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# 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 reported that only thirty-  
4 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 or had inadequate liquid and long-term savings.

8 The survey also found that five per cent of households are  
9 "unbanked," meaning they do not have a checking or savings  
10 account, and an additional nineteen per cent of households are  
11 "underbanked," meaning they may have either a checking account  
12 or a savings account but also rely on an alternative financial  
13 services products. These products include money orders, check  
14 cashing, payday loans, and pawn shop or auto title loans  
15 services. Despite the high costs, the study found these types  
16 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) Requiring licensure, beginning January 1, 2023, 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 fifty dollars;
- 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 and 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 and  
19           providing more flexibility for lenders and borrowers  
20           than under existing law;



1 (9) Requiring lenders to provide clear disclosures of the  
2 loan terms and total charges;

3 (10) Prohibiting a lender from making more than one loan at  
4 a time to a consumer, preventing incentives for  
5 lenders to "split" loans and charge higher fees; and

6 (11) Repealing section 480F-4, Hawaii Revised Statutes, to  
7 provide further protection to Hawaii's consumers from  
8 harmful lending practices.

9 SECTION 2. Chapter 412, article 9, Hawaii Revised  
10 Statutes, is amended by adding a new part to be appropriately  
11 designated and to read as follows:

12 "PART

13 SMALL DOLLAR INSTALLMENT LOANS

14 A. GENERAL PROVISIONS

15 §412:9-A Definitions. As used in this part, unless the  
16 context otherwise requires:

17 "Annual percentage rate" means an annual percentage rate as  
18 determined pursuant to section 107 of the federal Truth in  
19 Lending Act, Title 15 United States Code section 1606. For the  
20 purposes of this definition, all fees and charges, including  
21 interest and monthly maintenance fees authorized by this part,



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

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

20 "Control person" means any person in control of a licensee  
21 or applicant.



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

4 "Department" means the department of commerce and consumer  
5 affairs.

6 "Finance charges" means the cost of credit or cost of  
7 borrowing, including the interest, monthly maintenance fees, and  
8 other fees authorized by this part.

9 "Instrument" means a method of payment, which may include a  
10 debit card payment, automated clearing house transfer, e-check  
11 or other forms of electronic transfers, money order, cash,  
12 personal check signed by the consumer, or any other method of  
13 loan payment authorized by this part or by rule adopted by the  
14 commissioner pursuant to chapter 91 and made payable to a person  
15 subject to this part. The term "instrument" does not include an  
16 electronic fund transfer or other electronic debit or credit to  
17 the consumer's checking account.

18 "Interest" means all charges payable directly or indirectly  
19 by a borrower to a licensee as a condition to a loan, including  
20 fees, service charges, renewal charges, and any ancillary  
21 product sold in connection with a small dollar loan, but does



1 not include the monthly maintenance fees and any check  
2 collection charge.

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

5 "Loan amount" means the amount financed as defined in  
6 Regulation Z of the "Truth in Lending Act", Title 12 Code of  
7 Federal Regulations part 1026, as may be amended.

8 "Maintenance fee" means a monthly fee paid to a licensee to  
9 maintain a small dollar loan.

10 "NMLS" means the Nationwide Multistate Licensing System and  
11 Registry, which is a licensing system developed and maintained  
12 by the Conference of State Bank Supervisors for the state  
13 licensing and registration of state-licensed loan originators  
14 and other financial services providers, or any system provided  
15 by the Consumer Financial Protection Bureau.

16 "Place of business" means a location where small dollar  
17 loans are offered or made, including a website through which a  
18 consumer may apply for a small dollar loan from a small dollar  
19 lender.

20 "Precomputed interest" means an interest method that uses  
21 the original payment schedule to calculate interest.



1 "Precomputed loan" means a loan in which the debt is a sum  
2 comprising the principal amount and the amount of interest  
3 computed in advance on the assumption that all scheduled  
4 payments will be made when due.

5 "Renewal" means the refinancing of a small dollar loan that  
6 occurs during the period between the original maturity date and  
7 the preceding installment payment due date. "Renewal" does not  
8 include the refinancing of a small dollar loan that occurs prior  
9 to the penultimate installment payment due date.

10 "Small dollar lender" or "lender" means any person who is  
11 in the business of offering or making a consumer loan, who  
12 arranges a consumer loan for a third party, or who acts as an  
13 agent for a third party, regardless of whether the third party  
14 is exempt from licensure under this part, or whether approval,  
15 acceptance, or ratification by the third party is necessary to  
16 create a legal obligation for the third party, through any  
17 method including mail, telephone, the Internet, or any  
18 electronic means.

19 "Small dollar loan" means a loan made pursuant to this  
20 part.



1 "Truth in Lending Act" means the federal Truth in Lending  
2 Act, Title 15 United States Code section 1601 et seq., as may be  
3 amended, and regulations adopted thereunder, as may be amended.

4 **§412:9-B Small dollar loans; requirements; payments.** (a)

5 Each small dollar loan transaction and renewal shall meet the  
6 following requirements:

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

9 (2) The total amount of the small dollar loan shall not  
10 exceed \$1,500 pursuant to section 412:9-E(a);

11 (3) The total amount of fees and charges a small dollar  
12 lender may charge, collect, or receive in connection  
13 with a small dollar loan shall not exceed fifty per  
14 cent of the principal loan amount;

15 (4) A monthly maintenance fee may be charged by the  
16 lender, not to exceed the following:

17 (A) \$10 on a loan of an original principal loan  
18 amount up to \$299.99;

19 (B) \$15 on a loan of an original principal loan  
20 amount of at least \$300.00 and up to \$599.99;



- 1 (C) \$25 on a loan of an original principal loan  
2 amount of at least \$600.00 and up to \$799.99;
- 3 (D) \$40 on a loan of an original principal loan  
4 amount of at least \$800.00 and up to \$1,000.00;  
5 and
- 6 (E) \$50 on a loan of an original principal loan  
7 amount of at least \$1,000.01 and up to \$1,500.00;
- 8 provided that the monthly maintenance fee shall not be  
9 added to the loan balance upon which the interest is  
10 charged; and provided further that a small dollar  
11 lender shall not charge, collect, or receive a monthly  
12 maintenance fee if the consumer is a person on active  
13 duty in the armed forces of the United States or a  
14 dependent of that person;
- 15 (5) All repayment schedule due dates shall be dates upon  
16 which a small dollar lender is open for business to  
17 the public at the place of business where the small  
18 dollar loan was made;
- 19 (6) A small dollar loan shall have a minimum loan term of  
20 four months and a maximum loan term of twenty-four  
21 months;



- 1           (7) A small dollar lender shall accept prepayment in full  
2           or in part from a consumer prior to the loan due date  
3           and shall not charge the consumer a fee or penalty if  
4           the consumer opts to prepay the loan; provided that in  
5           order to make a prepayment, all past due interest and  
6           fees must first be paid;
- 7           (8) The loan amount shall be fully amortized over the term  
8           of the loan, and maintenance fees shall be applied in  
9           arrears on a monthly basis;
- 10          (9) A consumer's repayment obligations shall not be  
11          secured by a lien on any real or personal property;
- 12          (10) A small dollar lender shall not charge a consumer any  
13          direct or indirect fees for a small dollar loan, other  
14          than the fees permitted by this part; and
- 15          (11) A small dollar lender shall not require a consumer to  
16          purchase add-on products, such as credit insurance.
- 17          (b) A small dollar lender may contract for a twice-monthly  
18          or monthly payment of the loan balance due, including the  
19          applicable portion of the interest, and earned monthly  
20          maintenance fee.



1 (c) The lender shall inform the consumer in writing that  
2 the lender shall cash the monetary instrument or money order,  
3 upon request of the consumer, at no cost to the consumer.

