
A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

PART I

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



1 higher costs than traditional banking services that are
2 generally unavailable to underbanked individuals.

3 The legislature further finds that a form of alternative
4 financial service products known as deferred deposit agreements,
5 commonly referred to as payday loans, are small, short term,
6 unsecured loans that borrowers commit to repay from their next
7 paycheck or a regular income payment. A study conducted by The
8 Pew Charitable Trusts found that the majority of borrowers use
9 deferred deposit agreements for recurring expenses, rather than
10 unexpected expenses or emergencies, because they live paycheck
11 to paycheck. Additional research shows that approximately
12 12,000,000 Americans utilize payday loans annually. The
13 Consumer Financial Protection Bureau has reported that seventy
14 per cent of those payday borrowers will end up taking out a
15 second payday loan, and some lenders allow borrowers to roll the
16 balance into a new larger loan with the same associated costs.

17 The legislature also finds that there has been a shift in
18 the payday industry toward small dollar installment loans, which
19 are repayable over time and secured by access to the borrower's
20 checking account. According to the Pew Charitable Trusts,
21 national survey data indicates that seventy-nine per cent of



1 payday borrowers prefer loans that are due in installments,
2 which only take a small share of each paycheck. However, in the
3 absence of a sensible regulatory program, this type of lending
4 cannot come to fruition.

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

19 The legislature notes that there has been a growing trend
20 around the country to provide more consumer protections, which
21 benefit consumers and encourage responsible and transparent



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

15 The legislature acknowledges that there is a market for
16 installment loans. However, the legislature concludes that if
17 installment loans are going to be offered to Hawaii consumers,
18 there must be appropriate consumer protections in place to
19 ensure these loans contain reasonable terms and fees, provide
20 sufficient protections that allow borrowers to avoid extending



1 or adding additional loans, and allow borrowers to meet their
2 basic living expenses.

3 The purpose of this Act is to provide a two-year transition
4 period allowing check cashers that enter into deferred deposit
5 agreements to transition to installment loan lenders as
6 established by this Act by:

7 (1) Establishing a framework for providing new viable
8 installment loan transactions;

9 (2) Implementing certain consumer protection measures for
10 customers that enter into deferred deposit
11 transactions with check cashers, including:

12 (A) Requiring a check casher to offer a voluntary
13 payment plan for deferred deposit transactions;
14 and

15 (B) Requiring check cashers to take reasonable
16 measures to ensure that customers are limited to
17 one deferred deposit transaction at a time;

18 (3) On July 1, 2023, repealing the statutory authorization
19 for deferred deposit transactions in the State;

20 (4) Requiring the division of financial institutions of
21 the department of commerce and consumer affairs to



1 report on the implementation of this Act and an update
2 on the progress of transitioning check cashers that
3 enter into deferred deposit transactions to
4 installment lenders; and

- 5 (5) Authorizing the division of financial institutions to
6 establish and hire two full-time equivalent (2.0 FTE)
7 permanent examiners to carry out the purposes of the
8 installment loan program, funded via an increase to
9 the ceiling of the compliance resolution fund.

10 PART II

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

14 "CHAPTER

15 INSTALLMENT LOANS

16 PART I. GENERAL PROVISIONS

17 § -1 Definitions. As used in this chapter, unless the
18 context otherwise requires:

19 "Annual percentage rate" means an annual percentage rate as
20 determined pursuant to section 107 of the Truth in Lending Act,
21 title 15 United States Code section 1606. For the purposes of



1 this definition, all fees and charges, including interest and
2 monthly maintenance fees authorized by this chapter, shall be
3 included in the calculation of the annual percentage rate.

4 "Arranger" means a provider of funds in the syndication of
5 a debt.

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

9 "Commissioner" means the commissioner of financial
10 institutions.

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

15 "Control", in the context of control of an applicant or
16 licensee, means ownership of, or the power to vote, twenty-five
17 per cent or more of the outstanding voting securities of a
18 licensee or control person. For the purposes of determining the
19 percentage of an applicant or a licensee controlled by any
20 person, there shall be aggregated with the control person's



1 interest the interest of any other person controlled by the
2 person, or by any spouse, parent, or child of the person.

3 "Control person" means any person in control of a licensee
4 or applicant.

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

8 "Department" means the department of commerce and consumer
9 affairs.

10 "Division" means the division of financial institutions of
11 the department of commerce and consumer affairs.

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

14 "Finance charges" means the cost of credit or cost of
15 borrowing, including the interest, monthly maintenance fees, and
16 other fees authorized by this chapter.

17 "Financial institution" means any bank, savings bank,
18 savings and loan association, financial services loan company,
19 or credit union doing business in the State whose accounts are
20 insured by the Federal Deposit Insurance Corporation, the



1 National Credit Union Share Insurance Fund, or other similar or
2 successor program of federal insurance.

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

12 "Installment loan" means a loan made pursuant to this
13 chapter.

14 "Instrument" means a personal check signed by the consumer
15 and made payable to a person subject to this chapter.

16 "Instrument" does not include an electronic fund transfer or
17 other electronic debit or credit to the consumer's checking
18 account.

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



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

5 "Loan charges" means the total of monthly maintenance fees,
6 dishonored instrument fees, and default charges charged by a
7 lender to a borrower for the maintenance and servicing of a
8 loan.

9 "Maintenance fee" means a monthly fee paid to a licensee to
10 maintain an installment loan.

