

JAN 18 2019

A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1 SECTION 1. The legislature finds that deferred deposit
2 agreements, commonly referred to as payday loans, are small,
3 short term, unsecured loans that borrowers commit to repay from
4 their next paycheck or a regular income payment. According to
5 the Federal Reserve System's Report on the Economic Well-Being
6 of U.S. Households in 2017, forty per cent of Americans would
7 not be able to cover an unexpected expense of \$400 without
8 having to sell something or borrow money. Another study
9 conducted by The Pew Charitable Trusts found that the majority
10 of borrowers use deferred deposit agreements for recurring
11 expenses, rather than unexpected expenses or emergencies,
12 because they live paycheck to paycheck. Additional research
13 shows that approximately twelve million Americans utilize payday
14 loans annually. The Consumer Financial Protection Bureau has
15 reported that seventy per cent of those payday borrowers will
16 end up taking out a second payday loan, and some lenders allow



1 borrowers to roll the balance into a new larger loan with the
2 same predatory fee schedule.

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

13 Unfortunately, due to the State's current deferred deposit
14 laws, the payday lending industry can engage in practices that
15 trap consumers in unsustainable cycles of debt. Payday lenders
16 structure loans with unrealistically short repayment terms,
17 unaffordable payments, and excessive fees, resulting in long-
18 term, high-cost debt and harm to the consumer. Lenders are also
19 granted access to the borrower's checking account to ensure that
20 the lender gets repaid, even if the borrower cannot cover rent,
21 utilities, and other basic living expenses. The Pew Charitable



1 Trusts has reported that the average Hawaii payday borrower
2 incurs \$529 in fees to borrow \$300 over five months. Research
3 also shows that this amount is nearly three times higher than
4 what the same lenders charge similarly situated consumers in
5 other states. Due to the high cost of living in the State,
6 these practices are likely to contribute to the current
7 homelessness crisis.

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



1 critical the State take action now to address these harmful
2 practices in light of this delay and the weakening of the
3 federal consumer protections for payday and similar loans.

4 The legislature acknowledges that there is a market for
5 small dollar installment loans. However, the legislature
6 concludes that if small dollar installment loans are going to be
7 offered to Hawaii consumers, there must be appropriate consumer
8 protections in place to ensure these loans contain reasonable
9 terms and fees, do not trap borrowers in a cycle of high-
10 interest debt, and do not further contribute to the homelessness
11 crisis.

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

- 15 (1) Transitioning the payday lending industry from lump
16 sum deferred deposit transactions to installment-based
17 small dollar loan transactions;
- 18 (2) Specifying various consumer protection requirements
19 for small dollar loans;
- 20 (3) Beginning January 1, 2020, requiring licensure for
21 small dollar lenders that offer small dollar loans to



- 1 consumers, subject to the supervision of the
2 department of commerce and consumer affairs to protect
3 against illegal offshore lending;
- 4 (4) Specifying licensing requirements for small dollar
5 lenders;
- 6 (5) Capping interest at thirty-six per cent per annum and
7 one simple maximum monthly fee tiered up to \$25;
- 8 (6) Limiting monthly payments to five per cent of the
9 borrower's gross monthly income or six per cent of the
10 borrower's verified net monthly income, whichever is
11 greater, shielding ninety-five per cent of a
12 borrower's income so that they can more realistically
13 make rent payments, cover utility bills, and buy
14 groceries;
- 15 (7) Amortizing loans in full and extending loan terms from
16 two weeks to the number of months sufficient to pay
17 off the loan under the amortization schedule, while
18 also permitting borrowers to choose to repay the loan
19 in two weeks without penalty;



- 1 (8) Capping maximum allowable costs at fifty per cent of
2 the principal loan amount, preventing a loan from
3 being either too short or too long in duration;
- 4 (9) Capping the maximum allowable loan size at \$1,000,
5 providing more flexibility for lenders and borrowers
6 than under the current law;
- 7 (10) Requiring lenders to provide clear disclosures of the
8 loan terms and total charges;
- 9 (11) Prohibiting a lender from making more than one loan at
10 a time to a consumer, preventing incentives for
11 lenders to "split" loans and charge higher fees; and
- 12 (12) Authorizing the division of financial institutions to
13 establish and hire two full-time equivalent permanent
14 examiners to carry out the purposes of the small
15 dollar installment loan program, funded via an
16 increase to the ceiling of the compliance resolution
17 fund.

18 SECTION 2. The Hawaii Revised Statutes is amended by
19 adding a new chapter to title 25A to be appropriately designated
20 and to read as follows:

21 "CHAPTER



1 SMALL DOLLAR INSTALLMENT LOANS

2 PART I. GENERAL PROVISIONS

3 § -1 Definitions. As used in this chapter, unless the
4 context otherwise requires:

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

11 "Arranger" means a provider of funds in the syndication of
12 a debt.

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

16 "Commissioner" means the commissioner of financial
17 institutions.

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



1 "Control", in the context of control of an applicant or
2 licensee, means ownership of, or the power to vote, twenty-five
3 per cent or more of the outstanding voting securities of a
4 licensee or controlling person. For the purposes of determining
5 the percentage of an applicant or a licensee controlled by any
6 person, there shall be aggregated with the controlling person's
7 interest the interest of any other person controlled by the
8 person, or by any spouse, parent, or child of the person.

9 "Controlling person" means any person in control of a
10 licensee or applicant.