4 (d) For each payment made by a consumer, a lender shall  
5 give the consumer a written receipt with the lender's name and  
6 address, payment date, amount paid, consumer's name, and  
7 sufficient information to identify the account to which the  
8 payment is applied.

9 (e) Upon prepayment in full by the consumer, the lender  
10 shall refund:

11 (1) Any unearned portion of the interest charged; and

12 (2) Any unearned monthly maintenance fees.

13 (f) Upon request from a consumer or a consumer's agent, a  
14 small dollar lender shall provide confirmation of the amount  
15 required to discharge the small dollar loan obligation in full.  
16 When responding to a request under this subsection, the small  
17 dollar lender, at a minimum, shall include a statement of the  
18 amount required to discharge the consumer's obligation fully as  
19 of the date the notice is provided and for each of the next  
20 three business days following that date. The small dollar  
21 lender shall make the information required under this subsection



1 available verbally and in writing and shall provide it in an  
2 expeditious manner but no later than two business days after  
3 receiving the request.

4 **§412:9-C Written agreement; requirements; disclosure.** (a)

5 Each small dollar loan transaction and renewal shall be  
6 documented by a written agreement signed by the small dollar  
7 lender and consumer. The written agreement shall contain the  
8 following information:

- 9 (1) The name and address of the consumer and the lender;
- 10 (2) The transaction date;
- 11 (3) The loan amount;
- 12 (4) The annual percentage rate charged;
- 13 (5) The authorized interest rate;
- 14 (6) A statement of the total amount of finance charges  
15 charged, expressed as a dollar amount and an annual  
16 percentage rate;
- 17 (7) A statement that a small dollar lender shall not  
18 require a consumer to purchase add-on products;
- 19 (8) The installment payment schedule setting out the  
20 amount due on specific due dates;



- 1           (9) The name, address, and telephone number of any agent  
2                   involved in the small dollar loan transaction;
- 3           (10) The name, address, and telephone number of any  
4                   arranger involved in the small dollar loan  
5                   transaction;
- 6           (11) A notice clearly stating that the consumer has the  
7                   right to rescind the small dollar loan at or before  
8                   5:00 p.m. three business days following the loan  
9                   transaction, at the location where the loan was  
10                  originated, by returning the principal in cash, the  
11                  original check or money order disbursed by the lender,  
12                  or the other disbursement of loan proceeds from the  
13                  lender to fund the loan. The notice shall also state  
14                  that the lender shall not charge the consumer for  
15                  rescinding the loan;
- 16          (12) A notice to the consumer that a returned instrument  
17                  may result in a dishonored instrument charge, not to  
18                  exceed \$25;
- 19          (13) A statement that it shall not be considered a  
20                  violation of this part if a consumer obtains a small  
21                  dollar loan voluntarily and separately from the



1 consumer's spouse if the consumer documents the action  
2 in writing, either in the written agreement or in a  
3 subsequent agreement; and

4 (14) A description of the methods by which small dollar  
5 loan payments may be made, which may include a debit  
6 card payment, automated clearing house transfer,  
7 e-check, other forms of electronic transfers, money  
8 order, cash, check, or any additional method of loan  
9 payment authorized by this part or by rule adopted by  
10 the commissioner pursuant to chapter 91.

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

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

19 "MULTIPLE  
20 INSTALLMENT  
21 PAYMENT



1 Amount Financed  
2 Finance Charge  
3 **Amount you will receive**  
4 Term (months)  
5 Authorized Interest Rate  
6 Monthly Maintenance Fee  
7 **Total of All Permitted Charges**  
8 **Total You Will Pay for This Loan**  
9 (Amount Financed,  
10 Interest, and Monthly Maintenance Fee)  
11 ANNUAL PERCENTAGE RATE  
12 Payment Schedule"

13 (d) The consumer shall sign and date each of two copies of  
14 the written disclosure required pursuant to subsection (c), one  
15 of which shall be given to the consumer and the other of which  
16 shall be retained by the lender as part of its records of the  
17 small dollar loan; provided that if the consumer is applying for  
18 the small dollar loan over the Internet, this requirement shall  
19 be satisfied by the consumer's electronic signature on an  
20 electronic copy of the disclosure. For purposes of preparing  
21 the written disclosure, the small dollar loan shall be



1 structured on a precomputed basis (total of payments) with the  
2 assumption that all payments will be made as scheduled.

3 (e) The written agreement may include a demand feature  
4 that permits the lender or any other person, if the consumer  
5 fails to meet the repayment terms for any outstanding balance,  
6 to terminate the small dollar loan in advance of the original  
7 maturity date, but no earlier than ten days after the missed  
8 payment, and demand repayment of the entire outstanding balance.  
9 If the written agreement includes a demand feature and the  
10 demand feature is exercised, the lender shall be entitled to  
11 collect only the outstanding balance and a prorated portion of  
12 the unpaid interest and fees earned up to the date of  
13 termination. For purposes of this subsection, the outstanding  
14 balance and prorated portion of the unpaid interest and fees  
15 shall be calculated as if the consumer had voluntarily prepaid  
16 the loan in full on the date of termination.

17 **§412:9-D Authorized interest rate.** (a) Subject to  
18 section 412:9-B(a)(3), a small dollar lender may contract for  
19 and receive interest at a rate not exceeding thirty-six per cent  
20 per year on that portion of the unpaid principal balance of the  
21 loan. Loans shall be precomputed.



1 (b) For the purposes of computing precomputed loans,  
2 including calculating interest, a month shall be considered  
3 one-twelfth of a year and a day shall be considered one three  
4 hundred sixty-fifth of a year when calculation is made for a  
5 fraction of a month.

6 (c) Loans shall be repayable in substantially equal and  
7 consecutive monthly installments of principal and interest  
8 combined; provided that the first installment period may exceed  
9 one month by not more than fifteen days and the first  
10 installment payment amount may be larger than the remaining  
11 payments by the amount of interest charged for the extra days.

12 (d) Payments may be applied to the combined total of  
13 principal and precomputed interest until maturity of the loan,  
14 with priority given to any past due interest before applying  
15 payments to the principal.

16 (e) If a small dollar loan is prepaid in full or renewed  
17 prior to the loan's maturity date, the lender shall refund to  
18 the consumer a prorated portion of the interest and monthly  
19 maintenance fees based on a ratio of the number of days the loan  
20 was outstanding and the number of days for which the loan was  
21 originally contracted. For the purposes of this section, the



1 monthly maintenance fee shall not be considered to be fully  
2 earned at the beginning of a month.

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

7 (1) A deferment shall postpone the scheduled due date of  
8 the earliest unpaid installment and all subsequent  
9 installments as originally scheduled, or as previously  
10 deferred, for a period equal to the deferment period;

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

14 (3) The lender shall not charge or collect a deferment  
15 fee.

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

19 (h) A lender shall not charge or receive loan origination  
20 fees.



1 (i) A lender shall not collect a default charge on any  
2 installment not paid in full within ten days after its due date.  
3 For purposes of this subsection, all installments shall be  
4 considered paid in the order in which they become due.

5 **§412:9-E Maximum loan amount; prohibition against multiple**  
6 **loans.** (a) A lender shall not lend an amount greater than  
7 \$1,500 nor shall the amount financed exceed \$1,500 by any one  
8 lender at any time to a consumer.

9 (b) Except as otherwise provided in section 412:9-H, no  
10 small dollar lender shall make a small dollar loan to a consumer  
11 if there exists an outstanding loan between that consumer and  
12 any of the following:

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

19 (c) If a consumer obtains a small dollar loan voluntarily  
20 and separately from the consumer's spouse and the consumer's  
21 action is documented in writing, either in the written agreement



1 required under section 412:9-C or in a subsequent agreement,  
2 signed by the consumer, and retained by the lender, the  
3 transaction shall not be considered a violation of this section.

