

JAN 27 2021

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



1 banking services that are generally unavailable to underbanked
2 individuals.

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

17 The legislature also finds that a payday product may not be
18 the correct financing source for all borrowers. Many consumers
19 would be better suited to larger loans that are repayable over a
20 greater amount of time. These loans would allow these consumers
21 to obtain the financing at levels that they need, improve their



1 credit history, and allow them to pay their loan off and move
2 beyond the binary system of either payday or prime-lending – the
3 only available alternatives under the current regulatory scheme.
4 According to the Pew Charitable Trusts, national survey data
5 indicates that seventy-nine per cent of payday borrowers prefer
6 small dollar loans that are due in installments, which only take
7 a small share of each paycheck. However, in the absence of a
8 sensible regulatory program, this type of lending cannot come to
9 fruition.

10 The legislature believes that, without further sensible
11 regulatory safeguards, consumers may be forced to incur an
12 unsustainable cycle of debt. The legislature further believes
13 that the underbanked credit market will be substantially
14 improved by adopting new regulations that enhance deferred
15 deposit transactions to more effectively protect consumers and
16 establish a new and viable installment lending product to help
17 bridge consumers to prime-based banking products. The
18 legislature also believes adopting new regulations that address
19 and establish improved repayment terms, including the duration
20 of the loan and the maximum amount of interest and fees that can
21 be charged, will benefit both the consumers and the AFS industry



1 participants. Because lenders are granted access to the
2 borrower's checking account to ensure that the lender gets
3 repaid, the legislature also wants to ensure a proper order of
4 priority in payments so that borrowers can continue to meet
5 certain basic living expenses, such as rent, utilities, and
6 food. The Pew Charitable Trusts has reported that the average
7 Hawaii payday borrower incurs \$529 in fees to borrow \$300 over
8 five months. Research also shows that this amount is nearly
9 three times higher than what the same lenders charge similarly
10 situated consumers in other states.

11 The legislature notes that there has been a growing trend
12 around the country to provide more consumer protections, which
13 benefit consumers and encourage responsible and transparent
14 lending, for deferred deposit transactions and small dollar
15 installment loans within the AFS industry. Hawaii has not yet
16 joined in these reform efforts. In 2017, the Consumer Financial
17 Protection Bureau released new rules that, among other things,
18 target loans with a thirty-six per cent yearly interest rate or
19 higher and restrict payday lenders from extracting money from
20 the borrower's account, without explicit consent, if they failed
21 to repay twice in a row. It is critical that the State take



1 action now to join in the national effort to regulate and
2 enhance deferred deposit transactions, and institute small
3 dollar instalment lending so that all Hawaii consumers have
4 access to the financial product that is right for them, and are
5 able to establish a necessary credit history and ultimately
6 transition to traditional bank lending products.

7 The legislature acknowledges that there is a market for
8 small dollar installment loans. However, the legislature
9 concludes that if small dollar installment loans are going to be
10 offered to Hawaii consumers, there must be appropriate consumer
11 protections in place to ensure these loans contain reasonable
12 terms and fees, provide sufficient protections that allow
13 borrowers to avoid extending or adding additional loans, and
14 allow borrowers to meet their basic living expenses.

15 Accordingly, the purpose of this Act is to encourage
16 transparency, increase consumer protection in the AFS industry,
17 and improve the well-being of Hawaii consumers by:

18 (1) Providing for new viable installment-based small
19 dollar loan transactions in addition to enhanced
20 deferred deposit transactions;



- 1 (2) Specifying various consumer protection requirements
- 2 for small dollar loans;
- 3 (3) Beginning January 1, 2022, requiring licensure for
- 4 small dollar lenders that offer small dollar loans to
- 5 consumers, subject to the oversight of the division of
- 6 financial institutions of the department of commerce
- 7 and consumer affairs to protect against illegal
- 8 offshore lending;
- 9 (4) Specifying licensing requirements for small dollar
- 10 lenders;
- 11 (5) Capping interest at thirty-six per cent per annum and
- 12 one simple maximum monthly maintenance fee tiered up
- 13 to \$50;
- 14 (6) Amortizing loans in full and renewing the loan while
- 15 also permitting borrowers to choose to repay the loan
- 16 without penalty;
- 17 (7) Capping maximum allowable loan charges at fifty per
- 18 cent of the principal loan amount, preventing a loan
- 19 from being either too short or too long in duration;
- 20 (8) Capping the maximum allowable loan size at \$1,500, and
- 21 setting the minimum allowable loan size at \$600,



- 1 providing more flexibility for lenders and borrowers
2 than under the current law;
- 3 (9) Requiring lenders to provide clear disclosures of the
4 loan terms and total charges;
- 5 (10) Prohibiting a lender from making more than one loan at
6 a time to a consumer, preventing incentives for
7 lenders to "split" loans and charge higher fees;
- 8 (11) Authorizing the division of financial institutions to
9 establish and hire two full-time equivalent permanent
10 examiners to carry out the purposes of the small
11 dollar installment loan program, funded via an
12 increase to the ceiling of the compliance resolution
13 fund;
- 14 (12) Creating a registration requirement for check cashers,
15 including those that enter into deferred deposit
16 transactions;
- 17 (13) Requiring a check casher to offer a voluntary payment
18 plan for deferred deposit transactions;
- 19 (14) Requiring check cashers to maintain records and create
20 reports related to their business activities;



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 a small dollar 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", in the context of control of an applicant or
19 licensee, means ownership of, or the power to vote, twenty-five
20 per cent or more of the outstanding voting securities of a
21 licensee or control person. For the purposes of determining the



1 percentage of an applicant or a licensee controlled by any
2 person, there shall be aggregated with the control person's
3 interest the interest of any other person controlled by the
4 person, or by any spouse, parent, or child of the person.

