

**ACT 56**

H.B. NO. 1192

A Bill for an Act Relating to Consumer Protection.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. The legislature finds that there has been a shift in the market from deferred deposit agreements, commonly referred to as payday loans, toward small dollar installment loans, which are repayable over time and secured by access to the borrower's checking account. Unfortunately, due to the State's current deferred deposit laws, the payday lending industry can engage in practices that trap consumers in unsustainable cycles of debt. Payday lenders structure loans with unrealistically short repayment terms, unaffordable payments, and excessive fees, resulting in long-term, high-cost debt and harm to the

consumer. Lenders are also granted access to the borrower's checking account to ensure that the lender gets repaid, even if the borrower cannot cover rent, utilities, and other basic living expenses. The Pew Charitable Trusts has reported that the average Hawaii payday borrower incurs \$529 in fees to borrow \$300 over five months. Research also shows that this amount is nearly three times higher than what the same lenders charge similarly situated consumers in other states.

The legislature notes that there has been a growing trend around the country to provide more consumer protections, which benefit consumers and encourage responsible and transparent lending, for deferred deposit transactions and installment loans within the alternative financial service products industry. Hawaii has not yet joined in these reform efforts. In 2017, the Consumer Financial Protection Bureau released new rules that, among other things, targeted loans with a thirty-six per cent annual interest rate or higher and restricted payday lenders from extracting money from the borrower's account, without explicit consent, if they failed to repay twice in a row. However, the Consumer Financial Protection Bureau also rescinded the mandatory underwriting provisions of its payday lending rules. It is critical that the State take action now to address these harmful practices in light of this delay and the weakening of the federal consumer protections for payday and similar loans.

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

Accordingly, the purpose of this Act is to:

- (1) Establish a framework for providing new, viable installment loan transactions; and
- (2) Repeal the statutory authorization for deferred deposit transactions in the State.

## PART II

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### “CHAPTER INSTALLMENT LOANS

#### PART I. GENERAL PROVISIONS

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Annual percentage rate” means an annual percentage rate as determined pursuant to section 107 of the Truth in Lending Act, title 15 United States Code section 1606. For the purposes of this definition, all fees and charges, including interest and monthly maintenance fees authorized by this chapter, shall be included in the calculation of the annual percentage rate.

“Arranger” means a provider of funds in the syndication of a debt.

“Branch office” means any location in the State that is identified by any means to the public or consumers as a location at which the licensee holds itself out as an installment lender.

“Commissioner” means the commissioner of financial institutions.

“Consumer” means a natural person who is the buyer, lessee, or debtor to whom credit is granted in a transaction that is primarily for that natural person’s personal, family, or household purposes.

“Control” means the power, either directly or indirectly, to direct management or policies of a company, whether through ownership of securities, by contract, or otherwise.

“Control person” means any person who directly or indirectly exercises control of a licensee or applicant.

“Default” means a consumer’s failure to repay an installment loan in compliance with the terms contained in an installment loan agreement.

“Department” means the department of commerce and consumer affairs.

“Division” means the division of financial institutions of the department of commerce and consumer affairs.

“Elder” means an individual who is sixty-two years of age or older.

“Finance charges” means the cost of credit or cost of borrowing, including the interest and other fees authorized by this chapter.

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

“Installment lender” or “lender” means any person who is in the business of offering or making a consumer loan, who arranges a consumer loan for a third party, or who acts as an agent for a third party, regardless of whether the third party is exempt from licensure under this chapter or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, through any method including mail, telephone, the Internet, or any electronic means.

“Installment loan” means a loan made pursuant to this chapter.

“Instrument” means a method of payment that may include a debit card payment, Automated Clearing House transfer, electronic check or other forms of electronic transfers, money order, cash, personal check signed by the consumer, or any other method of loan payment authorized by this part or by rule adopted by the commissioner pursuant to chapter 91 and made payable to a person subject to this chapter.

“Interest” means all charges payable directly or indirectly by a borrower to a licensee as a condition to a loan or an application for a loan, however denominated. “Interest” does not include default charges, deferment charges, insurance charges or premiums, court costs, loan origination charges, check collection charges, credit line charges, credit report charges, or other fees and charges specifically authorized by law.

“Licensee” means a person who is licensed or required to be licensed under this chapter.

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

“Loan charges” means the total of all charges made in connection with a loan except for insufficient funds charges authorized by section 11 and default charges authorized by section 4(i).

“Maintenance fee” means a monthly fee paid to a licensee to maintain an installment loan.

“NMLS” means the Nationwide Multistate Licensing System and Registry, which is a licensing system developed and maintained by the Conference of State Bank Supervisors for the state licensing and registration of state-licensed

loan originators and other financial services providers, or any system provided by the Consumer Financial Protection Bureau.

“Nonprofit organization” means an organization that:

- (1) Has the status of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- (2) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;
- (3) Receives funding, revenue, and charge fees in a manner that does not incentivize its organization or its employees to act other than in the best interests of its clients; and
- (4) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients.

“Person” means an individual, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other association of individuals, however organized.

“Place of business” means a location where installment loans are offered or made and includes each website through which a consumer may apply for an installment loan from an installment lender.

“Precomputed interest” means an interest method that uses the original payment schedule to calculate interest.

“Renewal” means the refinancing of an installment loan that occurs during the period between the original maturity date and the immediately preceding installment payment due date. “Renewal” does not include the refinancing of an installment loan that occurs prior to the penultimate installment payment due date.

