
A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1 PART I

2 SECTION 1. The legislature finds that there has been a
3 shift in the market from deferred deposit agreements, commonly
4 referred to as payday loans, toward small dollar installment
5 loans, which are repayable over time and secured by access to
6 the borrower's checking account. Unfortunately, due to the
7 State's current deferred deposit laws, the payday lending
8 industry can engage in practices that trap consumers in
9 unsustainable cycles of debt. Payday lenders structure loans
10 with unrealistically short repayment terms, unaffordable
11 payments, and excessive fees, resulting in long-term, high-cost
12 debt and harm to the consumer. Lenders are also granted access
13 to the borrower's checking account to ensure that the lender
14 gets repaid, even if the borrower cannot cover rent, utilities,
15 and other basic living expenses. The Pew Charitable Trusts has
16 reported that the average Hawaii payday borrower incurs \$529 in
17 fees to borrow \$300 over five months. Research also shows that



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

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14 However, the Consumer Financial Protection Bureau also rescinded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

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



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

7 Accordingly, the purpose of this Act is to:

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

12 **PART II**

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

16 **"CHAPTER**

17 **INSTALLMENT LOANS**

18 **PART I. GENERAL PROVISIONS**

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



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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

19 "Interest" means all charges payable directly or indirectly
20 to a borrower to a licensee as a condition to an installment
21 loan, including fees, service charges, renewal charges, and any



1 ancillary product sold in connection with a small dollar
2 installment loan. "Interest" does not include monthly
3 maintenance fees authorized by section -2(a), insufficient
4 funds fees authorized by section -11, and default charges
5 authorized by section -4(i).

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

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

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

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

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



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

3 "Nonprofit organization" means an organization that:

- 4 (1) Has the status of a tax-exempt organization under
5 section 501(c)(3) of the Internal Revenue Code of
6 1986, as amended;
- 7 (2) Conducts its activities in a manner that serves public
8 or charitable purposes, rather than commercial
9 purposes;
- 10 (3) Receives funding, revenue, and charge fees in a manner
11 that does not incentivize its organization or its
12 employees to act other than in the best interests of
13 its clients; and
- 14 (4) Compensates its employees in a manner that does not
15 incentivize employees to act other than in the best
16 interests of its clients.

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



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

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

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

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

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

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

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

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



- 1 (2) The total amount of the installment loan shall not be
2 greater than \$1,500 pursuant to section -5(a);
- 3 (3) The total amount of loan charges an installment lender
4 may charge, collect, or receive in connection with an
5 installment loan shall not exceed fifty per cent of
6 the principal loan amount;
- 7 (4) Subject to subsection (a)(3), a monthly maintenance
8 fee may be charged by the lender, not to exceed the
9 following:
- 10 (A) \$25 on a loan of an original principal loan
11 amount up to \$299.99;
- 12 (B) \$30 on a loan of an original principal loan
13 amount of at least \$300.00 and up to \$699.99; and
- 14 (C) \$35 on a loan of an original principal loan
15 amount of at least \$700.00 and greater;
- 16 provided that the monthly maintenance fee shall not be
17 added to the loan balance 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 minimum contracted repayment term of the
4 installment loan shall be two months if the contracted
5 loan amount is \$500 or less, or four months if the
6 contracted loan amount is \$500.01 or more; provided
7 that, for purposes of meeting the required minimum
8 contracted repayment term, an installment lender may
9 calculate one month as twenty-eight days or longer;
- 10 (6) All repayment schedule due dates shall be dates on
11 which an installment lender is open for business to
12 the public at the place of business where the
13 installment loan was made;
- 14 (7) An installment lender shall accept prepayment in full
15 or in part from a consumer prior to the loan due date
16 and shall not charge the consumer a fee or penalty if
17 the consumer opts to prepay the loan; provided that in
18 order to make a prepayment all past due interest and
19 fees shall be paid first;



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

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

6 (10) An installment lender shall not charge a consumer any
7 loan charges for an installment loan, other than the
8 fees permitted by this chapter;

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

12 (12) The maximum contracted repayment term of the
13 installment loan shall be twelve months.