5 "Control person" means any person in control of a licensee
6 or applicant.

7 "Default" means a consumer's failure to repay a small
8 dollar loan in compliance with the terms contained in a small
9 dollar loan agreement.

10 "Department" means the department of commerce and consumer
11 affairs.

12 "Division" means the division of financial institutions of
13 the department of commerce and consumer affairs.

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

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

19 "Financial institution" means any bank, savings bank,
20 savings and loan association, financial services loan company,
21 or credit union doing business in the State whose accounts are



1 insured by the Federal Deposit Insurance Corporation, the
2 National Credit Union Share Insurance Fund, or other similar or
3 successor program of federal insurance.

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

6 "Instrument" does not include an electronic fund transfer or
7 other electronic debit or credit to the consumer's checking
8 account.

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

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

15 "Loan charges" means the total of monthly maintenance fees,
16 dishonored instrument fees, and default charges charged by a
17 lender to a borrower for the maintenance and servicing of a
18 loan.

19 "Maintenance fee" means a monthly fee paid to a licensee to
20 maintain a small dollar loan.



1 "NMLS" means the Nationwide Multistate Licensing System,
2 which is a licensing system developed and maintained by the
3 Conference of State Bank Supervisors for the state licensing and
4 registration of state-licensed loan originators and other
5 financial services providers, or any system provided by the
6 Consumer Financial Protection Bureau.

7 "Person" means an individual, sole proprietorship,
8 partnership, corporation, limited liability company, limited
9 liability partnership, or other association of individuals,
10 however organized.

11 "Place of business" means a location where small dollar
12 loans are offered or made and includes each website through
13 which a consumer may apply for a small dollar loan from a small
14 dollar lender.

15 "Precomputed interest" means an interest method that uses
16 the original payment schedule to calculate interest.

17 "Renewal" means the refinancing of a small dollar loan that
18 occurs during the period between the original maturity date and
19 the immediately preceding installment payment due date.

20 "Renewal" does not include the refinancing of a small dollar



1 loan that occurs prior to the penultimate installment payment
2 due date.

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

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

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

17 § -2 **Small dollar loans; requirements; payments.** (a)

18 Each small dollar loan transaction and renewal shall meet the
19 following requirements:

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



- 1 (2) The total amount of the small dollar loan shall not be
2 less than \$600 nor greater than \$1,500 pursuant to
3 section -5(a);
- 4 (3) The total amount of loan charges a small dollar lender
5 may charge, collect, or receive in connection with a
6 small dollar loan shall not exceed fifty per cent of
7 the principal loan amount;
- 8 (4) A monthly maintenance fee may be charged by the
9 lender, not to exceed the following:
- 10 (A) \$40 on a loan of an original principal loan
11 amount up to \$699.99;
- 12 (B) \$50 on a loan of an original principal loan
13 amount of at least \$700.00 and up to \$799.99; and
- 14 (C) \$60 on a loan of an original principal loan
15 amount of at least \$800.00 and up to \$1,500.00;
- 16 provided that the monthly maintenance fee shall not be
17 added to the loan balance on which the interest is
18 charged; provided further that a small dollar lender
19 shall not charge, collect, or receive a monthly
20 maintenance fee if the borrower is a person on active



- 1 duty in the armed forces of the United States or a
2 dependent of that person;
- 3 (5) The written agreement required under section -3 may
4 require multiple installment payments;
- 5 (6) All repayment schedule due dates shall be dates on
6 which a small dollar lender is open for business to
7 the public at the place of business where the small
8 dollar loan was made;
- 9 (7) A small dollar lender shall accept prepayment in full
10 or in part from a consumer prior to the loan due date
11 and shall not charge the consumer a fee or penalty if
12 the consumer opts to prepay the loan; provided that in
13 order to make a prepayment all past due interest and
14 fees shall be paid first;
- 15 (8) The loan amount shall be fully amortized over the term
16 of the loan, and maintenance fees shall be applied in
17 arrears on a monthly basis;
- 18 (9) A consumer's repayment obligations shall not be
19 secured by a lien on any real or personal property;



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

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

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

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

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

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

21 (2) Any unearned monthly maintenance fees.



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

13 **§ -3 Written agreement; requirements; disclosure.** (a)

14 Each small dollar loan transaction and renewal shall be
15 documented by a written agreement signed by the small dollar
16 lender and consumer. The written agreement shall contain the
17 following information:

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



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



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

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

**"MULTIPLE
INSTALLMENT
PAYMENT**

9
10
11
12
13 Amount Financed
14 Finance Charge
15 **Amount you will receive**
16 Term (months)
17
18 Authorized Interest Rate
19
20 Monthly Maintenance Fee
21
22 **Total of All Permitted Charges**
23
24 **Total You Will Pay for This Loan**
25 (Amount Financed,
26 Interest, and Monthly Maintenance Fee)
27
28 ANNUAL PERCENTAGE RATE
29
30 Payment Schedule"
31



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

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



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

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

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

18 (c) Small dollar loans shall be repayable in substantially
19 equal and consecutive monthly installments of principal and
20 interest combined; provided that the first installment period
21 may exceed one month by not more than fifteen days and the first



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

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

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

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



- 1 (1) A deferment shall postpone the scheduled due date of
2 the earliest unpaid installment and all subsequent
3 installments as originally scheduled, or as previously
4 deferred, for a period equal to the deferment period;
- 5 (2) The deferment period shall be that period during which
6 no installment is scheduled to be paid by reason of
7 the deferment; and
- 8 (3) The lender shall not charge or collect a deferment
9 fee.
- 10 (g) Other than the interest and loan charges permitted
11 under this section, no further or other amount shall be charged
12 or required by the small dollar lender.
- 13 (h) A lender shall not charge or receive loan origination
14 fees.
- 15 (i) A lender shall not collect a default charge on any
16 installment not paid in full within ten days after its due date.
17 A lender may charge a default charge of \$30 on an installment
18 not paid in full after ten days have passed since its due date.
19 For purposes of this subsection, all installments are considered
20 paid in the order in which they become due.