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

**§ -2 Installment loans; requirements; payments.** (a) Each installment loan transaction and renewal shall meet the following requirements:

- (1) Any transaction and renewal shall be documented in a written agreement pursuant to section -3;
- (2) The total amount of the installment loan shall not be greater than \$1,500 pursuant to section -5(a);
- (3) The total amount of loan charges an installment lender may charge, collect, or receive in connection with an installment loan shall not exceed fifty per cent of the principal loan amount;
- (4) Subject to paragraph (3), a monthly maintenance fee may be charged by the lender, not to exceed the following:
  - (A) \$25 on a loan of an original principal loan amount up to \$299.99;
  - (B) \$30 on a loan of an original principal loan amount of at least \$300.00 and up to \$699.99; and
  - (C) \$35 on a loan of an original principal loan amount of at least \$700.00 and greater;

provided that the monthly maintenance fee shall not be added to the loan balance upon which the interest is charged; provided further that an installment lender shall not charge, collect, or receive a monthly maintenance fee if the borrower is a person on active duty in the armed forces of the United States or a dependent of that person;

- (5) The minimum contracted repayment term of the installment loan shall be two months if the contracted loan amount is \$500 or less,

or four months if the contracted loan amount is \$500.01 or more; provided that, for purposes of meeting the required minimum contracted repayment term, an installment lender may calculate one month as twenty-eight days or longer;

- (6) All repayment schedule due dates shall be dates upon which an installment lender is open for business to the public at the place of business where the installment loan was made;
- (7) An installment lender shall accept prepayment in full or in part from a consumer prior to the loan due date and shall not charge the consumer a fee or penalty if the consumer opts to prepay the loan; provided that to make a prepayment, all past due interest and fees shall be paid first;
- (8) The loan amount shall be fully amortized over the term of the loan, and maintenance fees shall be applied in arrears on a monthly basis;
- (9) A consumer's repayment obligations shall not be secured by a lien on any real or personal property;
- (10) An installment lender shall not charge a consumer any loan charges for an installment loan, other than the fees permitted by this chapter;
- (11) The written agreement required under section -3 shall not require a consumer to purchase add-on products, such as credit insurance; and
- (12) The maximum contracted repayment term of the installment loan shall be twelve months.

(b) In an installment loan, a lender may contract for a once-every-two-weeks, twice-monthly, or monthly payment of the loan balance due, including the applicable portion of the interest, and earned monthly maintenance fee.

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

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

- (1) Any unearned and unaccrued portion of the interest charged; and
- (2) Any unearned monthly maintenance fees.

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

**§ -3 Written agreement; requirements; disclosure.** (a) Each installment loan transaction and renewal shall be documented by a written agreement signed by the installment lender and consumer. The written agreement shall contain the following information:

- (1) The name and address of the consumer and the lender;
- (2) The transaction date;
- (3) The loan amount;
- (4) The authorized interest rate;
- (5) A statement of the total amount of finance charges charged, expressed as a dollar amount and an annual percentage rate;

- (6) The installment payment schedule setting out the amount due on specific due dates;
  - (7) A statement that an installment lender shall not require a consumer to purchase add-on products;
  - (8) The name, address, electronic mail address, and telephone number of any agent or arranger involved in the installment loan transaction;
  - (9) A notice to the consumer that the consumer has the right to rescind the installment loan before 5:00 p.m., Hawaii-Aleutian Standard Time, by the third business day after the date the loan was originated and at the location where the loan was originated;
  - (10) A statement that it shall not be considered a violation of law if the consumer obtains an installment loan voluntarily and separately from the consumer's spouse if the consumer documents the action in writing, either in the written agreement or in a subsequent agreement;
  - (11) A notice to the consumer that a returned instrument may result in a dishonored instrument charge, not to exceed \$25; and
  - (12) A description of the methods by which installment loan payments may be made, which may include a debit card payment, Automated Clearing House transfer, electronic check, other forms of electronic transfers, money order, cash, check, or any additional method of loan payment authorized by this chapter or by rule adopted by the commissioner pursuant to chapter 91.
- (b) The written agreement shall also comply with the disclosure requirements of the Truth in Lending Act and any regulation adopted thereunder.
- (c) The installment lender shall provide to the consumer a printed written disclosure prior to signing the written agreement that accurately discloses the types of information in the chart below, in at least twelve-point type:

**“MULTIPLE  
INSTALLMENT  
LOAN PAYMENT**

Amount Financed  
 Term (months)  
 Authorized Interest Rate  
 Monthly Maintenance Fee  
 Total of All Permitted Charges  
 Total You Will Pay for This Loan If Paid on Time  
 (Amount Financed, Interest, and Monthly Maintenance Fee)  
**ANNUAL PERCENTAGE RATE**  
 Payment Schedule”

Included in the chart above, an installment lender may include any other information the lender believes will benefit the consumer, such as an explanation of annual percentage rate and how it is calculated.

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

(e) The written agreement may include a demand feature that permits the lender or any other person, if the consumer fails to make any payment when due, to terminate the installment loan in advance of the original maturity date, but no earlier than ten days after the missed payment, and demand repayment of the entire outstanding balance. If the written agreement includes a demand feature and the demand feature is exercised, the lender shall be entitled to collect only the outstanding balance and a prorated portion of the unpaid interest and fees earned up to the date of termination. For purposes of this subsection, the outstanding balance and prorated portion of the unpaid interest and fees shall be calculated as if the consumer had voluntarily prepaid the loan in full on the date of termination.

**§ -4 Authorized interest rate.** (a) Subject to section -2(a)(3), an installment lender may contract for and receive interest at a rate not exceeding thirty-six per cent per year on that portion of the unpaid principal balance of the installment loan. Loans shall be precomputed. Any loan charges assessed in compliance with this chapter shall be exempt from chapter 478.

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

(c) Subject to section -2(b), installment loans shall be repayable in substantially equal and consecutive installments of principal and interest combined; provided that the first installment period may exceed one month by not more than fifteen days, and the first installment payment amount may be larger than the remaining payments by the amount of interest charged for the extra days; provided further that monthly installment payment dates may be omitted if the parties agree in writing, either in the written agreement required under section -3 or in a subsequent agreement, to accommodate consumers with seasonal income.

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

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

(f) The parties may agree in writing, either in the written agreement required under section -3 or in a subsequent agreement, to a deferment of wholly unpaid installments; provided that:

- (1) A deferment shall postpone the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled, or as previously deferred, for a period equal to the deferment period;
- (2) The deferment period shall be that period during which no installment is scheduled to be paid by reason of the deferment; and
- (3) The lender shall not charge or collect a deferment fee.