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

18 (c) For each payment made by a consumer, a lender shall
19 give the consumer a written receipt with the lender's name and
20 address, payment date, amount paid, consumer's name, and



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

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

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

7 (2) Any unearned monthly maintenance fees.

8 (e) Upon request from a consumer or a consumer's agent, an
9 installment lender shall provide confirmation of the amount
10 required to discharge the installment loan obligation in full.

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

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

21 Each installment loan transaction and renewal shall be



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

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



- 1 (10) A statement that it shall not be considered a
2 violation of law if a consumer obtains an installment
3 loan voluntarily and separately from the consumer's
4 spouse if the consumer documents the action in
5 writing, either in the written agreement or in a
6 subsequent agreement;
- 7 (11) A notice to the consumer that a returned instrument
8 may result in a dishonored instrument charge, not to
9 exceed \$25; and
- 10 (12) A description of the methods by which installment loan
11 payments may be made, which may include a debit card
12 payment, Automated Clearing House transfer, electronic
13 check, other forms of electronic transfers, money
14 order, cash, check, or any additional method of loan
15 payment authorized by this chapter or by rule adopted
16 by the commissioner pursuant to chapter 91.
- 17 (b) The written agreement shall also comply with the
18 disclosure requirements of the Truth in Lending Act and any
19 regulation adopted thereunder.
- 20 (c) The installment lender shall provide to the consumer a
21 printed written disclosure prior to signing the written



1 agreement that accurately discloses the types of information in
2 the chart below, in at least twelve-point type:

3 "MULTIPLE
4 INSTALLMENT
5 LOAN PAYMENT

6
7 Amount Financed

8 Term (months)

9

10 Authorized Interest Rate

11

12 Monthly Maintenance Fee

13

14 Total of All Permitted Charges

15

16 Total You Will Pay for This Loan If Paid on Time

17 (Amount Financed,

18 Interest, and Monthly Maintenance Fee)

19

20 ANNUAL PERCENTAGE RATE

21

22 Payment Schedule"

23

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

25 other information as the lender believes will benefit the

26 consumer, such as an explanation of annual percentage rate and

27 how it is calculated.

28 (d) The consumer shall sign and date each of two copies of

29 the written disclosure required pursuant to subsection (c), one

30 of which shall be given to the consumer and the other of which

31 shall be retained by the lender as part of its records of the



1 installment loan. This requirement may also be accomplished by
2 electronically signing an electronic copy of the disclosure and
3 making the disclosure electronically available to the consumer
4 if the consumer is applying for the loan over the Internet. For
5 purposes of preparing the written disclosure, the installment
6 loan shall be structured on a precomputed basis (total of
7 payments) with the assumption that all payments will be made as
8 scheduled.

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



1 calculated as if the consumer had voluntarily prepaid the loan
2 in full on the date of termination.

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

10 (b) For the purposes of computing precomputed loans,
11 including but not limited to calculating interest, a month is
12 considered one-twelfth of a year and a day is considered one
13 three hundred sixty-fifth of a year when calculation is made for
14 a fraction of a month.

15 (c) Subject to section -2(b), installment loans shall
16 be repayable in substantially equal and consecutive installments
17 of principal and interest combined; provided that the first
18 installment period may exceed one month by not more than fifteen
19 days and the first installment payment amount may be larger than
20 the remaining payments by the amount of interest charged for the
21 extra days; provided further that monthly installment payment



1 dates may be omitted if the parties agree in writing, either in
2 the written agreement required under section -3 or in a
3 subsequent agreement, to accommodate consumers with seasonal
4 income.

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

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

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

20 (1) A deferment shall postpone the scheduled due date of
21 the earliest unpaid installment and all subsequent



1 installments as originally scheduled, or as previously
2 deferred, for a period equal to the deferment period;

3 (2) The deferment period shall be that period during which
4 no installment is scheduled to be paid by reason of
5 the deferment; and

6 (3) The lender shall not charge or collect a deferment
7 fee.