1 § -5 **Maximum loan amount; prohibition against multiple**
2 **loans.** (a) A lender shall not lend an amount less than \$600
3 nor greater than \$1,500 nor shall the amount financed exceed
4 \$1,500 by any one lender at any time to a consumer.

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

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

15 (c) If a consumer's spouse obtains a small dollar loan
16 voluntarily and separately from the consumer, and subsequently
17 the consumer obtains a small dollar loan voluntarily and
18 separately from the consumer's spouse, such that neither the
19 consumer nor the consumer's spouse are coborrowers with each
20 other on either loan, and the consumer's action is documented in
21 writing, either in the written agreement required under



1 section -3 or in a subsequent agreement, signed by the
2 consumer, and retained by the lender, the secondary transaction
3 shall not be considered a violation of this section.

4 **§ -6 Right of rescission.** (a) A consumer shall have
5 the right to rescind a small dollar loan, on or before 5:00 p.m.
6 on the next day of business at the location where the loan was
7 originated, by returning the principal in cash, the original
8 check or money order disbursed by the lender, or the other
9 disbursement of loan proceeds from the lender to fund the loan.
10 The lender shall not charge the consumer for rescinding the
11 loan.

12 (b) At the time of rescission, the lender shall refund any
13 loan fees and interest received and shall return to the consumer
14 the originally signed written agreement, clearly marked across
15 the face:

16 "RESCINDED BY [lender's name; license number], [date]"
17 and below which the lender's authorized representative shall
18 sign.

19 **§ -7 Notice to consumers; general requirements; right to**
20 **prepay; loan limits; right to rescind.** A small dollar lender
21 shall provide the following notice on each written agreement for



1 a small dollar loan. The notice shall be in a prominent place
2 and in at least twelve-point type:

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

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

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

9 RENEWING THIS SMALL DOLLAR LOAN RATHER THAN
10 PAYING THE DEBT IN FULL MAY REQUIRE ADDITIONAL FEES OR
11 CHARGES.

12 STATE LAW PROHIBITS THIS SMALL DOLLAR LOAN FROM
13 EXCEEDING ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)
14 IN TOTAL DEBT. EXCEEDING THIS AMOUNT MAY CREATE
15 FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY.

16 YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY
17 5:00 P.M. [SPECIFY HERE THE CLOSE OF THE NEXT BUSINESS
18 DAY BY DAY OF WEEK AND DATE]."

19 § -8 **Renewal; new loan requirements; consecutive loans;**
20 **payment plan.** (a) A small dollar loan may be renewed only



1 once. After one renewal, the consumer shall pay the debt in
2 cash or its equivalent.

3 (b) Upon renewal of a small dollar loan, the lender may
4 renew up to \$1,500 of the remaining unpaid principal balance.
5 If the unpaid balance on renewal is more than \$1,500, the
6 consumer may be required to pay the remaining balance; provided
7 that the lender shall not finance any amount over \$1,500. The
8 total amount of loan charges for the renewed loan shall meet the
9 requirements of section -2, with the understanding that the
10 total amount of loan charges a small dollar lender may charge,
11 collect, or receive in connection with the renewal of a small
12 dollar loan shall not exceed fifty per cent of the renewal
13 principal loan amount. If the small dollar loan is renewed
14 prior to the maturity date, the lender shall refund to the
15 consumer a prorated portion of the finance charge based upon the
16 ratio of time left before maturity to the loan term.

17 **§ -9 Form of loan proceeds.** A small dollar lender may
18 pay the proceeds from or otherwise fund a small dollar loan to
19 the consumer in the form of a monetary instrument, prepaid debit
20 cards, Automated Clearing House transfers, electronic checks,
21 other forms of electronic transfers, money order, or cash.



1 § -10 Delinquent small dollar loans; restrictions on
2 **collection by lender or third party.** (a) A small dollar lender
3 shall comply with all applicable state and federal laws when
4 collecting a delinquent small dollar loan. A lender may take
5 civil action to collect principal, interest, fees, and costs
6 allowed under this chapter. A lender may not threaten criminal
7 prosecution as a method of collecting a delinquent small dollar
8 loan or threaten to take any legal action against the consumer
9 that is not otherwise permitted by law.

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

18 (c) A lender shall not communicate with a consumer in a
19 manner intended to harass, intimidate, abuse, or embarrass a
20 consumer, including but not limited to communication at an
21 unreasonable hour, with unreasonable frequency, by threats of



1 force or violence, or by use of offensive language. A
2 communication shall be presumed to have been made for the
3 purposes of harassment if it is initiated by the lender for the
4 purposes of collection and the communication is made:

- 5 (1) With the consumer's spouse or the consumer's domestic
6 partner in any form, manner, or place, more than once,
7 excluding calling a shared phone number and asking to
8 speak to the consumer, sending a text message to a
9 shared phone number, sending an electronic mail to a
10 shared electronic mail address, or other electronic
11 writing to a shared electronic account;
- 12 (2) With a consumer at the consumer's place of employment
13 more than once;
- 14 (3) With the consumer, the consumer's spouse, or the
15 consumer's domestic partner at the consumer's place of
16 residence between the hours of 9:00 p.m. and
17 8:00 a.m.; or
- 18 (4) To a party other than the consumer, the consumer's
19 attorney, the lender's attorney, or a consumer credit
20 reporting agency if otherwise permitted by law, except



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

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

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

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

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

19 (2) "Communication" does not include:



1 (A) Verbal communication with the consumer while the
2 consumer is physically present in the lender's
3 place of business;

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

8 (C) An initial letter to the consumer that includes
9 disclosures under the federal Fair Debt
10 Collection Practices Act.