4 (d) Upon a customer's payment in full of any small dollar  
5 loan, a small dollar lender shall wait a period of three days  
6 before the small dollar lender may make another small dollar  
7 loan to the same customer.

8 **§412:9-F Right of rescission.** (a) A consumer shall have  
9 the right to rescind a small dollar loan, at or before 5:00 p.m.  
10 three business days following the loan transaction, at the  
11 location where the loan was originated, by returning the  
12 principal in cash, the original check or money order disbursed  
13 by the lender, or the other disbursement of loan proceeds from  
14 the lender to fund the loan. The lender shall not charge the  
15 consumer for rescinding the loan.

16 (b) At the time of rescission, the lender shall refund any  
17 loan fees and interest received and shall return to the consumer  
18 the originally signed written agreement, clearly marked across  
19 the face:

20 "RESCINDED BY [lender's name; license number], [date]"

21 which the lender's authorized representative shall sign.



1           **§412:9-G Notice to consumers; general requirements; right**  
2 **to prepay; loan limits; right to rescind.** A small dollar lender  
3 shall provide the following notice in a prominent place on each  
4 written agreement for a small dollar loan in at least twelve-  
5 point type:

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

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

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

12           RENEWING THIS SMALL DOLLAR LOAN RATHER THAN  
13 PAYING THE DEBT IN FULL MAY REQUIRE ADDITIONAL FEES OR  
14 CHARGES.

15           STATE LAW PROHIBITS THE PRINCIPAL OF THIS SMALL  
16 DOLLAR LOAN FROM EXCEEDING ONE THOUSAND FIVE HUNDRED  
17 DOLLARS (\$1,500). EXCEEDING THIS AMOUNT MAY CREATE  
18 FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY.

19           YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION AT  
20 OR BEFORE 5:00 P.M. THREE BUSINESS DAYS FOLLOWING THIS  
21 TRANSACTION."



1           **§412:9-H Renewal; new loan requirements; consecutive**  
2 **loans; payment plan.** (a) A small dollar loan may be renewed  
3 only once. After one renewal, the consumer shall pay the debt  
4 in cash or its equivalent.

5           (b) Upon renewal of a small dollar loan, the lender may  
6 renew up to \$1,500 of the remaining unpaid principal balance.  
7 If the unpaid balance on renewal is more than \$1,500, the  
8 consumer may be required to pay the remaining balance; provided  
9 that the lender shall not finance any amount over \$1,500. The  
10 total amount of fees and charges for the renewed loan shall meet  
11 the requirements of section 412:9-B, with the understanding that  
12 the total amount of fees and charges a small dollar lender may  
13 charge, collect, or receive in connection with the renewal of a  
14 small dollar loan shall not exceed sixty per cent of the renewal  
15 principal loan amount. If the small dollar loan is renewed  
16 prior to the maturity date, the lender shall refund to the  
17 consumer a prorated portion of the finance charge based upon the  
18 ratio of time left before maturity to the loan term.

19           (c) Once the consumer has paid off the small dollar loan  
20 transaction, the consumer may enter into a new small dollar loan  
21 agreement with the lender; provided that the lender shall not



1 have more than one outstanding loan with a consumer at any one  
2 time, pursuant to section 412:9-E.

3 **§412:9-I Form of loan proceeds.** A small dollar lender may  
4 pay the proceeds from a small dollar loan to the consumer in the  
5 form of a monetary instrument, prepaid debit card, automated  
6 clearing house transfer, e-check, other form of electronic  
7 transfer, money order, or cash.

8 **§412:9-J Endorsement of instrument.** A small dollar lender  
9 shall not negotiate or present an instrument for payment unless  
10 the instrument is endorsed with the actual business name of the  
11 lender.

12 **§412:9-K Redemption of instrument.** Prior to a small  
13 dollar lender negotiating or presenting the instrument, a  
14 consumer may redeem any instrument held by the lender as a  
15 result of a small dollar loan if the consumer pays the full  
16 amount of the instrument to the lender.

17 **§412:9-L Delinquent small dollar loans; restrictions on**  
18 **collection by lender or third party.** (a) A small dollar lender  
19 shall comply with all applicable state and federal laws when  
20 collecting a delinquent small dollar loan. A lender may take  
21 civil action to collect principal, interest, fees, and costs



1 allowed under this part. A lender shall not threaten criminal  
2 prosecution as a method of collecting a delinquent small dollar  
3 loan or threaten to take any legal action against the consumer  
4 that is not otherwise permitted by law.

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

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



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



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

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

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

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

16          (1) The term "communication" shall include initiated  
17 contact with a consumer, regardless of whether the  
18 communication is received or accessed by the consumer;  
19 and

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



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

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

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

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

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

15 (b) If the loan proceeds instrument delivered by the small  
16 dollar lender to the consumer is dishonored by the financial  
17 institution, the small dollar lender shall cover any fees and  
18 charges incurred by the consumer as a direct result of the  
19 dishonored loan proceeds instrument.

20 **§412:9-N Posting of license and fees and charges.** Any  
21 small dollar lender offering a small dollar loan shall



1 conspicuously and continuously post at any place of business  
2 where small dollar loans are made, the license required pursuant  
3 to this part and a notice of the fees and charges imposed for  
4 small dollar loans.

5       **§412:9-O Internet lending.** (a) A small dollar lender may  
6 advertise and accept applications for small dollar loans by any  
7 lawful medium, including the Internet, and the consumer may  
8 provide a valid electronic signature on the disclosures and loan  
9 agreement, subject to subsection (b).

10       (b) Small dollar lenders shall not advertise or make small  
11 dollar loans via the Internet without first having obtained a  
12 license pursuant to subpart B.

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

19       **§412:9-P Notice on assignment or sale of contract.** (a)  
20 No small dollar lender shall pledge, negotiate, sell, or assign  
21 a small dollar loan, except to another small dollar lender or to



1 a bank, savings bank, trust company, savings and loan or  
2 building and loan association, or credit union organized under  
3 the laws of the State or the laws of the United States.

4 (b) Prior to sale or assignment of a small dollar loan  
5 contract held by the small dollar lender, the lender shall place  
6 a notice on the small dollar loan contract in at least twelve-  
7 point type that reads:

8 "SMALL DOLLAR LOAN

9 No small dollar lender shall pledge, negotiate,  
10 sell, or assign a small dollar loan, except to another  
11 small dollar lender or to a bank, savings bank, trust  
12 company, savings and loan or building and loan  
13 association, or credit union organized under the laws  
14 of Hawaii or the laws of the United States."

15 (c) This section shall not apply to:

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

20 (2) The pledge or other granting of a security interest in  
21 the small dollar loan to a financial institution in



1 connection with asset backed financing or similar  
2 lending facility of the small dollar lender;  
3 provided that when making the transfer or pledge, the small  
4 dollar lender does not pledge, negotiate, sell, assign, or  
5 otherwise relinquish its servicing rights and requirements on  
6 the small dollar loan.

7 **§412:9-Q Maintenance of books and records.** (a) Every  
8 small dollar lender shall keep in a safe and secure place those  
9 books and records that directly relate to any small dollar loan  
10 made within the State, and other books and records as may be  
11 necessary for the commissioner to ensure full compliance with  
12 the laws of the State.

13 (b) All books and records may be maintained as originals  
14 or photocopies, on microfilm or microfiche, on computer disks or  
15 tapes, or similar forms; provided that the books and records are  
16 readily accessible and may be easily examined.

17 (c) All records, statements, and reports required or  
18 authorized by this part shall be made in writing in the English  
19 language.



1 (d) Every lender shall preserve all of its records for a  
2 minimum of six years or for a period the commissioner may  
3 prescribe by rule adopted pursuant to chapter 91.