11 "Default" means a consumer's failure to repay a small
12 dollar loan in compliance with the terms contained in a small
13 dollar loan agreement.

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

16 "Division" means the division of financial institutions of
17 the department of commerce and consumer affairs.

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



1 "Finance charges" means the cost of credit or cost of
2 borrowing, including the interest, monthly maintenance fees, and
3 other fees authorized by this chapter.

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

10 "Instrument" means a personal check signed by the consumer
11 and made payable to a person subject to this chapter. The term
12 "instrument" does not include an electronic fund transfer or
13 other electronic debit or credit to the consumer's checking
14 account.

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

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



1 "Maintenance fee" means a monthly fee paid to a licensee to
2 maintain a small dollar loan.

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

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

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

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

18 "Small dollar lender" or "lender" means any person who is
19 in the business of offering or making a consumer loan, who
20 arranges a consumer loan for a third party, or who acts as an
21 agent for a third party, regardless of whether the third party



1 is exempt from licensure under this chapter or whether approval,
2 acceptance, or ratification by the third party is necessary to
3 create a legal obligation for the third party, through any
4 method including mail, telephone, the Internet, or any
5 electronic means.

6 "Small dollar loan" means a loan made pursuant to this
7 chapter.

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

11 "Verified gross income" means evidence from a borrower of
12 one or more paystubs or other written evidence of recurring
13 income before taxes.

14 "Verified net income" means evidence from a borrower of one
15 or more paystubs or other written evidence of recurring income
16 after taxes and deductions.

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

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

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



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- 1 (2) The total amount of the small dollar loan shall not
2 exceed \$1,000 pursuant to section -5(a);
- 3 (3) The total monthly payment on the loan shall not exceed
4 an amount that is five per cent of the borrower's
5 verified gross monthly income or six per cent of the
6 borrower's verified net monthly income, whichever is
7 greater;
- 8 (4) The total amount of fees and charges a small dollar
9 lender may charge, collect, or receive in connection
10 with a small dollar loan shall not exceed fifty per
11 cent of the principal loan amount;
- 12 (5) A monthly maintenance fee may be charged by the
13 lender, not to exceed the following:
- 14 (A) \$10 on a loan of an original principal loan
15 amount up to \$300.00;
- 16 (B) \$15 on a loan of an original principal loan
17 amount of at least \$300.01 and up to \$600.00; and
- 18 (C) \$25 on a loan of an original principal loan
19 amount of at least \$600.01 and up to \$1,000.00;
- 20 provided that the monthly maintenance fee shall not be
21 added to the loan balance on which the interest is



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

6 (6) The written agreement required under section -3 may
7 require multiple installment payments;

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

12 (8) A small dollar lender shall accept prepayment in full
13 or in part from a consumer prior to the loan due date
14 and shall not charge the consumer a fee or penalty if
15 the consumer opts to prepay the loan;

16 (9) The loan amount and accrued interest and fees shall be
17 fully amortized over the term of the loan;

18 (10) A consumer's repayment obligations shall not be
19 secured by a lien on any real or personal property;



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

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

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

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

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

18 (1) Any unearned portion of the interest rate; and

19 (2) Any unearned monthly maintenance fees.

20 (e) Upon request from a consumer or a consumer's agent, a
21 small dollar lender shall provide confirmation of the amount



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

11 § -3 **Written agreement; requirements; disclosure.** (a)

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

- 16 (1) The name and address of the consumer and the lender;
17 (2) The transaction date;
18 (3) The loan amount;
19 (4) The annual percentage rate charged;
20 (5) The authorized interest rate;



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



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

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

**"MULTIPLE
INSTALLMENT
PAYMENT**

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



1 (d) The consumer shall sign and date each of two copies of
2 the written disclosure required pursuant to subsection (c), one
3 of which shall be given to the consumer and the other of which
4 shall be retained by the lender as part of its records of the
5 small dollar loan. For purposes of preparing the written
6 disclosure, the small dollar loan shall be structured on a
7 precomputed basis (total of payments) with the assumption that
8 all payments will be made as scheduled.

9 (e) The written agreement may include a demand feature
10 that permits the lender or any other person, in the event the
11 consumer fails to meet the repayment terms for any outstanding
12 balance, to terminate the small dollar loan in advance of the
13 original maturity date, but no earlier than ten days after
14 repayment was due, and demand repayment of the entire
15 outstanding balance. If the written agreement includes a demand
16 feature and the demand feature is exercised, the licensee shall
17 be entitled to collect only the outstanding balance and a
18 prorated portion of the unpaid interest and fees earned up to
19 the date of termination. For purposes of this subsection, the
20 outstanding balance and prorated portion of the unpaid interest



1 and fees shall be calculated as if the consumer had voluntarily
2 prepaid the loan in full on the date of termination.

3 **§ -4 Authorized interest rate.** (a) Subject to section
4 -2(a)(4), a small dollar lender may contract for, and receive
5 interest at, a rate not exceeding thirty-six per cent per year
6 on that portion of the unpaid principal balance of the loan. A
7 small dollar lender may contract for and receive interest at the
8 single annual rate that would earn the same total interest at
9 maturity of the small dollar loan, when the loan is paid
10 according to its agreed terms, as would be earned by the
11 application of the graduated rates set forth in this section.
12 Loans shall be precomputed.

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

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



1 installment payment amount may be larger than the remaining
2 payments by the amount of interest charged for the extra days;
3 provided further that monthly installment payment dates may be
4 omitted to accommodate consumers with seasonal income.