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

11 (h) A lender shall not charge or receive loan origination
12 fees.

13 (i) A lender shall not collect a default charge on any
14 installment not paid in full within ten days after its due date.

15 A lender may charge a default charge of \$30 on an installment
16 not paid in full after ten days have passed since its due date.

17 For purposes of this subsection, all installments are considered
18 paid in the order in which they become due.

19 § -5 **Maximum loan amount; prohibition against multiple**
20 **loans.** (a) A lender shall not lend an amount greater than



1 \$1,500 nor shall the amount financed exceed \$1,500 by any one
2 lender at any time to a consumer.

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

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

13 (c) An installment lender that receives written or
14 electronic confirmation from each consumer that the consumer
15 does not have any outstanding installment loans from the
16 entities listed in subsection (b)(1) through (4) as of the date
17 the consumer enters into an installment loan with the
18 installment lender shall be deemed to have met the requirements
19 of this section.

20 (d) If a consumer's spouse obtains an installment loan
21 voluntarily and separately from the consumer, and subsequently



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

9 (e) Upon a consumer's payment in full of any installment
10 loan, an installment lender shall wait a period of three days
11 before the lender may make another installment loan to the same
12 consumer.

13 § -6 Right of rescission. (a) A consumer shall have
14 the right to rescind an installment loan, on or before
15 5:00 p.m., Hawaii-Aleutian Standard Time, on the third business
16 day at the location where the loan was originated, by returning
17 the principal in cash, the original check or money order
18 disbursed by the lender, or the other disbursement of loan
19 proceeds from the lender to fund the loan. The lender shall not
20 charge the consumer for rescinding the 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 THIRD
7 BUSINESS 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; endorsement of instrument;**
6 **redemption of instrument.** (a) An installment lender may pay
7 the proceeds from or otherwise fund an installment loan to the
8 consumer in the form of a monetary instrument, prepaid debit
9 cards, Automated Clearing House transfers, electronic checks,
10 other forms of electronic transfers, money order, or cash.

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

14 (c) Prior to an installment lender negotiating or
15 presenting the instrument, a consumer may redeem any instrument
16 held by the lender as a result of an installment loan if the
17 consumer pays the full amount of the instrument to the lender.

18 **§ -10 Delinquent installment loans; restrictions on**
19 **collection by lender or third party.** (a) An installment lender
20 shall comply with all applicable state and federal laws when
21 collecting a delinquent installment loan. A lender may take



1 civil action to collect principal, interest, fees, and costs
2 allowed under this chapter. A lender shall not threaten
3 criminal prosecution as a method of collecting a delinquent
4 installment loan or threaten to take any legal action against
5 the consumer that is not otherwise permitted by law.

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

14 (c) A lender shall not communicate with a consumer in a
15 manner intended to harass, intimidate, abuse, or embarrass a
16 consumer, including but not limited to communication at an
17 unreasonable hour, with unreasonable frequency, by threats of
18 force or violence, or by use of offensive language. A
19 communication shall be presumed to have been made for the
20 purposes of harassment if it is initiated by the lender for the
21 purposes of collection and the communication is made:



- 1 (1) With the consumer's spouse or the consumer's domestic
2 partner in any form, manner, or place, more than once,
3 excluding calling a shared phone number and asking to
4 speak to the consumer, sending a text message to a
5 shared phone number, sending an electronic mail to a
6 shared electronic mail address, or other electronic
7 writing to a shared electronic account;
- 8 (2) With a consumer at the consumer's place of employment
9 more than once;
- 10 (3) With the consumer, the consumer's spouse, or the
11 consumer's domestic partner at the consumer's place of
12 residence between the hours of 9:00 p.m. and
13 8:00 a.m., Hawaii-Aleutian Standard Time; or
- 14 (4) To a party other than the consumer, the consumer's
15 attorney, the lender's attorney, or a consumer credit
16 reporting agency if otherwise permitted by law, except
17 for the purposes of acquiring location or contact
18 information about the consumer.
- 19 (d) A lender shall maintain, in accordance with applicable
20 law, an accurate and complete communication log of all telephone
21 and written communications with a consumer initiated by the



1 lender regarding any collection efforts, including date, time,
2 and the nature of each communication.