4 B. LICENSING

5 §412:9-R License required. No person, except those exempt  
6 under this subpart, shall act as a small dollar lender in the  
7 State unless licensed to do so by the commissioner.

8 §412:9-S Exemptions. This subpart shall not apply to the  
9 following:

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

15 §412:9-T License; application; issuance. (a) The  
16 commissioner shall require all licensees to register with NMLS.

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

- 20 (1) The legal name, trade names, and business address of:
  - 21 (A) The applicant; and



1 (B) Every member, officer, principal, or director, if  
2 the applicant is a partnership, association,  
3 limited liability company, limited liability  
4 partnership, or corporation;

5 (2) The principal place of business;

6 (3) The complete address of any other branch offices at  
7 which the applicant proposes to engage in making small  
8 dollar loans; and

9 (4) Any other data, financial statements, and pertinent  
10 information the commissioner may require with respect  
11 to the applicant or, if an applicant is not an  
12 individual, each of the applicant's control persons,  
13 executive officers, directors, general partners, and  
14 managing members.

15 (c) To fulfill the purposes of this subpart, the  
16 commissioner may enter into agreements or contracts with NMLS or  
17 other entities to use NMLS to collect and maintain records and  
18 process transaction fees or other fees related to licensees or  
19 other persons subject to this subpart.

20 (d) For the purpose and to the extent necessary to  
21 participate in NMLS, the commissioner may waive or modify, in



1 whole or in part, by rule or order, any or all of the  
2 requirements of this subpart and establish new requirements as  
3 reasonably necessary to participate in NMLS.

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

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

19 (2) Information verifying the personal history and  
20 experience of the applicant or, if an applicant is not  
21 an individual, the personal history and experience of



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

- 5 (A) An independent credit report from a consumer  
6 reporting agency described in section 603(p) of  
7 the Fair Credit Reporting Act, Title 15 United  
8 States Code section 1681a(p), as amended; and
- 9 (B) Information related to any administrative, civil,  
10 or criminal findings by any governmental  
11 jurisdiction;

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

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

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



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

5 **§412:9-U License; grounds for denial.** (a) The  
6 commissioner shall conduct an investigation of every applicant  
7 to determine the applicant's financial responsibility,  
8 character, and general fitness of the applicant. The  
9 commissioner shall issue the applicant a license to engage in  
10 the business of making small dollar loans if the commissioner  
11 determines that the applicant or, in the case of an applicant  
12 that is not an individual, each of the applicant's control  
13 persons, executive officers, directors, general partners, and  
14 managing members:

15 (1) Has not had a small dollar lender license revoked in  
16 any jurisdiction within five years of the filing of  
17 the present application; provided that a subsequent  
18 formal vacation of a revocation shall not be deemed a  
19 revocation;

20 (2) Has not been convicted of, pled guilty or nolo  
21 contendere to, or been granted a deferred acceptance



1 of a guilty plea under any federal law or under  
2 chapter 853 to a felony in a domestic, foreign, or  
3 military court either:

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

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

9 provided that any conviction for which a pardon has  
10 been granted shall not be deemed a conviction for the  
11 purposes of this section;

12 (3) Has demonstrated sufficient financial responsibility,  
13 good character, and general fitness to command the  
14 confidence of a community and to warrant a  
15 determination that the applicant will operate  
16 honestly, fairly, and efficiently, pursuant to this  
17 part. For the purposes of this paragraph, a person is  
18 not financially responsible if the person has shown  
19 disregard in the management of the person's own  
20 financial condition. A determination that a person



1 has shown disregard in the management of the person's  
2 own financial condition may be based upon:

3 (A) Current outstanding judgments, except judgments  
4 solely resulting from medical expenses;

5 (B) Current outstanding tax liens or other government  
6 liens and filings, subject to applicable  
7 disclosure laws and administrative rules;

8 (C) Foreclosures within the past three years; and

9 (D) A pattern of seriously delinquent accounts within  
10 the past three years;

11 (4) Has not been convicted of, pled guilty or nolo  
12 contendere to, or been granted a deferred acceptance  
13 of a guilty plea under federal law or chapter 853 to  
14 any misdemeanor involving an act of fraud, dishonesty,  
15 breach of trust, or money laundering;

16 (5) Has satisfied all other licensing requirements of this  
17 part; and

18 (6) Has provided the bond required by section 412:9-V.

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



1 members shall submit authorization to the commissioner to  
2 conduct background checks to determine or verify the information  
3 in subsection (a) in each state where the person has made small  
4 dollar loans. Authorization pursuant to this subsection shall  
5 include consent to provide additional fingerprints, if  
6 necessary, to law enforcement or regulatory bodies in other  
7 states.

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

9 (1) Whose license to conduct business under this part, or  
10 any similar statute in any other jurisdiction, has  
11 been suspended or revoked within five years of the  
12 filing of the present application;

13 (2) Whose license to conduct business in the small dollar  
14 loan or payday industry has been revoked by an  
15 administrative order issued by the commissioner or the  
16 commissioner's designee, or the licensing authority of  
17 another state or jurisdiction, for the period  
18 specified in the administrative order;

19 (3) Who has advertised or made Internet loans in Hawaii  
20 prior to obtaining a license under this part; or



1 (4) Who has failed to complete an application for  
2 licensure.

3 (d) A license issued in accordance with this part remains  
4 in force and effect until surrendered, suspended, or revoked, or  
5 until the license expires as a result of nonpayment of the  
6 annual license renewal fee required by this part.

7 **§412:9-V Fees; bond.** (a) A small dollar lender shall pay  
8 the following fees to the division to obtain and maintain a  
9 valid license under this part:

- 10 (1) An initial application fee of \$900;
- 11 (2) A processing fee of \$35 for each control person;
- 12 (3) An annual license renewal fee of \$600;
- 13 (4) Any applicable fee charged by the entities conducting  
14 the criminal history background check for each of the  
15 applicant's control persons, executive officers,  
16 directors, general partners, and managing members for  
17 submission to the Federal Bureau of Investigation and  
18 any governmental agency or entity authorized to  
19 receive the fingerprints for a state, national, and  
20 international criminal history background check; and



1           (5) Any applicable fee charged by the entities obtaining  
2           an independent credit report from a consumer reporting  
3           agency as described in section 603(p) of the Fair  
4           Credit Reporting Act, Title 15 United States Code  
5           section 1681a(p), as amended.

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

- 8           (1) A nonrefundable initial application fee of \$600; and
- 9           (2) An annual license renewal fee of \$450.

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

18          (d) The surety bond required by subsection (c) shall run  
19 to the State of Hawaii as obligee for the use and benefit of the  
20 State and of any person or persons who may have a cause of



1 action against the licensee as obligor under this part. The  
2 bond shall be conditioned upon the following:

3 (1) The licensee as obligor shall faithfully conform to  
4 and abide by this part and all rules adopted under  
5 this part; and

6 (2) The bond shall pay to the State and any person or  
7 persons having a cause of action against the licensee  
8 as obligor all moneys that may become due and owing to  
9 the State and those persons under and by virtue of  
10 this part.

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

13 **§412:9-W License renewal; annual report.** (a) On or  
14 before December 31 of each year, each licensee shall pay an  
15 annual license renewal fee pursuant to section 412:9-V.