5 (d) Payments may be applied to the combined total of
6 principal and precomputed interest until maturity of the loan.

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

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

19 (1) A deferment shall postpone the scheduled due date of
20 the earliest unpaid installment and all subsequent



1 installments as originally scheduled, or as previously
2 deferred, for a period equal to the deferment period;

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

6 (3) The lender shall not charge or collect a deferment
7 fee.

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

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

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

17 **§ -5 Maximum loan amount; prohibition against multiple**
18 **loans.** (a) A lender shall not lend an amount greater than
19 \$1,000 nor shall the amount financed exceed \$1,000 by any one
20 lender at any time to a consumer.



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

5 (1) The small dollar lender;

6 (2) A person related to the small dollar lender by common
7 ownership or control;

8 (3) A person in whom the small dollar lender has any
9 financial interest of ten per cent or more; or

10 (4) Any employee or agent of the small dollar lender.

11 (c) If a consumer obtains a small dollar loan voluntarily
12 and separately from the consumer's spouse and the consumer's
13 action is documented in writing, signed by the consumer, and
14 retained by the lender, the transaction shall not be considered
15 a violation of this section.

16 § -6 **Right of rescission.** (a) A consumer shall have
17 the right to rescind a small dollar loan, on or before 5:00 p.m.
18 on the next day of business at the location where the loan was
19 originated, by returning the principal in cash, the original
20 check or money order disbursed by the lender, or the other
21 disbursement of loan proceeds from the lender to fund the loan.



1 The lender shall not charge the consumer for rescinding the
2 loan.

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

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

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

11 § -7 Notice to consumers; general requirements; right to
12 prepay; loan limits; right to rescind. A small dollar lender
13 shall provide the following notice on each written agreement for
14 a small dollar loan. The notice shall be in a prominent place
15 and in at least twelve-point type:

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

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

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



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

4 STATE LAW PROHIBITS THIS SMALL DOLLAR LOAN FROM
5 EXCEEDING ONE THOUSAND DOLLARS (\$1,000) IN TOTAL DEBT.
6 EXCEEDING THIS AMOUNT MAY CREATE FINANCIAL HARDSHIPS
7 FOR YOU AND YOUR FAMILY.

8 YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY
9 5:00 P.M. [SPECIFY HERE THE CLOSE OF THE NEXT BUSINESS
10 DAY BY DAY OF WEEK AND DATE]."

11 § -8 **Renewal; new loan requirements; consecutive loans;**
12 **payment plan.** (a) A small dollar loan may be renewed only
13 once. After one renewal, the consumer shall pay the debt in
14 cash or its equivalent.

15 (b) Upon renewal of a small dollar loan, the lender may
16 renew up to \$1,000 of the remaining unpaid balance. If the
17 unpaid balance on renewal is more than \$1,000, the consumer may
18 be required to pay the remaining balance; provided that the
19 lender shall not finance any amount over \$1,000. The total
20 amount of fees and charges for the renewed loan shall meet the
21 requirements of section -2. If the small dollar loan is



1 renewed prior to the maturity date, the lender shall refund to
2 the consumer a prorated portion of the finance charge based upon
3 the ratio of time left before maturity to the loan term.

4 (c) Once the consumer has paid off the small dollar loan
5 transaction, the consumer may enter into a new small dollar loan
6 agreement with the lender; provided that the lender shall not
7 have more than one outstanding loan with a borrower at any one
8 time, pursuant to section -5.

9 § -9 **Form of loan proceeds.** A small dollar lender may
10 pay the proceeds from a small dollar loan to the consumer in the
11 form of a monetary instrument, money order, or cash. The lender
12 shall inform the consumer in writing that the lender shall cash
13 the monetary instrument or money order, upon request of the
14 consumer, at no cost to the consumer.

15 § -10 **Endorsement of instrument.** A small dollar lender
16 shall not negotiate or present an instrument for payment unless
17 the instrument is endorsed with the actual business name of the
18 lender.

19 § -11 **Redemption of instrument.** Prior to a small dollar
20 lender negotiating or presenting the instrument, a consumer
21 shall have the right to redeem any instrument held by the lender



1 as a result of a small dollar loan if the consumer pays the full
2 amount of the instrument to the lender.

3 § -12 Delinquent small dollar loans; restrictions on
4 collection by lender or third party. (a) A small dollar lender
5 shall comply with all applicable state and federal laws when
6 collecting a delinquent small dollar loan. A lender may take
7 civil action to collect principal, interest, fees, and costs
8 allowed under this chapter. A lender may not threaten criminal
9 prosecution as a method of collecting a delinquent small dollar
10 loan or threaten to take any legal action against the consumer
11 that is not otherwise permitted by law.

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

20 (c) A lender shall not communicate with a consumer in a
21 manner intended to harass, intimidate, abuse, or embarrass a



1 consumer, including but not limited to communication at an
2 unreasonable hour, with unreasonable frequency, by threats of
3 force or violence, or by use of offensive language. A
4 communication shall be presumed to have been made for the
5 purposes of harassment if it is initiated by the lender for the
6 purposes of collection and the communication is made:

7 (1) With the consumer's spouse or the consumer's domestic
8 partner in any form, manner, or place, more than once;

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

11 (3) With the consumer, the consumer's spouse, or the
12 consumer's domestic partner at the consumer's place of
13 residence between the hours of 9:00 p.m. and
14 8:00 a.m.; or

15 (4) To a party other than the consumer, the consumer's
16 attorney, the lender's attorney, or a consumer credit
17 reporting agency if otherwise permitted by law, except
18 for the purposes of acquiring location or contact
19 information about the consumer.