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

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

10 (1) "Communication" includes the time the lender initiates
11 contact with a consumer, regardless of whether the
12 communication is received or accessed by the consumer;
13 and

14 (2) "Communication" does not include:

15 (A) Verbal communication with the consumer while the
16 consumer is physically present in the lender's
17 place of business;

18 (B) An unanswered telephone call in which no message,
19 other than a caller identification, is left,
20 unless the telephone call is in violation of
21 subsection (c)(3); or



1 (C) An initial letter to the consumer that includes
2 disclosures under the federal Fair Debt
3 Collection Practices Act.

4 § -11 **Authorized insufficient funds charge.** (a)

5 Regardless of the number of instances where a consumer's payment
6 is rejected due to insufficient funds, an installment lender may
7 contract for and collect one insufficient funds charge for each
8 payment due on an installment loan, not to exceed \$25. The
9 lender shall not collect any other fees as a result of the
10 insufficient funds of the consumer.

11 (b) If the loan proceeds instrument delivered by the
12 installment lender to the consumer is dishonored by the
13 financial institution, the installment lender shall cover any
14 fees and charges incurred by the consumer as a direct result of
15 the dishonored loan proceeds instrument.

16 § -12 **Posting of license and loan charges.** Any

17 installment lender offering an installment loan shall
18 conspicuously and continuously post at any place of business
19 where installment loans are made, the license required pursuant
20 to this chapter and a notice of the loan charges imposed for
21 installment loans.



1 **§ -13 Internet lending.** (a) An installment lender may
2 advertise and accept applications for installment loans by any
3 lawful medium, including but not limited to the Internet, and
4 shall provide all required notices and disclosures via the
5 Internet, and the consumer may provide a valid electronic
6 signature on the disclosures and loan agreement, subject to
7 subsection (b).

8 (b) Installment lenders shall be prohibited from
9 advertising or making installment loans via the Internet without
10 first having obtained a license pursuant to part II of this
11 chapter.

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

17 **§ -14 Notice on assignment or sale of contract.** (a) No
18 licensee may pledge, negotiate, sell, or assign a current and
19 performing installment loan, except to another licensee or to a
20 bank, savings bank, trust company, financial services loan



1 company, or credit union organized under the laws of this State
2 or the laws of the United States.

3 (b) Prior to sale or assignment of a current and
4 performing installment loan contract held by the installment
5 lender as a result of an installment loan, the lender shall
6 place a notice on the installment loan contract in at least
7 twelve-point type that reads:

8 "INSTALLMENT LOAN

9 No licensee may pledge, negotiate, sell, or
10 assign an installment loan, except to another licensee
11 or to a bank, savings bank, trust company, financial
12 services loan company, or credit union organized under
13 the laws of Hawaii or the laws of the United States."

14 (c) This section shall not apply to:

15 (1) The transfer of an installment loan to a company
16 affiliated with the installment lender that
17 securitizes the installment lender's loan receivables;
18 and

19 (2) The pledge or other granting of a security interest in
20 the installment loan to a financial institution in



1 connection with asset back financing or similar
2 lending facility of the installment lender.

3 § -15 Maintenance of books and records. (a) Every
4 installment lender shall keep in a safe and secure place those
5 books and records that directly relate to any installment loan
6 made within this State, and other books and records as may be
7 necessary for the commissioner to ensure full compliance with
8 the laws of this State.

9 (b) All books and records may be maintained as originals
10 or photocopies, on microfilm or microfiche, on computer disks
11 (including related cloud storage devices) or tapes, or similar
12 forms; provided that the books and records are readily
13 accessible and may be easily examined.

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

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

21 **PART II. LICENSING**



1 **§ -31 License required.** (a) No person, unless exempt
2 under this chapter, shall act as an installment lender in this
3 State unless licensed to do so by the commissioner.

