



1 product sold in connection with a loan. "Interest" does not  
2 include the monthly maintenance fees, deposit item return fees,  
3 or late charges authorized under section 412: -201.

4 "Licensee" means a person to whom a license has been issued  
5 under this article.

6 "Loan amount" means the principal amount of a loan,  
7 exclusive of fees or charges.

8 "Short-term loan" means a loan made pursuant to this  
9 article.

10 "Short-term loan company" means a company engaged in the  
11 business of short-term loans.

12 **§412: -102 Short-term loan company license; required.**

13 Except as expressly permitted by federal law or this chapter, no  
14 person shall engage in any activity to operate as a short-term  
15 loan company, including without limitation, making loans and  
16 extensions of credit where the interest charged, contracted for,  
17 or received is in excess of rates permitted by law other than  
18 this article; use the term "short-term loan company"; or  
19 exercise powers or privileges restricted to short-term loan  
20 companies under applicable law unless the person is licensed  
21 under this article.



1           **§412: -103 Applicability of this article.** This article  
2 shall not apply to a depository institution that is otherwise  
3 subject to regulation elsewhere in this chapter. A depository  
4 institution that elects to be licensed under this article shall  
5 waive the benefits of any and all laws of this State or another  
6 State that are inconsistent with this article and any and all  
7 benefits under federal law that are inconsistent with, but not  
8 preemptive of the provisions of this article.

9           **§412: -104 Application for license.** (a) Any  
10 corporation or any person intending to form a corporation  
11 incorporated in this State may file an application with the  
12 commissioner for a license to engage in the business of a short-  
13 term loan company.

14           (b) The application shall contain the following  
15 information, unless waived by the commissioner:

16           (1) The proposed name of the short-term loan company, the  
17 location of its principal office, and any lease  
18 agreements for the principal office;

19           (2) Any intended or existing affiliates, subsidiaries, and  
20 holding company of the proposed short-term loan  
21 company and the extent and nature of the holding



1            company's control over the operations of the proposed  
2            short-term loan company;

3            (3) A business plan that shall contain the following:

4            (A) A written description of the short-term loan  
5            company's proposed financial products;

6            (B) A written statement that explains how the scope  
7            of the proposed business complies with this  
8            article and why any existing lines of business do  
9            not conflict with this article;

10           (C) A written description of the short-term loan  
11           company's proposed plan of marketing its  
12           products, whether through affiliates,  
13           subsidiaries, service corporations, or holding  
14           company;

15           (D) Financial projections regarding the short-term  
16           loan company's profitability; and

17           (E) Any and all contractual arrangements that are  
18           intended to be executed between the short-term  
19           loan company and its holding company, affiliates,  
20           and subsidiaries;



- 1           (4) Financial statements, employment history, education,  
2                   management experience, and other biographical  
3                   information for the proposed executive officers and  
4                   directors of the short-term loan company and its  
5                   holding company, if any;
- 6           (5) Proposed policies regarding loans, investments,  
7                   operations, accounting, recordkeeping, and compliance  
8                   with applicable federal and state consumer laws;
- 9           (6) The name and address of each proposed subscriber of  
10                   capital stock in the short-term loan company or the  
11                   majority shareholders in any holding company;
- 12           (7) A copy of the short-term loan company's articles of  
13                   incorporation and bylaws;
- 14           (8) Information necessary to conduct a criminal history  
15                   record check in accordance with section 846-2.7 of the  
16                   applicant and each of the proposed directors and  
17                   executive officers of the short-term loan company,  
18                   accompanied by payment of the applicable fee for each  
19                   record check to be conducted; and
- 20           (9) Any other information that the commissioner may  
21                   require.



1 (c) The application shall be submitted on a form  
2 prescribed by the commissioner and shall be accompanied by an  
3 application fee assessed pursuant to section 412:2-105.2.

4 (d) The identity of each applicant and organizer, and any  
5 information that is not confidential, shall be available to the  
6 public. The applicant may request in writing that information  
7 be kept confidential. The applicant shall designate and  
8 separate any matter which the applicant claims is confidential  
9 and shall submit a separate statement providing the reasons and  
10 authority for the request for confidential treatment. The  
11 failure by the applicant to request confidential treatment and  
12 designate and separate the confidential matter shall preclude  
13 any objection or claim for wrongful disclosure of the same.  
14 Information determined by the commissioner to be confidential,  
15 pursuant to an applicant's request or otherwise, shall not be  
16 available to the public.

17 **§412: -105 Publication of notice.** (a) Once the  
18 application for a license under this article is complete and has  
19 been accepted by the commissioner, the applicant shall publish a  
20 notice at least once in a newspaper of general circulation in



1 each county in this State where the short-term loan company  
2 intends to establish a principal office, branch, or agency.

3 (b) The notice shall be in a form prescribed by the  
4 commissioner and shall state the fact that an application has  
5 been filed, the name of the applicant, the location of the  
6 short-term loan company's proposed place of business, and the  
7 amount of its proposed capital. The notice shall also state  
8 that within fifteen days after the last publication of the  
9 notice, any person may file with the commissioner written  
10 comments on the application or a request for an informational  
11 and comment proceeding to present information and comments to  
12 the commissioner. Any request for an informational and comment  
13 proceeding shall be accompanied by a brief statement of the  
14 person's interest in the application, the matters to be  
15 discussed at the informational and comment proceeding, and the  
16 reasons why written comments will not suffice in lieu of an  
17 informational and comment proceeding.