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

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

18 (b) If the loan proceeds instrument delivered by the small
19 dollar lender to the consumer is dishonored by the financial
20 institution, the small dollar lender shall cover any fees and



1 charges incurred by the consumer as a direct result of the
2 dishonored loan proceeds instrument.

3 § -12 **Posting of license and loan charges.** Any small
4 dollar lender offering a small dollar loan shall conspicuously
5 and continuously post at any place of business where small
6 dollar loans are made, the license required pursuant to this
7 chapter and a notice of the loan charges imposed for small
8 dollar loans.

9 § -13 **Internet lending.** (a) A small dollar lender may
10 advertise and accept applications for small dollar loans by any
11 lawful medium, including but not limited to the Internet, and
12 may provide all required notices and disclosures via the
13 Internet, and the consumer may provide a valid electronic
14 signature on the disclosures and loan agreement, subject to
15 subsection (b).

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

20 (c) The unique identifier of any small dollar lender
21 originating a small dollar loan, except a person who is exempt



1 (c) This section shall not apply to:

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

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

10 provided that the small dollar lender shall not pledge,
11 negotiate, sell, assign, or otherwise relinquish its servicing
12 rights and requirements on the small dollar loan.

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

19 (b) All books and records may be maintained as originals
20 or photocopies, on microfilm or microfiche, on computer disks or



1 tapes, or similar forms; provided that the books and records are
2 readily accessible and may be easily examined.

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

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

10 **PART II. LICENSING**

11 **§ -31 License required.** No person, unless exempt under
12 this chapter, shall act as a small dollar lender in this State
13 unless licensed to do so by the commissioner.

14 **§ -32 Exemptions.** This chapter shall not apply to the
15 following:

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



1 § -33 License; application; issuance. (a) The
2 commissioner shall require all licensees to register with NMLS.

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

6 (1) The legal name, trade names, and business address of
7 the applicant and, if the applicant is a partnership,
8 association, limited liability company, limited
9 liability partnership, or corporation, of every
10 member, officer, principal, or director thereof;

11 (2) The principal place of business;

12 (3) The complete address of any other branch offices at
13 which the applicant currently proposes to engage in
14 making small dollar loans; and

15 (4) Other data, financial statements, and pertinent
16 information as the commissioner may require with
17 respect to the applicant or, if an applicant is not an
18 individual, each of the applicant's control persons,
19 executive officers, directors, general partners, and
20 managing members.



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

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

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

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



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



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

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

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

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

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



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

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

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

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

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

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



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

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

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



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

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

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

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

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



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

5 (2) Whose license to conduct business in the small dollar
6 loan or payday industry has been revoked by an
7 administrative order issued by the commissioner or the
8 commissioner's designee, or the licensing authority of
9 another state or jurisdiction, for the period
10 specified in the administrative order;

11 (3) Who has advertised directly and purposefully to Hawaii
12 consumers or made internet loans in violation of this
13 chapter; or

14 (4) Who has failed to complete an application for
15 licensure.

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



S.B. NO. 1355

1 § **-35 Fees; bond.** (a) A small dollar lender shall pay
2 the following fees to the division to obtain and maintain a
3 valid license under this chapter:

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



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

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

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

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

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

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



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

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

9 **§ -36 Renewal of license; annual report.** (a) On or
10 before December 31 of each year, each licensee shall pay a
11 renewal fee pursuant to section -35.

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

15 (1) A copy of the licensee's most recent audited annual
16 financial statement, including balance sheets,
17 statement of income or loss, statement of changes in
18 shareholders' equity, and statement of cash flows or,
19 if a licensee is a wholly owned subsidiary of another
20 corporation, the consolidated audited annual financial



- 1 statement of the parent corporation in lieu of the
2 licensee's audited annual financial statement;
- 3 (2) A report detailing the small dollar lender's
4 activities in this State, including:
- 5 (A) The number of small dollar loans made;
6 (B) The number of small dollar loans the lender is
7 servicing;
8 (C) The type and characteristics of loans serviced in
9 this State;
10 (D) The number of small dollar serviced loans in
11 default; and
12 (E) Any other information that the commissioner may
13 require;
- 14 (3) Any material changes to any of the information
15 submitted by the licensee on its original application
16 that have not previously been reported to the
17 commissioner on any other report required to be filed
18 under this chapter;
- 19 (4) A list of the principal place of business and branch
20 locations, if any, within this State where business



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

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

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

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

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



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

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

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

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

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

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

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

20 (5) The applicant or licensee is insolvent;



- 1 (6) The applicant or licensee has made, in any document or
2 statement filed with the commissioner, a false
3 representation of a material fact or has omitted to
4 state a material fact;
- 5 (7) The applicant, licensee, or, if an applicant or
6 licensee is not an individual, each of the applicant's
7 or licensee's control persons, executive officers,
8 directors, general partners, and managing members have
9 been convicted of or entered a plea of guilty or nolo
10 contendere to a crime involving fraud or deceit, or to
11 any similar crime under the jurisdiction of any
12 federal court or court of another state;
- 13 (8) The applicant or licensee has failed to make,
14 maintain, or produce records that comply with
15 section -15 or any rule adopted by the commissioner
16 pursuant to chapter 91;
- 17 (9) The applicant or licensee has been the subject of any
18 disciplinary action by any state or federal agency
19 that resulted in revocation of a license;
- 20 (10) A final judgment has been entered against the
21 applicant or licensee for violations of this chapter,



1 any state or federal law concerning small dollar
2 loans, deferred deposit loans, check cashing, payday
3 loans, banking, mortgage loan originators, money
4 transmitters, or any state or federal law prohibiting
5 unfair or deceptive acts or practices; or