(g) Other than the interest and loan charges permitted under this section, no further or other amount shall be charged or required by the installment lender.

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

(i) A lender shall not collect a default charge on any installment not paid in full within ten days after its due date. A lender may charge a default charge of \$30 on an installment not paid in full after ten days have passed since its due date. For purposes of this subsection, all installments shall be considered paid in the order in which they become due.

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

(b) Except as otherwise provided in section -8, an installment lender shall take reasonable measures to ensure that no consumer has more than one installment loan outstanding at a time from any of the following:

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

(c) An installment lender that receives written or electronic confirmation from each consumer that the consumer does not have any outstanding installment loans from the entities listed in subsection (b) as of the date the consumer enters into an installment loan with the installment lender shall be deemed to have met the requirements of this section.

(d) If a consumer's spouse obtains an installment loan voluntarily and separately from the consumer, and subsequently the consumer obtains an installment loan voluntarily and separately from the consumer's spouse, where neither the consumer nor the consumer's spouse are coborrowers with each other on either loan, and the consumer's action is documented in writing, either in the written agreement required under section -3 or in a subsequent agreement, signed by the consumer, and retained by the lender, the secondary transaction shall not be considered a violation of this section.

(e) Upon a consumer's payment in full of any installment loan, an installment lender shall wait a period of three days before the lender may make another installment loan to the same consumer.

**§ -6 Right of rescission.** (a) A consumer shall have the right to rescind an installment loan, at or before 5:00 p.m., Hawaii-Aleutian Standard Time, on the third business day after the date the loan was originated and at the location where the loan was originated, by returning the principal in cash, the original check or money order disbursed by the lender, or the other disbursement of loan proceeds from the lender to fund the loan. The lender shall not charge the consumer for rescinding the loan.

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

“RESCINDED BY [lender's name; license number], [date]”

and below which the lender's authorized representative shall sign.

**§ -7 Notice to consumers; general requirements; right to prepay; loan limits; right to rescind.** An installment lender shall provide the following notice on each written agreement for an installment loan. The notice shall be in a prominent place and in at least twelve-point type:

“THIS INSTALLMENT LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS.



THIS INSTALLMENT LOAN SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS.

YOU HAVE THE RIGHT TO PREPAY THIS INSTALLMENT LOAN IN FULL OR IN PART WITHOUT A PENALTY.

RENEWING THIS INSTALLMENT LOAN RATHER THAN PAYING THE DEBT IN FULL MAY REQUIRE ADDITIONAL FEES OR CHARGES.

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

YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION AT OR BEFORE 5:00 P.M. [SPECIFY HERE THE CLOSE OF THE THIRD BUSINESS DAY BY DAY OF WEEK AND DATE].”

**§ -8 Renewal; new loan requirements; consecutive loans; payment plan.**

(a) An installment loan may be renewed only once. After one renewal, the consumer shall pay the debt in cash or its equivalent.

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

**§ -9 Form of loan proceeds; endorsement of instrument; redemption of instrument.** (a) An installment lender may pay the proceeds from or otherwise fund an installment loan to the consumer in the form of a monetary instrument, prepaid debit card, Automated Clearing House transfer, electronic check, other form of electronic transfer, money order, or cash.

(b) An installment lender shall not negotiate or present an instrument for payment unless the instrument is endorsed with the actual business name of the lender.

(c) Prior to an installment lender negotiating or presenting the instrument, a consumer may redeem any instrument held by the lender as a result of an installment loan if the consumer pays the full amount of the instrument to the lender.

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

(b) Unless invited by the consumer, a lender shall not visit a consumer’s residence or place of employment for the purpose of collecting a delinquent in-

stallment loan. A lender shall not impersonate a law enforcement officer or make any statements that might be construed as indicating an official connection with any federal, state, or county law enforcement agency or any other governmental agency while engaged in collecting an installment loan.

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

- (1) With the consumer's spouse or the consumer's domestic partner in any form, manner, or place, on more than one occasion, except when:
  - (A) Calling a shared phone number and asking to speak to the consumer;
  - (B) Sending a text message to a shared phone number;
  - (C) Sending an electronic mail to a shared electronic mail address; or
  - (D) Sending any other electronic writing to a shared electronic account;
- (2) With a consumer at the consumer's place of employment on more than one occasion;
- (3) With the consumer, the consumer's spouse, or the consumer's domestic partner at the consumer's place of residence between the hours of 9:00 p.m. and 8:00 a.m., Hawaii-Aleutian Standard Time; or
- (4) To a party other than the consumer, the consumer's attorney, the lender's attorney, or a consumer credit reporting agency if otherwise permitted by law, except for the purposes of acquiring location or contact information about the consumer.

(d) A lender shall maintain, in accordance with applicable law, an accurate and complete communication log of all telephone and written communications with a consumer initiated by the lender regarding any collection efforts, including date, time, and the nature of each communication.

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

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

- (1) "Communication" includes the time the lender initiates contact with a consumer, regardless of whether the communication is received or accessed by the consumer; and
- (2) "Communication" does not include:
  - (A) Verbal communication with the consumer while the consumer is physically present in the lender's place of business;
  - (B) An unanswered telephone call in which no message, other than a caller identification, is left, unless the telephone call is in violation of subsection (c)(3); or
  - (C) An initial letter to the consumer that includes disclosures under the federal Fair Debt Collection Practices Act.

**§ -11 Authorized insufficient funds charge.** (a) Regardless of the number of instances where a consumer's payment is rejected due to insufficient

funds, an installment lender may contract for and collect one insufficient funds charge for each payment due on an installment loan, not to exceed \$25. The lender shall not collect any other fees as a result of the insufficient funds of the consumer.

(b) If the loan proceeds instrument delivered by the installment lender to the consumer is dishonored by the financial institution, the installment lender shall cover any fees and charges incurred by the consumer as a direct result of the dishonored loan proceeds instrument.

