 applicant's demonstrated financial responsibility, character,
4 and general fitness for licensure.

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

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

11 (h) An applicant for a license as an installment lender
12 shall be registered with the business registration division of
13 the department to do business in this State before a license
14 pursuant to this chapter may be granted.

15 **§ -34 License; grounds for denial.** (a) The
16 commissioner shall conduct an investigation of every applicant
17 to determine the applicant's financial responsibility,
18 character, and general fitness. The commissioner shall issue
19 the applicant a license to engage in the business of making
20 installment loans if the commissioner determines that the
21 applicant or, in the case of an applicant that is not an



1 individual, each of the applicant's control persons, executive
2 officers, directors, general partners, and managing members:

3 (1) Has never had an installment lender license revoked in
4 any jurisdiction; provided that a subsequent formal
5 vacation of a revocation shall not be deemed a
6 revocation;

7 (2) Has not been convicted of, pled guilty or nolo
8 contendere to, or been granted a deferred acceptance
9 of a guilty plea under any federal law or under
10 chapter 853 to a felony in a domestic, foreign, or
11 military court, either:

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

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

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

19 (3) Has demonstrated sufficient financial responsibility,
20 good character, and general fitness to command the
21 confidence of the community and to warrant a



1 determination that the applicant will operate
2 honestly, fairly, and efficiently, pursuant to this
3 chapter. For the purposes of this paragraph, a person
4 is not financially responsible when the person has
5 shown disregard in the management of the person's own
6 financial condition. A determination that a person
7 has shown disregard in the management of the person's
8 own financial condition may be based upon:

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

11 (B) Current outstanding tax liens or other government
12 liens and filings, subject to applicable
13 disclosure laws and administrative rules;

14 (C) Foreclosures within the prior three years; and

15 (D) A pattern of seriously delinquent accounts within
16 the prior three years;

17 (4) Has not been convicted of, pled guilty or nolo
18 contendere to, or been granted a deferred acceptance
19 of a guilty plea under federal law or chapter 853 to
20 any misdemeanor involving an act of fraud, dishonesty,
21 breach of trust, or money laundering;



- 1 (5) Has satisfied the licensing requirements of this
2 chapter; and
- 3 (6) Has provided the bond required by section -35.
- 4 (b) The applicant or, in the case of an applicant that is
5 not an individual, each of the applicant's control persons,
6 executive officers, directors, general partners, and managing
7 members shall submit authorization to the commissioner to
8 conduct background checks to determine or verify the information
9 in subsection (a) in each state where the person has made
10 installment loans. Authorization pursuant to this subsection
11 shall include consent to provide additional fingerprints, if
12 necessary, to law enforcement or regulatory bodies in other
13 states.
- 14 (c) A license shall not be issued to an applicant:
- 15 (1) Whose license to conduct business under this chapter,
16 or any similar statute in any other jurisdiction, has
17 been suspended or revoked within five years of the
18 filing of the present application;
- 19 (2) Whose license to conduct business in the installment
20 loan or payday industry has been revoked by an
21 administrative order issued by the commissioner or the



1 commissioner's designee, or the licensing authority of
2 another state or jurisdiction, for the period
3 specified in the administrative order;

4 (3) Who has advertised directly and purposefully to Hawaii
5 consumers or made internet loans in violation of this
6 chapter; or

7 (4) Who has failed to complete an application for
8 licensure.

9 (d) A license issued in accordance with this chapter shall
10 remain in force and effect until surrendered, suspended, or
11 revoked, or until the license expires as a result of nonpayment
12 of the annual license renewal fee required by this chapter.

13 **§ -35 Fees; bond.** (a) An installment lender shall pay
14 the following fees to the division to obtain and maintain a
15 valid license under this chapter:

16 (1) An initial application fee of \$1,000;

17 (2) A processing fee of \$35 for each control person;

18 (3) An annual license renewal fee of the greater of:

19 (A) \$1,000; or

20 (B) An amount equal to the sum of \$0.15 per

21 installment loan originated during the previous



1 year plus 0.08 per cent of the dollar volume of
2 loans originated during the previous year;
3 provided that for the purposes of calculating the
4 renewal fee, all installment loans originated by
5 the installment lender between the third quarter
6 of the previous year and third quarter of the
7 current year shall be considered.

8 (4) Any applicable fee charged by the entities conducting
9 the criminal history background check for each of the
10 applicant's control persons, executive officers,
11 directors, general partners, and managing members for
12 submission to the Federal Bureau of Investigation and
13 any governmental agency or entity authorized to
14 receive the fingerprints for a state, national, and
15 international criminal history background check; and

16 (5) Any applicable fee charged by the entities obtaining
17 an independent credit report from a consumer reporting
18 agency as described in section 603(p) of the Fair
19 Credit Reporting Act, title 15 United States Code
20 section 1681a(p);



1 provided that the application fee and annual license renewal fee
2 shall not apply to a nonprofit organization acting as an
3 installment lender.

4 (b) A nonprofit organization acting as an installment
5 lender shall pay the following fees to maintain a valid
6 registration as a nonprofit organization in NMLS:

7 (1) An initial registration fee of \$200;

8 (2) An annual registration renewal fee of \$150; and

9 (3) A late fee of \$25 per day if the nonprofit
10 registration expires and the nonprofit organization
11 continues to act as an installment lender.

