

---

---

# 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 only  
4 thirty-one per cent of households in the State were financially  
5 healthy. That means that more than two in three families  
6 regularly spent more than they earned, failed to pay all their  
7 bills on time, and/or had inadequate liquid and long-term  
8 savings.

9 The survey also found that five per cent of households are  
10 "unbanked," meaning that they do not have a checking or savings  
11 account, and an additional nineteen per cent of households are  
12 "underbanked," meaning they may have either a checking account  
13 or a savings account but may also rely on an alternative  
14 financial services products. These include money orders, check  
15 cashing, payday loans and pawn shop or auto title loans  
16 services. Despite the high costs, the study found these types  
17 of products were used by twenty-one per cent of households at



1 least once during the year, as many found the convenience and  
2 quick access to cash appealing.

3 The legislature also finds that there has been a shift in  
4 the payday industry toward small dollar installment loans, which  
5 are repayable over time and secured by access to the borrower's  
6 checking account. According to the Pew Charitable Trusts,  
7 national survey data indicates that seventy-nine per cent of  
8 payday borrowers prefer small dollar loans that are due in  
9 installments, which only take a small share of each paycheck.  
10 However, in the absence of sensible regulatory safeguards, this  
11 type of lending, as well as the traditional deferred deposit  
12 lending market, can be harmful to consumers.

13 Unfortunately, due to the State's current deferred deposit  
14 law, the payday lending industry can engage in practices that  
15 trap consumers in unsustainable cycles of debt. Payday lenders  
16 structure loans with unrealistically short repayment terms,  
17 unaffordable payments, and excessive fees, resulting in long-  
18 term, high-cost debt and harm to the consumer. Lenders are also  
19 granted access to the borrower's checking account and may  
20 continue to debit the consumer's account after the deferred  
21 deposit loan is repaid. The Pew Charitable Trusts has reported



1 that the average Hawaii payday borrower incurs \$529 in fees to  
2 borrow \$300 over five months. Research also shows that this  
3 amount is nearly three times higher than what the same lenders  
4 charge similarly situated consumers in other states.

5 The legislature notes that there has been a growing trend  
6 around the country to provide more consumer protections, which  
7 benefit consumers and encourage responsible and transparent  
8 lending, for deferred deposit transactions and small dollar  
9 installment loans within the payday lending industry. Many  
10 payday borrowers across the nation have found themselves trapped  
11 in a cycle of debt because of high annual interest rates and  
12 fees, especially if loans are not repaid on time or if loans are  
13 rolled over into a new loan.

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

- 17 (1) Providing for new viable installment-based small  
18 dollar loan transactions in addition to enhanced  
19 deferred deposit transactions;
- 20 (2) Specifying various consumer protection requirements  
21 for small dollar loans;



- 1           (3) Beginning January 1, 2023, requiring licensure for  
2           small dollar lenders that offer small dollar loans to  
3           consumers, subject to the oversight of the division of  
4           financial institutions of the department of commerce  
5           and consumer affairs to protect against illegal  
6           lending;
- 7           (4) Specifying licensing requirements for small dollar  
8           lenders;
- 9           (5) Capping interest at thirty-six per cent per annum and  
10          one simple maximum monthly maintenance fee tiered up  
11          to \$50.00;
- 12          (6) Amortizing loans in full and renewing the loan while  
13          also permitting borrowers to choose to repay the loan  
14          without penalty;
- 15          (7) Capping maximum allowable costs at sixty per cent of  
16          the principal loan amount, preventing a loan from  
17          being either too short or too long in duration;
- 18          (8) Capping the maximum allowable loan size at \$1,500,  
19          providing more flexibility for lenders and borrowers  
20          than under existing law;





1 shall be included in the calculation of the annual percentage  
2 rate.

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

5 "Branch office" means any location in the State that is  
6 identified by any means to the public or customers as a location  
7 at which the licensee holds itself out as a small dollar lender.

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

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

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



1 "Control person" means any person in control of a licensee  
2 or applicant.

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

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

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

10 "Finance charges" means the cost of credit or cost of  
11 borrowing, including the interest, monthly maintenance fees, and  
12 other fees authorized by this part.

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

19 "Instrument" means a method of payment, which may include a  
20 debit card payment, automated clearing house transfer, e-check  
21 or other forms of electronic transfers, money order, cash,



1 personal check signed by the consumer, or any other method of  
2 loan payment authorized by this part or by rule adopted by the  
3 commissioner pursuant to chapter 91 and made payable to a person  
4 subject to this part. The term "instrument" does not include an  
5 electronic fund transfer or other electronic debit or credit to  
6 the consumer's checking account.

7 "Interest" means all charges payable directly or indirectly  
8 by a borrower to a licensee as a condition to a loan, including  
9 fees, service charges, renewal charges, and any ancillary  
10 product sold in connection with a small dollar loan, but does  
11 not include the monthly maintenance fees and any check  
12 collection charge.

13 "Licensee" means a person who is licensed to make small  
14 dollar loans pursuant to this part.

15 "Loan amount" means the amount financed as defined in  
16 Regulation Z of the "Truth in Lending Act", title 12 Code of  
17 Federal Regulations part 1026, as may be amended.

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

20 "NMLS" means the Nationwide Multistate Licensing System and  
21 Registry, which is a licensing system developed and maintained



1 by the Conference of State Bank Supervisors for the state  
2 licensing and registration of state-licensed loan originators  
3 and other financial services providers, or any system provided  
4 by the Consumer Financial Protection Bureau.

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

9 "Place of business" means a location where small dollar  
10 loans are offered or made, including a website through which a  
11 consumer may apply for a small dollar loan from a small dollar  
12 lender.

13 "Precomputed interest" means an interest method that uses  
14 the original payment schedule to calculate interest.

15 "Precomputed loan" means a loan in which the debt is a sum  
16 comprising the principal amount and the amount of interest  
17 computed in advance on the assumption that all scheduled  
18 payments will be made when due.