**§ -12 Posting of license and loan charges.** Any installment lender offering an installment loan shall conspicuously and continuously post, at any place of business where installment loans are made, the license required pursuant to this chapter and a notice of the loan charges imposed for installment loans.

**§ -13 Internet lending.** (a) An installment lender may advertise and accept applications for installment loans by any lawful medium, including the Internet, and shall provide all required notices and disclosures via the Internet, and the consumer may provide a valid electronic signature on the disclosures and loan agreement, subject to subsection (b).

(b) Installment lenders shall not advertise or make installment loans via the Internet without first having obtained a license pursuant to part II of this chapter.

(c) The unique identifier of any installment lender originating an installment loan, except a person who is exempt from licensure under this chapter, shall be clearly shown on all solicitations, including websites, and all other documents, as established by rule or order of the commissioner.

**§ -14 Notice on assignment or sale of contract.** (a) No licensee shall pledge, negotiate, sell, or assign a current and performing installment loan, except to another licensee or to a bank, savings bank, trust company, financial services loan company, or credit union organized under the laws of this State or the laws of the United States.

(b) Prior to sale or assignment of a current and performing installment loan contract held by the installment lender, the lender shall place a notice on the installment loan contract in at least twelve-point type that reads:

**“INSTALLMENT LOAN**

No licensee shall pledge, negotiate, sell, or assign an installment loan, except to another licensee or to a bank, savings bank, trust company, financial services loan company, or credit union organized under the laws of Hawaii or the laws of the United States.”

(c) This section shall not apply to:

- (1) The transfer of an installment loan to a company affiliated with the installment lender that securitizes the installment lender’s loan receivables; and
- (2) The pledge or other granting of a security interest in the installment loan to a financial institution in connection with asset back financing or similar lending facility of the installment lender.

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

(b) All books and records may be maintained as originals or photocopies; on microfilm or microfiche; on computer disks, including related cloud storage devices, or tapes; or similar forms; provided that the books and records are readily accessible and may be easily examined.

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

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

## PART II. LICENSING

**§ -31 License required.** (a) No person, except those exempt under this chapter, shall act as an installment lender in this State unless licensed to do so by the commissioner.

(b) Any loan made in violation of this section is void, and no person shall have the right to collect, receive, or retain any principal, interest, fees, or other charges in connection with the loan.

**§ -32 Exemptions; relation to other laws.** (a) This chapter shall not apply to the following:

- (1) A financial institution;
  - (2) A nondepository financial services loan company;
  - (3) An “open end credit plan”, as defined in the Truth in Lending Act, title 15 United States Code section 1602(j); or
  - (4) A tax refund anticipation loan.
- (b) Persons licensed under this chapter shall not be subject to chapter

443B.

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

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

- (1) The legal name, trade names, and business address of:
  - (A) The applicant; and
  - (B) Every member, officer, principal, or director thereof, if the applicant is a partnership, association, limited liability company, limited liability partnership, or corporation;
- (2) The principal place of business;
- (3) The complete address of any other branch offices at which the applicant proposes to engage in making installment loans; and
- (4) Any other data, financial statements, and pertinent information the commissioner may require with respect to the applicant or, if an applicant is not an individual, each of the applicant’s control persons, executive officers, directors, general partners, and managing members.

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

(d) For the purpose and to the extent necessary to participate in NMLS, the commissioner may waive or modify, in whole or in part, by rule or order,

any or all of the requirements of this chapter and establish new requirements as reasonably necessary to participate in NMLS.

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

- (1) Fingerprints of the applicant or, if an applicant is not an individual, fingerprints of each of the applicant's control persons, executive officers, directors, general partners, and managing members for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive the fingerprints for a state, national, and international criminal history background check, accompanied by the applicable fee charged by the entities conducting the criminal history background check; and
- (2) Information verifying the personal history and experience of the applicant or, if an applicant is not an individual, the personal history and experiences of each of the applicant's control persons, executive officers, directors, general partners, and managing members in a form prescribed by NMLS, including authorization for NMLS and the commissioner to obtain:
  - (A) An independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, title 15 United States Code section 1681a(p); and
  - (B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction;

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

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

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

(h) An applicant for a license as an installment lender shall be registered with the business registration division of the department to do business in this State before a license pursuant to this chapter may be granted.

**§ -34 License; grounds for denial.** (a) The commissioner shall conduct an investigation of every applicant to determine the applicant's financial responsibility, character, and general fitness. The commissioner shall issue the applicant a license to engage in the business of making installment loans if the commissioner determines that the applicant or, in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members:

- (1) Has never had an installment lender license revoked in any jurisdiction; provided that a subsequent formal vacation of a revocation shall not be deemed a revocation;
- (2) Has not been convicted of, pled guilty or nolo contendere to, or been granted a deferred acceptance of a guilty plea under any federal law or under chapter 853 to a felony in a domestic, foreign, or military court, either:
  - (A) During the seven-year period preceding the date of the application for licensing; or

- (B) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;  
provided that any pardon of a conviction shall not be deemed a conviction for the purposes of this section;
- (3) Has demonstrated sufficient financial responsibility, good character, and general fitness to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, and efficiently, pursuant to this chapter. For the purposes of this paragraph, a person is not financially responsible when the person has shown disregard in the management of the person's own financial condition. A determination that a person has shown disregard in the management of the person's own financial condition may be based upon:
- (A) Current outstanding judgments, except judgments solely as a result of medical expenses;
- (B) Current outstanding tax liens or other government liens and filings, subject to applicable disclosure laws and administrative rules;
- (C) Foreclosures within the prior three years; and
- (D) A pattern of seriously delinquent accounts within the prior three years;
- (4) Has not been convicted of, pled guilty or nolo contendere to, or been granted a deferred acceptance of a guilty plea under federal law or chapter 853 to any misdemeanor involving an act of fraud, dishonesty, breach of trust, or money laundering;
- (5) Has satisfied the licensing requirements of this chapter; and
- (6) Has provided the bond required by section -35.
- (b) The applicant or, in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members shall submit authorization to the commissioner to conduct background checks to determine or verify the information in subsection (a) in each state where the person has made installment loans. Authorization pursuant to this subsection shall include consent to provide additional fingerprints, if necessary, to law enforcement or regulatory bodies in other states.
- (c) A license shall not be issued to an applicant:
- (1) Whose license to conduct business under this chapter, or any similar statute in any other jurisdiction, has been suspended or revoked within five years of the filing of the present application;
- (2) Whose license to conduct business in the installment loan or payday industry has been revoked by an administrative order issued by the commissioner or the commissioner's designee, or the licensing authority of another state or jurisdiction, for the period specified in the administrative order;
- (3) Who has advertised directly and purposefully to Hawaii consumers or made internet loans in violation of this chapter; or
- (4) Who has failed to complete an application for licensure.
- (d) A license issued in accordance with this chapter shall remain in force and effect until surrendered, suspended, or revoked, or until the license expires as a result of nonpayment of the annual license renewal fee required by this chapter.