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

8 **§ -32 Exemptions.** This chapter shall not apply to the
9 following:

- 10 (1) A financial institution;
- 11 (2) A nondepository financial services loan company;
- 12 (3) An "open end credit plan", as defined in the Truth in
13 Lending Act, title 15 United States Code
14 section 1602(j); or
- 15 (4) A tax refund anticipation loan;

16 provided that licensees shall not be subject to chapter 443B.

17 **§ -33 License; application; issuance.** (a) The
18 commissioner shall require all licensees to register with NMLS.

19 (b) Applicants for a license shall apply in a form as
20 prescribed by NMLS or by the commissioner. The application
21 shall contain, at a minimum, the following information:



- 1 (1) The legal name, trade names, and business address of
2 the applicant and, if the applicant is a partnership,
3 association, limited liability company, limited
4 liability partnership, or corporation, of every
5 member, officer, principal, or director thereof;
- 6 (2) The principal place of business;
- 7 (3) The complete address of any other branch offices at
8 which the applicant currently proposes to engage in
9 making installment loans; and
- 10 (4) Other data, financial statements, and pertinent
11 information as the commissioner may require with
12 respect to the applicant or, if an applicant is not an
13 individual, each of the applicant's control persons,
14 executive officers, directors, general partners, and
15 managing members.
- 16 (c) To fulfill the purposes of this chapter, the
17 commissioner may enter into agreements or contracts with NMLS or
18 other entities to use NMLS to collect and maintain records and
19 process transaction fees or other fees related to licensees or
20 other persons subject to this chapter.



1 (d) For the purpose and to the extent necessary to
2 participate in NMLS, the commissioner may waive or modify, in
3 whole or in part, by rule or order, any or all of the
4 requirements of this chapter and establish new requirements as
5 reasonably necessary to participate in NMLS.

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

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

20 (2) Personal history and experience of the applicant or,
21 if an applicant is not an individual, each of the



1 applicant's control persons, executive officers,
2 directors, general partners, and managing members in a
3 form prescribed by NMLS, including the submission of
4 authorization for NMLS and the commissioner to obtain:

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

9 (B) Information related to any administrative, civil,
10 or criminal findings by any governmental
11 jurisdiction;

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

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

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



1 (h) An applicant for a license as an installment lender
2 shall be registered with the business registration division of
3 the department to do business in this State before a license
4 pursuant to this chapter shall be granted.

5 **§ -34 Issuance of license; grounds for denial.** (a) The
6 commissioner shall conduct an investigation of every applicant
7 to determine the financial responsibility, character, and
8 general fitness of the applicant. The commissioner shall issue
9 the applicant a license to engage in the business of making
10 installment loans if the commissioner determines that:

11 (1) The applicant or, in the case of an applicant that is
12 not an individual, each of the applicant's control
13 persons, executive officers, directors, general
14 partners, and managing members, has never had an
15 installment lender license revoked in any
16 jurisdiction; provided that a subsequent formal
17 vacation of a revocation shall not be deemed a
18 revocation;

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



1 partners, and managing members, has not been convicted
2 of, pled guilty or nolo contendere to, or been granted
3 a deferred acceptance of a guilty plea under federal
4 law or under chapter 853 to a felony in a domestic,
5 foreign, or military court:

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

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

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

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



1 person is not financially responsible when the person
2 has shown a disregard in the management of the
3 person's financial condition. A determination that a
4 person has shown a disregard in the management of the
5 person's financial condition may be based upon:

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

8 (B) Current outstanding tax liens or other government
9 liens and filings, subject to applicable
10 disclosure laws and administrative rules;

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

12 (D) A pattern of seriously delinquent accounts within
13 the prior three years;

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



1 of fraud, dishonesty, breach of trust, or money
2 laundering;

3 (5) The applicant has satisfied the licensing requirements
4 of this chapter; and