19 "Renewal" means the refinancing of a small dollar loan that  
20 occurs during the period between the original maturity date and  
21 the preceding installment payment due date. "Renewal" does not



1 include the refinancing of a small dollar loan that occurs prior  
2 to the penultimate installment payment 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 part, 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 part.

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 **§412:9-B Small dollar loans; requirements; payments.** (a)  
18 Each small dollar loan transaction and renewal shall meet the  
19 following requirements:

20 (1) Each transaction and renewal shall be documented in a  
21 written agreement pursuant to section 412:9-C;



- 1           (2) The total amount of the small dollar loan shall not
- 2           exceed \$1,500 pursuant to section 412:9-E(a);
- 3           (3) The total amount of fees and charges a small dollar
- 4           lender may charge, collect, or receive in connection
- 5           with a small dollar loan shall not exceed fifty per
- 6           cent of the principal loan amount;
- 7           (4) A monthly maintenance fee may be charged by the
- 8           lender, not to exceed the following:
- 9           (A) \$10 on a loan of an original principal loan
- 10           amount up to \$299.99;
- 11           (B) \$15 on a loan of an original principal loan
- 12           amount of at least \$300.00 and up to \$599.99;
- 13           (C) \$25 on a loan of an original principal loan
- 14           amount of at least \$600.00 and up to \$799.99;
- 15           (D) \$40 on a loan of an original principal loan
- 16           amount of at least \$800.00 and up to \$1,000.00;
- 17           and
- 18           (E) \$50 on a loan of an original principal loan
- 19           amount of at least \$1,000.01 and up to \$1,500.00;
- 20           provided that the monthly maintenance fee shall not be
- 21           added to the loan balance on which the interest is



1 charged; and provided further that a small dollar  
2 lender shall not charge, collect, or receive a monthly  
3 maintenance fee if the consumer is a person on active  
4 duty in the armed forces of the United States or a  
5 dependent of that person;

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

10 (6) A small dollar loan shall have a minimum loan term of  
11 four months and a maximum loan term of twenty-four  
12 months;

13 (7) A small dollar lender shall accept prepayment in full  
14 or in part from a consumer prior to the loan due date  
15 and shall not charge the consumer a fee or penalty if  
16 the consumer opts to prepay the loan; provided that in  
17 order to make a prepayment all past due interest and  
18 fees must first be paid;

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



- 1           (9) A consumer's repayment obligations shall not be  
2           secured by a lien on any real or personal property;
- 3           (10) A small dollar lender shall not charge a consumer any  
4           direct or indirect fees for a small dollar loan, other  
5           than the fees permitted by this part; and
- 6           (11) A small dollar lender shall not require a consumer to  
7           purchase add-on products, such as credit insurance.
- 8           (b) A small dollar lender may contract for a twice-monthly  
9           or monthly payment of the loan balance due, including the  
10          applicable portion of the interest, and earned monthly  
11          maintenance fee.
- 12          (c) The lender shall inform the consumer in writing that  
13          the lender shall cash the monetary instrument or money order,  
14          upon request of the consumer, at no cost to the consumer.
- 15          (d) For each payment made by a consumer, a lender shall  
16          give the consumer a written receipt with the lender's name and  
17          address, payment date, amount paid, consumer's name, and  
18          sufficient information to identify the account to which the  
19          payment is applied.
- 20          (e) Upon prepayment in full by the consumer, the lender  
21          shall refund:



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

15 **§412:9-C Written agreement; requirements; disclosure. (a)**

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

- 20 (1) The name and address of the consumer and the lender;  
21 (2) The transaction date;



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



1 original check or money order disbursed by the lender,  
2 or the other disbursement of loan proceeds from the  
3 lender to fund the loan. The notice shall also state  
4 that the lender shall not charge the consumer for  
5 rescinding the loan;

6 (12) A notice to the consumer that a returned instrument  
7 may result in a dishonored instrument charge, not to  
8 exceed \$25;

9 (13) A statement that it shall not be considered a  
10 violation of this part if a consumer obtains a small  
11 dollar loan voluntarily and separately from the  
12 consumer's spouse if the consumer documents the action  
13 in writing, either in the written agreement or in a  
14 subsequent agreement; and

15 (14) 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 e-check, other forms of electronic transfers, money  
19 order, cash, check, or any additional method of loan  
20 payment authorized by this part or by rule adopted by  
21 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:

9 "MULTIPLE

10 INSTALLMENT

11 PAYMENT

12 Amount Financed

13 Finance Charge

14 **Amount you will receive**

15 Term (months)

16 Authorized Interest Rate

17 Monthly Maintenance Fee

18 **Total of All Permitted Charges**

19 **Total You Will Pay for This Loan**

20 (Amount Financed,

21 Interest, and Monthly Maintenance Fee)



1 ANNUAL PERCENTAGE RATE

2 Payment Schedule"

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

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



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

7 **§412:9-D Authorized interest rate.** (a) Subject to  
8 section 412:9-B(a)(3), a small dollar lender may contract for,  
9 and receive interest at, a rate not exceeding thirty-six per  
10 cent per year on that portion of the unpaid principal balance of  
11 the loan. Loans shall be precomputed.

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

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



1 payments by the amount of interest charged for the extra days.

2 (d) Payments may be applied to the combined total of  
3 principal and precomputed interest until maturity of the loan,  
4 with priority given to any past due interest before applying  
5 payments to the principal.

6 (e) If a small dollar loan is prepaid in full or renewed  
7 prior to the loan's maturity date, the lender shall refund to  
8 the consumer a prorated portion of the interest and monthly  
9 maintenance fees based on a ratio of the number of days the loan  
10 was outstanding and the number of days for which the loan was  
11 originally contracted. For the purposes of this section, the  
12 monthly maintenance fee shall not be considered to be fully  
13 earned at the beginning of a month.