§ -35 **Fees; bond.** (a) An installment lender shall pay the following fees to the division to obtain and maintain a valid license under this chapter:

- (1) An initial application fee of \$1,000;
- (2) A processing fee of \$35 for each control person;
- (3) An annual license renewal fee of the greater of:
  - (A) \$1,000; or
  - (B) An amount equal to the sum of \$0.15 per installment loan originated during the previous year plus 0.08 per cent of the dollar volume of loans originated during the previous year; provided that for the purposes of calculating the renewal fee, all installment loans originated by the installment lender between the third quarter of the previous year and third quarter of the current year shall be considered.
- (4) Any applicable fee charged by the entities conducting the criminal history background check for each of the applicant's control persons, executive officers, directors, general partners, and managing members for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive the fingerprints for a state, national, and international criminal history background check; and
- (5) Any applicable fee charged by the entities obtaining an independent credit report from a consumer reporting agency as described in section 603(p) of the Fair Credit Reporting Act, title 15 United States Code section 1681a(p);

provided that the application fee and annual license renewal fee shall not apply to a nonprofit organization acting as an installment lender.

(b) A nonprofit organization acting as an installment lender shall pay the following fees to maintain a valid registration as a nonprofit organization in NMLS:

- (1) An initial registration fee of \$200;
- (2) An annual registration renewal fee of \$150; and
- (3) A late fee of \$25 per day if the nonprofit registration expires and the nonprofit organization continues to act as an installment lender.

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

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

- (1) The licensee as obligor shall faithfully conform to and abide by this chapter and all rules adopted under this chapter; and
- (2) The bond shall pay to the State and any person or persons having a cause of action against the licensee as obligor all moneys that may become due and owing to the State and those persons under and by virtue of this chapter.

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

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

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

- (1) A copy of the licensee's most recent audited annual financial statement, including:
    - (A) Balance sheets;
    - (B) A statement of income or loss;
    - (C) A statement of changes in shareholders' equity; and
    - (D) A statement of cash flows, or if a licensee is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation in lieu of the licensee's audited annual financial statement;
  - (2) A report detailing the installment lender's activities in this State since the prior reporting period, including:
    - (A) The number of installment loans made;
    - (B) The number of installment loans that have defaulted; and
    - (C) Any other information the commissioner may reasonably require related to performance metrics and the efficacy of the installment loan program;
  - (3) A report of any material changes to any of the information submitted by the licensee on its original application that have not previously been reported to the commissioner on any other report required to be filed under this chapter;
  - (4) A list of the principal place of business and branch locations, if any, within this State where business regulated by this chapter is being conducted by the licensee;
  - (5) Disclosure of any pending or final suspension, revocation, or other enforcement action by any state or governmental authority; and
  - (6) Any other information the commissioner may require.
- (c) A licensee may renew by:
- (1) Continuing to meet the licensing requirements of sections -33, -34, and -35;
  - (2) Filing a completed renewal statement on a form prescribed by NMLS or by the commissioner;
  - (3) Paying a renewal fee; and
  - (4) Meeting all other requirements of this section.
- (d) A licensee that has not filed an annual report deemed complete by

the commissioner or paid the annual renewal fee by the renewal filing deadline, and has not been granted an extension of time to do so by the commissioner, shall have its license suspended on the renewal date. The licensee shall have thirty days after its license is suspended to file an annual report and pay the annual renewal fee, plus a late filing fee of \$250 for each day that has passed since suspension; provided that the late filing fee for a nonprofit organization acting as an installment lender shall be \$25 per day. The commissioner, for good cause, may grant an extension of the renewal date or reduce or suspend the late filing fees.

**§ -37 Enforcement; violations; penalties.** (a) To ensure the effective supervision and enforcement of this chapter, the commissioner, pursuant to chapter 91, may take any disciplinary action specified in subsection (b) against an applicant or licensee if the commissioner finds that the applicant or licensee:

- (1) Has violated this chapter, or any rule or order lawfully made pursuant to this chapter;
- (2) Has failed to disclose facts or conditions that clearly would have been grounds for the commissioner to deny an application for licensure, had those facts or conditions been disclosed at the time the application was made;



- (3) Has failed to provide information required by the commissioner within a reasonable time, as specified by the commissioner;
- (4) Has failed to provide or maintain proof of financial responsibility;
- (5) Is insolvent;
- (6) Has made, in any document or statement filed with the commissioner, a false representation of a material fact or has omitted to state a material fact;
- (7) Has, or, if an applicant or licensee is not an individual, any of the applicant's or licensee's control persons, executive officers, directors, general partners, and managing members, have been convicted of or entered a plea of guilty or nolo contendere to a crime involving fraud or deceit, or to any similar crime under the jurisdiction of any federal court or court of another state;
- (8) Has failed to make, maintain, or produce records that comply with section -15 or any rule adopted by the commissioner pursuant to chapter 91;
- (9) Has been the subject of any disciplinary action by any state or federal agency that resulted in revocation of a license;
- (10) Has a final judgment entered against the applicant or licensee for violations of this chapter; any state or federal law concerning installment loans, deferred deposit loans, check cashing, payday loans, banking, mortgage loan originators, or money transmitters; or any state or federal law prohibiting unfair or deceptive acts or practices; or
- (11) Has failed to take or provide proof of taking in a timely manner, as specified by the commissioner, the corrective action required by the commissioner subsequent to an investigation or examination pursuant to section -43.