20 (d) A lender shall maintain an accurate and complete
21 communication log of all telephone and written communications



1 with a consumer initiated by the lender regarding any collection
2 efforts, including date, time, and the nature of each
3 communication.

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

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

11 (1) The term "communication" shall include the time the
12 lender initiates contact with a consumer, regardless
13 of whether the communication is received or accessed
14 by the consumer; and

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

16 (A) Verbal communication with the consumer while the
17 consumer is physically present in the lender's
18 place of business;

19 (B) An unanswered telephone call in which no message,
20 other than a caller identification, is left,



1 unless the telephone call is in violation of
2 subsection (c)(3); or

3 (C) An initial letter to the consumer that includes
4 disclosures under the federal Fair Debt
5 Collection Practices Act.

6 **§ -13 Authorized dishonored instrument charge. (a)**

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

12 (b) If the loan proceeds instrument from the small dollar
13 lender is dishonored by the financial institution, the small
14 dollar lender shall cover any fees and charges incurred by the
15 consumer as a direct result of the dishonored loan proceeds
16 instrument.

17 **§ -14 Posting of license and fees and charges. Any**
18 small dollar lender offering a small dollar loan shall
19 conspicuously and continuously post at any place of business
20 where small dollar loans are made, the license required pursuant



1 to this chapter and a notice of the fees and charges imposed for
2 small dollar loans.

3 **§ -15 Internet lending.** (a) A small dollar lender may
4 advertise and accept applications for small dollar loans by any
5 lawful medium, including but not limited to the Internet,
6 subject to subsection (b).

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

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

16 **§ -16 Notice on assignment or sale of contract.** (a) No
17 licensee may pledge, negotiate, sell, or assign a small dollar
18 loan, except to another licensee or to a bank, savings bank,
19 trust company, savings and loan or building and loan
20 association, or credit union organized under the laws of Hawaii
21 or the laws of the United States.



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

5 "SMALL DOLLAR LOAN

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

12 § -17 Maintenance of books and records. (a) Every
13 small dollar lender shall keep in a safe and secure place those
14 books and records that directly relate to any small dollar loan
15 made within this State, and other books and records as may be
16 necessary for the commissioner to ensure full compliance with
17 the laws of this State.

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



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

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

8 **PART II. LICENSING**

9 § -31 **License required.** No person, unless exempt under
10 this chapter, shall act as a small dollar lender in this State
11 unless licensed to do so by the commissioner.

12 § -32 **Exemptions.** This chapter shall not apply to the
13 following:

14 (1) A financial institution that is authorized by the
15 division to do business in the State;

16 (2) A nondepository financial service loan company
17 authorized by the division to do business in the
18 State;

19 (3) An "open end credit plan", as defined in the Truth in
20 Lending Act, 15 U.S.C. section 1602(j); or

21 (4) A tax refund anticipation loan.



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

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

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

11 (2) The principal place of business;

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

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



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

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

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

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



1 criminal history background check, accompanied by the
2 applicable fee charged by the entities conducting the
3 criminal history background check; and

4 (2) Personal history and experience of the applicant or,
5 if an applicant is not an individual, each of the
6 applicant's controlling persons, executive officers,
7 directors, general partners, and managing members in a
8 form prescribed by NMLS, including the submission of
9 authorization for NMLS and the commissioner to obtain:

10 (A) An independent credit report obtained from a
11 consumer reporting agency described in section
12 603(p) of the Fair Credit Reporting Act, title 15
13 United States Code section 1681 et seq.; and

14 (B) Information related to any administrative, civil,
15 or criminal findings by any governmental
16 jurisdiction;

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



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

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

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

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

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



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

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

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

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

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

20 (3) The applicant, or in the case of an applicant that is
21 not an individual, each of the applicant's controlling



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

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



- 1 (4) The applicant, or in the case of an applicant that is
2 not an individual, each of the applicant's controlling
3 persons, executive officers, directors, general
4 partners, and managing members, has not been convicted
5 of, pled guilty or nolo contendere to, or been granted
6 a deferred acceptance of a guilty plea under federal
7 law or chapter 853 to any misdemeanor involving an act
8 of fraud, dishonesty, breach of trust, or money
9 laundering;
- 10 (5) The applicant has satisfied the licensing requirements
11 of this chapter; and
- 12 (6) The applicant has the bond required by section -35.
- 13 (b) The applicant, or in the case of an applicant that is
14 not an individual, each of the applicant's controlling persons,
15 executive officers, directors, general partners, and managing
16 members shall submit authorization to the commissioner for the
17 commissioner to conduct background checks to determine or verify
18 the information in subsection (a) in each state where the person
19 has conducted small dollar loan lending. Authorization pursuant
20 to this subsection shall include consent to provide additional



1 fingerprints, if necessary, to law enforcement or regulatory
2 bodies in other states.

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

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

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

14 (3) Who has advertised or made internet loans in violation
15 of this chapter; or

16 (4) Who has failed to complete an application for
17 licensure.