12 (c) The applicant shall file and maintain a surety bond
13 that is approved by the commissioner and executed by the
14 applicant as obligor and by a surety company authorized to
15 operate as a surety in this State, whose liability as a surety
16 does not exceed, in the aggregate, the penal sum of the bond.
17 The penal sum of the bond shall be a minimum of \$30,000 and a
18 maximum of \$250,000, based upon the annual dollar amount of
19 loans originated.

20 (d) The surety bond required by subsection (c) shall run
21 to the State of Hawaii as obligee for the use and benefit of the



1 State and of any person or persons who may have a cause of
2 action against the licensee as obligor under this chapter. The
3 bond shall be conditioned upon the following:

4 (1) The licensee as obligor shall faithfully conform to
5 and abide by this chapter and all rules adopted under
6 this chapter; and

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

12 (e) Each installment lender shall pay a nonrefundable fee
13 of \$100 to the division for each office that is relocated.

14 **§ -36 License renewal; annual report.** (a) On or before
15 December 31 of each year, each licensee shall pay a renewal fee
16 pursuant to section -35.

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



- 1 (1) A copy of the licensee's most recent audited annual
2 financial statement, including:
3 (A) Balance sheets;
4 (B) A statement of income or loss;
5 (C) A statement of changes in shareholders' equity;
6 and
7 (D) A statement of cash flows, or if a licensee is a
8 wholly owned subsidiary of another corporation,
9 the consolidated audited annual financial
10 statement of the parent corporation in lieu of
11 the licensee's audited annual financial
12 statement;
- 13 (2) A report detailing the installment lender's activities
14 in this State since the prior reporting period,
15 including:
16 (A) The number of installment loans made;
17 (B) The number of installment loans that have
18 defaulted; and
19 (C) Any other information the commissioner may
20 reasonably require related to performance metrics
21 and the efficacy of the installment loan program;



- 1 (3) A report of any material changes to any of the
2 information submitted by the licensee on its original
3 application that have not previously been reported to
4 the commissioner on any other report required to be
5 filed under this chapter;
- 6 (4) A list of the principal place of business and branch
7 locations, if any, within this State where business
8 regulated by this chapter is being conducted by the
9 licensee;
- 10 (5) Disclosure of any pending or final suspension,
11 revocation, or other enforcement action by any state
12 or governmental authority; and
- 13 (6) Any other information the commissioner may require.
- 14 (c) A licensee may renew by:
- 15 (1) Continuing to meet the licensing requirements of
16 sections -33, -34, and -35;
- 17 (2) Filing a completed renewal statement on a form
18 prescribed by NMLS or by the commissioner;
- 19 (3) Paying a renewal fee; and
- 20 (4) Meeting all other requirements of this section.



1 (d) A licensee that has not filed an annual report deemed
2 complete by the commissioner or paid the annual renewal fee by
3 the renewal filing deadline, and has not been granted an
4 extension of time to do so by the commissioner, shall have its
5 license suspended on the renewal date. The licensee shall have
6 thirty days after its license is suspended to file an annual
7 report and pay the annual renewal fee, plus a late filing fee of
8 \$250 for each day that has passed since suspension; provided
9 that the late filing fee for a nonprofit organization acting as
10 an installment lender shall be \$25 per day. The commissioner,
11 for good cause, may grant an extension of the renewal date or
12 reduce or suspend the late filing fees.

13 § -37 **Enforcement; violations; penalties.** (a) To
14 ensure the effective supervision and enforcement of this
15 chapter, the commissioner, pursuant to chapter 91, may take any
16 disciplinary action specified in subsection (b) against an
17 applicant or licensee if the commissioner finds that the
18 applicant or licensee:

19 (1) Has violated this chapter, or any rule or order
20 lawfully made pursuant to this chapter;



- 1 (2) Has failed to disclose facts or conditions that
2 clearly would have been grounds for the commissioner
3 to deny an application for licensure, had those facts
4 or conditions been disclosed at the time the
5 application was made;
- 6 (3) Has failed to provide information required by the
7 commissioner within a reasonable time, as specified by
8 the commissioner;
- 9 (4) Has failed to provide or maintain proof of financial
10 responsibility;
- 11 (5) Is insolvent;
- 12 (6) Has made, in any document or statement filed with the
13 commissioner, a false representation of a material
14 fact or has omitted to state a material fact;
- 15 (7) Has, or, if an applicant or licensee is not an
16 individual, any of the applicant's or licensee's
17 control persons, executive officers, directors,
18 general partners, and managing members, have been
19 convicted of or entered a plea of guilty or nolo
20 contendere to a crime involving fraud or deceit, or to



- 1 any similar crime under the jurisdiction of any
2 federal court or court of another state;
- 3 (8) Has failed to make, maintain, or produce records that
4 comply with section -15 or any rule adopted by the
5 commissioner pursuant to chapter 91;
- 6 (9) Has been the subject of any disciplinary action by any
7 state or federal agency that resulted in revocation of
8 a license;
- 9 (10) Has a final judgment entered against the applicant or
10 licensee for violations of this chapter; any state or
11 federal law concerning installment loans, deferred
12 deposit loans, check cashing, payday loans, banking,
13 mortgage loan originators, or money transmitters; or
14 any state or federal law prohibiting unfair or
15 deceptive acts or practices; or
- 16 (11) Has failed to take or provide proof of taking in a
17 timely manner, as specified by the commissioner, the
18 corrective action required by the commissioner
19 subsequent to an investigation or examination pursuant
20 to section -43.