(b) After finding that the applicant or licensee has violated one or more of the conditions under subsection (a), the commissioner may take any of the following actions:

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

(c) The commissioner may issue a temporary cease and desist order if the commissioner finds that the licensee, applicant, or person is engaging, has engaged, or is about to engage in an illegal, unauthorized, unsafe, or unsound practice in violation of this chapter. Whenever the commissioner denies a license application or takes disciplinary action pursuant to this subsection, the commissioner shall enter an order to that effect and notify the licensee, applicant, or person of the denial or disciplinary action. The notification required by this subsection shall be given by personal service or by certified mail to the last known address of the licensee or applicant as shown on the application, license, or as subsequently furnished in writing to the commissioner.

(d) The revocation, suspension, expiration, or surrender of a license shall not affect the licensee's liability for acts previously committed or impair the

commissioner's ability to issue a final agency order or take disciplinary action against the licensee.

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

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

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

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

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

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

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

- (1) The date of surrender;
- (2) The name, address, telephone number, facsimile number, and electronic mail address of a contact individual with knowledge and authority sufficient to communicate with the commissioner regarding all matters relating to the licensee during the period that it was licensed pursuant to this chapter;
- (3) The reason or reasons for surrender;
- (4) The total dollar amount of the licensee's outstanding installment loans sold in Hawaii and the individual amounts of each outstanding installment loan, and the name, address, and contact telephone number of the licensee to whom each outstanding installment loan was assigned;
- (5) A list of the licensee's Hawaii authorized branch offices, if any, as of the date of surrender;
- (6) Confirmation that the licensee has notified each of its Hawaii authorized branch offices, if any, that the branch offices shall no longer make installment loans on the licensee's behalf; and
- (7) Confirmation that the licensee has notified each of its installment loan consumers, if any, that the installment loan is being transferred and the name, address, telephone number, and any other contact information of the licensee or entity described in section -14 to whom the installment loan was assigned.

(c) Voluntary surrender of a license shall be effective upon the date of surrender specified on the written notice to the commissioner as required by this

section; provided that the licensee has met all the requirements of voluntary surrender and has returned the original license issued.

**§ -39 Sale or transfer of license; change of control.** (a) No installment lender license shall be transferred, except as provided in this section.

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

(c) After review of a request for approval under subsection (b), the commissioner may require the licensee or person or group of persons requesting approval of a proposed change of control of the licensee, or both, to provide additional information concerning the persons who shall assume control of the licensee. The additional information shall be limited to the information required of the licensee or persons in control of the licensee as part of its original license or renewal application under sections -33 and -36. The information shall include, for the five-year period prior to the date of the application for change of control of the licensee, a history of material litigation and criminal convictions of each person who, upon approval of the application for change of control, will be a principal of the licensee. Authorization shall also be given to conduct criminal history record checks of those persons, accompanied by the appropriate payment of the applicable fee for each record check.

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

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

- (1) Who acts as a proxy for the sole purpose of voting at a designated meeting of the security holders or holders of voting interests of a licensee or person in control of a licensee;
- (2) Who acquires control of a licensee by devise or descent;
- (3) Who acquires control as a personal representative, custodian, guardian, conservator, trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law; or
- (4) Whom the commissioner, by rule or order, exempts in the public interest.

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

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

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

(b) An installment lender shall not maintain any branch offices in the State in addition to its principal place of business without the prior written approval of the commissioner. No business shall be conducted at a branch office until the branch office has been licensed by the commissioner.

(c) An application to establish a branch office shall be submitted through NMLS with a nonrefundable application fee as required by section -35.

(d) An installment lender shall not relocate any office in this State without the prior written approval of the commissioner. An application to relocate an office shall be submitted to the commissioner at least thirty days prior to relocation and shall set forth the reasons for the relocation, street address of the proposed relocated office, and any other information required by the commissioner. An application to relocate an office pursuant to this subsection shall be submitted with a nonrefundable fee as required by section -35.

(e) An installment lender shall give the commissioner notice of its intent to close a branch office at least thirty days prior to the closing. The notice shall:

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

(f) The principal place of business and each branch office of the installment lender shall be identified in NMLS to consumers as a location at which the licensee holds itself out as an installment lender.

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

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

**§ -42 Commissioner; general powers.** (a) The commissioner may adopt rules pursuant to chapter 91 that the commissioner deems necessary for the administration of this chapter.

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

- (1) Issue declaratory rulings or informal nonbinding interpretations;
- (2) Investigate and conduct hearings regarding any violation of this chapter and any rule or order of, or agreement with, the commissioner;
- (3) Create fact-finding committees to make recommendations for the commissioner's consideration;
- (4) Require an applicant or any of its control persons, executive officers, directors, general partners, and managing members to disclose their relevant criminal history and request a criminal history record check in accordance with chapter 846;
- (5) Contract with or employ qualified persons, including accountants, attorneys, investigators, examiners, auditors, or other professionals who may be exempt from chapter 76 and who shall assist the commissioner in exercising the commissioner's powers and duties;
- (6) Process and investigate complaints; subpoena witnesses and documents; administer oaths; receive affidavits and oral testimony, including telephonic communications; and do any things necessary or

- incidental to the exercise of the commissioner's power and duties, including conducting contested case proceedings under chapter 91;
- (7) Require a licensee to comply with any rule, guidance, guideline, statement, supervisory policy or any similar proclamation issued or adopted by the Federal Deposit Insurance Corporation to the same extent and in the same manner as a bank chartered by the State or, in the alternative, any policy position of the Conference of State Bank Supervisors;
  - (8) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources; standardized or uniform methods or procedures; and documents, records, information, or evidence obtained under this chapter;
  - (9) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to investigate or examine a licensee or person subject to this chapter;
  - (10) Accept and rely on investigation or examination reports made by other government officials, within or without this State; and
  - (11) Accept audit reports made by an independent certified public accountant for the licensee or person subject to this chapter in the course of an examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in the commissioner's report of the examination, report of investigation, or other writing.