18 **§412: -106 Information and comment proceeding.** (a) An  
19 informational and comment proceeding on the application shall  
20 not be mandatory and whether an informational and comment



1 proceeding is held shall be within the commissioner's  
2 discretion, regardless of whether any person has requested one.

3 (b) If the commissioner determines that an informational  
4 and comment proceeding is warranted, the commissioner shall  
5 notify the applicant and every person who has requested an  
6 informational and comment proceeding of the time, date, and  
7 place of the proceeding at least ten days prior to the  
8 proceeding.

9 **§412: -107 Grant of approval.** (a) An application for a  
10 license shall be approved only if the commissioner finds that:

11 (1) The proposed short-term loan company and holding  
12 company, if any, will comply with the requirements of  
13 this article; and

14 (2) The qualifications, character, financial  
15 responsibility, experience, and general fitness of the  
16 proposed directors and executive officers of the  
17 short-term loan company are such as will warrant  
18 public confidence and a belief that the business of  
19 the short-term loan company will be honestly and  
20 efficiently conducted. For purposes of this section,  
21 the commissioner may presume that in the absence of



1 credible evidence to the contrary, a director,  
2 officer, or controlling person is of good character  
3 and sound financial standing. Such presumption may be  
4 rebutted by evidence to the contrary, including  
5 without limitation a finding that such director,  
6 officer, or controlling person has:

7 (A) Been convicted of, or has pleaded nolo contendere  
8 to, any crime involving an act of fraud or  
9 dishonesty;

10 (B) Consented to or suffered a judgment in any civil  
11 action based upon conduct involving an act of  
12 fraud or dishonesty;

13 (C) Consented to or suffered the suspension or  
14 revocation of any professional, occupational, or  
15 vocational license based upon conduct involving  
16 an act of fraud or dishonesty;

17 (D) Wilfully made or caused to be made in any  
18 application or report filed with the  
19 commissioner, or in any proceeding before the  
20 commissioner, any statement, which was at the  
21 time and in the light of the circumstances under



1           which it was made, false or misleading with  
2           respect to any material fact, or has wilfully  
3           omitted to state in any application or report any  
4           material fact which was required to be stated  
5           therein; or

6           (E) Wilfully committed any violation of, or has  
7           wilfully aided, abetted, counseled, commanded,  
8           induced, or procured the violation by any other  
9           person of, any provision of this article or of  
10          any rule or order issued under this article.

11          (b) If the commissioner is satisfied that the applicant  
12          has fulfilled all the requirements of law and is qualified to  
13          engage in the business of a short-term loan company, the  
14          commissioner shall issue a written decision and order approving  
15          the application. Upon the approval of the application and, if  
16          applicable, upon providing satisfactory evidence to the  
17          commissioner of compliance with the requirements of chapter 414  
18          relating to foreign corporations, the commissioner shall issue  
19          to the applicant a license to engage in the business of a short-  
20          term loan company under this article.



1 (c) In granting approval, the commissioner may impose any  
2 conditions and restrictions that are in the public interest,  
3 including but not limited to requiring the applicant to fulfill  
4 representations contained in its application and agreements made  
5 with the commissioner during the application process.

6 **§412: -108 Denial of license.** If the commissioner is  
7 not satisfied that the applicant meets all the criteria set  
8 forth for approval, the commissioner shall issue a written  
9 decision denying the applicant's application. An applicant who  
10 is denied approval may request a hearing before the commissioner  
11 in accordance with chapter 91. Any final decision of the  
12 commissioner denying an applicant a license may be appealed to  
13 the circuit court as provided in chapter 91.

14 **PART II. LOANS AND EXTENSIONS OF CREDIT**

15 **§412: -200 Loan terms and conditions.** A licensee may  
16 engage in the business of making short-term loans; provided that  
17 each loan shall meet the following requirements:

- 18 (1) The total amount of the loan shall not exceed \$2,500;  
19 (2) The minimum duration of the loan shall be four months  
20 and the maximum duration of the loan shall be twenty-  
21 four months; provided that the minimum duration of the



1 loan may be less than four months if the total monthly  
2 payment on the loan does not exceed the greater of:

3 (A) An amount that is five per cent of the borrower's  
4 verified gross monthly income; or

5 (B) Six per cent of the borrower's verified net  
6 monthly income.

7 (3) The short-term loan shall be made pursuant to a  
8 written loan contract that sets forth the terms and  
9 conditions of the loan, which shall be signed by the  
10 borrower and a person authorized by the licensee to  
11 sign such agreements and dated the same day the loan  
12 is made and disbursed. A copy of the signed loan  
13 contract shall be provided to the borrower. The loan  
14 contract shall disclose in a clear and concise manner  
15 the following information:

16 (A) The principal amount of the loan and the total  
17 amount of fees and charges the borrower will be  
18 required to pay in connection with the loan  
19 pursuant to the loan contract;

20 (B) The amount of each payment of principal and  
21 interest, when each payment is due, the total