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

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

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

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



- 1 (2) Whose license to conduct business in the installment
2 loan or payday industry has been revoked by an
3 administrative order issued by the commissioner or the
4 commissioner's designee, or the licensing authority of
5 another state or jurisdiction, for the period
6 specified in the administrative order;
- 7 (3) Who has advertised directly and purposefully to Hawaii
8 consumers or made Internet loans in violation of this
9 chapter; or
- 10 (4) Who has failed to complete an application for
11 licensure.
- 12 (d) A license issued in accordance with this chapter shall
13 remain in force and effect until surrendered, suspended, or
14 revoked, or until the license expires as a result of nonpayment
15 of the annual license renewal fee as required by this chapter.
- 16 § -35 Fees; bond. (a) An installment lender shall pay
17 the following fees to the division to obtain and maintain a
18 valid license under this chapter:
- 19 (1) Initial application fee of \$1,000;
- 20 (2) Processing fee of \$35 for each control person;



1 (3) Annual license renewal fee of \$1,000 and \$0.15 per
2 loan, plus 0.08 per cent of loan dollar volume;

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

11 (5) Applicable fee charged by the entities conducting an
12 independent credit report obtained from a consumer
13 reporting agency described in section 603(p) of the
14 Fair Credit Reporting Act, title 15 United States Code
15 section 1681a(p).

16 (b) A nonprofit organization shall pay the following fees
17 to maintain a valid registration as a nonprofit organization in
18 NMLS:

- 19 (1) Initial registration fee of \$200;
- 20 (2) Annual registration renewal fee of \$150; and
- 21 (3) Late fee of \$25 per day.



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

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

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

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



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

3 § -36 **Renewal of license; annual report.** (a) On or
4 before December 31 of each year, each licensee shall pay a
5 renewal fee pursuant to section -35.

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

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

17 (2) A report detailing the installment lender's activities
18 in this State since the prior reporting period,
19 including:

20 (A) The number of installment loans made;



- 1 (B) The number of installment loans that have
2 defaulted; and
- 3 (C) Any other information that the commissioner may
4 reasonably require related to performance metrics
5 and the efficacy of the installment loan program;
- 6 (3) Any material changes to any of the information
7 submitted by the licensee on its original application
8 that have not previously been reported to the
9 commissioner on any other report required to be filed
10 under this chapter;
- 11 (4) A list of the principal place of business and branch
12 locations, if any, within this State where business
13 regulated by this chapter is being conducted by the
14 licensee;
- 15 (5) Disclosure of any pending or final suspension,
16 revocation, or other enforcement action by any state
17 or governmental authority; and
- 18 (6) Any other information the commissioner may require.
- 19 (c) A license may be renewed by continuing to meet the
20 licensing requirements of sections -33, -34, and -35,
21 filing a completed renewal statement on a form prescribed by



1 NMLS or by the commissioner, paying a renewal fee, and meeting
2 the requirements of this section.

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

15 § -37 **Enforcement authorities; violations; penalties.**

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



- 1 (1) The applicant or licensee has violated this chapter,
2 or any rule or order lawfully made pursuant to this
3 chapter;
- 4 (2) The applicant has failed to disclose facts or
5 conditions that would have clearly justified the
6 commissioner in denying an application for licensure,
7 had these facts or conditions been known to exist at
8 the time the application was made;
- 9 (3) The applicant or licensee has failed to provide
10 information required by the commissioner within a
11 reasonable time, as specified by the commissioner;
- 12 (4) The applicant or licensee has failed to provide or
13 maintain proof of financial responsibility;
- 14 (5) The applicant or licensee is insolvent;
- 15 (6) The applicant or licensee has made, in any document or
16 statement filed with the commissioner, a false
17 representation of a material fact or has omitted to
18 state a material fact;
- 19 (7) The applicant, licensee, or, if an applicant or
20 licensee is not an individual, each and every of the
21 applicant's or licensee's control persons, executive



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

7 (8) The applicant or licensee has failed to make,
8 maintain, or produce records that comply with section
9 -15 or any rule adopted by the commissioner
10 pursuant to chapter 91;

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

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



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

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

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



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

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

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



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

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

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

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

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



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

3 **§ -38 Voluntary surrender of license.** (a) A licensee
4 may voluntarily cease business and surrender its license by
5 giving written notice to the commissioner of its intent to
6 surrender its license. Prior to the surrender date of a
7 license, the licensee shall have either completed all pending
8 installment loan transactions or assigned each pending
9 installment loan transaction to another licensee or entity
10 described in section -14.