14 (f) If the parties agree in writing, either in the written  
15 agreement required under section 412:9-C or in a subsequent  
16 agreement, to a deferment of wholly unpaid installments, a  
17 lender may grant one deferment; provided that:

18 (1) A deferment shall postpone the scheduled due date of  
19 the earliest unpaid installment and all subsequent  
20 installments as originally scheduled, or as previously  
21 deferred, for a period equal to the deferment period;



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

4           (3) The lender shall not charge or collect a deferment  
5           fee.

6           (g) Other than the interest and charges permitted under  
7 this section, no further or other amount shall be charged or  
8 required by the small dollar lender.

9           (h) A lender shall not charge or receive loan origination  
10 fees.

11           (i) A lender shall not collect a default charge on any  
12 installment not paid in full within ten days after its due date.  
13 For purposes of this subsection, all installments are considered  
14 paid in the order in which they become due.

15           **§412:9-E Maximum loan amount; prohibition against multiple**  
16 **loans.** (a) A lender shall not lend an amount greater than  
17 \$1,500 nor shall the amount financed exceed \$1,500 by any one  
18 lender at any time to a consumer.

19           (b) Except as otherwise provided in section 412:9-H, no  
20 small dollar lender shall make a small dollar loan to a consumer



1 if there exists an outstanding loan between that consumer and  
2 any of the following:

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

9 (c) If a consumer obtains a small dollar loan voluntarily  
10 and separately from the consumer's spouse and the consumer's  
11 action is documented in writing, either in the written agreement  
12 required under section 412:9-C or in a subsequent agreement,  
13 signed by the consumer, and retained by the lender, the  
14 transaction shall not be considered a violation of this section.

15 (d) Upon a customer's payment in full of any small dollar  
16 loan, a small dollar lender shall wait a period of three days  
17 before the small dollar lender may make another small dollar  
18 loan to the same customer.

19 **§412:9-F Right of rescission.** (a) A consumer shall have  
20 the right to rescind a small dollar loan, at or before 5:00 p.m.  
21 three business days following the loan transaction, at the



1 location where the loan was originated, by returning the  
2 principal in cash, the original check or money order disbursed  
3 by the lender, or the other disbursement of loan proceeds from  
4 the lender to fund the loan. The lender shall not charge the  
5 consumer for rescinding the loan.

6 (b) At the time of rescission, the lender shall refund any  
7 loan fees and interest received and shall return to the consumer  
8 the originally signed written agreement, clearly marked across  
9 the face:

10 "RESCINDED BY [lender's name; license number], [date]"  
11 which the lender's authorized representative shall sign.

12 §412:9-G Notice to consumers; general requirements; right  
13 to prepay; loan limits; right to rescind. A small dollar lender  
14 shall provide the following notice in a prominent place on each  
15 written agreement for a small dollar loan in at least twelve-  
16 point type:

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

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



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

3           RENEWING THIS SMALL DOLLAR LOAN RATHER THAN  
4           PAYING THE DEBT IN FULL MAY REQUIRE ADDITIONAL FEES OR  
5           CHARGES.

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

10           YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY  
11           5:00 P.M. THREE BUSINESS DAYS FOLLOWING THIS  
12           TRANSACTION."

13           **§412:9-H Renewal; new loan requirements; consecutive**  
14           **loans; payment plan.** (a) A small dollar loan may be renewed  
15           only once. After one renewal, the consumer shall pay the debt  
16           in cash or its equivalent.

17           (b) Upon renewal of a small dollar loan, the lender may  
18           renew up to \$1,500 of the remaining unpaid principal balance.  
19           If the unpaid balance on renewal is more than \$1,500, the  
20           consumer may be required to pay the remaining balance; provided  
21           that the lender shall not finance any amount over \$1,500. The



1 total amount of fees and charges for the renewed loan shall meet  
2 the requirements of section 412:9-B, with the understanding that  
3 the total amount of fees and charges a small dollar lender may  
4 charge, collect, or receive in connection with the renewal of a  
5 small dollar loan shall not exceed sixty per cent of the renewal  
6 principal loan amount. If the small dollar loan is renewed  
7 prior to the maturity date, the lender shall refund to the  
8 consumer a prorated portion of the finance charge based upon the  
9 ratio of time left before maturity to the loan term.

10 (c) Once the consumer has paid off the small dollar loan  
11 transaction, the consumer may enter into a new small dollar loan  
12 agreement with the lender; provided that the lender shall not  
13 have more than one outstanding loan with a consumer at any one  
14 time, pursuant to section 412:9-E.

15 **§412:9-I Form of loan proceeds.** A small dollar lender may  
16 pay the proceeds from a small dollar loan to the consumer in the  
17 form of a monetary instrument, prepaid debit card, automated  
18 clearing house transfer, e-check, other forms of electronic  
19 transfers, money order, or cash.

20 **§412:9-J Endorsement of instrument.** A small dollar lender  
21 shall not negotiate or present an instrument for payment unless



1 the instrument is endorsed with the actual business name of the  
2 lender.

3       **§412:9-K Redemption of instrument.** Prior to a small  
4 dollar lender negotiating or presenting the instrument, a  
5 consumer shall have the right to redeem any instrument held by  
6 the lender as a result of a small dollar loan if the consumer  
7 pays the full amount of the instrument to the lender.

8       **§412:9-L Delinquent small dollar loans; restrictions on**  
9 **collection by lender or third party.** (a) A small dollar lender  
10 shall comply with all applicable state and federal laws when  
11 collecting a delinquent small dollar loan. A lender may take  
12 civil action to collect principal, interest, fees, and costs  
13 allowed under this part. A lender may not threaten criminal  
14 prosecution as a method of collecting a delinquent small dollar  
15 loan or threaten to take any legal action against the consumer  
16 that is not otherwise permitted by law.

17       (b) Unless invited by the consumer, a lender shall not  
18 visit a consumer's residence or place of employment for the  
19 purpose of collecting a delinquent small dollar loan. A lender  
20 shall not impersonate a law enforcement officer or make any  
21 statements that may be construed as indicating an official



1 connection with any federal, state, or county law enforcement  
2 agency or any other governmental agency while engaged in  
3 collecting a small dollar loan.