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

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



1 "Place of business" means a location where 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 less than \$600 nor greater than \$1,500 pursuant to
3 section -5(a);

4 (3) The total amount of loan charges an installment lender
5 may charge, collect, or receive in connection with an
6 installment loan shall not exceed fifty per cent of
7 the principal loan amount;

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

10 (A) \$40 on a loan of an original principal loan
11 amount up to \$699.99;

12 (B) \$50 on a loan of an original principal loan
13 amount of at least \$700.00 and up to \$799.99; and

14 (C) \$60 on a loan of an original principal loan
15 amount of at least \$800.00 and up to \$1,500.00;

16 provided that the monthly maintenance fee shall not be
17 added to the loan balance on 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 written agreement required under section -3 may
4 require multiple installment payments;

5 (6) All repayment schedule due dates shall be dates on
6 which an installment lender is open for business to
7 the public at the place of business where the
8 installment loan was made;

9 (7) An installment lender shall accept prepayment in full
10 or in part from a consumer prior to the loan due date
11 and shall not charge the consumer a fee or penalty if
12 the consumer opts to prepay the loan; provided that in
13 order to make a prepayment all past due interest and
14 fees shall be paid first;

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

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



1 (10) An installment lender shall not charge a consumer any
2 loan charges for an installment loan, other than the
3 fees permitted by this chapter; and

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

7 (b) In an installment loan, a lender may contract for a
8 once-every-two-weeks, twice-monthly, or monthly payment of the
9 loan balance due, including the applicable portion of the
10 interest, and earned monthly maintenance fee.

11 (c) For each payment made by a consumer, a lender shall
12 give the consumer a written receipt with the lender's name and
13 address, payment date, amount paid, consumer's name, and
14 sufficient information to identify the account to which the
15 payment is applied.

16 (d) Upon prepayment in full by the consumer, the lender
17 shall refund:

18 (1) Any unearned and unaccrued portion of the interest
19 charged; and

20 (2) Any unearned monthly maintenance fees.



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

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

Each installment loan transaction and renewal shall be documented by a written agreement signed by the installment lender and consumer. The written agreement shall contain the following information:

- (1) The name and address of the consumer and the lender;
- (2) The transaction date;
- (3) The loan amount;
- (4) The authorized interest rate;



- 1 (5) A statement of the total amount of finance charges
2 charged, expressed as a dollar amount and an annual
3 percentage rate;
- 4 (6) The installment payment schedule setting out the
5 amount due on specific due dates;
- 6 (7) The name, address, electronic mail address, and
7 telephone number of any agent or arranger involved in
8 the installment loan transaction;
- 9 (8) The right to rescind the installment loan before
10 5:00 p.m. on the next day of business at the location
11 where the loan was originated;
- 12 (9) A notice to the consumer that a returned instrument
13 may result in a dishonored instrument charge, not to
14 exceed \$25; and
- 15 (10) A description of the methods by which installment loan
16 payments may be made, which may include a debit card
17 payment, Automated Clearing House transfer, electronic
18 check, other forms of electronic transfers, money
19 order, cash, check, or any additional method of loan
20 payment authorized by this chapter or by rule adopted
21 by the commissioner pursuant to chapter 91.



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

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

**"MULTIPLE
INSTALLMENT
PAYMENT**

8
9
10
11
12 Amount Financed

13 Term (months)

14

15 Authorized Interest Rate

16

17 Monthly Maintenance Fee

18

19 **Total of All Permitted Charges**

20

21 **Total You Will Pay for This Loan If Paid on Time**

22 (Amount Financed,

23 Interest, and Monthly Maintenance Fee)

24

25 ANNUAL PERCENTAGE RATE

26

27 Payment Schedule"

28

29 Included in the chart above, an installment lender may include

30 other information as the lender believes will benefit the



1 consumer, such as an explanation of annual percentage rate and
2 how it is calculated.

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

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



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

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

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

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



1 interest combined; provided that the first installment period
2 may exceed one month by not more than fifteen days and the first
3 installment payment amount may be larger than the remaining
4 payments by the amount of interest charged for the extra days;
5 provided further that monthly installment payment dates may be
6 omitted if the parties agree in writing, either in the written
7 agreement required under section -3 or in a subsequent
8 agreement, to accommodate consumers with seasonal income.

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

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

20 (f) The parties may agree in writing, either in the
21 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 are considered
2 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 less than \$600
5 nor greater than \$1,500 nor shall the amount financed exceed
6 \$1,500 by any one 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)(1) through (4) as of the date
21 the consumer enters into an installment loan with the



1 installment lender shall be deemed to have met the requirements
2 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, such that 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 **§ -6 Right of rescission.** (a) A consumer shall have
14 the right to rescind an installment loan, on or before 5:00 p.m.
15 on the next day of business at the location where the loan was
16 originated, by returning the principal in cash, the original
17 check or money order disbursed by the lender, or the other
18 disbursement of loan proceeds from the lender to fund the loan.
19 The lender shall not charge the consumer for rescinding the
20 loan.



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

5 "RESCINDED BY [lender's name; license number], [date]"
6 and below which the lender's authorized representative shall
7 sign.

8 § -7 Notice to consumers; general requirements; right to
9 prepay; loan limits; right to rescind. An installment lender
10 shall provide the following notice on each written agreement for
11 an installment loan. The notice shall be in a prominent place
12 and in at least twelve-point type:

13 "THIS INSTALLMENT LOAN IS NOT INTENDED TO MEET
14 LONG-TERM FINANCIAL NEEDS.

15 THIS INSTALLMENT LOAN SHOULD BE USED ONLY TO MEET
16 SHORT-TERM CASH NEEDS.

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

19 RENEWING THIS INSTALLMENT LOAN RATHER THAN PAYING
20 THE DEBT IN FULL MAY REQUIRE ADDITIONAL FEES OR
21 CHARGES.



1 STATE LAW PROHIBITS THIS INSTALLMENT LOAN FROM
2 EXCEEDING ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)
3 IN TOTAL DEBT. EXCEEDING THIS AMOUNT MAY CREATE
4 FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY.

5 YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY
6 5:00 P.M. [SPECIFY HERE THE CLOSE OF THE NEXT BUSINESS
7 DAY BY DAY OF WEEK AND DATE]."

8 § -8 **Renewal; new loan requirements; consecutive loans;**
9 **payment plan.** (a) An installment loan may be renewed only
10 once. After one renewal, the consumer shall pay the debt in
11 cash or its equivalent.