1 (b) After finding that the applicant or licensee has
2 violated one or more of the conditions under subsection (a), the
3 commissioner may take any of the following actions:

- 4 (1) Deny an application for licensure, including an
5 application for a branch office license;
6 (2) Revoke the license;
7 (3) Suspend the license for a period of time;
8 (4) Issue an order to the licensee to cease and desist
9 from engaging in any act specified in subsection (a);
10 (5) Order the licensee to refund to consumers any excess
11 charges under this chapter;
12 (6) Impose penalties of up to \$1,000 for each violation;
13 or
14 (7) Bar a person from applying for or holding a license
15 for a period of five years following revocation of the
16 person's license.

17 (c) The commissioner may issue a temporary cease and
18 desist order if the commissioner finds that the licensee,
19 applicant, or person is engaging, has engaged, or is about to
20 engage in an illegal, unauthorized, unsafe, or unsound practice
21 in violation of this chapter. Whenever the commissioner denies



1 a license application or takes disciplinary action pursuant to
2 this subsection, the commissioner shall enter an order to that
3 effect and notify the licensee, applicant, or person of the
4 denial or disciplinary action. The notification required by
5 this subsection shall be given by personal service or by
6 certified mail to the last known address of the licensee or
7 applicant as shown on the application, license, or as
8 subsequently furnished in writing to the commissioner.

9 (d) The revocation, suspension, expiration, or surrender
10 of a license shall not affect the licensee's liability for acts
11 previously committed or impair the commissioner's ability to
12 issue a final agency order or take disciplinary action against
13 the licensee.

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

17 (f) The commissioner may reinstate a license, terminate a
18 suspension, or grant a new license to a person whose license has
19 been revoked or suspended if no fact or condition then exists
20 that clearly would justify the commissioner in revoking,
21 suspending, or refusing to grant a license.



1 (g) The commissioner may impose an administrative fine on
2 a licensee or person subject to this chapter if the commissioner
3 finds on the record after notice and opportunity for hearing
4 that the licensee or person subject to this chapter has violated
5 or failed to comply with any requirement of this chapter or any
6 rule or order issued under the authority of this chapter.

7 (h) Each violation or failure to comply with any directive
8 or order of the commissioner shall be a separate and distinct
9 violation.

10 (i) Any violation of this chapter that is directed toward,
11 targets, or injures an elder may be subject to an additional
12 civil penalty not to exceed \$10,000 for each violation, in
13 addition to any other fines or penalties assessed for the
14 violation.

15 **§ -38 Voluntary surrender of license.** (a) A licensee
16 may voluntarily cease business and surrender its license by
17 giving written notice to the commissioner of its intent to
18 surrender its license. Prior to the surrender date, the
19 licensee shall have either completed all pending installment
20 loan transactions or assigned each pending installment loan



1 transaction to another licensee or entity as described in
2 section -14.

3 (b) Notice pursuant to this section shall be provided at
4 least thirty days before the surrender of the license and shall
5 include:

6 (1) The date of surrender;

7 (2) The name, address, telephone number, facsimile number,
8 and electronic mail address of a contact individual
9 with knowledge and authority sufficient to communicate
10 with the commissioner regarding all matters relating
11 to the licensee during the period that it was licensed
12 pursuant to this chapter;

13 (3) The reason or reasons for surrender;

14 (4) The total dollar amount of the licensee's outstanding
15 installment loans sold in Hawaii and the individual
16 amounts of each outstanding installment loan, and the
17 name, address, and contact telephone number of the
18 licensee to whom each outstanding installment loan was
19 assigned;

20 (5) A list of the licensee's Hawaii authorized branch
21 offices, if any, as of the date of surrender;



1 (6) Confirmation that the licensee has notified each of
2 its Hawaii authorized branch offices, if any, that the
3 branch offices shall no longer make installment loans
4 on the licensee's behalf; and

5 (7) Confirmation that the licensee has notified each of
6 its installment loan consumers, if any, that the
7 installment loan is being transferred and the name,
8 address, telephone number, and any other contact
9 information of the licensee or entity described in
10 section -14 to whom the installment loan was
11 assigned.

12 (c) Voluntary surrender of a license shall be effective
13 upon the date of surrender specified on the written notice to
14 the commissioner as required by this section; provided that the
15 licensee has met all the requirements of voluntary surrender and
16 has returned the original license issued.

17 **§ -39 Sale or transfer of license; change of control.**

18 (a) No installment lender license shall be transferred, except
19 as provided in this section.

20 (b) A person or group of persons requesting approval of a
21 proposed change of control of a licensee shall submit to the



1 commissioner an application requesting approval of a proposed
2 change of control of the licensee, accompanied by a
3 nonrefundable application fee of \$500.

4 (c) After review of a request for approval under
5 subsection (b), the commissioner may require the licensee or
6 person or group of persons requesting approval of a proposed
7 change of control of the licensee, or both, to provide
8 additional information concerning the persons who shall assume
9 control of the licensee. The additional information shall be
10 limited to the information required of the licensee or persons
11 in control of the licensee as part of its original license or
12 renewal application under sections -33 and -36. The
13 information shall include, for the five-year period prior to the
14 date of the application for change of control of the licensee, a
15 history of material litigation and criminal convictions of each
16 person who, upon approval of the application for change of
17 control, will be a principal of the licensee. Authorization
18 shall also be given to conduct criminal history record checks of
19 those persons, accompanied by the appropriate payment of the
20 applicable fee for each record check.