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



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

4 (1) Initial application fee of \$900;

5 (2) Processing fee of \$35 for each controlling person;

6 (3) Annual license renewal fee of \$600;

7 (4) Applicable fee charged by the entities conducting the
8 criminal history background check of each of the
9 applicant's controlling persons, executive officers,
10 directors, general partners, and managing members for
11 submission to the Federal Bureau of Investigation and
12 any governmental agency or entity authorized to
13 receive the fingerprints for a state, national, and
14 international criminal history background check;

15 (5) Applicable fee charged by the entities conducting an
16 independent credit report obtained from a consumer
17 reporting agency described in section 603(p) of the
18 Fair Credit Reporting Act, title 15 United States Code
19 section 1681 et seq.; and

20 (6) Information related to any administrative, civil, or
21 criminal findings by any governmental jurisdiction;



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

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

8 (1) Initial application fee of \$600; and

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

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

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



1 against the licensee as obligor under this chapter. The bond
2 shall be conditioned that:

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

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

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

14 § -36 **Renewal of license; annual report.** (a) On or
15 before December 31 of each year, each licensee shall pay a
16 renewal fee pursuant to section -35.

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

20 (1) A copy of the licensee's most recent audited annual
21 financial statement, including balance sheets,



1 statement of income or loss, statement of changes in
2 shareholders' equity, and statement of cash flows or,
3 if a licensee is a wholly owned subsidiary of another
4 corporation, the consolidated audited annual financial
5 statement of the parent corporation in lieu of the
6 licensee's audited annual financial statement;

7 (2) A report detailing the small dollar lender's
8 activities in this State, including:

9 (A) The number of small dollar loans made;

10 (B) The number of small dollar loans the lender is
11 servicing;

12 (C) The type and characteristics of loans serviced in
13 this State;

14 (D) The number of small dollar serviced loans in
15 default; and

16 (E) Any other information that the commissioner may
17 require;

18 (3) Any material changes to any of the information
19 submitted by the licensee on its original application
20 that have not previously been reported to the



1 commissioner on any other report required to be filed
2 under this chapter;

3 (4) A list of the principal place of business and branch
4 locations, if any, within this State where business
5 regulated by this chapter is being conducted by the
6 licensee;

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

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

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

16 (d) A licensee that has not filed an annual report that
17 has been deemed complete by the commissioner or paid its annual
18 renewal fee by the renewal filing deadline, and has not been
19 granted an extension of time to do so by the commissioner, shall
20 have its license suspended on the renewal date. The licensee
21 shall have thirty days after its license is suspended to file an



1 annual report and pay the annual renewal fee, plus a late filing
2 fee of \$250 for each business day after suspension that the
3 commissioner does not receive the annual report and the annual
4 renewal fee. The commissioner, for good cause, may grant an
5 extension of the renewal date or reduce or suspend the \$250 per
6 day late filing fee.

7 **§ -37 Enforcement authorities; violations; penalties.**

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

12 (1) The applicant or licensee has violated this chapter or
13 any rule or order lawfully made pursuant to this
14 chapter;

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

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



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



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- 1 (9) The applicant or licensee has been the subject of any
2 disciplinary action by any state or federal agency
3 which resulted in revocation of a license;
- 4 (10) A final judgment has been entered against the
5 applicant or licensee for violations of this chapter,
6 any state or federal law concerning small dollar
7 loans, deferred deposit loans, check cashing, payday
8 loans, banking, mortgage loan originators, money
9 transmitters, or any state or federal law prohibiting
10 deceptive or unfair trade or business practices; or
- 11 (11) The applicant or licensee has failed to, in a timely
12 manner as specified by the commissioner, take or
13 provide proof of the corrective action required by the
14 commissioner subsequent to an investigation or
15 examination pursuant to section -43.
- 16 (b) After a finding of one or more of the conditions under
17 subsection (a), the commissioner may take any or all of the
18 following actions:
- 19 (1) Deny an application for licensure, including an
20 application for a branch office license;
- 21 (2) Revoke the license;



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



1 or by mail to the last known address of the licensee or
2 applicant as shown on the application, license, or as
3 subsequently furnished in writing to the commissioner.

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

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

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

17 (g) The commissioner may impose an administrative fine on
18 a licensee or person subject to this chapter if the commissioner
19 finds on the record after notice and opportunity for hearing
20 that the licensee or person subject to this chapter has violated
21 or failed to comply with any requirement of this chapter or any



1 rule prescribed by the commissioner under this chapter or order
2 issued under the authority of this chapter.

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

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

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

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

21 (1) The date of surrender;



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



1 dollar loan is being transferred and the name,
2 address, telephone number, and any other contact
3 information of the licensee to whom the small dollar
4 loan was assigned.

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

10 § -39 **Sale or transfer of license; change of control.**

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

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

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



1 additional information concerning the persons who shall assume
2 control of the licensee. The additional information shall be
3 limited to similar information required of the licensee or
4 persons in control of the licensee as part of its original
5 license or renewal application under sections -34 and -36.
6 The information shall include, for the five-year period prior to
7 the date of the application for change of control of the
8 licensee, a history of material litigation and criminal
9 convictions of each person who upon approval of the application
10 for change of control will be a principal of the licensee.
11 Authorization shall also be given to conduct criminal history
12 record checks of those persons, accompanied by the appropriate
13 payment of the applicable fee for each record check.

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



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

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

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

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

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

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



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

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

6 § -40 Authorized places of business; principal office;
7 branch offices; relocation; closure. (a) Every small dollar
8 lender licensed under this chapter shall have and maintain a
9 principal place of business in the State, regardless of whether
10 the small dollar lender maintains its principal office outside
11 of the State.