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

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

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



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

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

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

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

18          (f) For the purposes of this section, "communication"  
19         includes any attempted contact with a consumer, initiated by a  
20         lender, in person, by telephone, or in writing, including via



1 electronic mail, text message, or other electronic writing;  
2 provided that:

3 (1) The term "communication" shall include the dates and  
4 times the lender initiates contact with a consumer,  
5 regardless of whether the communication is received or  
6 accessed by the consumer; and

7 (2) The term "communication" shall not include:

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

11 (B) An unanswered telephone call in which no message,  
12 other than a caller identification, is left; or

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

16 **§412:9-M Authorized dishonored instrument charge.** (a)

17 Regardless of the number of instruments that are returned  
18 unpaid, a small dollar lender may contract for and collect one  
19 returned instrument charge for each payment due on a small  
20 dollar loan, not to exceed \$25. The lender shall not collect  
21 any other fees as a result of the dishonored presentment.



1 (b) If the loan proceeds instrument delivered by the small  
2 dollar lender to the consumer is dishonored by the financial  
3 institution, the small dollar lender shall cover any fees and  
4 charges incurred by the consumer as a direct result of the  
5 dishonored loan proceeds instrument.

6 **§412:9-N Posting of license and fees and charges.** Any  
7 small dollar lender offering a small dollar loan shall  
8 conspicuously and continuously post at any place of business  
9 where small dollar loans are made, the license required pursuant  
10 to this part and a notice of the fees and charges imposed for  
11 small dollar loans.

12 **§412:9-O Internet lending.** (a) A small dollar lender may  
13 advertise and accept applications for small dollar loans by any  
14 lawful medium, including but not limited to the Internet, and  
15 the consumer may provide a valid electronic signature on the  
16 disclosures and loan agreement, subject to subsection (b).

17 (b) Small dollar lenders shall be prohibited from  
18 advertising or making small dollar loans via the Internet  
19 without first having obtained a license pursuant to subpart B.

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



1 from licensure under this part, shall be clearly and  
2 conspicuously shown on all solicitations, including websites,  
3 and all other documents, as established by rule or order of the  
4 commissioner.

5 **§412:9-P Notice on assignment or sale of contract. (a)**

6 No small dollar lender may pledge, negotiate, sell, or assign a  
7 small dollar loan, except to another small dollar lender or to a  
8 bank, savings bank, trust company, savings and loan or building  
9 and loan association, or credit union organized under the laws  
10 of the State or the laws of the United States.

11 (b) Prior to sale or assignment of a small dollar loan  
12 contract held by the small dollar lender as a result of a small  
13 dollar loan, the lender shall place a notice on the small dollar  
14 loan contract in at least twelve-point type that reads:

15 "SMALL DOLLAR LOAN

16 No small dollar lender may pledge, negotiate,  
17 sell, or assign a small dollar loan, except to another  
18 small dollar lender or to a bank, savings bank, trust  
19 company, savings and loan or building and loan  
20 association, or credit union organized under the laws  
21 of Hawaii or the laws of the United States."



1 (c) This provision 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 backed financing or similar  
9 lending facility of the small dollar lender;  
10 provided that when making the transfer or pledge, the small  
11 dollar lender does not pledge, negotiate, sell, assign, or  
12 otherwise relinquish its servicing rights and requirements on  
13 the small dollar loan.

14 **§412:9-Q Maintenance of books and records.** (a) Every  
15 small dollar lender shall keep in a safe and secure place those  
16 books and records that directly relate to any small dollar loan  
17 made within the State, and other books and records as may be  
18 necessary for the commissioner to ensure full compliance with  
19 the laws of the State.

20 (b) All books and records may be maintained as originals  
21 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 part shall be made in writing in the English  
5 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 B. LICENSING

11 §412:9-R License required. No person, unless exempt under  
12 this part, shall act as a small dollar lender in the State  
13 unless licensed to do so by the commissioner.

14 §412:9-S Exemptions. This part 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, 15 United States Code section 1602(j); or
- 20 (4) A tax refund anticipation loan.



1           §412:9-T 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, every member,  
10 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 part, the commissioner  
2 may enter into agreements or contracts with NMLS or other  
3 entities to use NMLS to collect and maintain records and process  
4 transaction fees or other fees related to licensees or other  
5 persons subject to this part.

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 part 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 part, 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), as amended;  
14 and  
15 (B) Information related to any administrative, civil,  
16 or criminal findings by any governmental  
17 jurisdiction;  
18 provided that the commissioner may use any information obtained  
19 pursuant to this subsection or through NMLS to determine an  
20 applicant's demonstrated financial responsibility, character,  
21 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 the State before a license  
10 pursuant to this part shall be granted.

11 §412:9-U Issuance of license; grounds for denial. (a)  
12 The commissioner shall conduct an investigation of every  
13 applicant to determine the financial responsibility, character,  
14 and general fitness of the applicant. The commissioner shall  
15 issue the applicant a license to engage in the business of  
16 making 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 not had a small  
21 dollar lender license revoked in any jurisdiction



1           within five years of the filing of the present  
2           application; provided that a subsequent formal  
3           vacation of a revocation shall not be deemed a  
4           revocation;

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

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

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

18          provided that any conviction for which a pardon has  
19          been granted shall not be deemed a conviction for the  
20          purposes of this section;



- 1           (3) The applicant or, in the case of an applicant that is  
2           not an individual, each of the applicant's control  
3           persons, executive officers, directors, general  
4           partners, and managing members, has demonstrated  
5           financial responsibility, character, and general  
6           fitness to command the confidence of a community and  
7           to warrant a determination that the applicant shall  
8           operate honestly, fairly, and efficiently, pursuant to  
9           this part. For the purposes of this paragraph, a  
10          person is not financially responsible if the person  
11          has shown a disregard in the management of the  
12          person's financial condition. A determination that a  
13          person has shown a disregard in the management of the  
14          person's financial condition may be based upon:
- 15          (A) Current outstanding judgments, except judgments  
16             solely as a result of medical expenses;
  - 17          (B) Current outstanding tax liens or other government  
18             liens and filings, subject to applicable  
19             disclosure laws and administrative rules;
  - 20          (C) Foreclosures within the past three years; and



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

3 (4) 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 chapter 853 to any misdemeanor involving an act  
10 of fraud, dishonesty, breach of trust, or money  
11 laundering;

12 (5) The applicant has satisfied all other licensing  
13 requirements of this part; and

14 (6) The applicant has the bond required by section  
15 412:9-V.