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

9 (e) The following persons shall be exempt from the
10 requirements of subsection (b); provided that the licensee shall
11 notify the commissioner when control is assumed by a person:

12 (1) Who acts as a proxy for the sole purpose of voting at
13 a designated meeting of the security holders or
14 holders of voting interests of a licensee or person in
15 control of a licensee;

16 (2) Who acquires control of a licensee by devise or
17 descent;

18 (3) Who acquires control as a personal representative,
19 custodian, guardian, conservator, trustee, or as an
20 officer appointed by a court of competent jurisdiction
21 or by operation of law; or



1 (4) Whom the commissioner, by rule or order, exempts in
2 the public interest.

3 (f) Before filing a request for approval for a change of
4 control, a person may request, in writing, a determination from
5 the commissioner as to whether the person would be considered a
6 person in control of a licensee upon consummation of a proposed
7 transaction. If the commissioner determines that the person
8 would not be a person in control of a licensee, the commissioner
9 shall enter an order to that effect and the proposed person and
10 transaction shall not be subject to subsections (b) through (d).

11 (g) Subsection (b) shall not apply to public offerings of
12 securities.

13 **§ -40 Authorized places of business; principal office;**
14 **branch offices; relocation; closure.** (a) Every installment
15 lender licensed under this chapter shall have and maintain a
16 principal place of business in the State, regardless of whether
17 the installment lender maintains its principal office outside of
18 the State.

19 (b) An installment lender shall not maintain any branch
20 offices in the State in addition to its principal place of
21 business without the prior written approval of the commissioner.



1 No business shall be conducted at a branch office until the
2 branch office has been licensed by the commissioner.

3 (c) An application to establish a branch office shall be
4 submitted through NMLS with a nonrefundable application fee as
5 required by section -35.

6 (d) An installment lender shall not relocate any office in
7 this State without the prior written approval of the
8 commissioner. An application to relocate an office shall be
9 submitted to the commissioner at least thirty days prior to
10 relocation and shall set forth the reasons for the relocation,
11 street address of the proposed relocated office, and any other
12 information required by the commissioner. An application to
13 relocate an office pursuant to this subsection shall be
14 submitted with a nonrefundable fee as required by section -35.

15 (e) An installment lender shall give the commissioner
16 notice of its intent to close a branch office at least thirty
17 days prior to the closing. The notice shall:

- 18 (1) State the intended date of closing; and
19 (2) Specify the reasons for the closing.

20 (f) The principal place of business and each branch office
21 of the installment lender shall be identified in NMLS to



1 consumers as a location at which the licensee holds itself out
2 as an installment lender.

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

6 § -41 **Payment of fees.** All fees collected pursuant to
7 section -35, administrative fines, and other charges
8 collected pursuant to this chapter shall be deposited into the
9 compliance resolution fund established pursuant to
10 section 26-9(o) and shall be payable through NMLS, to the extent
11 allowed by NMLS. Fees not eligible for payment through NMLS
12 shall be deposited into a separate account within the compliance
13 resolution fund for use by the division.

14 § -42 **Commissioner; general powers.** (a) The
15 commissioner may adopt rules pursuant to chapter 91 that the
16 commissioner deems necessary for the administration of this
17 chapter.

18 (b) In addition to any other powers provided by law, the
19 commissioner may:

20 (1) Issue declaratory rulings or informal nonbinding
21 interpretations;



- 1 (2) Investigate and conduct hearings regarding any
2 violation of this chapter and any rule or order of, or
3 agreement with, the commissioner;
- 4 (3) Create fact-finding committees to make recommendations
5 for the commissioner's consideration;
- 6 (4) Require an applicant or any of its control persons,
7 executive officers, directors, general partners, and
8 managing members to disclose their relevant criminal
9 history and request a criminal history record check in
10 accordance with chapter 846;
- 11 (5) Contract with or employ qualified persons, including
12 accountants, attorneys, investigators, examiners,
13 auditors, or other professionals who may be exempt
14 from chapter 76 and who shall assist the commissioner
15 in exercising the commissioner's powers and duties;
- 16 (6) Process and investigate complaints; subpoena witnesses
17 and documents; administer oaths; receive affidavits
18 and oral testimony, including telephonic
19 communications; and do any things necessary or
20 incidental to the exercise of the commissioner's power



- 1 and duties, including conducting contested case
2 proceedings under chapter 91;
- 3 (7) Require a licensee to comply with any rule, guidance,
4 guideline, statement, supervisory policy or any
5 similar proclamation issued or adopted by the Federal
6 Deposit Insurance Corporation to the same extent and
7 in the same manner as a bank chartered by the State
8 or, in the alternative, any policy position of the
9 Conference of State Bank Supervisors;
- 10 (8) Enter into agreements or relationships with other
11 government officials or regulatory associations in
12 order to improve efficiencies and reduce regulatory
13 burden by sharing resources; standardized or uniform
14 methods or procedures; and documents, records,
15 information, or evidence obtained under this chapter;
- 16 (9) Use, hire, contract, or employ public or privately
17 available analytical systems, methods, or software to
18 investigate or examine a licensee or person subject to
19 this chapter;



1 (10) Accept and rely on investigation or examination
2 reports made by other government officials, within or
3 without this State; and
4 (11) Accept audit reports made by an independent certified
5 public accountant for the licensee or person subject
6 to this chapter in the course of an examination
7 covering the same general subject matter as the audit.
8 The commissioner may incorporate the audit report in
9 the commissioner's report of the examination, report
10 of investigation, or other writing.