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

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



1 through NMLS with a nonrefundable application fee as required by
2 section -35.

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

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

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

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



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

4 § -41 Payment of fees. All fees collected pursuant to
5 section -35, administrative fines, and other charges
6 collected pursuant to this chapter shall be deposited into the
7 compliance resolution fund established pursuant to section 26-
8 9(o) and shall be payable through NMLS, to the extent allowed by
9 NMLS. Fees not eligible for payment through NMLS shall be
10 deposited into a separate account within the compliance
11 resolution fund for use by the division.

12 § -42 Powers of commissioner. (a) The commissioner may
13 adopt rules pursuant to chapter 91 as the commissioner deems
14 necessary for the administration of this chapter.

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

- 17 (1) Issue declaratory rulings or informal nonbinding
18 interpretations;
- 19 (2) Investigate and conduct hearings regarding any
20 violation of this chapter or any rule or order of, or
21 agreement with, the commissioner;



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



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



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

8 § -43 **Investigation and examination authority.** (a) In
9 addition to the authority granted under section -42(b), the
10 commissioner shall have the authority to conduct investigations
11 and examinations in accordance with this section. The
12 commissioner may access, receive, and use any books, accounts,
13 records, files, documents, information, or evidence that the
14 commissioner deems relevant to the investigation or examination,
15 regardless of the location, possession, control, or custody of
16 the documents, information, or evidence.

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



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

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

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

20 (1) Accounting compilations;



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



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

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

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



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

7 **§ -44 Confidentiality.** (a) Except as otherwise
8 provided in Public Law 110-289, section 1512, the requirements
9 under any federal or state law regarding the privacy or
10 confidentiality of any information or material provided to NMLS,
11 and any privilege arising under federal or state law, including
12 the rules of any federal or state court, with respect to the
13 information or material shall continue to apply to the
14 information or material after the information or material has
15 been disclosed to NMLS. The information and material may be
16 shared with all state and federal regulatory officials with
17 oversight authority over transactions subject to this chapter,
18 without the loss of privilege or the loss of confidentiality
19 protections provided by federal or state law.

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



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

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

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

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

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



1 (e) Any provision of state law to the contrary relating to
2 the disclosure of confidential supervisory information or any
3 information or material described in subsection (a) that is
4 inconsistent with this section shall be superseded by the
5 requirements of this section.

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

11 § -45 Prohibited practices. (a) It shall be a
12 violation of this chapter for a licensee, its controlling
13 persons, executive officers, directors, general partners,
14 managing members, employees, or independent contractors, or any
15 other person subject to this chapter to:

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



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



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



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- 1 rate of interest or otherwise fail to comply with any
2 requirement of the Truth in Lending Act, or any other
3 applicable state or federal laws or regulations;
- 4 (13) Make small dollar loans from any unlicensed location;
- 5 (14) Draft funds from any depository financial institution
6 without written approval of the consumer; provided
7 that nothing in this paragraph shall prohibit the
8 conversion of a negotiable instrument into an
9 electronic form for processing through the Automated
10 Clearing House or similar system;
- 11 (15) Attempt to collect from a consumer's account after two
12 consecutive attempts have failed, unless the licensee
13 obtains new written authorization from the consumer to
14 transfer or withdraw funds from the account;
- 15 (16) Make a loan to a consumer that includes a demand
16 feature that was not clearly disclosed in the written
17 agreement pursuant to section -3 or collect or
18 demand repayment of any outstanding balance or unpaid
19 interest or fees except as provided in section -3;



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

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

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

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

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

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

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

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



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1 **"§478-5 Usury not recoverable.** If a greater rate of
 2 interest than that permitted by law is contracted for with
 3 respect to any consumer credit transaction, any home business
 4 loan or any credit card agreement, the contract shall not, by
 5 reason thereof, be void. But if in any action on the contract
 6 proof is made that a greater rate of interest than that
 7 permitted by law has been directly or indirectly contracted for,
 8 the creditor shall only recover the principal and the debtor
 9 shall recover costs. If interest has been paid, judgment shall
 10 be for the principal less the amount of interest paid. This
 11 section shall not be held to apply[~~, to loans~~] to:

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

15 (2) Any small dollar loan regulated under chapter _____ ."

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

18 **"§478-6 Usury; penalty.** Any person who directly or
 19 indirectly receives any interest or finance charge at a rate
 20 greater than that permitted by law or who, by any method or
 21 device whatsoever, receives or arranges for the receipt of



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

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

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

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

13 "~~[+] §480F-3 [{}]~~ **Authorized fees.** [~~Except as provided in~~
 14 ~~section 480F-4, no]~~ No check casher shall charge fees in excess
 15 of the following amounts:

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



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

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

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

10 SECTION 8. Section 480F-6, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§480F-6 Penalties.** (a) Any person who violates this
13 chapter shall be deemed to have engaged in an unfair or
14 deceptive act or practice in the conduct of any trade or
15 commerce within the meaning of section 480-2(a). Aggrieved
16 consumers may seek those remedies set forth in section
17 480-13(b).

18 (b) Any person who is not a consumer and is injured by a
19 wilful violation of this chapter may bring an action for the
20 recovery of damages, a proceeding to restrain and enjoin those
21 violations, or both. If judgment is for the plaintiff, the



1 plaintiff shall be awarded a sum not less than \$1,000 or
2 threefold damages, whichever sum is greater, and reasonable
3 attorneys' fees together with the costs of suit.