**§ -43 Commissioner; investigation and examination authority.** (a)

In addition to the authority granted under section -42(b), the commissioner shall have the authority to conduct investigations and examinations in accordance with this section. The commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence that the commissioner deems relevant to the investigation or examination, regardless of the location, possession, control, or custody of the documents, information, or evidence.

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

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

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

- (1) Accounting compilations;

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

(3) Any other information the commissioner deems necessary.

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

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

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

(h) The commissioner may charge an investigation or examination fee, payable to the commissioner, based upon the cost per hour per examiner for each licensee or person subject to this chapter investigated or examined by the commissioner or the commissioner's staff. The hourly fee shall be \$60 or an amount the commissioner shall establish by rule pursuant to chapter 91. In addition to the investigation or examination fee, the commissioner may charge any person who is investigated or examined by the commissioner or the commissioner's staff pursuant to this section additional fees for travel, per diem, mileage, and other reasonable expenses incurred in connection with the investigation or examination, payable to the commissioner.

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

**§ -44 Confidentiality.** (a) Except as otherwise provided in title 12 United States Code section 5111, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to NMLS and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material shall continue to apply to the information or material after the information or material has been disclosed to NMLS. The information and material may be shared with all state and federal regulatory officials with oversight authority over transactions subject to this chapter without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

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

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

- (1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or a state; or
- (2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless:
  - (A) Any privilege is determined by NMLS to be inapplicable to the information or material; or
  - (B) The person to whom the information or material pertains waives that privilege, in whole or in part.
- (d) Notwithstanding chapter 92F, the examination process and related information and documents, including the reports of examination, shall be confidential and shall not be subject to discovery or disclosure in civil or criminal lawsuits.
- (e) If a conflict arises between this section and any other state law relating to the disclosure of privileged or confidential information or material, this section shall control.
- (f) This section shall not apply to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, any persons that are included in NMLS for access by the public.

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

- (1) Engage in any act that limits or restricts the application of this chapter, including:
  - (A) Disguising an installment loan as a leaseback transaction or a personal property, personal sales, or automobile title loan; or
  - (B) Disguising loan proceeds as cash rebates for the pretextual installment sale of goods and services;
- (2) Make an installment loan that requires collateralization, a security interest, or any other pledge of personal property from the consumer;
- (3) Use a consumer's account number to prepare, issue, or create a check on behalf of the consumer;
- (4) Charge, collect, or receive, directly or indirectly, charges:
  - (A) For negotiating forms of loan proceeds other than cash;
  - (B) For brokering or obtaining loans;
  - (C) Prepayment fees, or any fees, interest, or charges in connection with an installment loan except those explicitly authorized in this chapter;
- (5) Fail to make disclosures as required by this chapter or any other applicable state or federal law, including rules or regulations adopted pursuant to state or federal law;
- (6) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any consumer, lender, or person;
- (7) Directly or indirectly engage in unfair or deceptive acts, practices, or advertising in connection with an installment loan;
- (8) Directly or indirectly obtain property by fraud or misrepresentation;
- (9) Make an installment loan to any person physically located in the State through the use of the Internet, facsimile, telephone, kiosk, or other means without first obtaining a license under this chapter;

- (10) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, fees, or other financing terms or conditions for an installment loan, or engage in bait and switch advertising;
  - (11) Make any false statement or knowingly and wilfully omit any material fact in connection with any reports filed with the division by a licensee or in connection with any investigation conducted by the division;
  - (12) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by that rate of interest or otherwise fail to comply with any requirement of the Truth in Lending Act, or any other applicable state or federal laws or regulations;
  - (13) Make installment loans from any unlicensed location;
  - (14) Draft funds from any depository financial institution without written approval of the consumer; provided that nothing in this paragraph shall prohibit the conversion of a negotiable instrument into an electronic form for processing through the Automated Clearing House or similar system;
  - (15) Attempt to collect from a consumer's account after two consecutive attempts have failed, unless the licensee obtains new written authorization from the consumer to transfer or withdraw funds from the account;
  - (16) Make a loan to a consumer that includes a demand feature that was not clearly disclosed in the written agreement pursuant to section 478-3 or collect or demand repayment of any outstanding balance or unpaid interest or fees except as provided in section 478-3;
  - (17) Fail to comply with any applicable state or federal laws relating to the activities governed by this chapter; or
  - (18) Fail to pay any fee, assessment, or moneys due to the department.
- (b) In addition to any other penalties provided for under this chapter, any installment loan transaction in violation of subsection (a) shall be void and unenforceable.”

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

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

- (1) Credit transaction authorized by, and entered into in accordance with the provisions of, articles 9 and 10 of chapter 412 or chapter 476[-]; or
- (2) Installment loan transactions authorized by, and entered into in accordance with, chapter 478-5.”

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

“**§478-5 Usury not recoverable.** If a greater rate of interest than that permitted by law is contracted for with respect to any consumer credit transaction, any home business loan or any credit card agreement, the contract shall not, by reason thereof, be void. But if in any action on the contract proof is made that a greater rate of interest than that permitted by law has been directly or indirectly contracted for, the creditor shall only recover the principal and the debtor shall recover costs. If interest has been paid, judgment shall be for the principal less the amount of interest paid. This section shall not be held to apply [~~to loans~~] to:



- (1) Loans made by financial services loan companies and credit unions at the rates authorized under and pursuant to articles 9 and 10 of chapter 412[-]; or
- (2) Any installment loan regulated under chapter .”