16 (b) The annual license renewal fee shall be accompanied by  
17 a report, in a form prescribed by the commissioner, which shall  
18 include:

19 (1) A copy of the licensee's most recent audited annual  
20 financial statement, including:

21 (A) Balance sheets;



- 1 (B) A statement of income or loss;
- 2 (C) A statement of changes in shareholders' equity;
- 3 and
- 4 (D) A statement of cash flows or, if a licensee is a
- 5 wholly owned subsidiary of another corporation,
- 6 the consolidated audited annual financial
- 7 statement of the parent corporation in lieu of
- 8 the licensee's audited annual financial
- 9 statement;
- 10 (2) A report detailing the small dollar lender's
- 11 activities in the State, including:
  - 12 (A) The number of small dollar loans made;
  - 13 (B) The number of small dollar loans the lender is
  - 14 servicing;
  - 15 (C) The type and characteristics of loans serviced in
  - 16 the State;
  - 17 (D) The number of small dollar serviced loans in
  - 18 default; and
  - 19 (E) Any other information the commissioner may
  - 20 require;



- 1           (3) A report of any material changes to any of the
- 2                   information submitted by the licensee on its original
- 3                   application that have not previously been reported to
- 4                   the commissioner on any other report required to be
- 5                   filed under this part;
- 6           (4) A list of the principal place of business and branch
- 7                   locations, if any, within the State where business
- 8                   regulated by this part is being conducted by the
- 9                   licensee;
- 10          (5) Disclosure of any pending or final suspension,
- 11                   revocation, or other reinforcement action by any state
- 12                   or governmental authority; and
- 13          (6) Any other information the commissioner may require.
- 14          (c) A licensee may renew by:
- 15            (1) Continuing to meet the licensing requirements of
- 16                   sections 412:9-T, 412:9-U, and 412:9-V;
- 17            (2) Filing a completed renewal statement on a form
- 18                   prescribed by NMLS or by the commissioner;
- 19            (3) Paying a renewal fee; and
- 20            (4) Meeting all other requirements of this section.



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

12 **§412:9-X Enforcement; violations; penalties.** (a) To  
 13 ensure the effective supervision and enforcement of this part,  
 14 the commissioner, pursuant to chapter 91, may take any  
 15 disciplinary action specified in subsection (b) against an  
 16 applicant or licensee if the commissioner finds that the  
 17 applicant or licensee:

18 (1) Has violated this part or any rule or order lawfully  
 19 made pursuant to this part;

20 (2) Has failed to disclose facts or conditions that  
 21 clearly would have been grounds for the commissioner



1 to deny the application for licensure, had those facts  
2 or conditions been disclosed at the time the  
3 application was made;

4 (3) Has failed to provide information required by the  
5 commissioner within a reasonable time, as specified by  
6 the commissioner;

7 (4) Has failed to provide or maintain proof of financial  
8 responsibility;

9 (5) Is insolvent;

10 (6) Has made, in any document or statement filed with the  
11 commissioner, a false representation of a material  
12 fact or has omitted to state a material fact;

13 (7) Has, or, if an applicant or licensee is not an  
14 individual, any of the applicant's or licensee's  
15 control persons, executive officers, directors,  
16 general partners, and managing members have been  
17 convicted of or entered a plea of guilty or nolo  
18 contendere to a crime involving fraud or deceit, or to  
19 any similar crime under the jurisdiction of any  
20 federal court or court of another state;



- 1           (8) Has failed to make, maintain, or produce records that  
2                   comply with section 412:9-Q or any rule adopted by the  
3                   commissioner pursuant to chapter 91;
- 4           (9) Has been the subject of any disciplinary action by any  
5                   state or federal agency that resulted in revocation of  
6                   a license;
- 7           (10) Has a final judgment entered against the applicant or  
8                   licensee for violations of this part; any state or  
9                   federal law concerning small dollar loans, installment  
10                  loans, short-term loans, deferred deposit loans, check  
11                  cashing, payday loans, banking, mortgage loan  
12                  originators, money transmitters; or any state or  
13                  federal law prohibiting deceptive or unfair trade or  
14                  business practices; or
- 15          (11) Has failed to take or provide proof in a timely  
16                  manner, as specified by the commissioner, of taking  
17                  the corrective action required by the commissioner  
18                  subsequent to an investigation or examination pursuant  
19                  to section 412:9-DD.



1 (b) After finding the applicant or licensee has committed  
2 one or more violations of subsection (a), the commissioner may  
3 take any of the following actions:

- 4 (1) Deny an application for licensure, including an  
5 application for a branch office license;
- 6 (2) Revoke the license;
- 7 (3) Suspend the license for a period of time;
- 8 (4) Issue an order to the licensee to cease and desist  
9 from engaging in any act specified in subsection (a);
- 10 (5) Order the licensee to refund to consumers any excess  
11 charges under this part;
- 12 (6) Impose penalties of up to \$1,000 for each violation;  
13 or
- 14 (7) Bar a person from applying for or holding a license  
15 for a period of five years following revocation of the  
16 person's license.

17 (c) The commissioner may issue a temporary cease and  
18 desist order if the commissioner makes a finding that the  
19 licensee, applicant, or person is engaging, has engaged, or is  
20 about to engage in an illegal, unauthorized, unsafe, or unsound  
21 practice in violation of this part. Whenever the commissioner



1 denies a license application or takes disciplinary action  
2 pursuant to this section, the commissioner shall enter an order  
3 to that effect and notify the licensee, applicant, or person of  
4 the denial or disciplinary action. The notification required by  
5 this subsection shall be given by personal service or by  
6 certified mail to the last known address of the licensee or  
7 applicant as shown on the application, license, or as  
8 subsequently furnished in writing to the commissioner.

9 (d) The revocation, suspension, expiration, or surrender  
10 of a license shall not affect the licensee's liability for acts  
11 previously committed or impair the commissioner's ability to  
12 issue a final agency order to impose discipline against the  
13 licensee.

14 (e) No revocation, suspension, or surrender of a license  
15 shall impair or affect the obligations of any preexisting lawful  
16 contract between the licensee and any consumer.

17 (f) The commissioner may reinstate a license, terminate a  
18 suspension, or grant a new license to a person whose license has  
19 been revoked or suspended if no fact or condition then exists  
20 that clearly would justify the commissioner in revoking  
21 suspending, or refusing to grant a license.



1 (g) The commissioner may impose an administrative fine on  
2 a licensee or person subject to this part if the commissioner  
3 finds on the record, after notice and opportunity for hearing,  
4 that the licensee or person subject to this part has violated or  
5 failed to comply with any requirement of this part or any rule  
6 or order issued under the authority of this part.

7 (h) Each violation or failure to comply with any directive  
8 or order of the commissioner shall be a separate and distinct  
9 violation.

10 (i) Any violation of this part that is directed toward,  
11 targets, or injures an elder may be subject to an additional  
12 civil penalty not to exceed \$10,000 for each violation in  
13 addition to any other fines or penalties assessed for the  
14 violation. For purposes of this section, "elder" has the same  
15 meaning as defined in section 356D-1.

16 **§412:9-Y Voluntary surrender of license.** (a) A licensee  
17 may voluntarily cease business and surrender its license by  
18 giving written notice to the commissioner of its intent to  
19 surrender its license. Prior to the surrender date, the  
20 licensee shall have either completed all pending small dollar  
21 loan transactions or assigned each pending small dollar loan



1 transaction to another licensee, bank, savings bank, trust  
2 company, savings and loan or building and loan association, or  
3 credit union organized under the laws of the State or the laws  
4 of the United States.

5 (b) Notice pursuant to this section shall be provided at  
6 least thirty days before the surrender of the license and shall  
7 include:

- 8 (1) The date of surrender;
- 9 (2) The name, address, telephone number, facsimile number,  
10 and electronic mail address of a contact individual  
11 with knowledge and authority sufficient to communicate  
12 with the commissioner regarding all matters relating  
13 to the licensee during the period that it was licensed  
14 pursuant to this part;
- 15 (3) The reason or reasons for surrender;
- 16 (4) The total dollar amount of the licensee's outstanding  
17 small dollar loans sold in the State and the  
18 individual amounts of each outstanding small dollar  
19 loan, and the name, address, and contact telephone  
20 number of the licensee to which each outstanding small  
21 dollar loan was assigned;



1 (5) A list of the licensee's authorized branch offices in  
2 the State, if any, as of the date of surrender;

3 (6) Confirmation that the licensee has notified each of  
4 its authorized branch offices in the State, if any,  
5 that the branch offices shall no longer make small  
6 dollar loans on the licensee's behalf; and

7 (7) Confirmation that the licensee has notified each of  
8 its small dollar loan consumers, if any, that the  
9 small dollar loan is being transferred and the name,  
10 address, telephone number, and any other contact  
11 information of the licensee, bank, savings bank, trust  
12 company, savings and loan or building and loan  
13 association, or credit union organized under the laws  
14 of the State or the laws of the United States to whom  
15 the small dollar loan was assigned.