- 1                    number of payments that the borrower will be  
2                    required to make under the loan contract, and the  
3                    loan's maturity date;
- 4            (C)    If the licensee receives a check as security for  
5                    the loan, evidence of receipt from the borrower  
6                    of a check, stating the amount of the check and  
7                    terms upon which the check may be presented for  
8                    payment;
- 9            (D)    A statement, printed in at least ten-point type,  
10                    that informs the borrower that complaints  
11                    regarding the loan or lender may be submitted to  
12                    the division and includes the correct telephone  
13                    number, website address, and mailing address for  
14                    the short-term loan company;
- 15            (E)    Any disclosures required under the federal Truth  
16                    in Lending Act and its implementing regulations,  
17                    as they may be amended from time to time;
- 18            (F)    The annual percentage rate. All fees and charges  
19                    payable directly or indirectly by a borrower to a  
20                    licensee as a condition to a loan, including  
21                    interest and the monthly maintenance fees



- 1 authorized under section 412: -201, shall be  
2 included in the computation of the annual  
3 percentage rate;
- 4 (G) A statement, printed in at least ten-point type,  
5 as follows: "This loan is made pursuant to  
6 Article of Chapter 412 of the Hawaii Revised  
7 Statutes. You have the right to rescind or cancel  
8 this loan by returning the loan proceeds check or  
9 the originally contracted loan amount by 5 p.m.  
10 of the third business day immediately following  
11 the day you enter into this contract.";
- 12 (H) A statement, printed in at least ten-point type,  
13 as follows: "Electronic payment is optional. You  
14 have the right to revoke or remove your  
15 authorization for electronic payment at any  
16 time.";
- 17 (I) The borrower's mailing address; and
- 18 (J) Any other information relating to the loan as the  
19 division shall determine, by rule, is necessary  
20 to ensure that the borrower is provided adequate  
21 notice of the relevant provisions of the loan;



1 (4) The loan shall be a precomputed loan and shall be  
2 payable in substantially equal installments consisting  
3 of principal, fees, and interest combined. For  
4 purposes of this paragraph, "precomputed loan" means a  
5 loan in which the debt is a sum comprising the  
6 principal amount and the amount of fees and interest  
7 computed in advance on the assumption that all  
8 scheduled payments will be made when due; and

9 (5) The loan may be rescinded or canceled on or before 5  
10 p.m. of the third business day immediately following  
11 the day of the loan transaction upon the borrower  
12 returning the original loan proceeds check or paying  
13 to the licensee, in the form of cash or other good  
14 funds instrument, the loan proceeds.

15 **§412: -201 Authorized fees and charges.** (a) A licensee  
16 may charge, collect, and receive only the following fees and  
17 charges in connection with a short-term loan, provided such fees  
18 and charges are set forth in the written loan contract described  
19 in section 412: -200:

20 (1) Interest at a simple annual rate not to exceed thirty-  
21 six per cent;

- 1           (2) Subject to section 412: -202, a monthly maintenance  
2           fee that shall not exceed the lesser of eight per cent  
3           of the originally contracted loan amount or \$25;  
4           provided the fee shall not be added to the loan  
5           balance on which interest is charged;
- 6           (3) Any deposit item return fee incurred by the licensee,  
7           not to exceed \$25, if a borrower's check or electronic  
8           draft is returned because the account on which it was  
9           drawn was closed by the borrower or contained  
10          insufficient funds, or the borrower stopped payment of  
11          the check or electronic draft; provided that the terms  
12          and conditions upon which this fee will be charged to  
13          the borrower shall be set forth in the written loan  
14          contract described in section 412: -200; and
- 15          (4) Damages and costs to which the licensee may become  
16          entitled to by law in connection with any civil action  
17          to collect a loan after default, except that the total  
18          amount of damages and costs shall not exceed the  
19          originally contracted loan amount.
- 20          (b) A licensee may impose a late charge for failure to  
21          make timely payment of any installment; provided that the late



1 charge does not exceed five per cent of the amount of the  
2 installment payment and the charge is specified in the contract  
3 between the licensee and the borrower; provided further that the  
4 late charge shall not exceed \$20.

5       **§412: -202 Inflation adjustment; maximum monthly**  
6 **maintenance fee.** The division may, from time to time, by rule,  
7 adjust the dollar amount of \$25 specified in section 412: -  
8 201(a) to reflect the rate of inflation from the previous date  
9 that the dollar amount was established, as measured by the  
10 Consumer Price Index or other method of measuring the rate of  
11 inflation that the division determines is reliable and generally  
12 accepted.

13       **§412: -203 Refinancing of short-term loans.** Subject to  
14 section 412: -204(f), a licensee may refinance a short-term  
15 loan; provided that the refinanced loan is also a short-term  
16 loan.

17       **§412: -204 Statement of balance due; repayment and**  
18 **refunds.** (a) The licensee shall, upon the request of the  
19 borrower or the borrower's agent, provide a statement of balance  
20 due on a short-term loan.



1           (b) A borrower shall be permitted to make partial  
2 payments, in increments of not less than \$5, on the loan at any  
3 time prior to maturity without charge. The licensee shall give  
4 the borrower dated receipts for each payment made, which shall  
5 state the updated balance due on the loan.

6           (c) When providing a statement of balance due on the loan,  
7 the licensee shall state the amount required to discharge the  
8 borrower's obligation in full as of the date the notice is  
9 provided and for each of the next three business days following  
10 that date. If the licensee cannot reasonably supply a firm  
11 statement of balance due when requested or required, the  
12 licensee may provide a good faith estimate of the balance due  
13 immediately and provide to the borrower or the borrower's agent  
14 a firm statement of balance due within two business days.