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

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

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

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

- (1) The department of health or its designee on operators of adult foster homes for individuals with developmental disabilities or developmental disabilities domiciliary homes and their employees, as provided by section 321-15.2;
- (2) The department of health or its designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health or health care services as provided by section 321-171.5;
- (3) The department of health or its designee on all applicants for licensure or certification for, operators for, prospective employees, adult volunteers, and all adults, except adults in care, at healthcare facilities as defined in section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The county liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control investigations;
- (8) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (9) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (10) The department of human services or its designee on applicants to operate child care facilities, household members of the applicant, prospective employees of the applicant, and new employees and household members of the provider after registration or licensure as provided by section 346-154, and persons subject to section 346-152.5;

- (11) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (12) The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as provided by section 321-15.2;
- (13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (14) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (16) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (17) The board of private detectives and guards on applicants for private detective or private guard licensure as provided by section 463-9;
- (18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
- (19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (20) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (21) The department of health on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 321-15.2;
- (22) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult protective and community services branch, as provided by section 346-97;
- (23) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;
- (24) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under section 1915(c) of the Social Security Act, title 42 United States Code section 1396n(c), or under any other applicable section or sections of

- the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
  - (26) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
  - (27) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
  - (28) The department of commerce and consumer affairs on:
    - (A) Each principal of every non-corporate applicant for a money transmitter license;
    - (B) Each person who upon approval of an application by a corporate applicant for a money transmitter license will be a principal of the licensee; and
    - (C) Each person who upon approval of an application requesting approval of a proposed change in control of licensee will be a principal of the licensee,
 as provided by sections 489D-9 and 489D-15;
  - (29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
  - (30) The Hawaii health systems corporation on:
    - (A) Employees;
    - (B) Applicants seeking employment;
    - (C) Current or prospective members of the corporation board or regional system board; or
    - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
  - (31) The department of commerce and consumer affairs on:
    - (A) An applicant for a mortgage loan originator license, or license renewal; and
    - (B) Each control person, executive officer, director, general partner, and managing member of an applicant for a mortgage loan originator company license or license renewal,
 as provided by chapter 454F;
  - (32) The state public charter school commission or public charter schools on employees, teacher trainees, prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;
  - (33) The counties on prospective employees who work with children, vulnerable adults, or senior citizens in community-based programs;
  - (34) The counties on prospective employees for fire department positions which involve contact with children or vulnerable adults;
  - (35) The counties on prospective employees for emergency medical services positions which involve contact with children or vulnerable adults;
  - (36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including view-

- ing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;
- (37) The State and counties on employees, prospective employees, volunteers, and contractors whose position responsibilities require unescorted access to secured areas and equipment related to a traffic management center;
  - (38) The State and counties on employees and prospective employees whose positions involve the handling or use of firearms for other than law enforcement purposes;
  - (39) The State and counties on current and prospective systems analysts and others involved in an agency's information technology operation whose position responsibilities provide them with access to proprietary, confidential, or sensitive information;
  - (40) The department of commerce and consumer affairs on:
    - (A) Applicants for real estate appraiser licensure or certification as provided by chapter 466K;
    - (B) Each person who owns more than ten per cent of an appraisal management company who is applying for registration as an appraisal management company, as provided by section 466L-7; and
    - (C) Each of the controlling persons of an applicant for registration as an appraisal management company, as provided by section 466L-7;
  - (41) The department of health or its designee on all license applicants, licensees, employees, contractors, and prospective employees of medical cannabis dispensaries, and individuals permitted to enter and remain in medical cannabis dispensary facilities as provided under sections 329D-15(a)(4) and 329D-16(a)(3);
  - (42) The department of commerce and consumer affairs on applicants for nurse licensure or license renewal, reactivation, or restoration as provided by sections 457-7, 457-8, 457-8.5, and 457-9;
  - (43) The county police departments on applicants for permits to acquire firearms pursuant to section 134-2 and on individuals registering their firearms pursuant to section 134-3;
  - (44) The department of commerce and consumer affairs on:
    - (A) Each of the controlling persons of the applicant for licensure as an escrow depository, and each of the officers, directors, and principals who will be in charge of the escrow depository's activities upon licensure; and
    - (B) Each of the controlling persons of an applicant for proposed change in control of an escrow depository licensee, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of such application, as provided by chapter 449;
  - (45) The department of taxation on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 231-1.6;
  - (46) The department of labor and industrial relations on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 383-110;
  - (47) The department of human services on current or prospective employees or contractors who have access to federal tax information

- in order to comply with requirements of federal law, regulation, or procedure, as provided by section 346-2.5;
- (48) The child support enforcement agency on current or prospective employees, or contractors who have access to federal tax information in order to comply with federal law, regulation, or procedure, as provided by section 576D-11.5; ~~and~~
  - (49) The department of commerce and consumer affairs on each control person, executive officer, director, general partner, and managing member of an installment loan licensee, or an applicant for an installment loan license, as provided in chapter \_\_\_\_\_; and
  - ~~[(49)]~~ (50) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

PART III

SECTION 7. Section 480F-1, Hawaii Revised Statutes, is amended by repealing the definition of “deferred deposit”.

~~[““Deferred deposit” means a transaction in which a check casher refrains from depositing a personal check written by a customer until a date after the transaction date, pursuant to a written agreement.”]~~

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

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

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

~~[The fees allowed in this section shall not be assessed in any transaction or agreement in which the check casher defers deposit of the check.]”~~

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

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

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

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

~~[(d) A customer who enters into a written deferred deposit agreement and offers a personal check to a check casher pursuant to that agreement shall not be subject to any criminal penalty for failure to comply with the terms of that agreement unless the check is dishonored because the customer closed the account or stopped payment on the check.]”~~

SECTION 10. Section 480F-4, Hawaii Revised Statutes, is repealed.

#### PART IV

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 2021; provided that:

- (1) The licensing requirements for installment lenders established by section 2 of this Act shall take effect on January 1, 2022; and
- (2) Part III of this Act shall take effect on January 1, 2022.

(Approved June 16, 2021.)

#### Note

1. Edited pursuant to HRS §23G-16.5.