16 (c) Voluntary surrender of a license shall be effective  
17 upon the date of surrender specified on the written notice to  
18 the commissioner as required by this section; provided that the  
19 licensee has met all the requirements of voluntary surrender and  
20 has returned the original license issued.



1           **§412:9-Z Sale or transfer of license; change of control.**

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

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

9           (c) After review of a request for approval under  
10 subsection (b), the commissioner may require the licensee or  
11 person or group of persons requesting approval of a proposed  
12 change of control of the licensee, or both, to provide  
13 additional information concerning the persons who shall assume  
14 control of the licensee. The additional information shall be  
15 limited to the information required of the licensee or persons  
16 in control of the licensee as part of its original license or  
17 renewal application under sections 412:9-T and 412:9-W. The  
18 information shall include, for the five-year period prior to the  
19 date of the application for change of control of the licensee, a  
20 history of material litigation and criminal convictions of each  
21 person who, upon approval of the application for change of



1 control, will be a principal of the licensee. Authorization  
2 shall also be given to conduct criminal history record checks of  
3 those persons, accompanied by the appropriate payment of the  
4 applicable fee for each record check.

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

13 (e) The following persons shall be exempt from the  
14 requirements of subsection (b); provided that the licensee shall  
15 notify the commissioner when control is assumed by a person:

16 (1) Who acts as a proxy for the sole purpose of voting at  
17 a designated meeting of the security holders or  
18 holders of voting interests of a licensee or person in  
19 control of a licensee;

20 (2) Who acquires control of a licensee by devise or  
21 descent;



1 (3) Who acquires control as a personal representative,  
2 custodian, guardian, conservator, trustee, or as an  
3 officer appointed by a court of competent jurisdiction  
4 or by operation of law; or

5 (4) Whom the commissioner, by rule or order, exempts in  
6 the public interest.

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

15 (g) Subsection (b) shall not apply to public offerings of  
16 securities.

17 **§412:9-AA Authorized places of business; principal office;**  
18 **branch offices; relocation; closure.** (a) Every small dollar  
19 lender licensed under this part shall have and maintain a  
20 principal place of business in the State, regardless of whether



1 the small dollar lender maintains its principal office outside  
2 of the State.

3 (b) A small dollar lender shall not maintain any branch  
4 offices in the State in addition to its principal place of  
5 business without the prior written approval of the commissioner.  
6 No business shall be conducted at a branch office until the  
7 branch office has been licensed by the commissioner.

8 (c) An application to establish a branch office shall be  
9 submitted through NMLS with a nonrefundable application fee as  
10 required by section 412:9-V.

11 (d) A small dollar lender shall not relocate any office in  
12 the State without the prior written approval of the  
13 commissioner. An application to relocate an office shall be  
14 submitted to the commissioner at least thirty days prior to  
15 relocation and shall set forth the reasons for the relocation,  
16 street address of the proposed relocated office, and any other  
17 information required by the commissioner. An application to  
18 relocate an office pursuant to this subsection shall be  
19 submitted with a nonrefundable fee as required by  
20 section 412:9-V.



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

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

5 (2) Specify the reasons for the closing.

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

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

13 **§412:9-BB Payment of fees.** All fees collected pursuant to  
14 section 412:9-V, administrative fines, and other charges  
15 collected pursuant to this part shall be deposited into the  
16 compliance resolution fund established pursuant to  
17 section 26-9(o) and shall be payable through NMLS, to the extent  
18 allowed by NMLS. Fees not eligible for payment through NMLS  
19 shall be deposited into a separate account within the compliance  
20 resolution fund for use by the division.



1           **§412:9-CC Commissioner; general powers.** (a) The  
2 commissioner may adopt rules pursuant to chapter 91 that the  
3 commissioner deems necessary for the administration of this  
4 part.

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

- 7           (1) Issue declaratory rulings or informal nonbinding  
8           interpretations;
- 9           (2) Investigate and conduct hearings regarding any  
10           violation of this part and any rule or order of, or  
11           agreement with, the commissioner;
- 12           (3) Create fact-finding committees to make recommendations  
13           for the commissioner's consideration;
- 14           (4) Require an applicant or any of its control persons,  
15           executive officers, directors, general partners, and  
16           managing members to disclose their relevant criminal  
17           history and request a criminal history record check in  
18           accordance with chapter 846;
- 19           (5) Contract with or employ qualified persons, including  
20           accountants, attorneys, investigators, examiners,  
21           auditors, or other professionals who may be exempt



- 1 from chapter 76 and who shall assist the commissioner  
2 in exercising the commissioner's powers and duties;
- 3 (6) Process and investigate complaints; subpoena witnesses  
4 and documents; administer oaths; receive affidavits  
5 and oral testimony, including telephonic  
6 communications; and do any and all things necessary or  
7 incidental to the exercise of the commissioner's power  
8 and duties, including conducting contested case  
9 proceedings under chapter 91;
- 10 (7) Require a licensee to comply with any rule, guidance,  
11 guideline, statement, supervisory policy or any  
12 similar proclamation issued or adopted by the Federal  
13 Deposit Insurance Corporation to the same extent and  
14 in the same manner as a bank chartered by the State  
15 or, in the alternative, any policy position of the  
16 Conference of State Bank Supervisors;
- 17 (8) Enter into agreements or relationships with other  
18 government officials or regulatory associations in  
19 order to improve efficiencies and reduce regulatory  
20 burden by sharing resources; standardized or uniform



1 methods or procedures; and documents, records,  
 2 information, or evidence obtained under this part;  
 3 (9) Use, hire, contract, or employ public or privately  
 4 available analytical systems, methods, or software to  
 5 investigate or examine a licensee or person subject to  
 6 this part;

7 (10) Accept and rely on investigation or examination  
 8 reports made by other government officials, within or  
 9 without the State; and

10 (11) Accept audit reports made by an independent certified  
 11 public accountant for the licensee or person subject  
 12 to this part in the course of an examination covering  
 13 the same general subject matter as the audit. The  
 14 commissioner may incorporate the audit report in the  
 15 commissioner's report of the examination, report of  
 16 investigation, or other writing.

17 **§412:9-DD Commissioner; investigation and examination**  
 18 **authority.** (a) In addition to the authority granted under  
 19 section 412:9-CC(b), the commissioner may conduct investigations  
 20 and examinations in accordance with this section. The  
 21 commissioner may access, receive, and use any books, accounts,



1 records, files, documents, information, or evidence that the  
2 commissioner deems relevant to the investigation or examination,  
3 regardless of the location, possession, control, or custody of  
4 the documents, information, or evidence.

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

17 (c) Each licensee or person subject to this part shall  
18 provide to the commissioner, upon request, the books and records  
19 relating to the operations of the licensee or person subject to  
20 this part. The commissioner shall have access to the books and  
21 records and shall be permitted to interview the control persons,



1 executive officers, directors, general partners, managing  
2 members, principals, managers, employees, independent  
3 contractors, agents, and consumers of the licensee, or person  
4 subject to this part concerning their business practices.