11 **§ -43 Commissioner; investigation and examination**
12 **authority.** (a) In addition to the authority granted under
13 section -42(b), the commissioner shall have the authority to
14 conduct investigations and examinations in accordance with this
15 section. The commissioner may access, receive, and use any
16 books, accounts, records, files, documents, information, or
17 evidence that the commissioner deems relevant to the
18 investigation or examination, regardless of the location,
19 possession, control, or custody of the documents, information,
20 or evidence.



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

13 (c) Each licensee or person subject to this chapter shall
14 provide to the commissioner, upon request, the books and records
15 relating to the operations of the licensee or person subject to
16 this chapter. The commissioner shall have access to the books
17 and records and shall be permitted to interview the control
18 persons, executive officers, directors, general partners,
19 managing members, principals, managers, employees, independent
20 contractors, agents, and consumers of the licensee or person
21 subject to this chapter concerning their business practices.



1 (d) Each licensee or person subject to this chapter shall
2 make or compile reports or prepare other information, as
3 directed by the commissioner, to carry out the purposes of this
4 section, including:

5 (1) Accounting compilations;

6 (2) Information lists and data concerning loan
7 transactions in a format prescribed by the
8 commissioner; or

9 (3) Any other information the commissioner deems
10 necessary.

11 (e) In conducting any investigation or examination
12 authorized by this chapter, the commissioner may control access
13 to any documents and records of the licensee or person under
14 investigation or examination. The commissioner may take
15 possession of the documents and records or place a person in
16 exclusive charge of the documents and records. During the
17 period of control, no person shall remove or attempt to remove
18 any of the documents and records except pursuant to a court
19 order or with the consent of the commissioner. Unless the
20 commissioner has reasonable grounds to believe the documents or
21 records of the licensee or person under investigation or



1 examination have been, or are at risk of being, altered or
2 destroyed for the purposes of concealing a violation of this
3 chapter, the licensee or owner of the documents and records
4 shall have access to the documents or records as necessary to
5 conduct its ordinary business affairs.

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

10 (g) No licensee or person subject to investigation or
11 examination under this section shall knowingly withhold,
12 abstract, remove, mutilate, destroy, or conceal any books,
13 records, computer records, or any other relevant information.

14 (h) The commissioner may charge an investigation or
15 examination fee, payable to the commissioner, based upon the
16 cost per hour per examiner for each licensee or person subject
17 to this chapter investigated or examined by the commissioner or
18 the commissioner's staff. The hourly fee shall be \$60 or an
19 amount the commissioner shall establish by rule pursuant to
20 chapter 91. In addition to the investigation or examination
21 fee, the commissioner may charge any person who is investigated



1 or examined by the commissioner or the commissioner's staff
2 pursuant to this section additional fees for travel, per diem,
3 mileage, and other reasonable expenses incurred in connection
4 with the investigation or examination, payable to the
5 commissioner.

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

12 § -44 Confidentiality. (a) Except as otherwise
13 provided in title 12 United States Code section 5111, the
14 requirements under any federal or state law regarding the
15 privacy or confidentiality of any information or material
16 provided to NMLS and any privilege arising under federal or
17 state law, including the rules of any federal or state court,
18 with respect to the information or material shall continue to
19 apply to the information or material after the information or
20 material has been disclosed to NMLS. The information and
21 material may be shared with all state and federal regulatory



1 officials with oversight authority over transactions subject to
2 this chapter without the loss of privilege or the loss of
3 confidentiality protections provided by federal or state law.

4 (b) For the purposes of this section, the commissioner
5 shall be authorized to enter into agreements or sharing
6 arrangements with other governmental agencies, the Conference of
7 State Bank Supervisors, or other associations representing
8 governmental agencies as established by rule or order of the
9 commissioner.

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

12 (1) Disclosure under any federal or state law governing
13 the disclosure to the public of information held by an
14 officer or an agency of the federal government or a
15 state; or

16 (2) Subpoena or discovery, or admission into evidence, in
17 any private civil action or administrative process,
18 unless:

19 (A) Any privilege is determined by NMLS to be
20 inapplicable to the information or material; or



1 (B) The person to whom the information or material
2 pertains waives that privilege, in whole or in
3 part.

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

8 (e) If a conflict arises between this section and any
9 other state law relating to the disclosure of privileged or
10 confidential information or material, this section shall
11 control.

12 (f) This section shall not apply to information or
13 material relating to the employment history of, and publicly
14 adjudicated disciplinary and enforcement actions against, any
15 persons that are included in NMLS for access by the public.