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

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

- 14 (1) Deny an application for licensure, including an
15 application for a branch office license;
- 16 (2) Revoke the license;
- 17 (3) Suspend the license for a period of time;
- 18 (4) Issue an order to the licensee to cease and desist
19 from engaging in any act specified under subsection
20 (a);



- 1 (5) Order the licensee to make refunds to consumers of
2 excess charges under this chapter;
- 3 (6) Impose penalties of up to \$1,000 for each violation;
4 or
- 5 (7) Bar a person from applying for or holding a license
6 for a period of five years following revocation of the
7 person's license.
- 8 (c) The commissioner may issue a temporary cease and
9 desist order if the commissioner makes a finding that the
10 licensee, applicant, or person is engaging, has engaged, or is
11 about to engage in an illegal, unauthorized, unsafe, or unsound
12 practice in violation of this chapter. Whenever the
13 commissioner denies a license application or takes disciplinary
14 action pursuant to this subsection, the commissioner shall enter
15 an order to that effect and notify the licensee, applicant, or
16 person of the denial or disciplinary action. The notification
17 required by this subsection shall be given by personal service
18 or by mail to the last known address of the licensee or
19 applicant as shown on the application, license, or as
20 subsequently furnished in writing to the commissioner.



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

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

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

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



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

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

9 § -38 **Voluntary surrender of license.** (a) A licensee
10 may voluntarily cease business and surrender its license by
11 giving written notice to the commissioner of its intent to
12 surrender its license. Prior to the surrender date of a
13 license, the licensee shall have either completed all pending
14 small dollar loan transactions or assigned each pending small
15 dollar loan transaction to another licensee or entity described
16 in section -14.

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

20 (1) The date of surrender;



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



1 small dollar loan is being transferred and the name,
2 address, telephone number, and any other contact
3 information of the licensee or entity described in
4 section -14 to whom the small dollar loan was
5 assigned.

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

11 **§ -39 Sale or transfer of license; change of control.**

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

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

19 (c) After review of a request for approval under
20 subsection (b), the commissioner may require the licensee or
21 person or group of persons requesting approval of a proposed



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

15 (d) The commissioner shall approve a request for change of
16 control under subsection (b) if, after investigation, the
17 commissioner determines that the person or group of persons
18 requesting approval has the competence, experience, character,
19 and general fitness to control the licensee or person in control
20 of the licensee in a lawful and proper manner, and that the



1 interests of the public will not be jeopardized by the change of
2 control.

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

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

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

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

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

19 (f) Before filing a request for approval for a change of
20 control, a person may request, in writing, a determination from
21 the commissioner as to whether the person would be considered a



1 person in control of a licensee upon consummation of a proposed
2 transaction. If the commissioner determines that the person
3 would not be a person in control of a licensee, the commissioner
4 shall enter an order to that effect and the proposed person and
5 transaction shall not be subject to subsections (b) through (d).

6 (g) Subsection (b) shall not apply to public offerings of
7 securities.

8 **§ -40 Authorized places of business; principal office;**
9 **branch offices; relocation; closure.** (a) Every small dollar
10 lender licensed under this chapter shall have and maintain a
11 principal place of business in the State, regardless of whether
12 the small dollar lender maintains its principal office outside
13 of the State.

14 (b) If a small dollar lender has more than one place of
15 business, each additional place of business in the State shall
16 be licensed as a branch office with the commissioner. No
17 business shall be conducted at a branch office until the branch
18 office has been licensed by the commissioner.

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



1 An application to establish a branch office shall be submitted
2 through NMLS with a nonrefundable application fee as required by
3 section -35.

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

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

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

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



1 consumers as a location at which the licensee holds itself out
2 as a small dollar lender.

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

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

14 § -42 **Powers of commissioner.** (a) The commissioner may
15 adopt rules pursuant to chapter 91 as the commissioner deems
16 necessary for the administration of this chapter.

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

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



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



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



1 (10) Accept and rely on investigation or examination
2 reports made by other government officials, within or
3 without this State; and

4 (11) Accept audit reports made by an independent certified
5 public accountant for the licensee or person subject
6 to this chapter in the course of that part of the
7 examination covering the same general subject matter
8 as the audit and may incorporate the audit report in
9 the report of the examination, report of
10 investigation, or other writing of the commissioner.

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

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



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

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

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



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

3 (1) Accounting compilations;

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

7 (3) Other information that the commissioner deems
8 necessary.

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



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

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

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

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



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

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

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



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

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

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

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

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



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

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

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

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

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



- 1 loan, or by disguising loan proceeds as cash rebates
2 for the pretextual installment sale of goods and
3 services;
- 4 (2) Make a secured small dollar loan;
- 5 (3) Use a consumer's account number to prepare, issue, or
6 create a check on behalf of the consumer;
- 7 (4) Charge, collect, or receive, directly or indirectly,
8 charges for negotiating forms of loan proceeds other
9 than cash, charges for brokering or obtaining loans,
10 prepayment fees, or any fees, interest, or charges in
11 connection with a small dollar loan except those
12 explicitly authorized in this chapter;
- 13 (5) Fail to make disclosures as required by this chapter
14 and any other applicable state or federal law,
15 including rules or regulations adopted pursuant to
16 state or federal law;
- 17 (6) Directly or indirectly employ any scheme, device, or
18 artifice to defraud or mislead any consumer, any
19 lender, or any person;



S.B. NO. 1355

- 1 (7) Directly or indirectly engage in unfair or deceptive
2 acts, practices, or advertising in connection with a
3 small dollar loan toward any person;
- 4 (8) Directly or indirectly obtain property by fraud or
5 misrepresentation;
- 6 (9) Make a small dollar loan to any person physically
7 located in the State through the use of the Internet,
8 facsimile, telephone, kiosk, or other means without
9 first obtaining a license under this chapter;
- 10 (10) Make, in any manner, any false or deceptive statement
11 or representation, including with regard to the rates,
12 fees, or other financing terms or conditions for a
13 small dollar loan, or engage in bait and switch
14 advertising;
- 15 (11) Make any false statement or knowingly and wilfully
16 make any omission of material fact in connection with
17 any reports filed with the division by a licensee or
18 in connection with any investigation conducted by the
19 division;
- 20 (12) Advertise any rate of interest without conspicuously
21 disclosing the annual percentage rate implied by that



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

4 (13) Make small dollar loans from any unlicensed location;

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

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

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



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

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

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

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

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

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

17 (2) Small dollar loan transaction authorized by, and
18 entered into in accordance with, chapter ."