5 (d) Each licensee or person subject to this part shall  
6 make or compile reports or prepare other information, as  
7 directed by the commissioner, to carry out the purposes of this  
8 section, including:

9 (1) Accounting compilations;

10 (2) Information, lists, and data concerning loan  
11 transactions in a format prescribed by the  
12 commissioner; or

13 (3) Any other information the commissioner deems  
14 necessary.

15 (e) In conducting any investigation or examination  
16 authorized by this part, the commissioner may control access to  
17 any documents and records of the licensee or person under  
18 investigation or examination. The commissioner may take  
19 possession of the documents and records or place a person in  
20 exclusive charge of the documents and records. During the  
21 period of control, no person shall remove or attempt to remove



1 any of the documents and records except pursuant to a court  
2 order or with the consent of the commissioner. Unless the  
3 commissioner has reasonable grounds to believe the documents or  
4 records of the licensee or person under investigation or  
5 examination have been, or are at risk of being, altered or  
6 destroyed for the purposes of concealing a violation of this  
7 part, the licensee or owner of the documents and records shall  
8 have access to the documents or records as necessary to conduct  
9 its ordinary business affairs.

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

14 (g) No licensee or person subject to investigation or  
15 examination under this section shall knowingly withhold,  
16 abstract, remove, mutilate, destroy, or conceal any books,  
17 records, computer records, or any other relevant information.

18 (h) The commissioner may charge an investigation or  
19 examination fee, payable to the commissioner, based upon the  
20 cost per hour, per examiner, for each licensee or person subject  
21 to this part investigated or examined by the commissioner or the



1 commissioner's staff. The hourly fee shall be \$60 or an amount  
2 the commissioner shall establish by rule pursuant to chapter 91.  
3 In addition to the investigation or examination fee, the  
4 commissioner may charge any person who is examined or  
5 investigated by the commissioner or the commissioner's staff  
6 pursuant to this section additional fees for travel, per diem,  
7 mileage, and other reasonable expenses incurred in connection  
8 with the investigation or examination, payable to the  
9 commissioner.

10 (i) Any person having reason to believe that this part or  
11 the rules adopted under this part have been violated, or that a  
12 license issued under this part should be suspended or revoked,  
13 may file a written complaint with the commissioner, setting  
14 forth the details of the alleged violation or grounds for  
15 suspension or revocation.

16 **§412:9-EE Confidentiality.** (a) Except as otherwise  
17 provided in Title 12 United States Code section 5111, the  
18 requirements under any federal or state law regarding the  
19 privacy or confidentiality of any information or material  
20 provided to NMLS and any privilege arising under federal or  
21 state law, including the rules of any federal or state court,



1 with respect to the information or material shall continue to  
2 apply to the information or material after the information or  
3 material has been disclosed to NMLS. The information and  
4 material may be shared with all state and federal regulatory  
5 officials having oversight authority over transactions subject  
6 to this part without the loss of privilege or the loss of  
7 confidentiality protections provided by federal or state law.

8 (b) For the purposes of this section, the commissioner is  
9 authorized to enter into agreements or sharing arrangements with  
10 other governmental agencies, the Conference of State Bank  
11 Supervisors, or other associations representing governmental  
12 agencies as established by rule or order of the commissioner.

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

15 (1) Disclosure under any federal or state law governing  
16 the disclosure to the public of information held by an  
17 officer or an agency of the federal government or a  
18 state; or

19 (2) Subpoena or discovery, or admission into evidence, in  
20 any private civil action or administrative process,  
21 unless:



1 (A) Any privilege is determined by NMLS to be  
2 inapplicable to the information or material; or

3 (B) The person to whom the information or material  
4 pertains waives that privilege in whole or in  
5 part.

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

10 (e) If a conflict arises between this section and any  
11 other provision of state law relating to the disclosure of  
12 privileged or confidential information or material, this section  
13 shall control.

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

18 **§412:9-FF Prohibited practices.** (a) It shall be a  
19 violation of this part for a licensee or its control persons,  
20 executive officers, directors, general partners, managing



1 members, employees, independent contractors, or any other person  
2 subject to this part to:

3 (1) Engage in any act that limits or restricts the  
4 application of this part, including:

5 (A) Disguising a small dollar loan as a leaseback  
6 transaction or a personal property, personal  
7 sales, or automobile title loan; or

8 (B) Disguising loan proceeds as cash rebates for the  
9 pretextual installment sale of goods and  
10 services;

11 (2) Make a secured small dollar loan;

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

14 (4) Charge, collect, or receive, directly or indirectly:

15 (A) Mandatory credit insurance premiums;

16 (B) Charges for negotiating forms of loan proceeds  
17 other than cash;

18 (C) Charges for brokering or obtaining loans;

19 (D) Prepayment fees; or



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



- 1 fees, or other financing terms or conditions for a  
2 small dollar loan, or engage in bait and switch  
3 advertising;
- 4 (11) Make any false statement or knowingly and wilfully  
5 omit any material fact in connection with any reports  
6 filed with the division by a licensee or in connection  
7 with any investigation conducted by the division;
- 8 (12) Advertise any rate of interest without conspicuously  
9 disclosing the annual percentage rate implied by that  
10 rate of interest or otherwise fail to comply with any  
11 requirement of the Truth in Lending Act, or any other  
12 applicable state or federal laws or regulations;
- 13 (13) Make small dollar loans from any unlicensed location;
- 14 (14) Draft funds from any depository financial institution  
15 without written approval of the consumer; provided  
16 that nothing in this paragraph shall prohibit the  
17 conversion of a negotiable instrument into an  
18 electronic form for processing through the automated  
19 clearing house or similar system;
- 20 (15) Attempt to collect from a consumer's account after two  
21 consecutive attempts have failed, unless the licensee



1 obtains new written authorization from the consumer to  
2 transfer or withdraw funds from the account;

3 (16) Make a loan to a consumer that includes a demand  
4 feature that was not clearly disclosed in the written  
5 agreement pursuant to section 412:9-C or collect or  
6 demand repayment of any outstanding balance or unpaid  
7 interest or fees except as provided in section  
8 412:9-C;

9 (17) Fail to comply with any applicable state or federal  
10 law relating to the activities governed by this part;  
11 or

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

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

17 PART II

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



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

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

7           (2) Small dollar loan transaction authorized by, and  
8           entered into in accordance with, part \_\_\_\_\_,  
9           article 9, chapter 412."

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

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



1 judgment shall be for the principal less the amount of interest  
2 paid. This section shall not [~~be held to~~] apply[~~, to loans~~] to:

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

6 (2) Any small dollar loan regulated under part \_\_\_\_\_,  
7 article 9, chapter 412."

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

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

18 SECTION 6. Section 480F-3, Hawaii Revised Statutes, is  
19 amended to read as follows:



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

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

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

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

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

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

19           SECTION 7. Section 480F-4, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "**§480F-4 Deferred deposits**~~[, when allowed.]~~; **prohibited.**

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

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

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



1 ~~charged for deferred deposit of a personal check in compliance~~  
2 ~~with this section shall be exempt from chapter 478.~~

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

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

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

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



- 1           "(b) Criminal history record checks may be conducted by:
- 2           (1) The department of health or its designee on operators
- 3           of adult foster homes for individuals with
- 4           developmental disabilities or developmental
- 5           disabilities domiciliary homes and their employees, as
- 6           provided by section 321-15.2;
- 7           (2) The department of health or its designee on
- 8           prospective employees, persons seeking to serve as
- 9           providers, or subcontractors in positions that place
- 10          them in direct contact with clients when providing
- 11          non-witnessed direct mental health or health care
- 12          services as provided by section 321-171.5;
- 13          (3) The department of health or its designee on all
- 14          applicants for licensure or certification for,
- 15          operators for, prospective employees, adult
- 16          volunteers, and all adults, except adults in care, at
- 17          healthcare facilities as defined in section 321-15.2;
- 18          (4) The department of education on employees, prospective
- 19          employees, and teacher trainees in any public school
- 20          in positions that necessitate close proximity to
- 21          children as provided by section 302A-601.5;