16 § -45 Prohibited practices. (a) It shall be a
17 violation of this chapter for a licensee; its control persons,
18 executive officers, directors, general partners, managing
19 members, employees, or independent contractors; or any other
20 person subject to this chapter to:



- 1 (1) Engage in any act that limits or restricts the
2 application of this chapter, including:
 - 3 (A) Disguising an installment loan as a leaseback
4 transaction or a personal property, personal
5 sales, or automobile title loan; or
 - 6 (B) Disguising loan proceeds as cash rebates for the
7 pretextual installment sale of goods and
8 services;
- 9 (2) Make an installment loan that requires
10 collateralization, a security interest, or any other
11 pledge of personal property from the consumer;
- 12 (3) Use a consumer's account number to prepare, issue, or
13 create a check on behalf of the consumer;
- 14 (4) Charge, collect, or receive, directly or indirectly,
15 charges:
 - 16 (A) For negotiating forms of loan proceeds other than
17 cash;
 - 18 (B) For brokering or obtaining loans;
 - 19 (C) Prepayment fees, or any fees, interest, or
20 charges in connection with an installment loan



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



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



1 obtains new written authorization from the consumer to
2 transfer or withdraw funds from the account;

3 (16) Make a loan to a consumer that includes a demand
4 feature that was not clearly disclosed in the written
5 agreement pursuant to section -3 or collect or
6 demand repayment of any outstanding balance or unpaid
7 interest or fees except as provided in section -3;

8 (17) Fail to comply with any applicable state or federal
9 laws relating to the activities governed by this
10 chapter; or

11 (18) Fail to pay any fee, assessment, or moneys due to the
12 department.

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

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

18 "(d) The rate limitations contained in subsections (a)
19 and (b) [~~of this section~~] and section 478-11.5 shall not apply
20 to any [~~credit~~];



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

4 (2) Installment loan transactions authorized by, and
5 entered into in accordance with, chapter ."

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

8 "**§478-5 Usury not recoverable.** If a greater rate of
9 interest than that permitted by law is contracted for with
10 respect to any consumer credit transaction, any home business
11 loan or any credit card agreement, the contract shall not, by
12 reason thereof, be void. But if in any action on the contract
13 proof is made that a greater rate of interest than that
14 permitted by law has been directly or indirectly contracted for,
15 the creditor shall only recover the principal and the debtor
16 shall recover costs. If interest has been paid, judgment shall
17 be for the principal less the amount of interest paid. This
18 section shall not be held to apply[~~, to loans~~] to:

19 (1) Loans made by financial services loan companies and
20 credit unions at the rates authorized under and
21 pursuant to articles 9 and 10 of chapter 412[-]; or



1 (2) Any installment loan regulated under chapter ."

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

4 "**§478-6 Usury; penalty.** Any person who directly or
5 indirectly receives any interest or finance charge at a rate
6 greater than that permitted by law or who, by any method or
7 device whatsoever, receives or arranges for the receipt of
8 interest or finance charge at a greater rate than that permitted
9 by law on any credit transaction shall be guilty of usury and
10 shall be fined not more than \$250, unless a greater amount is
11 allowed by law, or imprisoned not more than one year, or both."

12 SECTION 6. Section 846-2.7, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

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

15 (1) The department of health or its designee on operators
16 of adult foster homes for individuals with
17 developmental disabilities or developmental
18 disabilities domiciliary homes and their employees, as
19 provided by section 321-15.2;

20 (2) The department of health or its designee on
21 prospective employees, persons seeking to serve as



- 1 providers, or subcontractors in positions that place
2 them in direct contact with clients when providing
3 non-witnessed direct mental health or health care
4 services as provided by section 321-171.5;
- 5 (3) The department of health or its designee on all
6 applicants for licensure or certification for,
7 operators for, prospective employees, adult
8 volunteers, and all adults, except adults in care, at
9 healthcare facilities as defined in section 321-15.2;
- 10 (4) The department of education on employees, prospective
11 employees, and teacher trainees in any public school
12 in positions that necessitate close proximity to
13 children as provided by section 302A-601.5;
- 14 (5) The counties on employees and prospective employees
15 who may be in positions that place them in close
16 proximity to children in recreation or child care
17 programs and services;
- 18 (6) The county liquor commissions on applicants for liquor
19 licenses as provided by section 281-53.5;
- 20 (7) The county liquor commissions on employees and
21 prospective employees involved in liquor



- 1 administration, law enforcement, and liquor control
2 investigations;
- 3 (8) The department of human services on operators and
4 employees of child caring institutions, child placing
5 organizations, and foster boarding homes as provided
6 by section 346-17;
- 7 (9) The department of human services on prospective
8 adoptive parents as established under
9 section 346-19.7;
- 10 (10) The department of human services or its designee on
11 applicants to operate child care facilities, household
12 members of the applicant, prospective employees of the
13 applicant, and new employees and household members of
14 the provider after registration or licensure as
15 provided by section 346-154, and persons subject to
16 section 346-152.5;
- 17 (11) The department of human services on persons exempt
18 pursuant to section 346-152 to be eligible to provide
19 child care and receive child care subsidies as
20 provided by section 346-152.5;



- 1 (12) The department of health on operators and employees of
2 home and community-based case management agencies and
3 operators and other adults, except for adults in care,
4 residing in community care foster family homes as
5 provided by section 321-15.2;
- 6 (13) The department of human services on staff members of
7 the Hawaii youth correctional facility as provided by
8 section 352-5.5;
- 9 (14) The department of human services on employees,
10 prospective employees, and volunteers of contracted
11 providers and subcontractors in positions that place
12 them in close proximity to youth when providing
13 services on behalf of the office or the Hawaii youth
14 correctional facility as provided by section 352D-4.3;
- 15 (15) The judiciary on employees and applicants at detention
16 and shelter facilities as provided by section 571-34;
- 17 (16) The department of public safety on employees and
18 prospective employees who are directly involved with
19 the treatment and care of persons committed to a
20 correctional facility or who possess police powers