19 SECTION 4. 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~~] to:

12 (1) Loans made by financial services loan companies and
13 credit unions at the rates authorized under and
14 pursuant to articles 9 and 10 of chapter 412[+];

15 (2) Any small dollar loan regulated under chapter ; or

16 (3) Fees authorized under and pursuant to chapter 480F."

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

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



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

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

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

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

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

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



- 1 operators for, prospective employees, adult
2 volunteers, and all adults, except adults in care, at
3 healthcare facilities as defined in section 321-15.2;
- 4 (4) The department of education on employees, prospective
5 employees, and teacher trainees in any public school
6 in positions that necessitate close proximity to
7 children as provided by section 302A-601.5;
- 8 (5) The counties on employees and prospective employees
9 who may be in positions that place them in close
10 proximity to children in recreation or child care
11 programs and services;
- 12 (6) The county liquor commissions on applicants for liquor
13 licenses as provided by section 281-53.5;
- 14 (7) The county liquor commissions on employees and
15 prospective employees involved in liquor
16 administration, law enforcement, and liquor control
17 investigations;
- 18 (8) The department of human services on operators and
19 employees of child caring institutions, child placing
20 organizations, and foster boarding homes as provided
21 by section 346-17;



- 1 (9) The department of human services on prospective
2 adoptive parents as established under section
3 346-19.7;
- 4 (10) The department of human services or its designee on
5 applicants to operate child care facilities, household
6 members of the applicant, prospective employees of the
7 applicant, and new employees and household members of
8 the provider after registration or licensure as
9 provided by section 346-154, and persons subject to
10 section 346-152.5;
- 11 (11) The department of human services on persons exempt
12 pursuant to section 346-152 to be eligible to provide
13 child care and receive child care subsidies as
14 provided by section 346-152.5;
- 15 (12) The department of health on operators and employees of
16 home and community-based case management agencies and
17 operators and other adults, except for adults in care,
18 residing in community care foster family homes as
19 provided by section 321-15.2;



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

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

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

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

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



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



- 1 subcontracted service providers and their employees,
2 and adult volunteers as provided by section 321-15.2;
- 3 (22) The department of human services on purchase of
4 service contracted and subcontracted service providers
5 and their employees serving clients of the adult
6 protective and community services branch, as provided
7 by section 346-97;
- 8 (23) The department of human services on foster grandparent
9 program, senior companion program, and respite
10 companion program participants as provided by section
11 346-97;
- 12 (24) The department of human services on contracted and
13 subcontracted service providers and their current and
14 prospective employees that provide home and community-
15 based services under section 1915(c) of the Social
16 Security Act, title 42 United States Code section
17 1396n(c), or under any other applicable section or
18 sections of the Social Security Act for the purposes
19 of providing home and community-based services, as
20 provided by section 346-97;



- 1 (25) The department of commerce and consumer affairs on
2 proposed directors and executive officers of a bank,
3 savings bank, savings and loan association, trust
4 company, and depository financial services loan
5 company as provided by section 412:3-201;
- 6 (26) The department of commerce and consumer affairs on
7 proposed directors and executive officers of a
8 nondepository financial services loan company as
9 provided by section 412:3-301;
- 10 (27) The department of commerce and consumer affairs on the
11 original chartering applicants and proposed executive
12 officers of a credit union as provided by section
13 412:10-103;
- 14 (28) The department of commerce and consumer affairs on:
- 15 (A) Each principal of every non-corporate applicant
16 for a money transmitter license;
- 17 (B) Each person who upon approval of an application
18 by a corporate applicant for a money transmitter
19 license will be a principal of the licensee; and
- 20 (C) Each person who upon approval of an application
21 requesting approval of a proposed change in



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



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

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

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

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

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

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



S.B. NO. 1355

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

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

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

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

18 (40) The department of commerce and consumer affairs on:
19 (A) Applicants for real estate appraiser licensure or
20 certification as provided by chapter 466K;



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



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

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

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

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

15 as provided by chapter 449;

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



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



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

4 SECTION 7. There is appropriated out of the general
 5 revenues of the State of Hawaii the sum of \$ or so
 6 much thereof as may be necessary for fiscal year 2021-2022 and
 7 the same sum or so much thereof as may be necessary for fiscal
 8 year 2022-2023 to establish and hire two full-time equivalent
 9 (2.0 FTE) permanent examiners, without regard to chapter 76,
 10 Hawaii Revised Statutes, to carry out the purposes of the small
 11 dollar installment loan program established by section 2 of this
 12 Act; provided that the positions may be added to the position
 13 count for the division of financial institutions of the
 14 department of commerce and consumer affairs.

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

PART III

18 SECTION 8. Chapter 480F, Hawaii Revised Statutes, is
 19 amended by adding six new sections to be appropriately
 20 designated and to read as follows:



1 **"§480F- Registration required.** (a) No check cashier
2 shall conduct business in the State, including deferred deposit
3 transactions, without first registering with the department
4 under this chapter.