15           (d) The licensee shall provide any statement of balance  
16 due verbally and in writing, and shall not fail to provide the  
17 information by phone upon the request of the borrower or the  
18 borrower's agent.

19           (e) A licensee shall not fail to accept cash or other  
20 instruments from the borrower, or a third party when submitted  
21 on behalf of the borrower, for repayment of a short-term loan in



1 full or in part. Payments shall be credited by the licensee on  
2 the date received.

3 (f) Notwithstanding any other provision of law, if a  
4 short-term loan is prepaid in full or refinanced prior to the  
5 loan's maturity date, the licensee shall refund to the borrower  
6 a prorated portion of fees and charges based on a ratio of the  
7 number of days the loan was outstanding and the number of days  
8 for which the loan was originally contracted. For purposes of  
9 this section, all charges made in connection with the loan shall  
10 be included when calculating the loan charges except for deposit  
11 item return fees and late charges authorized under section  
12 412: -201.

13 (g) If a licensee presents a check held as security for a  
14 loan, the licensee shall refund any amount received that is in  
15 excess of the payment due on the loan as of the day the licensee  
16 presents the check. For purposes of this subsection, the  
17 payment due on the loan shall be no more than the amount of  
18 unpaid payments and fees that have already come due according to  
19 the loan contract or, if applicable, the amount due according to  
20 a valid contractual acceleration clause or demand feature as  
21 described in section 412: -300(23).



1 (h) The licensee shall provide any refund due to a  
2 borrower in the form of cash or business check as soon as  
3 reasonably possible and no later than two business days after  
4 receiving payment from the borrower.

5 (i) Upon repayment of the loan in full, the licensee shall  
6 mark the original loan agreement with the word "paid" or  
7 "canceled", return it to the borrower, and retain a copy in the  
8 licensee's records.

9 **§412: -205 Restriction on certain fees and charges.** (a)  
10 Notwithstanding any provision of this article to the contrary, a  
11 licensee shall not contract for, charge, collect, or receive in  
12 connection with a short-term loan a total amount of fees and  
13 charges that exceeds either:

14 (1) Fifty per cent of the originally contracted loan  
15 amount, if the originally contracted loan amount was  
16 \$1,500 or less; or

17 (2) Sixty per cent of the originally contracted loan  
18 amount, if the originally contracted loan amount was  
19 greater than \$1,500.

20 (b) For purposes of this section, all charges made in  
21 connection with the loan shall be included when calculating the



1 total loan charges except for deposit item return fees and late  
2 charges authorized under section 412: -201.

3       **§412: -206 Verification of borrower's income.** Prior to  
4 initiating a short-term loan transaction with a borrower, a  
5 licensee shall make a reasonable attempt to verify the  
6 borrower's income. At a minimum, the licensee shall obtain from  
7 the borrower one or more recent pay stubs or other written  
8 evidence of recurring income, such as a bank statement. The  
9 written evidence shall include at least one document that, when  
10 presented to the licensee, is dated not earlier than forty-five  
11 days prior to the borrower's initiation of the short-term loan  
12 transaction.

13                               **PART III. BUSINESS PRACTICES**

14       **§412: -300 Required and prohibited business practices.**

15 Each licensee shall comply with the following requirements and  
16 prohibitions:

- 17       (1) A licensee shall not make a loan that does not comply  
18               with section 412: -200;
- 19       (2) A licensee shall not charge, collect, or receive,  
20               directly or indirectly, credit insurance premiums,  
21               charges for any ancillary product sold, charges for



1 disbursing loan proceeds or refunds, including check-  
2 cashing charges and any other charges for negotiating  
3 forms of payment other than cash, charges for  
4 brokering or obtaining a loan, or any fees, interest,  
5 or charges in connection with a loan, other than fees  
6 and charges permitted by section 412: -201;

7 (3) A licensee shall not obtain any agreement from the  
8 borrower that:

9 (A) Gives the licensee or any third person power of  
10 attorney or authority to confess judgment for the  
11 borrower;

12 (B) Authorizes the licensee or any third party to  
13 bring suit against the borrower in a court  
14 outside the State; or

15 (C) Waives the borrower's right to legal recourse or  
16 any other right the borrower has under any  
17 otherwise applicable provision of state or  
18 federal law;

19 (4) A licensee shall not cause any person to be obligated  
20 to the licensee in any capacity at any time in the  
21 principal amount of more than \$2,500;



- 1           (5) Except as provided in section 412: -204, a licensee  
2           shall not refinance, renew, or extend any short-term  
3           loan or make a loan to a person if the loan would  
4           cause the person to have more than one short-term loan  
5           from any licensee outstanding at the same time;
- 6           (6) A licensee shall not cause a borrower to be obligated  
7           upon more than one loan at any time;
- 8           (7) A licensee shall not contract with a borrower who  
9           completed a short-term loan within the last fifteen  
10          days;
- 11          (8) A check accepted by a licensee as security for any  
12          loan shall be dated no earlier than the date of the  
13          first required loan payment shown in the loan  
14          agreement;
- 15          (9) A licensee shall not threaten, or cause to be  
16          instigated, criminal proceedings against a borrower if  
17          a check given as security for a loan is dishonored or  
18          for any reason related to the borrower's failure to  
19          pay any sum due under a loan agreement;
- 20          (10) A licensee shall not:



- 1 (A) Accept the title or registration of a vehicle,  
2 real or personal property, or any interest in any  
3 property other than a check payable to the  
4 licensee as security for a loan;
  - 5 (B) Create or accept any remotely created check, as  
6 defined in title 12 Code of Federal Regulations  
7 section 229.2(fff), in connection with a loan;
  - 8 (C) Draft funds electronically from a borrower's  
9 account without express written authorization  
10 from the borrower; or
  - 11 (D) Fail to stop attempts to draft funds  
12 electronically from a borrower's account upon  
13 request from the borrower or his agent.
- 14 Nothing in this paragraph shall prohibit the  
15 conversion of a negotiable instrument into an  
16 electronic form for processing through the automated  
17 clearing house system;
- 18 (11) A licensee shall not present a check, negotiable order  
19 of withdrawal, share draft, or other negotiable  
20 instrument that has been previously presented by the  
21 licensee and subsequently returned dishonored for any



1 reason, unless the licensee obtains new written  
2 authorization from the borrower to present the  
3 previously returned item;

4 (12) A licensee shall not attempt to draft funds  
5 electronically from a borrower's account after two  
6 consecutive attempts have failed, unless the licensee  
7 obtains new written authorization from the borrower to  
8 transfer or withdraw funds electronically from the  
9 borrower's account;

10 (13) A licensee shall not make a loan to a borrower to  
11 enable the borrower to:

12 (A) Pay for any other product or service sold at the  
13 licensee's office location; or

14 (B) Repay any amount owed to the licensee or an  
15 affiliate of the licensee in connection with  
16 another credit transaction;

17 (14) Loan proceeds shall be disbursed in cash or by the  
18 licensee's business check. No fee shall be charged by  
19 the licensee or an affiliate for cashing a loan  
20 proceeds check;



- 1 (15) A check given as security for a loan shall not be  
2 negotiated to a third party;
- 3 (16) Upon receipt of a check given as security for a loan,  
4 the licensee shall stamp the check with an endorsement  
5 stating: "This check is being negotiated as part of a  
6 short-term loan pursuant to Article of Chapter 412  
7 of the Hawaii Revised Statutes, and any holder of this  
8 check takes it subject to all claims and defenses of  
9 the maker.";
- 10 (17) Before entering into a short-term loan, the licensee  
11 shall provide each borrower with a pamphlet, in form  
12 consistent with regulations adopted by the Commission,  
13 explaining in plain language the rights and  
14 responsibilities of the borrower and providing a toll-  
15 free number for the division for assistance with  
16 complaints;
- 17 (18) Each licensee shall conspicuously post in each  
18 approved office:
- 19 (A) A schedule of fees and interest charges, which  
20 shall include examples using a \$300 loan repaid  
21 in three months, a \$500 loan repaid in five



1 months, and a \$1,000 loan repaid in 10 months;

2 and

3 (B) A notice containing the following statement: "If  
4 you wish to file a complaint against us, you may  
5 contact the Division of Financial Institutions at  
6 [insert contact information]." The division  
7 shall furnish licensees with the appropriate  
8 contact information;

9 (19) A licensee shall not knowingly make a short-term loan  
10 to a person who is a member of the military service of  
11 the United States or the spouse or other dependent of  
12 a member of the military service of the United States.  
13 Prior to making a short-term loan, every licensee  
14 shall inquire of every prospective borrower if the  
15 prospective borrower is a member of the military  
16 service of the United States or the spouse or other  
17 dependent of a member of the military service of the  
18 United States. The loan documents shall include  
19 verification that the borrower is not a member of the  
20 military service of the United States or the spouse or



1 other dependent of a member of the military service of  
2 the United States;

3 (20) In collecting or attempting to collect a short-term  
4 loan, a licensee shall comply with the restrictions  
5 and prohibitions applicable to debt collectors  
6 contained in the Fair Debt Collection Practices Act  
7 (15 U.S.C. § 1692 et seq.) regarding harassment or  
8 abuse, false or misleading misrepresentations, and  
9 unfair practices in collections;

10 (21) A licensee shall not contact a borrower for any reason  
11 other than:

12 (A) For the borrower's benefit regarding upcoming  
13 payments, options for obtaining loans, payment  
14 options, payment due dates, the effect of  
15 default, or, after default, receiving payments or  
16 other actions permitted by the licensee;

17 (B) To advise the borrower of missed payments or  
18 dishonored checks; or

19 (C) To assist the transmittal of payments via a  
20 third-party mechanism;



- 1           (22) A short-term loan agreement shall not be sold or  
2                   otherwise assigned to any other person who is not also  
3                   a licensee, and if a loan agreement or its servicing  
4                   is sold or assigned to another licensee, the buyer or  
5                   assignee of the loan agreement shall be subject to the  
6                   same obligations under this article that apply to the  
7                   selling or assigning licensee. If a licensee sells or  
8                   assigns a short-term loan or its servicing, the  
9                   licensee shall provide to the borrower written notice  
10                  and the information needed to make future payments no  
11                  later than ten days before the borrower's next payment  
12                  due date;
- 13           (23) A licensee shall not make a loan to a borrower that  
14                  includes an acceleration clause or demand feature that  
15                  permits the licensee, in the event the borrower fails  
16                  to meet the repayment terms for any outstanding  
17                  balance, to terminate the loan in advance of the  
18                  original maturity date and to demand repayment of the  
19                  entire outstanding balance, unless the following  
20                  conditions are met:



1 (A) Not earlier than ten days after the borrower's  
2 payment was due, the licensee provides written  
3 notice to the borrower of the termination of the  
4 loan; and

5 (B) In addition to the outstanding balance, the  
6 licensee collects only prorated interest and the  
7 fees earned up to termination of the loan. For  
8 purposes of this subparagraph, the outstanding  
9 balance and prorated interest and fees shall be  
10 calculated as if the borrower had voluntarily  
11 prepaid the loan in full on the date of  
12 termination;

13 (24) A licensee shall not file or initiate a legal  
14 proceeding of any kind against a borrower until sixty  
15 days after the date of default on a short-term loan,  
16 during which period the licensee and borrower may  
17 voluntarily enter into a repayment arrangement and the  
18 licensee shall recommend a credit counseling program  
19 approved by the division;



1 (25) A licensee shall not recommend to a borrower that the  
2 borrower obtain a loan for a dollar amount that is  
3 higher than the borrower has requested; and

4 (26) A licensee may not engage in any unfair or deceptive  
5 acts or practices in the conduct of its business."

6 SECTION 2. Section 412:1-104, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) Unless authorized to engage in business as a  
9 financial institution in this State of the type indicated by the  
10 name or as otherwise approved by the commissioner, no person may  
11 use any of the terms "financial institution", "bank", "savings  
12 bank", "savings and loan", "savings association", "financial  
13 services loan company", "credit union", "trust company", "intra-  
14 Pacific bank", "international banking corporation", "short-term  
15 loan company", words of similar import, or translations of such  
16 words, in a manner that might suggest or tend to lead others  
17 into believing that the person is a financial institution of the  
18 character indicated by the name."

19 SECTION 3. Section 412:1-109, Hawaii Revised Statutes, is  
20 amended by amending the definition of "Hawaii financial  
21 institution" to read as follows:



1        ""Hawaii financial institution" means:

2        (1) A corporation or credit union that holds a charter or  
3            license under this chapter or under prior Hawaii law,  
4            authorizing it to accept deposits, to make loans in  
5            excess of the rates permitted in chapter 478, or to  
6            engage in the business of a trust company; or

7        (2) A resulting bank as defined in article 12,  
8 and includes a corporation or credit union existing and  
9 chartered as a Hawaii financial institution or licensed to  
10 transact business in this State on July 1, 1993. A Hawaii  
11 financial institution may be a bank, resulting bank as defined  
12 in article 12, savings bank, savings and loan association,  
13 depository financial services loan company, nondepository  
14 financial services loan company, trust company, credit union,  
15 [~~e~~] intra-Pacific bank[-], or short-term loan company."

16        SECTION 4. Section 412:9-101, Hawaii Revised Statutes, is  
17 amended to read as follows:

18        "**§412:9-101 Necessity for financial services loan company**  
19 **license.** Except as expressly permitted by federal law or this  
20 chapter, no person shall engage in any activity for which a  
21 license to operate as a financial services loan company is



1 required by this chapter, including without limitation, making  
 2 loans and extensions of credit where the interest charged,  
 3 contracted for, or received is in excess of rates permitted by  
 4 law other than this article[7] and not in accordance with  
 5 article the use of the term "financial services loan  
 6 company", or the exercise of such other powers or privileges  
 7 restricted to financial services loan companies under applicable  
 8 law unless it is a corporation incorporated in this State and  
 9 has such a license; provided that a nondepository financial  
 10 services loan company shall not be required to be incorporated  
 11 in this State."

12 SECTION 5. Section 478-4, Hawaii Revised Statutes, is  
 13 amended by amending subsection (d) to read as follows:

14 "(d) The rate limitations contained in subsections (a) and  
 15 (b) of this section and section 478-11.5 shall not apply to any  
 16 credit transaction authorized by, and entered into in accordance  
 17 with the provisions of, articles 9 [~~and~~], 10, and of chapter  
 18 412 or chapter 476."

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



1           "**§478-5 Usury not recoverable.** If a greater rate of  
2 interest than that permitted by law is contracted for with  
3 respect to any consumer credit transaction, any home business  
4 loan or any credit card agreement, the contract shall not, by  
5 reason thereof, be void. But if in any action on the contract  
6 proof is made that a greater rate of interest than that  
7 permitted by law has been directly or indirectly contracted for,  
8 the creditor shall only recover the principal and the debtor  
9 shall recover costs. If interest has been paid, judgment shall  
10 be for the principal less the amount of interest paid. This  
11 section shall not be held to apply, to loans made by financial  
12 services loan companies [~~and~~], credit unions, and small-term  
13 loan lenders at the rates authorized under and pursuant to  
14 articles 9 [~~and~~], 10, and \_\_\_\_\_ of chapter 412."

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

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



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

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

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

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

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

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

18 The fees allowed in this section shall not be assessed in any  
19 transaction or agreement in which the check casher defers  
20 deposit of the check."