- 1 including the power of arrest as provided by
2 section 353C-5;
- 3 (17) The board of private detectives and guards on
4 applicants for private detective or private guard
5 licensure as provided by section 463-9;
- 6 (18) Private schools and designated organizations on
7 employees and prospective employees who may be in
8 positions that necessitate close proximity to
9 children; provided that private schools and designated
10 organizations receive only indications of the states
11 from which the national criminal history record
12 information was provided pursuant to section 302C-1;
- 13 (19) The public library system on employees and prospective
14 employees whose positions place them in close
15 proximity to children as provided by
16 section 302A-601.5;
- 17 (20) The State or any of its branches, political
18 subdivisions, or agencies on applicants and employees
19 holding a position that has the same type of contact
20 with children, vulnerable adults, or persons committed
21 to a correctional facility as other public employees



- 1 who hold positions that are authorized by law to
2 require criminal history record checks as a condition
3 of employment as provided by section 78-2.7;
- 4 (21) The department of health on licensed adult day care
5 center operators, employees, new employees,
6 subcontracted service providers and their employees,
7 and adult volunteers as provided by section 321-15.2;
- 8 (22) The department of human services on purchase of
9 service contracted and subcontracted service providers
10 and their employees serving clients of the adult
11 protective and community services branch, as provided
12 by section 346-97;
- 13 (23) The department of human services on foster grandparent
14 program, senior companion program, and respite
15 companion program participants as provided by
16 section 346-97;
- 17 (24) The department of human services on contracted and
18 subcontracted service providers and their current and
19 prospective employees that provide home and
20 community-based services under section 1915(c) of the
21 Social Security Act, title 42 United States Code



- 1 section 1396n(c), or under any other applicable
2 section or sections of the Social Security Act for the
3 purposes of providing home and community-based
4 services, as provided by section 346-97;
- 5 (25) The department of commerce and consumer affairs on
6 proposed directors and executive officers of a bank,
7 savings bank, savings and loan association, trust
8 company, and depository financial services loan
9 company as provided by section 412:3-201;
- 10 (26) The department of commerce and consumer affairs on
11 proposed directors and executive officers of a
12 nondepository financial services loan company as
13 provided by section 412:3-301;
- 14 (27) The department of commerce and consumer affairs on the
15 original chartering applicants and proposed executive
16 officers of a credit union as provided by
17 section 412:10-103;
- 18 (28) The department of commerce and consumer affairs on:
19 (A) Each principal of every non-corporate applicant
20 for a money transmitter license;



- 1 (B) Each person who upon approval of an application
2 by a corporate applicant for a money transmitter
3 license will be a principal of the licensee; and
4 (C) Each person who upon approval of an application
5 requesting approval of a proposed change in
6 control of licensee will be a principal of the
7 licensee,
8 as provided by sections 489D-9 and 489D-15;
9 (29) The department of commerce and consumer affairs on
10 applicants for licensure and persons licensed under
11 title 24;
12 (30) The Hawaii health systems corporation on:
13 (A) Employees;
14 (B) Applicants seeking employment;
15 (C) Current or prospective members of the corporation
16 board or regional system board; or
17 (D) Current or prospective volunteers, providers, or
18 contractors,
19 in any of the corporation's health facilities as
20 provided by section 323F-5.5;



- 1 (31) The department of commerce and consumer affairs on:
- 2 (A) An applicant for a mortgage loan originator
- 3 license, or license renewal; and
- 4 (B) Each control person, executive officer, director,
- 5 general partner, and managing member of an
- 6 applicant for a mortgage loan originator company
- 7 license or license renewal,
- 8 as provided by chapter 454F;
- 9 (32) The state public charter school commission or public
- 10 charter schools on employees, teacher trainees,
- 11 prospective employees, and prospective teacher
- 12 trainees in any public charter school for any position
- 13 that places them in close proximity to children, as
- 14 provided in section 302D-33;
- 15 (33) The counties on prospective employees who work with
- 16 children, vulnerable adults, or senior citizens in
- 17 community-based programs;
- 18 (34) The counties on prospective employees for fire
- 19 department positions which involve contact with
- 20 children or vulnerable adults;



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



- 1 responsibilities provide them with access to
2 proprietary, confidential, or sensitive information;
- 3 (40) The department of commerce and consumer affairs on:
- 4 (A) Applicants for real estate appraiser licensure or
5 certification as provided by chapter 466K;
- 6 (B) Each person who owns more than ten per cent of an
7 appraisal management company who is applying for
8 registration as an appraisal management company,
9 as provided by section 466L-7; and
- 10 (C) Each of the controlling persons of an applicant
11 for registration as an appraisal management
12 company, as provided by section 466L-7;
- 13 (41) The department of health or its designee on all
14 license applicants, licensees, employees, contractors,
15 and prospective employees of medical cannabis
16 dispensaries, and individuals permitted to enter and
17 remain in medical cannabis dispensary facilities as
18 provided under sections 329D-15(a)(4)
19 and 329D-16(a)(3);
- 20 (42) The department of commerce and consumer affairs on
21 applicants for nurse licensure or license renewal,



- 1 reactivation, or restoration as provided by
2 sections 457-7, 457-8, 457-8.5, and 457-9;
- 3 (43) The county police departments on applicants for
4 permits to acquire firearms pursuant to section 134-2
5 and on individuals registering their firearms pursuant
6 to section 134-3;
- 7 (44) The department of commerce and consumer affairs on:
- 8 (A) Each of the controlling persons of the applicant
9 for licensure as an escrow depository, and each
10 of the officers, directors, and principals who
11 will be in charge of the escrow depository's
12 activities upon licensure; and
- 13 (B) Each of the controlling persons of an applicant
14 for proposed change in control of an escrow
15 depository licensee, and each of the officers,
16 directors, and principals who will be in charge
17 of the licensee's activities upon approval of
18 such application,
- 19 as provided by chapter 449;
- 20 (45) The department of taxation on current or prospective
21 employees or contractors who have access to federal