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



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

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

- 6 (1) Whose license to conduct business under this part, or  
7 any similar statute in any other jurisdiction, has  
8 been suspended or revoked within five years of the  
9 filing of the present application;
- 10 (2) Whose license to conduct business in the small dollar  
11 loan or payday industry has been revoked by an  
12 administrative order issued by the commissioner or the  
13 commissioner's designee, or the licensing authority of  
14 another state or jurisdiction, for the period  
15 specified in the administrative order;
- 16 (3) Who has advertised or made Internet loans prior to  
17 obtaining a license under this part; or
- 18 (4) Who has failed to complete an application for  
19 licensure.
- 20 (d) A license issued in accordance with this part remains  
21 in force and in effect until surrendered, suspended, or revoked,



1 or until the license expires as a result of nonpayment of the  
2 annual license renewal fee as required by this part.

3       **§412:9-V Fees; bond.** (a) A small dollar lender shall pay  
4 the following fees to the division to obtain and maintain a  
5 valid license under this part:

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



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

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

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

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

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

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

6           (e) Each small dollar lender shall pay a nonrefundable fee  
7 of \$100 to the division for each office that is relocated.

8           **§412:9-W Renewal of license; annual report.** (a) On or  
9 before December 31 of each year, each licensee shall pay a  
10 renewal fee pursuant to section 412:9-V.

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

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



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



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

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

5 (c) A license may be renewed by continuing to meet the  
6 licensing requirements of sections 412:9-T, 412:9-U, and  
7 412:9-V, filing a completed renewal statement on a form  
8 prescribed by NMLS or by the commissioner, paying a renewal fee,  
9 and meeting the requirements of this section.

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



1 §412:9-X Enforcement authorities; violations; penalties.

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

6 (1) The applicant or licensee has violated this part or  
7 any rule or order lawfully made pursuant to this part;

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

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

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

17 (5) The applicant or licensee is insolvent;

18 (6) The applicant or licensee has made, in any document or  
19 statement filed with the commissioner, a false  
20 representation of a material fact or has omitted to  
21 state a material fact;



- 1           (7) The applicant, licensee, or, if an applicant or  
2           licensee is not an individual, each of the applicant's  
3           or licensee's control persons, executive officers,  
4           directors, general partners, and managing members have  
5           been convicted of or entered a plea of guilty or nolo  
6           contendere to a crime involving fraud or deceit, or to  
7           any similar crime under the jurisdiction of any  
8           federal court or court of another state;
- 9           (8) The applicant or licensee has failed to make,  
10          maintain, or produce records that comply with section  
11          412:9-Q or any rule adopted by the commissioner  
12          pursuant to chapter 91;
- 13          (9) The applicant or licensee has been the subject of any  
14          disciplinary action by any state or federal agency  
15          that resulted in revocation of a license;
- 16          (10) A final judgment has been entered against the  
17          applicant or licensee for violations of this part, any  
18          state or federal law concerning small dollar loans,  
19          installment loans, short-term loans, deferred deposit  
20          loans, check cashing, payday loans, banking, mortgage  
21          loan originators, money transmitters, or any state or



1 federal law prohibiting deceptive or unfair trade or  
2 business practices; or

3 (11) The applicant or licensee has failed, in a timely  
4 manner as specified by the commissioner, to take or  
5 provide proof of the corrective action required by the  
6 commissioner subsequent to an investigation or  
7 examination pursuant to section 412:9-DD.

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

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



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

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

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



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

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

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

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

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



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

3       **§412:9-Y Voluntary surrender of license.** (a) A licensee  
4 may voluntarily cease business and surrender its license by  
5 giving written notice to the commissioner of its intent to  
6 surrender its license. Prior to the surrender date of a  
7 license, the licensee shall have either completed all pending  
8 small dollar loan transactions or assigned each pending small  
9 dollar loan transaction to another licensee, bank, savings bank,  
10 trust company, savings and loan or building and loan  
11 association, or credit union organized under the laws of the  
12 State or the laws of the United States.

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

- 16       (1) The date of surrender;
- 17       (2) The name, address, telephone number, facsimile number,  
18             and electronic mail address of a contact individual  
19             with knowledge and authority sufficient to communicate  
20             with the commissioner regarding all matters relating



- 1 to the licensee during the period that it was licensed  
2 pursuant to this part;
- 3 (3) The reason or reasons for surrender;
- 4 (4) Total dollar amount of the licensee's outstanding  
5 small dollar loans sold in the State and the  
6 individual amounts of each outstanding small dollar  
7 loans, and the name, address, and contact telephone  
8 number of the licensee to which each outstanding small  
9 dollar loan was assigned;
- 10 (5) A list of the licensee's authorized branch offices in  
11 the State, if any, as of the date of surrender;
- 12 (6) Confirmation that the licensee has notified each of  
13 its authorized branch offices in the State, if any,  
14 that the branch offices may no longer make small  
15 dollar loans on the licensee's behalf; and
- 16 (7) Confirmation that the licensee has notified each of  
17 its small dollar loan consumers, if any, that the  
18 small dollar loan is being transferred and the name,  
19 address, telephone number, and any other contact  
20 information of the licensee, bank, savings bank, trust  
21 company, savings and loan or building and loan



1 association, or credit union organized under the laws  
2 of the State or the laws of the United States to whom  
3 the small dollar loan was assigned.