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

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

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

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

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



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

3 SECTION 10. Section 846-2.7, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

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

- 6 (1) The department of health or its designee on operators  
7 of adult foster homes for individuals with  
8 developmental disabilities or developmental  
9 disabilities domiciliary homes and their employees, as  
10 provided by section 321-15.2;
- 11 (2) The department of health or its designee on  
12 prospective employees, persons seeking to serve as  
13 providers, or subcontractors in positions that place  
14 them in direct contact with clients when providing  
15 non-witnessed direct mental health or health care  
16 services as provided by section 321-171.5;
- 17 (3) The department of health or its designee on all  
18 applicants for licensure or certification for,  
19 operators for, prospective employees, adult  
20 volunteers, and all adults, except adults in care, at  
21 healthcare facilities as defined in section 321-15.2;



- 1           (4) The department of education on employees, prospective  
2           employees, and teacher trainees in any public school  
3           in positions that necessitate close proximity to  
4           children as provided by section 302A-601.5;
- 5           (5) The counties on employees and prospective employees  
6           who may be in positions that place them in close  
7           proximity to children in recreation or child care  
8           programs and services;
- 9           (6) The county liquor commissions on applicants for liquor  
10          licenses as provided by section 281-53.5;
- 11          (7) The county liquor commissions on employees and  
12          prospective employees involved in liquor  
13          administration, law enforcement, and liquor control  
14          investigations;
- 15          (8) The department of human services on operators and  
16          employees of child caring institutions, child placing  
17          organizations, and foster boarding homes as provided  
18          by section 346-17;
- 19          (9) The department of human services on prospective  
20          adoptive parents as established under section  
21          346-19.7;



- 1           (10) The department of human services or its designee on  
2           applicants to operate child care facilities, household  
3           members of the applicant, prospective employees of the  
4           applicant, and new employees and household members of  
5           the provider after registration or licensure as  
6           provided by section 346-154, and persons subject to  
7           section 346-152.5;
- 8           (11) The department of human services on persons exempt  
9           pursuant to section 346-152 to be eligible to provide  
10          child care and receive child care subsidies as  
11          provided by section 346-152.5;
- 12          (12) The department of health on operators and employees of  
13          home and community-based case management agencies and  
14          operators and other adults, except for adults in care,  
15          residing in community care foster family homes as  
16          provided by section 321-15.2;
- 17          (13) The department of human services on staff members of  
18          the Hawaii youth correctional facility as provided by  
19          section 352-5.5;
- 20          (14) The department of human services on employees,  
21          prospective employees, and volunteers of contracted



- 1 providers and subcontractors in positions that place  
2 them in close proximity to youth when providing  
3 services on behalf of the office or the Hawaii youth  
4 correctional facility as provided by section 352D-4.3;
- 5 (15) The judiciary on employees and applicants at detention  
6 and shelter facilities as provided by section 571-34;
- 7 (16) The department of public safety on employees and  
8 prospective employees who are directly involved with  
9 the treatment and care of persons committed to a  
10 correctional facility or who possess police powers  
11 including the power of arrest as provided by section  
12 353C-5;
- 13 (17) The board of private detectives and guards on  
14 applicants for private detective or private guard  
15 licensure as provided by section 463-9;
- 16 (18) Private schools and designated organizations on  
17 employees and prospective employees who may be in  
18 positions that necessitate close proximity to  
19 children; provided that private schools and designated  
20 organizations receive only indications of the states



- 1 from which the national criminal history record  
2 information was provided pursuant to section 302C-1;
- 3 (19) The public library system on employees and prospective  
4 employees whose positions place them in close  
5 proximity to children as provided by section  
6 302A-601.5;
- 7 (20) The State or any of its branches, political  
8 subdivisions, or agencies on applicants and employees  
9 holding a position that has the same type of contact  
10 with children, vulnerable adults, or persons committed  
11 to a correctional facility as other public employees  
12 who hold positions that are authorized by law to  
13 require criminal history record checks as a condition  
14 of employment as provided by section 78-2.7;
- 15 (21) The department of health on licensed adult day care  
16 center operators, employees, new employees,  
17 subcontracted service providers and their employees,  
18 and adult volunteers as provided by section 321-15.2;
- 19 (22) The department of human services on purchase of  
20 service contracted and subcontracted service providers  
21 and their employees serving clients of the adult



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

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

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

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



- 1 (26) The department of commerce and consumer affairs on  
2 proposed directors and executive officers of a  
3 nondepository financial services loan company as  
4 provided by section 412:3-301;
- 5 (27) The department of commerce and consumer affairs on the  
6 original chartering applicants and proposed executive  
7 officers of a credit union as provided by section  
8 412:10-103;
- 9 (28) The department of commerce and consumer affairs on:  
10 (A) Each principal of every non-corporate applicant  
11 for a money transmitter license;  
12 (B) Each person who upon approval of an application  
13 by a corporate applicant for a money transmitter  
14 license will be a principal of the licensee; and  
15 (C) Each person who upon approval of an application  
16 requesting approval of a proposed change in  
17 control of licensee will be a principal of the  
18 licensee,  
19 as provided by sections 489D-9 and 489D-15;