5 (b) The director shall prescribe the form of the
6 application for registration. Each application shall be
7 accompanied by the appropriate fee as prescribed by the director
8 by rules adopted pursuant to chapter 91.

9 (c) Check cashier registration shall be updated annually
10 and shall include the following:

11 (1) The address of the principal office of the check
12 cashier;

13 (2) The name and address of the check cashier's agent for
14 service of process in the State; and

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

18 **§480F- Voluntary payment plans.** (a) At the time of
19 origination of a third consecutive deferred deposit transaction
20 made to a customer by a check cashier, and at the time of
21 origination of any subsequent consecutive deferred deposit



1 transactions, the check casher shall offer the customer, in
2 writing, the option to participate in a voluntary payment plan.
3 Should the customer be in financial hardship, a voluntary
4 payment plan may be requested by the customer and arranged by
5 the customer and the check casher at any time.

6 (b) The voluntary payment plan shall be structured to pay
7 the existing debt, both the principal and the fee, in at least
8 four equal payments that coincide with the customer's periodic
9 pay dates or the date the customer is scheduled to receive
10 benefits, unless the customer requests different payment due
11 dates. The payments made pursuant to the voluntary payment plan
12 shall be applied directly to the existing debt, and the lender
13 shall not charge the customer any additional fee other than an
14 administration fee not to exceed \$30 for participation in the
15 voluntary payment plan.

16 (c) The check casher shall provide a written copy of the
17 voluntary payment plan agreement to the customer, or an electric
18 copy if the transaction is being conducted over the Internet.
19 The check casher shall be prohibited from engaging in collection
20 activities while the customer continues to make payments in
21 accordance with the payment plan. The check casher shall be



1 prohibited from making any additional deferred deposit
2 transactions to the customer prior to the completion of the
3 payments under the voluntary payment plan.

4 (d) The check casher may require the customer to provide a
5 post-dated check or electronic authorization for funds
6 transferred for each payment under the voluntary payment plan.
7 If any check or electronic authorization accepted by the check
8 casher as payment for a voluntary payment plan is dishonored,
9 the check casher shall charge the customer a fee for the
10 dishonored instrument not to exceed \$20.

11 (e) If the customer fails to make payments in accordance
12 with a voluntary payment plan, the check casher is entitled to
13 take action as otherwise allowed under this chapter to collect
14 the remaining funds due and may charge the customer a one-time
15 default fee of \$30.

16 **\$480F- Single deferred deposit transaction limitation.**

17 A check casher shall take reasonable measures to ensure that no
18 customer has more than one deferred deposit transaction
19 outstanding at a time from all sources. A check casher that
20 receives written confirmation from each customer that the
21 customer does not have any outstanding deferred deposit



1 transactions as of the date the customer enters into a deferred
2 deposit transaction with the check casher shall be deemed to
3 have met the requirements of this section.

4 §480F- Fees; relation to usury. Any fee charged in
5 compliance with this chapter shall be exempt from chapter 478.

6 §480F- Records and reports. Every check casher shall
7 keep records and make reports with respect to the operation of
8 business as provided in rules adopted by the director pursuant
9 to chapter 91.

10 §480F- Rules. The director shall adopt rules necessary
11 to implement this chapter pursuant to chapter 91."

12 SECTION 9. Section 480F-1, Hawaii Revised Statutes, is
13 amended by adding three new definitions to be appropriately
14 inserted and to read as follows:

15 "Department" means the department of commerce and consumer
16 affairs.

17 "Director" means the director of commerce and consumer
18 affairs.

19 "Financial hardship" means any hardship from loss of
20 income, reduced work hours, increased living costs, or other
21 hardships outside of the control of the customer at the



1 discretion of the check casher and evidenced with
2 documentation."

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

5 "[~~f~~]**S480F-2**[~~]~~ **Posting and notice of fees charged.** Any
6 person who cashes one or more checks for a fee shall:

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

10 (A) The fees charged for cashing a check, for selling
11 or issuing a money order, and for the initial
12 issuance of any membership or identification
13 cards; and

14 (B) That consumer complaints about the check cashing
15 business may be filed with the department [~~of~~
16 ~~commerce and consumer affairs~~], and includes and
17 identifies the telephone number and address of
18 the consumer information service of the
19 department [~~of commerce and consumer affairs~~];

20 (2) Provide written notice to each customer [~~of the fees~~
21 ~~charged for cashing checks~~] in no smaller than twelve-



1 point type that is separate from and in addition to
2 any posted notice[+] the following information:

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

4 (B) That consumer complaints about the check cashing
5 business may be filed with the department,
6 including and identifying the telephone number
7 and address of the consumer information service
8 of the department;

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

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

15 SECTION 11. Section 480F-3, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "~~[+]§480F-3[+]~~ **Authorized fees.** Except as provided in
18 ~~[section 480F-4,]~~ this chapter for check cashers that enter into
19 deferred deposit transactions, no check casher shall charge fees
20 in excess of the following amounts:



- 1 (1) Five per cent of the face amount of the check or \$5,
2 whichever is greater;
- 3 (2) Three per cent of the face amount of the check or \$5,
4 whichever is greater, if the check is the payment of
5 any kind of state public assistance or federal social
6 security benefit payable to the bearer of the check;
- 7 (3) Ten per cent of the face amount of a personal check or
8 money order, or \$5, whichever is greater; or
- 9 (4) No more than \$10 to set up an initial account and
10 issue an optional membership or identification card,
11 and no more than \$5 for a replacement optional
12 identification card.

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

16 SECTION 12. Section 480F-4, Hawaii Revised Statutes, is
17 amended to read as follows:

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



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

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

9 (2) That customers have a right to rescind a deferred
10 deposit transaction within twenty-four hours of the
11 transaction;

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

14 (4) That a customer may have no more than one outstanding
15 deferred deposit transaction from all sources;

16 (5) Information on available financial education services,
17 including contact information for an approved budget
18 and credit counselor or an approved housing counselor;
19 and

20 (6) A copy of the registration to do business as a check
21 casher as required by this chapter.