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



- 1 the provider after registration or licensure as  
2 provided by section 346-154, and persons subject to  
3 section 346-152.5;
- 4 (11) The department of human services on persons exempt  
5 pursuant to section 346-152 to be eligible to provide  
6 child care and receive child care subsidies as  
7 provided by section 346-152.5;
- 8 (12) The department of health on operators and employees of  
9 home and community-based case management agencies and  
10 operators and other adults, except for adults in care,  
11 residing in community care foster family homes as  
12 provided by section 321-15.2;
- 13 (13) The department of human services on staff members of  
14 the Hawaii youth correctional facility as provided by  
15 section 352-5.5;
- 16 (14) The department of human services on employees,  
17 prospective employees, and volunteers of contracted  
18 providers and subcontractors in positions that place  
19 them in close proximity to youth when providing  
20 services on behalf of the office or the Hawaii youth  
21 correctional facility as provided by section 352D-4.3;



- 1 (15) The judiciary on employees and applicants at detention  
2 and shelter facilities as provided by section 571-34;
- 3 (16) The department of public safety on employees and  
4 prospective employees who are directly involved with  
5 the treatment and care of persons committed to a  
6 correctional facility or who possess police powers  
7 including the power of arrest as provided by section  
8 353C-5;
- 9 (17) The board of private detectives and guards on  
10 applicants for private detective or private guard  
11 licensure as provided by section 463-9;
- 12 (18) Private schools and designated organizations on  
13 employees and prospective employees who may be in  
14 positions that necessitate close proximity to  
15 children; provided that private schools and designated  
16 organizations receive only indications of the states  
17 from which the national criminal history record  
18 information was provided pursuant to section 302C-1;
- 19 (19) The public library system on employees and prospective  
20 employees whose positions place them in close



- 1           proximity to children as provided by section  
2           302A-601.5;
- 3       (20) The State or any of its branches, political  
4           subdivisions, or agencies on applicants and employees  
5           holding a position that has the same type of contact  
6           with children, vulnerable adults, or persons committed  
7           to a correctional facility as other public employees  
8           who hold positions that are authorized by law to  
9           require criminal history record checks as a condition  
10          of employment as provided by section 78-2.7;
- 11       (21) The department of health on licensed adult day care  
12           center operators, employees, new employees,  
13           subcontracted service providers and their employees,  
14           and adult volunteers as provided by section 321-15.2;
- 15       (22) The department of human services on purchase of  
16           service contracted and subcontracted service providers  
17           and their employees serving clients of the adult  
18           protective and community services branch, as provided  
19           by section 346-97;
- 20       (23) The department of human services on foster grandparent  
21           program, senior companion program, and respite



1           companion program participants as provided by section  
2           346-97;

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

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

17       (26) The department of commerce and consumer affairs on  
18           proposed directors and executive officers of a  
19           nondepository financial services loan company as  
20          provided by section 412:3-301;



- 1           (27) The department of commerce and consumer affairs on the
- 2                   original chartering applicants and proposed executive
- 3                   officers of a credit union as provided by section
- 4                   412:10-103;
- 5           (28) The department of commerce and consumer affairs on:
- 6                   (A) Each principal of every non-corporate applicant
- 7                           for a money transmitter license;
- 8                   (B) Each person who upon approval of an application
- 9                           by a corporate applicant for a money transmitter
- 10                           license will be a principal of the licensee; and
- 11                   (C) Each person who upon approval of an application
- 12                           requesting approval of a proposed change in
- 13                           control of licensee will be a principal of the
- 14                           licensee,
- 15                   as provided by sections 489D-9 and 489D-15;
- 16           (29) The department of commerce and consumer affairs on
- 17                   applicants for licensure and persons licensed under
- 18                   title 24;
- 19           (30) The Hawaii health systems corporation on:
- 20                   (A) Employees;
- 21                   (B) Applicants seeking employment;



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



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



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

4 (39) The State and counties on current and prospective  
5 systems analysts and others involved in an agency's  
6 information technology operation whose position  
7 responsibilities provide them with access to  
8 proprietary, confidential, or sensitive information;

9 (40) The department of commerce and consumer affairs on:

10 (A) Applicants for real estate appraiser licensure or  
11 certification as provided by chapter 466K;

12 (B) Each person who owns more than ten per cent of an  
13 appraisal management company who is applying for  
14 registration as an appraisal management company,  
15 as provided by section 466L-7; and

16 (C) Each of the controlling persons of an applicant  
17 for registration as an appraisal management  
18 company, as provided by section 466L-7;

19 (41) The department of health or its designee on all  
20 license applicants, licensees, employees, contractors,  
21 and prospective employees of medical cannabis



1 dispensaries, and individuals permitted to enter and  
2 remain in medical cannabis dispensary facilities as  
3 provided under sections 329D-15(a)(4) and  
4 329D-16(a)(3);

5 (42) The department of commerce and consumer affairs on  
6 applicants for nurse licensure or license renewal,  
7 reactivation, or restoration as provided by sections  
8 457-7, 457-8, 457-8.5, and 457-9;

9 (43) The county police departments on applicants for  
10 permits to acquire firearms pursuant to section 134-2  
11 and on individuals registering their firearms pursuant  
12 to section 134-3;

13 (44) The department of commerce and consumer affairs on:  
14 (A) Each of the controlling persons of the applicant  
15 for licensure as an escrow depository, and each  
16 of the officers, directors, and principals who  
17 will be in charge of the escrow depository's  
18 activities upon licensure; and

19 (B) Each of the controlling persons of an applicant  
20 for proposed change in control of an escrow  
21 depository licensee, and each of the officers,



1 directors, and principals who will be in charge  
2 of the licensee's activities upon approval of  
3 such application,

4 as provided by chapter 449;

5 (45) The department of taxation on current or prospective  
6 employees or contractors who have access to federal  
7 tax information in order to comply with requirements  
8 of federal law, regulation, or procedure, as provided  
9 by section 231-1.6;

10 (46) The department of labor and industrial relations on  
11 current or prospective employees or contractors who  
12 have access to federal tax information in order to  
13 comply with requirements of federal law, regulation,  
14 or procedure, as provided by section 383-110;

15 (47) The department of human services on current or  
16 prospective employees or contractors who have access  
17 to federal tax information in order to comply with  
18 requirements of federal law, regulation, or procedure,  
19 as provided by section 346-2.5;

20 (48) The child support enforcement agency on current or  
21 prospective employees, or contractors who have access



1 to federal tax information in order to comply with  
2 federal law, regulation, or procedure, as provided by  
3 section 576D-11.5; [~~and~~]

4 (49) The department of commerce and consumer affairs on  
5 each control person, executive officer, director,  
6 general partner, and managing member of a small dollar  
7 loan licensee, or an applicant for a small dollar loan  
8 license as provided by part \_\_\_\_\_, article 9,  
9 chapter 412; and

10 [~~(49)~~] (50) Any other organization, entity, or the State,  
11 its branches, political subdivisions, or agencies as  
12 may be authorized by state law."

13 PART III

14 SECTION 9. This Act does not affect rights and duties that  
15 matured, penalties that were incurred, and proceedings that were  
16 begun before its effective date.

17 SECTION 10. In codifying the new sections added by  
18 section 2 of this Act, the revisor of statutes shall substitute  
19 appropriate section numbers for the letters used in designating  
20 the new sections in this Act.



1 SECTION 11. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 12. This Act shall take effect on July 1, 2050;  
4 provided that the licensing requirements for small dollar  
5 lenders established by section 2 of this Act shall take effect  
6 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

**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. Effective 7/1/50; provided that the licensing requirements shall take effect on 1/1/23. (SD2)

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