- 1           (29) The department of commerce and consumer affairs on  
2                    applicants for licensure and persons licensed under  
3                    title 24;
- 4           (30) The Hawaii health systems corporation on:
- 5                    (A) Employees;
- 6                    (B) Applicants seeking employment;
- 7                    (C) Current or prospective members of the corporation  
8                            board or regional system board; or
- 9                    (D) Current or prospective volunteers, providers, or  
10                            contractors,
- 11                    in any of the corporation's health facilities as  
12                            provided by section 323F-5.5;
- 13           (31) The department of commerce and consumer affairs on:
- 14                    (A) An applicant for a mortgage loan originator  
15                            license, or license renewal; and
- 16                    (B) Each control person, executive officer, director,  
17                            general partner, and managing member of an  
18                            applicant for a mortgage loan originator company  
19                            license or license renewal,
- 20                    as provided by chapter 454F;



- 1           (32) The state public charter school commission or public  
2 charter schools on employees, teacher trainees,  
3 prospective employees, and prospective teacher  
4 trainees in any public charter school for any position  
5 that places them in close proximity to children, as  
6 provided in section 302D-33;
- 7           (33) The counties on prospective employees who work with  
8 children, vulnerable adults, or senior citizens in  
9 community-based programs;
- 10          (34) The counties on prospective employees for fire  
11 department positions which involve contact with  
12 children or vulnerable adults;
- 13          (35) The counties on prospective employees for emergency  
14 medical services positions which involve contact with  
15 children or vulnerable adults;
- 16          (36) The counties on prospective employees for emergency  
17 management positions and community volunteers whose  
18 responsibilities involve planning and executing  
19 homeland security measures including viewing,  
20 handling, and engaging in law enforcement or



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

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

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

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

16 (40) The department of commerce and consumer affairs on:  
17 (A) Applicants for real estate appraiser licensure or  
18 certification as provided by chapter 466K;  
19 (B) Each person who owns more than ten per cent of an  
20 appraisal management company who is applying for



- 1 registration as an appraisal management company,  
2 as provided by section 466L-7; and
- 3 (C) Each of the controlling persons of an applicant  
4 for registration as an appraisal management  
5 company, as provided by section 466L-7;
- 6 (41) The department of health or its designee on all  
7 license applicants, licensees, employees, contractors,  
8 and prospective employees of medical cannabis  
9 dispensaries, and individuals permitted to enter and  
10 remain in medical cannabis dispensary facilities as  
11 provided under sections 329D-15(a)(4) and  
12 329D-16(a)(3);
- 13 (42) The department of commerce and consumer affairs on  
14 applicants for nurse licensure or license renewal,  
15 reactivation, or restoration as provided by sections  
16 457-7, 457-8, 457-8.5, and 457-9;
- 17 (43) The county police departments on applicants for  
18 permits to acquire firearms pursuant to section 134-2  
19 and on individuals registering their firearms pursuant  
20 to section 134-3;
- 21 (44) The department of commerce and consumer affairs on:



- 1 (A) Each of the controlling persons of the applicant  
2 for licensure as an escrow depository, and each  
3 of the officers, directors, and principals who  
4 will be in charge of the escrow depository's  
5 activities upon licensure; and
- 6 (B) Each of the controlling persons of an applicant  
7 for proposed change in control of an escrow  
8 depository licensee, and each of the officers,  
9 directors, and principals who will be in charge  
10 of the licensee's activities upon approval of  
11 such application,  
12 as provided by chapter 449;
- 13 (45) The department of taxation on current or prospective  
14 employees or contractors who have access to federal  
15 tax information in order to comply with requirements  
16 of federal law, regulation, or procedure, as provided  
17 by section 231-1.6;
- 18 (46) The department of labor and industrial relations on  
19 current or prospective employees or contractors who  
20 have access to federal tax information in order to



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

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

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

13          (49) The department of commerce and consumer affairs on  
14          each director and executive officer of a short-term  
15          loan company licensee or an applicant for a small  
16          dollar loan license as provided by article        of  
17          chapter 412; and

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



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

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

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

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



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

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

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

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



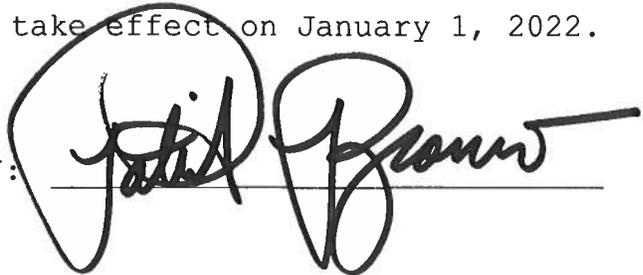
1 SECTION 12. This Act does not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun before its effective date.

4 SECTION 13. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 14. This Act shall take effect on January 1, 2022.

7

INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "J. Brown", is written over a horizontal line. The signature is stylized and cursive.

JAN 26 2021



# H.B. NO. 1233

**Report Title:**

Payday Lending; Short-Term Loans; Short-Term Loan Companies;  
Licensure; Requirements

**Description:**

Transitions from lump sum deferred deposit transactions to installment-based short-term loans. Specifies various consumer protection requirements for short-term loans, including interest and fee caps, allowable outstanding loans, a cooling-off period, and the right to rescind. Beginning 1/1/2022, requires persons operating as short-term loan companies to be licensed. Specifies licensing requirements for short-term loan companies.

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