1 [~~(b)~~] (c) Each deferred deposit shall be made pursuant to
2 a written agreement that has been signed by the customer and the
3 check cashier or an authorized representative of the check
4 cashier. The written agreement shall contain a statement of the
5 following:

6 (1) The total amount of any fees charged for the deferred
7 deposit, expressed both in United States currency and
8 as an annual percentage rate[-]; and

9 (2) Notices stating that:

10 (A) The customer has a right to rescind a deferred
11 deposit transaction within twenty-four hours of
12 the transaction;

13 (B) The customer may have no more than one
14 outstanding deferred deposit transaction from all
15 sources;

16 (C) Deferred deposit transactions are not suitable
17 for long-term borrowing; and

18 (D) The customer may enter into a voluntary payment
19 plan if the customer:

20 (i) Is experiencing financial hardship; or



- 1 (ii) Has entered into three or more consecutive
2 transactions with the same check casher; and
3 (3) A declaration that financial education services are
4 available and include contact information for an
5 approved budget and credit counselor or an approved
6 housing counselor.

7 The written agreement shall authorize the check casher to defer
8 deposit of the personal check until a specific date not later
9 than thirty-two days from the date the written agreement was
10 signed. The written agreement shall not permit the check casher
11 to accept collateral.

12 ~~(e)~~ (d) The face amount of the check shall not exceed
13 \$600 or twenty five per cent of the customer's gross monthly
14 income, whichever is less, and the deposit of a personal check
15 written by a customer pursuant to a deferred deposit transaction
16 may be deferred for no more than thirty-two days. A check
17 casher may charge a fee for deferred deposit of a personal check
18 in an amount not to exceed fifteen per cent of the face amount
19 of the check. Any fees charged for deferred deposit of a
20 personal check in compliance with this section shall be exempt
21 from chapter 478.



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

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

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



1 (h) For purposes of this section, "approved budget and
2 credit counselor" and "approved housing counselor" shall have
3 the same meaning as those terms are defined in section 667-1."

4 SECTION 13. Section 480F-5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~f~~]§480F-5[~~}]~~ **Exemptions.** This chapter shall not apply
7 to[~~+~~

8 ~~(1) Any person who is principally engaged in the bona fide~~
9 ~~retail sale of goods or services, and who, either as~~
10 ~~incident to or independent of the retail sale or~~
11 ~~service, from time to time cashes items for a fee or~~
12 ~~other consideration, where not more than \$2, or two~~
13 ~~per cent of the amount of the check, whichever is~~
14 ~~greater, is charged for the service; or~~

15 ~~(2) Any] any~~ person authorized to engage in business as a
16 bank, trust company, savings bank, savings and loan
17 association, financial services loan company, or
18 credit union under the laws of the United States, any
19 state or territory of the United States, or the
20 District of Columbia."



1 SECTION 14. 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 15. (a) The division of financial institutions of
4 the department of commerce and consumer affairs shall conduct an
5 analysis of the regulation of payday lenders and deferred
6 deposit agreements and its impact on consumer protection in the
7 State as part of its implementation of the purposes of this Act.

8 (b) In conducting the analysis, the division of financial
9 institutions of the department of commerce and consumer affairs
10 shall examine the following:

11 (1) The increasing impact of out-of-state internet lenders
12 who operate in the State;

13 (2) Data regarding consumer complaints;

14 (3) The impact of chapter 480F, Hawaii Revised Statutes,
15 on consumers within the State over the past fifteen
16 years; and

17 (4) Any further measures necessary for increased consumer
18 protection in the State.

19 (c) The division of financial institutions of the
20 department of commerce and consumer affairs shall submit a
21 report of findings and recommendations, including any proposed



S.B. NO. 1355

1 legislation, to the legislature no later than twenty days prior
2 to the convening of the regular session of 2023.

3 PART IV

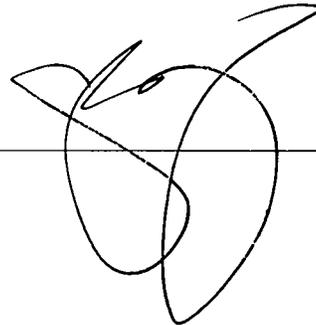
4 SECTION 16. This Act does not affect rights and duties
5 that matured, penalties that were incurred, and proceedings that
6 were begun before its effective date.

7 SECTION 17. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 18. This Act shall take effect on July 1, 2022;
10 provided that the licensing requirements for small dollar
11 lenders established by section 2 of this Act shall take effect
12 on January 1, 2023.

13

INTRODUCED BY: _____

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S.B. NO. 1355

Report Title:

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

Description:

Transitions from lump sum deferred deposit transactions to installment-based small dollar loan transactions. Specifies various consumer protection requirements for small dollar loans. Beginning 1/1/2023, requires licensure for small dollar lenders that offer small dollar loans to consumers. Specifies licensing requirements for small dollar lenders. Authorizes the division of financial institutions to appoint 2.0 FTE examiner positions, funded via the compliance resolution fund, to carry out the purposes of the small dollar installment loan program. Requires check cashers to be registered with DCCA and to offer a voluntary payment plan to customers under certain circumstances. Establishes the terms of voluntary payment plans. Clarifies that a customer may only have one outstanding deferred deposit transaction from any source. Amends notices to customers required of check cashers. Removes the exemption for persons engaged in the bona fide retail sale of goods or services. Requires the division of financial institutions of the DCCA to conduct an analysis of the regulation of payday lenders and deferred deposit agreements in the State. Effective 7/1/2022.

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