12 (b) Upon renewal of an installment loan, the lender may
13 renew up to \$1,500 of the remaining unpaid principal balance.
14 If the unpaid balance on renewal is more than \$1,500, the
15 consumer may be required to pay the remaining balance; provided
16 that the lender shall not finance any amount over \$1,500. The
17 total amount of loan charges for the renewed loan shall meet the
18 requirements of section -2, with the understanding that the
19 total amount of loan charges an installment lender may charge,
20 collect, or receive in connection with the renewal of an
21 installment loan shall not exceed fifty per cent of the renewal



1 principal loan amount. If the installment loan is renewed prior
2 to the maturity date, the lender shall refund to the consumer a
3 prorated portion of the finance charge based upon the ratio of
4 time left before maturity to the loan term.

5 **§ -9 Form of loan proceeds.** An installment lender may
6 pay the proceeds from or otherwise fund an installment loan to
7 the consumer in the form of a monetary instrument, prepaid debit
8 cards, Automated Clearing House transfers, electronic checks,
9 other forms of electronic transfers, money order, or cash.

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

19 (b) Unless invited by the consumer, a lender shall not
20 visit a consumer's residence or place of employment for the
21 purpose of collecting a delinquent installment loan. A lender



1 shall not impersonate a law enforcement officer or make any
2 statements that might be construed as indicating an official
3 connection with any federal, state, or county law enforcement
4 agency or any other governmental agency while engaged in
5 collecting an installment loan.

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

14 (1) With the consumer's spouse or the consumer's domestic
15 partner in any form, manner, or place, more than once,
16 excluding calling a shared phone number and asking to
17 speak to the consumer, sending a text message to a
18 shared phone number, sending an electronic mail to a
19 shared electronic mail address, or other electronic
20 writing to a shared electronic account;



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

3 (3) With the consumer, the consumer's spouse, or the
4 consumer's domestic partner at the consumer's place of
5 residence between the hours of 9:00 p.m. and
6 8:00 a.m.; or

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

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

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

20 (f) For purposes of this section, "communication" includes
21 any contact with a consumer, initiated by a lender, in person,



1 by telephone, or in writing, including via electronic mail, text
2 message, or other electronic writing; provided that:

3 (1) "Communication" includes the time the lender initiates
4 contact with a consumer, regardless of whether the
5 communication is received or accessed by the consumer;
6 and

7 (2) "Communication" does not include:

8 (A) Verbal communication with the consumer while the
9 consumer is physically present in the lender's
10 place of business;

11 (B) An unanswered telephone call in which no message,
12 other than a caller identification, is left,
13 unless the telephone call is in violation of
14 subsection (c) (3); or

15 (C) An initial letter to the consumer that includes
16 disclosures under the federal Fair Debt
17 Collection Practices Act.

18 § -11 **Authorized insufficient funds charge.** (a)

19 Regardless of the number of instances where a consumer's payment
20 is rejected due to insufficient funds, an installment lender may
21 contract for and collect one insufficient funds charge for each



1 payment due on an installment loan, not to exceed \$25. The
2 lender shall not collect any other fees as a result of the
3 insufficient funds of the consumer.

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

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

15 § -13 **Internet lending.** (a) An installment lender may
16 advertise and accept applications for installment loans by any
17 lawful medium, including but not limited to the Internet, and
18 shall provide all required notices and disclosures via the
19 Internet, and the consumer may provide a valid electronic
20 signature on the disclosures and loan agreement, subject to
21 subsection (b).



1 (b) Installment lenders shall be prohibited from
2 advertising or making installment loans via the Internet without
3 first having obtained a license pursuant to part II of this
4 chapter.

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

10 **§ -14 Notice on assignment or sale of contract.** (a) No
11 licensee may pledge, negotiate, sell, or assign a current and
12 performing installment loan, except to another licensee or to a
13 bank, savings bank, trust company, savings and loan or building
14 and loan association, or credit union organized under the laws
15 of this State or the laws of the United States.

16 (b) Prior to sale or assignment of a current and
17 performing installment loan contract held by the installment
18 lender as a result of an installment loan, the lender shall
19 place a notice on the installment loan contract in at least
20 twelve-point type that reads:



1 "INSTALLMENT LOAN

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

8 (c) This section shall not apply to:

9 (1) The transfer of an installment loan to a company
10 affiliated with the installment lender that
11 securitizes the installment lender's loan receivables;
12 and

13 (2) The pledge or other granting of a security interest in
14 the installment loan to a financial institution in
15 connection with asset back financing or similar
16 lending facility of the installment lender.

17 § -15 **Maintenance of books and records.** (a) Every
18 installment lender shall keep in a safe and secure place those
19 books and records that directly relate to any installment loan
20 made within this State, and other books and records as may be



1 necessary for the commissioner to ensure full compliance with
2 the laws of this State.

3 (b) All books and records may be maintained as originals
4 or photocopies, on microfilm or microfiche, on computer disks
5 (included related cloud storage devices) or tapes, or similar
6 forms; provided that the books and records are readily
7 accessible and may be easily examined.

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

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

15 **PART II. LICENSING**

16 **§ -31 License required.** No person, unless exempt under
17 this chapter, shall act as an installment lender in this State
18 unless licensed to do so by the commissioner.

19 **§ -32 Exemptions.** This chapter shall not apply to the
20 following:

21 (1) A financial institution;



- 1 (2) A nondepository financial service loan company;
- 2 (3) An "open end credit plan", as defined in the Truth in
- 3 Lending Act, title 15 United States Code
- 4 section 1602(j); or
- 5 (4) A tax refund anticipation loan.

6 **§ -33 License; application; issuance.** (a) The

7 commissioner shall require all licensees to register with NMLS.

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

9 prescribed by NMLS or by the commissioner. The application

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

- 11 (1) The legal name, trade names, and business address of
- 12 the applicant and, if the applicant is a partnership,
- 13 association, limited liability company, limited
- 14 liability partnership, or corporation, of every
- 15 member, officer, principal, or director thereof;
- 16 (2) The principal place of business;
- 17 (3) The complete address of any other branch offices at
- 18 which the applicant currently proposes to engage in
- 19 making installment loans; and
- 20 (4) Other data, financial statements, and pertinent
- 21 information as the commissioner may require with



1 respect to the applicant or, if an applicant is not an
2 individual, each of the applicant's control persons,
3 executive officers, directors, general partners, and
4 managing members.