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

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



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



1 the commissioner as required by this section; provided that the
2 licensee has met all the requirements of voluntary surrender and
3 has returned the original license issued.

4 § -39 Sale or transfer of license; change of control.

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

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

11 (2) Specify the reasons for the closing.

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

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

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



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

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

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

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



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

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

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

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



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



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

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



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

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

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

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



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

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

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



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

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

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



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

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

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



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

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

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

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

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



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

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

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

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

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

20 (4) Charge, collect, or receive, directly or indirectly,
21 charges for negotiating forms of loan proceeds other



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



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



1 electronic form for processing through the Automated
2 Clearing House or similar system;

3 (15) Attempt to collect from a consumer's account after two
4 consecutive attempts have failed, unless the licensee
5 obtains new written authorization from the consumer to
6 transfer or withdraw funds from the account;

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

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

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

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

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

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

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

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

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

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



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

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

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

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

17 "(b) Criminal history record checks may be conducted by:
18 (1) The department of health or its designee on operators
19 of adult foster homes for individuals with
20 developmental disabilities or developmental



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

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

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

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

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



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



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



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



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



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



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

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

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

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

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

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

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

17 (30) The Hawaii health systems corporation on:

18 (A) Employees;

19 (B) Applicants seeking employment;

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



- 1 (D) Current or prospective volunteers, providers, or
2 contractors,
3 in any of the corporation's health facilities as
4 provided by section 323F-5.5;
- 5 (31) The department of commerce and consumer affairs on:
- 6 (A) An applicant for a mortgage loan originator
7 license, or license renewal; and
- 8 (B) Each control person, executive officer, director,
9 general partner, and managing member of an
10 applicant for a mortgage loan originator company
11 license or license renewal,
12 as provided by chapter 454F;
- 13 (32) The state public charter school commission or public
14 charter schools on employees, teacher trainees,
15 prospective employees, and prospective teacher
16 trainees in any public charter school for any position
17 that places them in close proximity to children, as
18 provided in section 302D-33;
- 19 (33) The counties on prospective employees who work with
20 children, vulnerable adults, or senior citizens in
21 community-based programs;



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



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



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



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



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

11 PART III

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

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

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



1 " ~~[+] §480F-3 [1]~~ **Authorized fees.** ~~[Except as provided in~~
2 ~~section 480F-4, no]~~ No check casher shall charge fees in excess
3 of the following amounts:

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

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

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

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

16 ~~[The fees allowed in this section shall not be assessed in any~~
17 ~~transaction or agreement in which the check casher defers~~
18 ~~deposit of the check.] "~~

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



1 "§480F-6 Penalties. (a) Any person who violates this
2 chapter shall be deemed to have engaged in an unfair or
3 deceptive act or practice in the conduct of any trade or
4 commerce within the meaning of section 480-2(a). Aggrieved
5 consumers may seek those remedies set forth in section
6 480-13(b).

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

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

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



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

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

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

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



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

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

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

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

21 PART IV



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

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

6 SECTION 13. This Act shall take effect on July 1, 2021;
7 provided that the licensing requirements for installment lenders
8 established by section 2 of Part II of this Act shall take
9 effect on January 1, 2022, and Part III of this Act shall take
10 effect on January 1, 2022.



Report Title:

Payday Lending; Installment Loans; Installment Lenders;
Licensure; Requirements

Description:

Transitions from lump sum deferred deposit transactions to installment loan transactions. Specifies various consumer protection requirements for installment loans. Beginning 1/1/2022, requires licensure for installment lenders that offer installment loans to consumers. Repeals the statutory authorization for deferred deposit transactions on 1/1/2022.
(SD1)

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