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

9 **§412:9-Z Sale or transfer of license; change of control.**

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

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

17 (c) After review of a request for approval under  
18 subsection (b), the commissioner may require the licensee or  
19 person or group of persons requesting approval of a proposed  
20 change of control of the licensee, or both, to provide  
21 additional information concerning the persons who shall assume



1 control of the licensee. The additional information shall be  
2 limited to similar information required of the licensee or  
3 persons in control of the licensee as part of its original  
4 license or renewal application under sections 412:9-T and  
5 412:9-W. The information shall include, for the five-year  
6 period prior to the date of the application for change of  
7 control of the licensee, a history of material litigation and  
8 criminal convictions of each person who, upon approval of the  
9 application for change of control, will be a principal of the  
10 licensee. Authorization shall also be given to conduct criminal  
11 history record checks of those persons, accompanied by the  
12 appropriate payment of the applicable fee for each record check.

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



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

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

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

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

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

17           (f) Before filing a request for approval for a change of  
18 control, a person may request, in writing, a determination from  
19 the commissioner as to whether the person would be considered a  
20 person in control of a licensee upon consummation of a proposed  
21 transaction. If the commissioner determines that the person



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

4 (g) Subsection (b) shall not apply to public offerings of  
5 securities.

6 **§412:9-AA Authorized places of business; principal office;**  
7 **branch offices; relocation; closure.** (a) Every small dollar  
8 lender licensed under this part shall have and maintain a  
9 principal place of business in the State, regardless of whether  
10 the small dollar lender maintains its principal office outside  
11 of the State.

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

17 (c) A small dollar lender shall not maintain any branch  
18 offices in the State in addition to its principal place of  
19 business without the prior written approval of the commissioner.  
20 An application to establish a branch office shall be submitted



1 through NMLS with a nonrefundable application fee as required by  
2 section 412:9-V.

3 (d) A small dollar lender shall not relocate any office in  
4 the State without the prior written approval of the  
5 commissioner. An application to relocate an office shall be  
6 submitted to the commissioner at least thirty days prior to  
7 relocating and shall set forth the reasons for the relocation,  
8 the street address of the proposed relocated office, and other  
9 information that may be required by the commissioner. An  
10 application to relocate an office pursuant to this subsection  
11 shall be submitted with a nonrefundable fee as required by  
12 section 412:9-V.

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

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

17 (2) Specify the reasons for the closing.

18 (f) The principal place of business and each branch office  
19 of the small dollar lender shall be identified in NMLS to  
20 consumers as a location at which the licensee holds itself out  
21 as a small dollar lender.



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

4 §412:9-BB Payment of fees. All fees collected pursuant to  
5 section 412:9-V, administrative fines, and other charges  
6 collected pursuant to this part shall be deposited into the  
7 compliance resolution fund established pursuant to  
8 section 26-9(o) and shall be payable through NMLS, to the extent  
9 allowed by NMLS. Fees not eligible for payment through NMLS  
10 shall be deposited into a separate account within the compliance  
11 resolution fund for use by the division.

12 §412:9-CC Powers of commissioner. (a) The commissioner  
13 may adopt rules pursuant to chapter 91 as the commissioner deems  
14 necessary for the administration of this part.

15 (b) In addition to any other powers provided by law, the  
16 commissioner may:

17 (1) Issue declaratory rulings or informal nonbinding  
18 interpretations;

19 (2) Investigate and conduct hearings regarding any  
20 violation of this part or any rule or order of, or  
21 agreement with, the commissioner;



- 1           (3) Create fact-finding committees that may make  
2           recommendations to the commissioner for the  
3           commissioner's deliberations;
- 4           (4) Require an applicant or any of its control persons,  
5           executive officers, directors, general partners, and  
6           managing members to disclose their relevant criminal  
7           history and request a criminal history record check in  
8           accordance with chapter 846;
- 9           (5) Contract with or employ qualified persons, including  
10          accountants, attorneys, investigators, examiners,  
11          auditors, or other professionals who may be exempt  
12          from chapter 76 and who shall assist the commissioner  
13          in exercising the commissioner's powers and duties;
- 14          (6) Process and investigate complaints, subpoena witnesses  
15          and documents, administer oaths, and receive  
16          affidavits and oral testimony, including telephonic  
17          communications, and do any and all things necessary or  
18          incidental to the exercise of the commissioner's power  
19          and duties, including the authority to conduct  
20          contested case proceedings under chapter 91;



- 1           (7) Require a licensee to comply with any rule, guidance,  
2           guideline, statement, supervisory policy or any  
3           similar proclamation issued or adopted by the Federal  
4           Deposit Insurance Corporation to the same extent and  
5           in the same manner as a bank chartered by the State  
6           or, in the alternative, any policy position of the  
7           Conference of State Bank Supervisors;
- 8           (8) Enter into agreements or relationships with other  
9           government officials or regulatory associations in  
10          order to improve efficiencies and reduce regulatory  
11          burden by sharing resources, standardized or uniform  
12          methods or procedures, and documents, records,  
13          information, or evidence obtained under this part;
- 14          (9) Use, hire, contract, or employ public or privately  
15          available analytical systems, methods, or software to  
16          investigate or examine a licensee or person subject to  
17          this part;
- 18          (10) Accept and rely on investigation or examination  
19          reports made by other government officials, within or  
20          without the State; and



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

8           **§412:9-DD Investigation and examination authority. (a)**  
9           In addition to the authority granted under section 412:9-CC(b),  
10          the commissioner may conduct investigations and examinations in  
11          accordance with this section. The commissioner may access,  
12          receive, and use any books, accounts, records, files, documents,  
13          information, or evidence that the commissioner deems relevant to  
14          the investigation or examination, regardless of the location,  
15          possession, control, or custody of the documents, information,  
16          or evidence.