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

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

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

19 (1) Fingerprints of the applicant or, if an applicant is
20 not an individual, each of the applicant's control
21 persons, executive officers, directors, general



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

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

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

18 (B) Information related to any administrative, civil,
19 or criminal findings by any governmental
20 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 and distributing information to and from any source
10 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 shall be granted.

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



1 (1) The applicant or, in the case of an applicant that is
2 not an individual, each of the applicant's control
3 persons, executive officers, directors, general
4 partners, and managing members, has never had an
5 installment lender license revoked in any
6 jurisdiction; provided that a subsequent formal
7 vacation of a revocation shall not be deemed a
8 revocation;

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

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

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



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

3 (3) The applicant or, in the case of an applicant that is
4 not an individual, each of the applicant's control
5 persons, executive officers, directors, general
6 partners, and managing members, has demonstrated
7 financial responsibility, character, and general
8 fitness to command the confidence of the community and
9 to warrant a determination that the applicant shall
10 operate honestly, fairly, and efficiently, pursuant to
11 this chapter. For the purposes of this paragraph, a
12 person is not financially responsible when the person
13 has shown a disregard in the management of the
14 person's financial condition. A determination that a
15 person has shown a disregard in the management of the
16 person's financial condition may be based upon:

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

19 (B) Current outstanding tax liens or other government
20 liens and filings, subject to applicable
21 disclosure laws and administrative rules;



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

2 (D) A pattern of seriously delinquent accounts within
3 the past three years;

4 (4) The applicant or, in the case of an applicant that is
5 not an individual, each of the applicant's control
6 persons, executive officers, directors, general
7 partners, and managing members, has not been convicted
8 of, pled guilty or nolo contendere to, or been granted
9 a deferred acceptance of a guilty plea under federal
10 law or chapter 853 to any misdemeanor involving an act
11 of fraud, dishonesty, breach of trust, or money
12 laundering;

13 (5) The applicant has satisfied the licensing requirements
14 of this chapter; and

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

16 (b) The applicant or, in the case of an applicant that is
17 not an individual, each of the applicant's control persons,
18 executive officers, directors, general partners, and managing
19 members shall submit authorization to the commissioner for the
20 commissioner to conduct background checks to determine or verify
21 the information in subsection (a) in each state where the person



1 has conducted the lending of installment loans. Authorization
2 pursuant to this subsection shall include consent to provide
3 additional fingerprints, if necessary, to law enforcement or
4 regulatory bodies in other states.

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

- 6 (1) Whose license to conduct business under this chapter,
7 or any similar statute in any other jurisdiction, has
8 been suspended or revoked within five years of the
9 filing of the present application;
- 10 (2) Whose license to conduct business in the installment
11 loan or payday industry has been revoked by an
12 administrative order issued by the commissioner or the
13 commissioner's designee, or the licensing authority of
14 another state or jurisdiction, for the period
15 specified in the administrative order;
- 16 (3) Who has advertised directly and purposefully to Hawaii
17 consumers or made internet loans in violation of this
18 chapter; or
- 19 (4) Who has failed to complete an application for
20 licensure.



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

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

- (1) Initial application fee of \$900;
- (2) Processing fee of \$35 for each control person;
- (3) Annual license renewal fee of \$600;
- (4) Applicable fee charged by the entities conducting the criminal history background check of each of the applicant's control persons, executive officers, directors, general partners, and managing members for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive the fingerprints for a state, national, and international criminal history background check; and
- (5) Applicable fee charged by the entities conducting an independent credit report obtained from a consumer reporting agency described in section 603(p) of the



1 Fair Credit Reporting Act, title 15 United States Code
2 section 1681a(p).

3 (b) Each branch office shall pay the following fees to the
4 division to obtain and maintain a valid license under this
5 chapter:

6 (1) Nonrefundable initial application fee of \$600; and

7 (2) Annual license renewal fee of \$450.

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

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



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

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

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

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

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

(1) A copy of the licensee's most recent audited annual financial statement, including balance sheets, statement of income or loss, statement of changes in shareholders' equity, and statement of cash flows or,



1 if a licensee is a wholly owned subsidiary of another
2 corporation, the consolidated audited annual financial
3 statement of the parent corporation in lieu of the
4 licensee's audited annual financial statement;

5 (2) A report detailing the installment lender's activities
6 in this State since the prior reporting period,
7 including:

8 (A) The number of installment loans made;

9 (B) The number of installment loans that have
10 defaulted; and

11 (C) Any other information that the commissioner may
12 reasonably require related to performance metrics
13 and the efficacy of the installment loan program;

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

19 (4) A list of the principal place of business and branch
20 locations, if any, within this State where business



1 regulated by this chapter is being conducted by the
2 licensee;

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

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

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

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



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

3 **§ -37 Enforcement authorities; violations; penalties.**

4 (a) To ensure the effective supervision and enforcement of this
5 chapter, the commissioner, pursuant to chapter 91, may take any
6 disciplinary action as specified in subsection (b) against an
7 applicant or licensee if the commissioner finds that:

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

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

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

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

20 (5) The applicant or licensee is insolvent;



1 (6) The applicant or licensee has made, in any document or
2 statement filed with the commissioner, a false
3 representation of a material fact or has omitted to
4 state a material fact;

5 (7) The applicant, licensee, or, if an applicant or
6 licensee is not an individual, each and every of the
7 applicant's or licensee's control persons, executive
8 officers, directors, general partners, and managing
9 members have been convicted of or entered a plea of
10 guilty or nolo contendere to a crime involving fraud
11 or deceit, or to any similar crime under the
12 jurisdiction of any federal court or court of another
13 state;

14 (8) The applicant or licensee has failed to make,
15 maintain, or produce records that comply with
16 section -15 or any rule adopted by the commissioner
17 pursuant to chapter 91;

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



1 (10) A final judgment has been entered against the
2 applicant or licensee for violations of this chapter,
3 any state or federal law concerning installment loans,
4 deferred deposit loans, check cashing, payday loans,
5 banking, mortgage loan originators, money
6 transmitters, or any state or federal law prohibiting
7 unfair or deceptive acts or practices; or

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

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

16 (1) Deny an application for licensure, including an
17 application for a branch office license;

18 (2) Revoke the license;

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



1 (4) Issue an order to the licensee to cease and desist
2 from engaging in any act specified under
3 subsection (a);

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

6 (6) Impose penalties of up to \$1,000 for each violation;
7 or

8 (7) Bar a person from applying for or holding a license
9 for a period of five years following revocation of the
10 person's license.