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

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

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

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

15 (1) The department of health or its designee on operators
16 of adult foster homes for individuals with
17 developmental disabilities or developmental
18 disabilities domiciliary homes and their employees, as
19 provided by section 321-15.2;

20 (2) The department of health or its designee on
21 prospective employees, persons seeking to serve as



1 providers, or subcontractors in positions that place
2 them in direct contact with clients when providing
3 non-witnessed direct mental health or health care
4 services as provided by section 321-171.5;

5 (3) The department of health or its designee on all
6 applicants for licensure or certification for,
7 operators for, prospective employees, adult
8 volunteers, and all adults, except adults in care, at
9 healthcare facilities as defined in section 321-15.2;

10 (4) The department of education on employees, prospective
11 employees, and teacher trainees in any public school
12 in positions that necessitate close proximity to
13 children as provided by section 302A-601.5;

14 (5) The counties on employees and prospective employees
15 who may be in positions that place them in close
16 proximity to children in recreation or child care
17 programs and services;

18 (6) The county liquor commissions on applicants for liquor
19 licenses as provided by section 281-53.5;

20 (7) The county liquor commissions on employees and
21 prospective employees involved in liquor



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- 1 administration, law enforcement, and liquor control
2 investigations;
- 3 (8) The department of human services on operators and
4 employees of child caring institutions, child placing
5 organizations, and foster boarding homes as provided
6 by section 346-17;
- 7 (9) The department of human services on prospective
8 adoptive parents as established under section
9 346-19.7;
- 10 (10) The department of human services or its designee on
11 applicants to operate child care facilities, household
12 members of the applicant, prospective employees of the
13 applicant, and new employees and household members of
14 the provider after registration or licensure as
15 provided by section 346-154, and persons subject to
16 section 346-152.5;
- 17 (11) The department of human services on persons exempt
18 pursuant to section 346-152 to be eligible to provide
19 child care and receive child care subsidies as
20 provided by section 346-152.5;



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- 1 (12) The department of health on operators and employees of
2 home and community-based case management agencies and
3 operators and other adults, except for adults in care,
4 residing in community care foster family homes as
5 provided by section 321-15.2;
- 6 (13) The department of human services on staff members of
7 the Hawaii youth correctional facility as provided by
8 section 352-5.5;
- 9 (14) The department of human services on employees,
10 prospective employees, and volunteers of contracted
11 providers and subcontractors in positions that place
12 them in close proximity to youth when providing
13 services on behalf of the office or the Hawaii youth
14 correctional facility as provided by section 352D-4.3;
- 15 (15) The judiciary on employees and applicants at detention
16 and shelter facilities as provided by section 571-34;
- 17 (16) The department of public safety on employees and
18 prospective employees who are directly involved with
19 the treatment and care of persons committed to a
20 correctional facility or who possess police powers



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1 including the power of arrest as provided by section
2 353C-5;

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

6 (18) Private schools and designated organizations on
7 employees and prospective employees who may be in
8 positions that necessitate close proximity to
9 children; provided that private schools and designated
10 organizations receive only indications of the states
11 from which the national criminal history record
12 information was provided pursuant to section 302C-1;

13 (19) The public library system on employees and prospective
14 employees whose positions place them in close
15 proximity to children as provided by section
16 302A-601.5;

17 (20) The State or any of its branches, political
18 subdivisions, or agencies on applicants and employees
19 holding a position that has the same type of contact
20 with children, vulnerable adults, or persons committed
21 to a correctional facility as other public employees



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- 1 who hold positions that are authorized by law to
2 require criminal history record checks as a condition
3 of employment as provided by section 78-2.7;
- 4 (21) The department of health on licensed adult day care
5 center operators, employees, new employees,
6 subcontracted service providers and their employees,
7 and adult volunteers as provided by section 321-15.2;
- 8 (22) The department of human services on purchase of
9 service contracted and subcontracted service providers
10 and their employees serving clients of the adult
11 protective and community services branch, as provided
12 by section 346-97;
- 13 (23) The department of human services on foster grandparent
14 program, senior companion program, and respite
15 companion program participants as provided by section
16 346-97;
- 17 (24) The department of human services on contracted and
18 subcontracted service providers and their current and
19 prospective employees that provide home and community-
20 based services under section 1915(c) of the Social
21 Security Act, title 42 United States Code section



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1 1396n(c), or under any other applicable section or
2 sections of the Social Security Act for the purposes
3 of providing home and community-based services, as
4 provided by section 346-97;

5 (25) The department of commerce and consumer affairs on
6 proposed directors and executive officers of a bank,
7 savings bank, savings and loan association, trust
8 company, and depository financial services loan
9 company as provided by section 412:3-201;

10 (26) The department of commerce and consumer affairs on
11 proposed directors and executive officers of a
12 nondepository financial services loan company as
13 provided by section 412:3-301;

14 (27) The department of commerce and consumer affairs on the
15 original chartering applicants and proposed executive
16 officers of a credit union as provided by section
17 412:10-103;

18 (28) The department of commerce and consumer affairs on:
19 (A) Each principal of every non-corporate applicant
20 for a money transmitter license;