17          (b) For the purposes of investigating violations or  
18          complaints arising under this part, or for the purposes of  
19          examination, the commissioner may review, investigate, or  
20          examine any licensee or person subject to this part as often as  
21          necessary to carry out the purposes of this part. The



1 commissioner may direct, subpoena, or order the attendance of,  
2 and examine under oath, all persons whose testimony may be  
3 required about loans or the business or subject matter of any  
4 examination or investigation and may direct, subpoena, or order  
5 the person to produce books, accounts, records, files, and any  
6 other documents the commissioner deems relevant to the inquiry.

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

16 (d) Each licensee or person subject to this part shall  
17 make or compile reports or prepare other information, as  
18 directed by the commissioner, to carry out the purposes of this  
19 section, including:

20 (1) Accounting compilations;



1           (2) Information lists and data concerning loan  
2           transactions in a format prescribed by the  
3           commissioner; or

4           (3) Other information that the commissioner deems  
5           necessary.

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



1           (f) The authority of this section shall remain in effect,  
2 whether a licensee or person subject to this part acts or claims  
3 to act under any licensing or registration law of the State, or  
4 claims to act without that authority.

5           (g) No licensee or person subject to investigation or  
6 examination under this section shall knowingly withhold,  
7 abstract, remove, mutilate, destroy, or conceal any books,  
8 records, computer records, or other information.

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



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

7 **§412:9-EE Confidentiality.** (a) Except as otherwise  
8 provided in title 12 United States Code section 5111, the  
9 requirements under any federal or state law regarding the  
10 privacy or confidentiality of any information or material  
11 provided to NMLS, and any privilege arising under federal or  
12 state law, including the rules of any federal or state court,  
13 with respect to the information or material shall continue to  
14 apply to the information or material after the information or  
15 material has been disclosed to NMLS. The information and  
16 material may be shared with all state and federal regulatory  
17 officials having oversight authority over transactions subject  
18 to this part, without the loss of privilege or the loss of  
19 confidentiality protections provided by federal or state law.

20 (b) For the purposes of this section, the commissioner is  
21 authorized to enter into agreements or sharing arrangements with



1 other governmental agencies, the Conference of State Bank  
2 Supervisors, or other associations representing governmental  
3 agencies as established by rule or order of the commissioner.

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

6 (1) Disclosure under any federal or state law governing  
7 the disclosure to the public of information held by an  
8 officer or an agency of the federal government or a  
9 state; or

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

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



1 (e) If a conflict between this section and any other  
2 section of law relating to the disclosure of privileged or  
3 confidential information or material occurs, this section shall  
4 control.

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

9 **§412:9-FF Prohibited practices.** (a) It shall be a  
10 violation of this part for a licensee, its control persons,  
11 executive officers, directors, general partners, managing  
12 members, employees, or independent contractors, or any other  
13 person subject to this part to:

14 (1) Engage in any act that limits or restricts the  
15 application of this part, including making a small  
16 dollar loan disguised as a leaseback transaction or a  
17 personal property, personal sales, or automobile title  
18 loan, or by disguising loan proceeds as cash rebates  
19 for the pretextual installment sale of goods and  
20 services;

21 (2) Make a secured small dollar loan;



- 1 (3) Use a consumer's account number to prepare, issue, or  
2 create a check on behalf of the consumer;
- 3 (4) Charge, collect, or receive, directly or indirectly,  
4 mandatory credit insurance premiums, charges for  
5 negotiating forms of loan proceeds other than cash,  
6 charges for brokering or obtaining loans, prepayment  
7 fees, or any fees, interest, or charges in connection  
8 with a small dollar loan except those explicitly  
9 authorized in this part;
- 10 (5) Fail to make disclosures as required by this part and  
11 any other applicable state or federal law, including  
12 rules or regulations adopted pursuant to state or  
13 federal law;
- 14 (6) Directly or indirectly employ any scheme, device, or  
15 artifice to defraud or mislead any consumer, lender,  
16 or person;
- 17 (7) Directly or indirectly engage in unfair or deceptive  
18 acts, practices, or advertising in connection with a  
19 small dollar loan toward any person;
- 20 (8) Directly or indirectly obtain property by fraud or  
21 misrepresentation;



- 1           (9) Make a small dollar loan to any person physically  
2                   located in the State through the use of the Internet,  
3                   facsimile, telephone, kiosk, or other means without  
4                   first obtaining a license under this part;
- 5           (10) Make, in any manner, any false or deceptive statement  
6                   or representation, including with regard to the rates,  
7                   fees, or other financing terms or conditions for a  
8                   small dollar loan, or engage in bait and switch  
9                   advertising;
- 10          (11) Make any false statement or knowingly and wilfully  
11                   make any omission of material fact in connection with  
12                   any reports filed with the division by a licensee or  
13                   in connection with any investigation conducted by the  
14                   division;
- 15          (12) Advertise any rate of interest without conspicuously  
16                   disclosing the annual percentage rate implied by that  
17                   rate of interest or otherwise fail to comply with any  
18                   requirement of the Truth in Lending Act, or any other  
19                   applicable state or federal laws or regulations;
- 20          (13) Make small dollar loans from any unlicensed location;



- 1       (14) Draft funds from any depository financial institution  
2           without written approval of the consumer; provided  
3           that nothing in this paragraph shall prohibit the  
4           conversion of a negotiable instrument into an  
5           electronic form for processing through the automated  
6           clearing house or similar system;
- 7       (15) Attempt to collect from a consumer's account after two  
8           consecutive attempts have failed, unless the licensee  
9           obtains new written authorization from the consumer to  
10          transfer or withdraw funds from the account;
- 11      (16) Make a loan to a consumer that includes a demand  
12          feature that was not clearly disclosed in the written  
13          agreement pursuant to section 412:9-C or collect or  
14          demand repayment of any outstanding balance or unpaid  
15          interest or fees except as provided in section  
16          412:9-C;
- 17      (17) Fail to comply with any applicable state and federal  
18          law relating to the activities governed by this part;  
19          or
- 20      (18) Fail to pay any fee, assessment, or moneys due to the  
21          department.