11 (c) The commissioner may issue a temporary cease and
12 desist order if the commissioner makes a finding that the
13 licensee, applicant, or person is engaging, has engaged, or is
14 about to engage in an illegal, unauthorized, unsafe, or unsound
15 practice in violation of this chapter. Whenever the
16 commissioner denies a license application or takes disciplinary
17 action pursuant to this subsection, the commissioner shall enter
18 an order to that effect and notify the licensee, applicant, or
19 person of the denial or disciplinary action. The notification
20 required by this subsection shall be given by personal service
21 or by certified mail to the last known address of the licensee



1 or applicant as shown on the application, license, or as
2 subsequently furnished in writing to the commissioner.

3 (d) The revocation, suspension, expiration, or surrender
4 of a license shall not affect the licensee's liability for acts
5 previously committed or impair the commissioner's ability to
6 issue a final agency order or take disciplinary action against
7 the licensee.

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

11 (f) The commissioner may reinstate a license, terminate a
12 suspension, or grant a new license to a person whose license has
13 been revoked or suspended if no fact or condition then exists
14 that clearly would justify the commissioner in revoking,
15 suspending, or refusing to grant a license.

16 (g) The commissioner may impose an administrative fine on
17 a licensee or person subject to this chapter if the commissioner
18 finds on the record after notice and opportunity for hearing
19 that the licensee or person subject to this chapter has violated
20 or failed to comply with any requirement of this chapter or any



1 rule prescribed by the commissioner under this chapter or order
2 issued under the authority of this chapter.

3 (h) Each violation or failure to comply with any directive
4 or order of the commissioner shall be a separate and distinct
5 violation.

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

11 **§ -38 Voluntary surrender of license.** (a) A licensee
12 may voluntarily cease business and surrender its license by
13 giving written notice to the commissioner of its intent to
14 surrender its license. Prior to the surrender date of a
15 license, the licensee shall have either completed all pending
16 installment loan transactions or assigned each pending
17 installment loan transaction to another licensee or entity
18 described in section -14.

19 (b) Notice pursuant to this section shall be provided at
20 least thirty days before the surrender of the license and shall
21 include:



- 1 (1) The date of surrender;
- 2 (2) The name, address, telephone number, facsimile number,
3 and electronic mail address of a contact individual
4 with knowledge and authority sufficient to communicate
5 with the commissioner regarding all matters relating
6 to the licensee during the period that it was licensed
7 pursuant to this chapter;
- 8 (3) The reason or reasons for surrender;
- 9 (4) Total dollar amount of the licensee's outstanding
10 installment loans sold in Hawaii and the individual
11 amounts of each outstanding installment loan, and the
12 name, address, and contact telephone number of the
13 licensee to whom each outstanding installment loan was
14 assigned;
- 15 (5) A list of the licensee's Hawaii authorized branch
16 offices, if any, as of the date of surrender;
- 17 (6) Confirmation that the licensee has notified each of
18 its Hawaii authorized branch offices, if any, that the
19 branch offices may no longer make installment loans on
20 the licensee's behalf; and



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

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

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

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

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



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

18 (d) The commissioner shall approve a request for change of
19 control under subsection (b) if, after investigation, the
20 commissioner determines that the person or group of persons
21 requesting approval has the competence, experience, character,



1 and general fitness to control the licensee or person in control
2 of the licensee in a lawful and proper manner, and that the
3 interests of the public will not be jeopardized by the change of
4 control.

5 (e) The following persons shall be exempt from the
6 requirements of subsection (b), but the licensee regardless
7 shall notify the commissioner when a change of control results
8 in the following:

9 (1) A person who acts as a proxy for the sole purpose of
10 voting at a designated meeting of the security holders
11 or holders of voting interests of a licensee or person
12 in control of a licensee;

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

15 (3) A person who acquires control as a personal
16 representative, custodian, guardian, conservator,
17 trustee, or as an officer appointed by a court of
18 competent jurisdiction or by operation of law; or

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



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

9 (g) Subsection (b) shall not apply to public offerings of
10 securities.

11 § -40 Authorized places of business; principal office;
12 branch offices; relocation; closure. (a) Every installment
13 lender licensed under this chapter shall have and maintain a
14 principal place of business in the State, regardless of whether
15 the installment lender maintains its principal office outside of
16 the State.

17 (b) If an installment lender has more than one place of
18 business, each additional place of business in the State shall
19 be licensed as a branch office with the commissioner. No
20 business shall be conducted at a branch office until the branch
21 office has been licensed by the commissioner.



1 (c) An installment lender shall not maintain any branch
2 offices in the State in addition to its principal place of
3 business without the prior written approval of the commissioner.
4 An application to establish a branch office shall be submitted
5 through NMLS with a nonrefundable application fee as required by
6 section -35.

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

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

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

21 (2) Specify the reasons for the closing.



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

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

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

16 § -42 **Powers of commissioner.** (a) The commissioner may
17 adopt rules pursuant to chapter 91 as the commissioner deems
18 necessary for the administration of this chapter.

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



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



1 communications, and do any and all things necessary or
2 incidental to the exercise of the commissioner's power
3 and duties, including the authority to conduct
4 contested case proceedings under chapter 91;

5 (7) Require a licensee to comply with any rule, guidance,
6 guideline, statement, supervisory policy or any
7 similar proclamation issued or adopted by the Federal
8 Deposit Insurance Corporation to the same extent and
9 in the same manner as a bank chartered by the State
10 or, in the alternative, any policy position of the
11 Conference of State Bank Supervisors;

12 (8) Enter into agreements or relationships with other
13 government officials or regulatory associations in
14 order to improve efficiencies and reduce regulatory
15 burden by sharing resources, standardized or uniform
16 methods or procedures, and documents, records,
17 information, or evidence obtained under this chapter;

18 (9) Use, hire, contract, or employ public or privately
19 available analytical systems, methods, or software to
20 investigate or examine a licensee or person subject to
21 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 that part of the
7 examination covering the same general subject matter
8 as the audit and may incorporate the audit report in
9 the report of the examination, report of
10 investigation, or other writing of the commissioner.