- 1 tax information in order to comply with requirements
2 of federal law, regulation, or procedure, as provided
3 by section 231-1.6;
- 4 (46) The department of labor and industrial relations on
5 current or prospective employees or contractors who
6 have access to federal tax information in order to
7 comply with requirements of federal law, regulation,
8 or procedure, as provided by section 383-110;
- 9 (47) The department of human services on current or
10 prospective employees or contractors who have access
11 to federal tax information in order to comply with
12 requirements of federal law, regulation, or procedure,
13 as provided by section 346-2.5;
- 14 (48) The child support enforcement agency on current or
15 prospective employees, or contractors who have access
16 to federal tax information in order to comply with
17 federal law, regulation, or procedure, as provided by
18 section 576D-11.5; [and]
- 19 (49) The department of commerce and consumer affairs on
20 each control person, executive officer, director,
21 general partner, and managing member of an installment



1 loan licensee, or an applicant for an installment loan
2 license, as provided in chapter ; and
3 ~~[(49)]~~ (50) Any other organization, entity, or the State,
4 its branches, political subdivisions, or agencies as
5 may be authorized by state law."

6 PART III

7 SECTION 7. Section 480F-1, Hawaii Revised Statutes, is
8 amended by repealing the definition of "deferred deposit".

~~9 ["Deferred deposit" means a transaction in which a check~~
~~10 casher refrains from depositing a personal check written by a~~
~~11 customer until a date after the transaction date, pursuant to a~~
~~12 written agreement."]~~

13 SECTION 8. Section 480F-3, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[~~§~~]**S480F-3**[~~§~~] **Authorized fees.** [~~Except as provided in~~
16 ~~section 480F-4, no~~] No check casher shall charge fees in excess
17 of the following amounts:

- 18 (1) Five per cent of the face amount of the check or \$5,
19 whichever is greater;
20 (2) Three per cent of the face amount of the check or \$5,
21 whichever is greater, if the check is the payment of



1 any kind of state public assistance or federal social
2 security benefit payable to the bearer of the check;

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

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

9 ~~[The fees allowed in this section shall not be assessed in any~~
10 ~~transaction or agreement in which the check-casher defers~~
11 ~~deposit of the check.]"~~

12 SECTION 9. Section 480F-6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§480F-6 Penalties.** (a) Any person who violates this
15 chapter shall be deemed to have engaged in an unfair or
16 deceptive act or practice in the conduct of any trade or
17 commerce within the meaning of section 480-2(a). Aggrieved
18 consumers may seek those remedies set forth in
19 section 480-13(b).

20 (b) Any person who is not a consumer and is injured by a
21 wilful violation of this chapter may bring an action for the



1 recovery of damages, a proceeding to restrain and enjoin those
2 violations, or both. If judgment is for the plaintiff, the
3 plaintiff shall be awarded a sum not less than \$1,000 or
4 threefold damages, whichever sum is greater, and reasonable
5 attorneys' fees together with the costs of suit.

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

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

14 SECTION 10. Section 480F-4, Hawaii Revised Statutes, is
15 repealed.

16 ~~["**§480F-4 Deferred deposits, when allowed.** (a) No check~~
17 ~~casher may defer the deposit of a check except as provided in~~
18 ~~this section.~~

19 ~~(b) Each deferred deposit shall be made pursuant to a~~
20 ~~written agreement that has been signed by the customer and the~~
21 ~~check casher or an authorized representative of the check~~



1 ~~casher. The written agreement shall contain a statement of the~~
2 ~~total amount of any fees charged for the deferred deposit,~~
3 ~~expressed both in United States currency and as an annual~~
4 ~~percentage rate. The written agreement shall authorize the~~
5 ~~check casher to defer deposit of the personal check until a~~
6 ~~specific date not later than thirty two days from the date the~~
7 ~~written agreement was signed. The written agreement shall not~~
8 ~~permit the check casher to accept collateral.~~

9 ~~(c) The face amount of the check shall not exceed \$600 and~~
10 ~~the deposit of a personal check written by a customer pursuant~~
11 ~~to a deferred deposit transaction may be deferred for no more~~
12 ~~than thirty two days. A check casher may charge a fee for~~
13 ~~deferred deposit of a personal check in an amount not to exceed~~
14 ~~fifteen per cent of the face amount of the check. Any fees~~
15 ~~charged for deferred deposit of a personal check in compliance~~
16 ~~with this section shall be exempt from chapter 478.~~

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



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

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

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

14 PART IV

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

18 SECTION 12. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



1 SECTION 13. This Act shall take effect on July 1, 2021;
2 provided that:
3 (1) The licensing requirements for installment lenders
4 established by section 2 of this Act shall take effect
5 on January 1, 2022; and
6 (2) Part III of this Act shall take effect on January 1,
7 2022.

APPROVED this 16 day of JUN , 2021



GOVERNOR OF THE STATE OF HAWAII



HB No. 1192, HD 1, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives




Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI‘I

Date: April 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2021.


President of the Senate


Clerk of the Senate