

JAN 22 2021

A BILL FOR AN ACT

RELATING TO DEFERRED DEPOSITS.

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

1 SECTION 1. The deferred deposit of checks, commonly known
2 as payday lending, provides small, short-term, unsecured loans
3 to borrowers in exchange for their promise to repay the loan
4 from their next paycheck or regular income payment, such as a
5 public benefit check. State law allows a check casher, who
6 "loans" the money by deferring deposit of the borrower's check,
7 to charge up to fifteen per cent of the face amount of the
8 postdated check for an agreed-upon period of up to thirty-two
9 days. While a fee of fifteen per cent may appear to be
10 reasonable, because payday loans are short-term, that fifteen
11 per cent rate equates to a much higher, if not exorbitant,
12 annual percentage rate or APR. For example, on a loan of \$100
13 borrowed for a term of fourteen days at fifteen per cent, the
14 total cost or fee for the loan would be \$17.65, which translates
15 to an APR of approximately four hundred sixty per cent. If
16 extended to thirty-two days, the maximum statutory loan term
17 allowed, the APR would be approximately two hundred one per



1 cent. This fee of fifteen per cent is significantly higher than
2 the maximum fee permitted for cashing a personal check without
3 deferred deposit, which is capped at the greater of ten per cent
4 or \$5. Payday loans are also exempt from state usury laws.

5 Since Hawai'i began regulating payday lending in 1999,
6 several states' payday lending laws have either been repealed or
7 struck down as unconstitutional, with the result that states are
8 limiting payday loans to a more moderate APR-based maximum
9 charge, usually ranging from twenty-four to thirty-six per cent.
10 In a sunrise analysis on a proposal to expand regulation of
11 payday lenders, the state auditor recommended that the maximum
12 fee charged for payday loans be reduced. *Sunrise Analysis:*
13 *Check Cashing and Deferred Deposit Agreements (Payday Loans),*
14 Report No. 05-11. In 2007, a groundbreaking statement was made
15 by Congress when, in response to reports about high-cost
16 predatory lending targeting service members, it passed the
17 Military Lending Act that established a thirty-six per cent APR
18 cap on payday loans and other types of consumer loans made to
19 service members and their dependents.

20 During discussion of prior measures to lower the maximum
21 fee allowed and to further regulate payday lenders operating in



1 the State, concerns were raised that such legislation would
2 reduce the number of Hawai'i-based lenders and result in
3 residents turning to payday loans made via internet lenders.
4 The legislature notes that data from the Pew Charitable Trusts'
5 report *Payday Lending in America: Who Borrows, Where They*
6 *Borrow, and Why* shows that borrowers do not turn to online
7 lenders in the absence of physical payday loan stores.
8 Additionally, the legislature acknowledges that any payday
9 lender making loans to individuals in Hawai'i is subject to
10 Hawai'i laws regardless of where the lender is located. Recent
11 enforcement actions commenced against payday lenders by other
12 states, notably Arkansas, Georgia, Iowa, New York, Pennsylvania,
13 and West Virginia, upheld the application of state laws to
14 payday loans made by internet lenders not only within the state,
15 but even where the lender is based out-of-state or affiliated
16 with a Native American tribal entity.

17 The legislature finds that excessive and disproportionate
18 fees on payday loans are detrimental to borrowers and concludes
19 that the maximum fee must be reduced to a more reasonable
20 figure.



1 The purpose of this Act is to reduce the allowable maximum
2 fee of a payday loan from fifteen per cent to seven per cent of
3 the face amount of the deferred check, which for a \$100 loan
4 corresponds to an APR of approximately one hundred ninety-six
5 per cent for a fourteen-day term, and approximately eighty-six
6 per cent for a thirty-two-day term.

7 SECTION 2. Section 480F-4, Hawaii Revised Statutes, is
8 amended by amending subsection (c) to read as follows:

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

17 SECTION 3. This Act shall apply to all agreements to defer
18 the deposit of a check entered into after the effective date of
19 this Act.

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



S.B. NO. 205

1 SECTION 5. This Act shall take effect upon its approval.

2

INTRODUCED BY: Paul Rhoad



S.B. NO. 205

Report Title:

Deferred Deposits; Payday Loan; Fees

Description:

Reduces the maximum fee a check casher may charge under a payday loan agreement for deferring the deposit of a check from fifteen per cent to seven per cent of the face value of the check.

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