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

20 (b) For the purposes of investigating violations or
21 complaints arising under this chapter, or for the purposes of



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

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

19 (d) Each licensee or person subject to this chapter shall
20 make or compile reports or prepare other information, as



1 directed by the commissioner, to carry out the purposes of this
2 section, including:

- 3 (1) Accounting compilations;
- 4 (2) Information lists and data concerning loan
5 transactions in a format prescribed by the
6 commissioner; or
- 7 (3) Other information that the commissioner deems
8 necessary.

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



1 chapter, the licensee or owner of the documents and records
2 shall have access to the documents or records as necessary to
3 conduct its ordinary business affairs.

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

8 (g) No licensee or person subject to investigation or
9 examination under this section may knowingly withhold, abstract,
10 remove, mutilate, destroy, or secrete any books, records,
11 computer records, or other information.

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



1 diem, mileage, and other reasonable expenses incurred in
2 connection with the investigation or examination, payable to the
3 commissioner.

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

10 **§ -44 Confidentiality.** (a) Except as otherwise
11 provided in title 12 United States Code section 5111, the
12 requirements under any federal or state law regarding the
13 privacy or confidentiality of any information or material
14 provided to NMLS, and any privilege arising under federal or
15 state law, including the rules of any federal or state court,
16 with respect to the information or material shall continue to
17 apply to the information or material after the information or
18 material has been disclosed to NMLS. The information and
19 material may be shared with all state and federal regulatory
20 officials with oversight authority over transactions subject to



1 this chapter, without the loss of privilege or the loss of
2 confidentiality protections provided by federal or state law.

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

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

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

15 (2) Subpoena or discovery, or admission into evidence, in
16 any private civil action or administrative process,
17 unless any privilege is determined by NMLS to be
18 applicable to the information or material; provided
19 that the person to whom the information or material
20 pertains waives, in whole or in part, in the
21 discretion of the person, that privilege.



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

5 (e) In the event of a conflict between this section and
6 any other section of law relating to the disclosure of
7 privileged or confidential information or material, this section
8 shall control.

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

13 **§ -45 Prohibited practices.** (a) It shall be a
14 violation of this chapter for a licensee, its control persons,
15 executive officers, directors, general partners, managing
16 members, employees, or independent contractors, or any other
17 person subject to this chapter to:

18 (1) Engage in any act that limits or restricts the
19 application of this chapter, including making an
20 installment loan disguised as a leaseback transaction
21 or a personal property, personal sales, or automobile



1 title loan, or by disguising loan proceeds as cash
2 rebates for the pretextual installment sale of goods
3 and services;

4 (2) Make an installment loan that requires
5 collateralization, a security interest, or other
6 pledge of personal property from the consumer;

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

9 (4) Charge, collect, or receive, directly or indirectly,
10 charges for negotiating forms of loan proceeds other
11 than cash, charges for brokering or obtaining loans,
12 prepayment fees, or any fees, interest, or charges in
13 connection with an installment loan except those
14 explicitly authorized in this chapter;

15 (5) Fail to make disclosures as required by this chapter
16 and any other applicable state or federal law,
17 including rules or regulations adopted pursuant to
18 state or federal law;

19 (6) Directly or indirectly employ any scheme, device, or
20 artifice to defraud or mislead any consumer, any
21 lender, or any person;



1 (7) Directly or indirectly engage in unfair or deceptive
2 acts, practices, or advertising in connection with an
3 installment loan toward any person;

4 (8) Directly or indirectly obtain property by fraud or
5 misrepresentation;

6 (9) Make an installment loan to any person physically
7 located in the State through the use of the Internet,
8 facsimile, telephone, kiosk, or other means without
9 first obtaining a license under this chapter;

10 (10) Make, in any manner, any false or deceptive statement
11 or representation, including with regard to the rates,
12 fees, or other financing terms or conditions for an
13 installment loan, or engage in bait and switch
14 advertising;

15 (11) Make any false statement or knowingly and wilfully
16 make any omission of material fact in connection with
17 any reports filed with the division by a licensee or
18 in connection with any investigation conducted by the
19 division;

20 (12) Advertise any rate of interest without conspicuously
21 disclosing the annual percentage rate implied by that



1 rate of interest or otherwise fail to comply with any
2 requirement of the Truth in Lending Act, or any other
3 applicable state or federal laws or regulations;

4 (13) Make installment loans from any unlicensed location;

5 (14) Draft funds from any depository financial institution
6 without written approval of the consumer; provided
7 that nothing in this paragraph shall prohibit the
8 conversion of a negotiable instrument into an
9 electronic form for processing through the Automated
10 Clearing House or similar system;

11 (15) Attempt to collect from a consumer's account after two
12 consecutive attempts have failed, unless the licensee
13 obtains new written authorization from the consumer to
14 transfer or withdraw funds from the account;

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



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

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

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

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

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

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

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

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



1 **"§478-5 Usury not recoverable.** If a greater rate of
2 interest than that permitted by law is contracted for with
3 respect to any consumer credit transaction, any home business
4 loan or any credit card agreement, the contract shall not, by
5 reason thereof, be void. But if in any action on the contract
6 proof is made that a greater rate of interest than that
7 permitted by law has been directly or indirectly contracted for,
8 the creditor shall only recover the principal and the debtor
9 shall recover costs. If interest has been paid, judgment shall
10 be for the principal less the amount of interest paid. This
11 section shall not be held to apply[~~, to loans~~] to:

- 12 (1) Loans made by financial services loan companies and
13 credit unions at the rates authorized under and
14 pursuant to articles 9 and 10 of chapter 412[~~-~~];
15 (2) Any installment loan regulated under chapter ; or
16 (3) Fees authorized under and pursuant to chapter 480F."