1 (b) In addition to any other penalties provided for under  
2 this part, any small dollar loan transaction in violation of  
3 subsection (a) shall be void and unenforceable."

4 PART II

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

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

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

13 (2) Small dollar loan transaction authorized by, and  
14 entered into in accordance with, part ,  
15 article 9, chapter 412."

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

18 "**§478-5 Usury not recoverable.** If a greater rate of  
19 interest than that permitted by law is contracted for, with  
20 respect to any consumer credit transaction, any home business  
21 loan, or any credit card agreement, the contract shall not ~~by~~



1 ~~reason thereof,]~~ be void[~~—But~~]; provided that if in any action  
 2 on the contract proof is made that a greater rate of interest  
 3 than that permitted by law has been directly or indirectly  
 4 contracted for, the creditor shall only recover the principal  
 5 and the debtor shall recover costs. If interest has been paid,  
 6 judgment shall be for the principal less the amount of interest  
 7 paid. This section shall not [~~be held to~~] apply[~~, to loans~~] to:

- 8       (1) Loans made by financial services loan companies and  
 9           credit unions at the rates authorized under and  
 10           pursuant to articles 9 and 10 of chapter 412[~~—~~]; or
- 11       (2) Any small dollar loan regulated under part \_\_\_\_\_,  
 12           article 9, chapter 412."

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

15       "**§478-6 Usury; penalty.** Any person who directly or  
 16 indirectly receives any interest or finance charge at a rate  
 17 greater than that permitted by law or who, by any method or  
 18 device whatsoever, receives or arranges for the receipt of  
 19 interest or finance charge at a greater rate than that permitted  
 20 by law on any credit transaction shall be guilty of usury and



1 shall be fined not more than \$250, unless a greater amount is  
2 allowed by law, or imprisoned not more than one year, or both."

3 SECTION 6. Section 480F-1, Hawaii Revised Statutes, is  
4 amended by deleting the definition of "deferred deposit".

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

9 SECTION 7. Section 480F-3, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "~~[+] §480F-3 [1]~~ **Authorized fees.** [~~Except as provided in~~  
12 ~~section 480F-4, no]~~ No check cashier shall charge fees in excess  
13 of the following amounts:

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

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

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



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

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

8 SECTION 8. Section 480F-4, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "§480F-4 Deferred deposits [~~, when allowed.~~] prohibited.

11 [~~(a) No check casher may defer the deposit of a check except as  
12 provided in this section.~~

13 ~~(b) Each deferred deposit shall be made pursuant to a  
14 written agreement that has been signed by the customer and the  
15 check casher or an authorized representative of the check  
16 casher. The written agreement shall contain a statement of the  
17 total amount of any fees charged for the deferred deposit,  
18 expressed both in United States currency and as an annual  
19 percentage rate. The written agreement shall authorize the  
20 check casher to defer deposit of the personal check until a  
21 specific date not later than thirty two days from the date the~~



1 ~~written agreement was signed. The written agreement shall not~~  
2 ~~permit the check casher to accept collateral.~~

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

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

17 ~~[(e) A check casher who enters into a deferred deposit~~  
18 ~~agreement and accepts a check passed on insufficient funds, or~~  
19 ~~any assignee of that check casher, shall not be entitled to~~  
20 ~~recover damages in any action brought pursuant to or governed by~~  
21 ~~chapter 490. Instead, the check casher may charge and recover a~~



1 ~~fee for the return of a dishonored check in an amount not~~  
2 ~~greater than \$20.~~

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

7 SECTION 9. Section 846-2.7, Hawaii Revised Statutes, is  
8 amended by amending subsection (b) to read as follows:

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

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

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



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



- 1 organizations, and foster boarding homes as provided  
2 by section 346-17;
- 3 (9) The department of human services on prospective  
4 adoptive parents as established under section  
5 346-19.7;
- 6 (10) The department of human services or its designee on  
7 applicants to operate child care facilities, household  
8 members of the applicant, prospective employees of the  
9 applicant, and new employees and household members of  
10 the provider after registration or licensure as  
11 provided by section 346-154, and persons subject to  
12 section 346-152.5;
- 13 (11) The department of human services on persons exempt  
14 pursuant to section 346-152 to be eligible to provide  
15 child care and receive child care subsidies as  
16 provided by section 346-152.5;
- 17 (12) The department of health on operators and employees of  
18 home and community-based case management agencies and  
19 operators and other adults, except for adults in care,  
20 residing in community care foster family homes as  
21 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



- 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 part \_\_\_\_\_, article 9, chapter  
21          412; and





1           SECTION 12. In codifying the new sections added by  
2 section 2 of this Act, the revisor of statutes shall substitute  
3 appropriate section numbers for the letters used in designating  
4 the new sections in this Act.

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

7           SECTION 14. This Act, upon its approval, shall take effect  
8 on July 1, 2022; provided that the licensing requirements for  
9 small dollar lenders established by section 2 of this Act shall  
10 take effect on January 1, 2023.



**Report Title:**

Department of Commerce and Consumer Affairs; Payday Lending; Small Dollar Loans; Small Dollar Lenders; Licensure; Requirements; Check Cashers; Registration; Voluntary Payment Plans; Notices; Appropriation

**Description:**

Provides for new viable installment-based small dollar loan transactions in addition to enhanced deferred deposit transactions. Specifies various consumer protection requirements for small dollar loans. Beginning 1/1/23, requires licensure for small dollar lenders that offer small dollar loans to consumers, subject to the oversight of the division of financial institutions of the department of commerce and consumer affairs to protect against illegal lending. Specifies licensing requirements for small dollar lenders. Caps the maximum allowable loan size at \$1,500, providing more flexibility for lenders and borrowers than under the current law. Repeals provisions of Hawaii Revised Statutes relating to deferred deposits. Effective 7/1/22; provided that the licensing requirements shall take effect on 1/1/23. Makes an appropriation. (SD1)

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