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

19 **"§478-6 Usury; penalty.** Any person who directly or
20 indirectly receives any interest or finance charge at a rate
21 greater than that permitted by law or who, by any method or



1 device whatsoever, receives or arranges for the receipt of
2 interest or finance charge at a greater rate than that permitted
3 by law on any credit transaction shall be guilty of usury and
4 shall be fined not more than \$250, unless a greater amount is
5 allowed by law, or imprisoned not more than one year, or both."

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

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

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

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

20 (3) The department of health or its designee on all
21 applicants for licensure or certification for,



1 operators for, prospective employees, adult
2 volunteers, and all adults, except adults in care, at
3 healthcare facilities as defined in section 321-15.2;

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

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

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

14 (7) The county liquor commissions on employees and
15 prospective employees involved in liquor
16 administration, law enforcement, and liquor control
17 investigations;

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



1 (9) The department of human services on prospective
2 adoptive parents as established under
3 section 346-19.7;

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

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

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



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

4 (14) The department of human services on employees,
5 prospective employees, and volunteers of contracted
6 providers and subcontractors in positions that place
7 them in close proximity to youth when providing
8 services on behalf of the office or the Hawaii youth
9 correctional facility as provided by section 352D-4.3;

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

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

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



- 1 (18) Private schools and designated organizations on
2 employees and prospective employees who may be in
3 positions that necessitate close proximity to
4 children; provided that private schools and designated
5 organizations receive only indications of the states
6 from which the national criminal history record
7 information was provided pursuant to section 302C-1;
- 8 (19) The public library system on employees and prospective
9 employees whose positions place them in close
10 proximity to children as provided by
11 section 302A-601.5;
- 12 (20) The State or any of its branches, political
13 subdivisions, or agencies on applicants and employees
14 holding a position that has the same type of contact
15 with children, vulnerable adults, or persons committed
16 to a correctional facility as other public employees
17 who hold positions that are authorized by law to
18 require criminal history record checks as a condition
19 of employment as provided by section 78-2.7;
- 20 (21) The department of health on licensed adult day care
21 center operators, employees, new employees,



1 subcontracted service providers and their employees,
2 and adult volunteers as provided by section 321-15.2;

3 (22) The department of human services on purchase of
4 service contracted and subcontracted service providers
5 and their employees serving clients of the adult
6 protective and community services branch, as provided
7 by section 346-97;

8 (23) The department of human services on foster grandparent
9 program, senior companion program, and respite
10 companion program participants as provided by
11 section 346-97;

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



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

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

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

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

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

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

20 (C) Each person who upon approval of an application
21 requesting approval of a proposed change in



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



1 applicant for a mortgage loan originator company
2 license or license renewal,
3 as provided by chapter 454F;

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

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

13 (34) The counties on prospective employees for fire
14 department positions which involve contact with
15 children or vulnerable adults;

16 (35) The counties on prospective employees for emergency
17 medical services positions which involve contact with
18 children or vulnerable adults;

19 (36) The counties on prospective employees for emergency
20 management positions and community volunteers whose
21 responsibilities involve planning and executing



1 homeland security measures including viewing,
2 handling, and engaging in law enforcement or
3 classified meetings and assisting vulnerable citizens
4 during emergencies or crises;

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

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

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

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

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



1 (B) Each person who owns more than ten per cent of an
2 appraisal management company who is applying for
3 registration as an appraisal management company,
4 as provided by section 466L-7; and

5 (C) Each of the controlling persons of an applicant
6 for registration as an appraisal management
7 company, as provided by section 466L-7;

8 (41) The department of health or its designee on all
9 license applicants, licensees, employees, contractors,
10 and prospective employees of medical cannabis
11 dispensaries, and individuals permitted to enter and
12 remain in medical cannabis dispensary facilities as
13 provided under sections 329D-15(a)(4)
14 and 329D-16(a)(3);

15 (42) The department of commerce and consumer affairs on
16 applicants for nurse licensure or license renewal,
17 reactivation, or restoration as provided by
18 sections 457-7, 457-8, 457-8.5, and 457-9;

19 (43) The county police departments on applicants for
20 permits to acquire firearms pursuant to section 134-2



1 and on individuals registering their firearms pursuant
2 to section 134-3;

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

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

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

15 as provided by chapter 449;

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



1 (46) The department of labor and industrial relations on
2 current or prospective employees or contractors who
3 have access to federal tax information in order to
4 comply with requirements of federal law, regulation,
5 or procedure, as provided by section 383-110;

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

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

16 (49) The department of commerce and consumer affairs on
17 each control person, executive officer, director,
18 general partner, and managing member of an installment
19 loan licensee, or an applicant for an installment loan
20 license as provided by chapter ; and



1 ~~[(49)]~~ (50) Any other organization, entity, or the State, its
2 branches, political subdivisions, or agencies as may
3 be authorized by state law."

4 PART III

5 SECTION 7. Chapter 480F, Hawaii Revised Statutes, is
6 amended by adding two new sections to be appropriately
7 designated and to read as follows:

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

17 (b) The voluntary payment plan shall be structured to pay
18 the existing debt, both the principal and the fee, in at least
19 four equal payments that coincide with the customer's periodic
20 pay dates or the date the customer is scheduled to receive
21 benefits, unless the customer requests different payment due



1 dates. The payments made pursuant to the voluntary payment plan
2 shall be applied directly to the existing debt, and the lender
3 shall not charge the customer any additional fee other than an
4 administration fee not to exceed \$30 for participation in the
5 voluntary payment plan.

6 (c) The check casher shall provide a written copy of the
7 voluntary payment plan agreement to the customer, or an
8 electronic copy if the transaction is being conducted over the
9 Internet. The check casher shall be prohibited from engaging in
10 collection activities while the customer continues to make
11 payments in accordance with the payment plan. The check casher
12 shall be prohibited from making any additional deferred deposit
13 transactions to the customer prior to the completion of the
14 payments under the voluntary payment plan.

15 (d) The check casher may require the customer to provide a
16 post-dated check or electronic authorization for funds
17 transferred for each payment under the voluntary payment plan.
18 If any check or electronic authorization accepted by the check
19 casher as payment for a voluntary payment plan is dishonored,
20 the check casher shall charge the customer a fee for the
21 dishonored instrument not to exceed \$25.



1 (e) If the customer fails to make payments in accordance
2 with a voluntary payment plan, the check casher shall be
3 entitled to take action as otherwise allowed under this chapter
4 to collect the remaining funds due and may charge the customer a
5 one-time default fee of \$30.

6 (f) For purposes of this section, "financial hardship"
7 means any hardship from loss of income, reduced work hours,
8 increased living costs, or other hardships outside of the
9 control of the customer at the reasonable discretion of the
10 check casher and evidenced with documentation.

11 **\$480F- Single deferred deposit transaction limitation.**

12 A check casher shall take reasonable measures to ensure that no
13 customer has more than one deferred deposit transaction
14 outstanding at a time from all sources. A check casher that
15 receives written or electronic confirmation from each customer
16 that the customer does not have any outstanding deferred deposit
17 transactions as of the date the customer enters into a deferred
18 deposit transaction with the check casher shall be deemed to
19 have met the requirements of this section."



PART IV

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

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

SECTION 9. Section 480F-3, Hawaii Revised Statutes, is amended to read as follows:

"~~[f]~~**\$480F-3**~~[f]~~ **Authorized fees.** ~~[Except as provided in section 480F-4, no]~~ No check casher shall charge fees in excess of the following amounts:

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

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

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



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

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

8 SECTION 10. Section 480F-6, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§480F-6 Penalties.** (a) Any person who violates this
11 chapter shall be deemed to have engaged in an unfair or
12 deceptive act or practice in the conduct of any trade or
13 commerce within the meaning of section 480-2(a). Aggrieved
14 consumers may seek those remedies set forth in
15 section 480-13(b).

16 (b) Any person who is not a consumer and is injured by a
17 wilful violation of this chapter may bring an action for the
18 recovery of damages, a proceeding to restrain and enjoin those
19 violations, or both. If judgment is for the plaintiff, the
20 plaintiff shall be awarded a sum not less than \$1,000 or



1 threefold damages, whichever sum is greater, and reasonable
2 attorneys' fees together with the costs of suit.

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

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

11 SECTION 11. Section 480F-4, Hawaii Revised Statutes, is
12 repealed.

13 ~~["**\$480F-4 Deferred deposits, when allowed.** (a) No check
14 casher may defer the deposit of a check except as provided in
15 this section.~~

16 ~~(b) Each deferred deposit shall be made pursuant to a
17 written agreement that has been signed by the customer and the
18 check-casher or an authorized representative of the check
19 casher. The written agreement shall contain a statement of the
20 total amount of any fees charged for the deferred deposit,
21 expressed both in United States currency and as an annual~~



1 ~~percentage rate. The written agreement shall authorize the~~
2 ~~check casher to defer deposit of the personal check until a~~
3 ~~specific date not later than thirty-two days from the date the~~
4 ~~written agreement was signed. The written agreement shall not~~
5 ~~permit the check casher to accept collateral.~~

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

14 ~~(d) A check casher shall not enter into an agreement for~~
15 ~~deferred deposit with a customer during the period of time that~~
16 ~~an earlier agreement for a deferred deposit for the same~~
17 ~~customer is in effect. A deferred deposit transaction shall not~~
18 ~~be repaid, refinanced, or consolidated by or with the proceeds~~
19 ~~of another deferred deposit transaction.~~

20 ~~(e) A check casher who enters into a deferred deposit~~
21 ~~agreement and accepts a check passed on insufficient funds, or~~



1 ~~any assignee of that check casher, shall not be entitled to~~
2 ~~recover damages in any action brought pursuant to or governed by~~
3 ~~chapter 490. Instead, the check casher may charge and recover a~~
4 ~~fee for the return of a dishonored check in an amount not~~
5 ~~greater than \$20.~~

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

10 PART V

11 SECTION 12. The division of financial institutions of the
12 department of commerce and consumer affairs shall submit a
13 report on the implementation of this Act and an update on the
14 progress of transitioning payday lenders to installment lenders
15 to the legislature no later than one year after the effective
16 date of this Act.

17 SECTION 13. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so
19 much thereof as may be necessary for fiscal year 2021-2022 and
20 the same sum or so much thereof as may be necessary for fiscal
21 year 2022-2023:



(1) To establish and hire two full-time equivalent (2.0 FTE) permanent examiners, without regard to chapter 76, Hawaii Revised Statutes, to carry out the purposes of the installment loan program established by section 2 of this Act; provided that the positions may be added to the position count for the division of financial institutions of the department of commerce and consumer affairs; and

(2) For resources necessary to implement this Act, including the procurement of an electronic system to assist in the regulation of installment loan lenders.

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

PART VII

SECTION 14. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.



1 SECTION 16. This Act shall take effect on January 1, 2050;

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, 2023;

6 (2) Part III shall be repealed on July 1, 2023; and

7 (3) Part IV shall take effect on July 1, 2023.



Report Title:

Payday Lending; Installment Loans; Installment Lenders;
Licensure; Requirements; Check Cashers; Voluntary Payment Plans;
Appropriation

Description:

Transitions from lump sum deferred deposit transactions to installment loan transactions. Specifies various consumer protection requirements for installment loans. Beginning 1/1/2023, requires licensure for installment lenders that offer installment loans to consumers. Requires check cashers to offer a voluntary payment plan to customers under certain circumstances. Clarifies that a customer may only have one outstanding deferred deposit transaction from any source. Requires the division of financial institutions of the DCCA to report on the implementation of installment loan transaction requirements and the transition of check cashers who engage in deferred deposit transaction to installment lenders. Appropriates funds to the division of financial institutions for positions and resources. Repeals the statutory authorization for deferred deposit transactions on 7/1/2023. Effective 7/1/2050. (HD1)

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