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



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- 1 (A) An applicant for a mortgage loan originator
- 2 license, or license renewal; and
- 3 (B) Each control person, executive officer, director,
- 4 general partner, and managing member of an
- 5 applicant for a mortgage loan originator company
- 6 license or license renewal,
- 7 as provided by chapter 454F;
- 8 (32) The state public charter school commission or public
- 9 charter schools on employees, teacher trainees,
- 10 prospective employees, and prospective teacher
- 11 trainees in any public charter school for any position
- 12 that places them in close proximity to children, as
- 13 provided in section 302D-33;
- 14 (33) The counties on prospective employees who work with
- 15 children, vulnerable adults, or senior citizens in
- 16 community-based programs;
- 17 (34) The counties on prospective employees for fire
- 18 department positions which involve contact with
- 19 children or vulnerable adults;



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- 1 (35) The counties on prospective employees for emergency
2 medical services positions which involve contact with
3 children or vulnerable adults;
- 4 (36) The counties on prospective employees for emergency
5 management positions and community volunteers whose
6 responsibilities involve planning and executing
7 homeland security measures including viewing,
8 handling, and engaging in law enforcement or
9 classified meetings and assisting vulnerable citizens
10 during emergencies or crises;
- 11 (37) The State and counties on employees, prospective
12 employees, volunteers, and contractors whose position
13 responsibilities require unescorted access to secured
14 areas and equipment related to a traffic management
15 center;
- 16 (38) The State and counties on employees and prospective
17 employees whose positions involve the handling or use
18 of firearms for other than law enforcement purposes;
- 19 (39) The State and counties on current and prospective
20 systems analysts and others involved in an agency's
21 information technology operation whose position



- 1 responsibilities provide them with access to
2 proprietary, confidential, or sensitive information;
- 3 (40) The department of commerce and consumer affairs on:
- 4 (A) Applicants for real estate appraiser licensure or
5 certification as provided by chapter 466K;
- 6 (B) Each person who owns more than ten per cent of an
7 appraisal management company who is applying for
8 registration as an appraisal management company,
9 as provided by section 466L-7; and
- 10 (C) Each of the controlling persons of an applicant
11 for registration as an appraisal management
12 company, as provided by section 466L-7;
- 13 (41) The department of health or its designee on all
14 license applicants, licensees, employees, contractors,
15 and prospective employees of medical cannabis
16 dispensaries, and individuals permitted to enter and
17 remain in medical cannabis dispensary facilities as
18 provided under sections 329D-15(a)(4) and
19 329D-16(a)(3);
- 20 (42) The department of commerce and consumer affairs on
21 applicants for nurse licensure or license renewal,



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1 reactivation, or restoration as provided by sections
2 457-7, 457-8, 457-8.5, and 457-9;

3 (43) The county police departments on applicants for
4 permits to acquire firearms pursuant to section 134-2
5 and on individuals registering their firearms pursuant
6 to section 134-3;

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

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

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

19 as provided by chapter 449;

20 (45) The department of taxation on current or prospective
21 employees or contractors who have access to federal



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1 tax information in order to comply with requirements
2 of federal law, regulation, or procedure, as provided
3 by section 231-1.6;

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

9 (47) The department of human services on current or
10 prospective employees or contractors who have access
11 to federal tax information in order to comply with
12 requirements of federal law, regulation, or procedure,
13 as provided by section 346-2.5;

14 (48) The child support enforcement agency on current or
15 prospective employees, or contractors who have access
16 to federal tax information in order to comply with
17 federal law, regulation, or procedure, as provided by
18 section 576D-11.5; [and]

19 (49) The department of commerce and consumer affairs on
20 each controlling person, executive officer, director,
21 general partner, and managing member of a small dollar



1 loan licensee, or an applicant for a small dollar loan
2 license as provided by chapter _____ ; and
3 [~~(49)~~] (50) Any other organization, entity, or the State,
4 its branches, political subdivisions, or agencies as
5 may be authorized by state law."

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

8 ~~["§480F-4 Deferred deposits, when allowed. (a) No check~~
9 ~~easher may defer the deposit of a check except as provided in~~
10 ~~this section.~~

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



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

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

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



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

5 SECTION 11. There is appropriated out of the compliance
6 resolution fund the sum of \$ or so much thereof as may
7 be necessary for fiscal year 2019-2020 and the same sum or so
8 much thereof as may be necessary for fiscal year 2020-2021 to
9 establish and hire two full-time equivalent (2.0 FTE) permanent
10 examiners, without regard to chapter 76, Hawaii Revised
11 Statutes, to carry out the purposes of the small dollar
12 installment loan program established by section 2 of this Act;
13 provided that the positions may be added to the position count
14 for the division of financial institutions of the department of
15 commerce and consumer affairs.

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

18 SECTION 12. This Act does not affect rights and duties
19 that matured, penalties that were incurred, and proceedings that
20 were begun before its effective date.



S.B. NO. 537

1 SECTION 13. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 14. This Act shall take effect on July 1, 2019;
4 provided that the licensing requirements for small dollar
5 lenders established by section 2 of this Act shall take effect
6 on January 1, 2020.

7

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S.B. NO. 537

Report Title:

Payday Lending; Small Dollar Loans; Small Dollar Lenders;
Licensure; Requirements; Appropriation

Description:

Transitions from lump sum deferred deposit transactions to installment-based small dollar loan transactions. Specifies various consumer protection requirements for small dollar loans. Beginning 1/1/2020, requires licensure for small dollar lenders that offer small dollar loans to consumers. Specifies licensing requirements for small dollar lenders. Authorizes the division of financial institutions to appoint 2.0 FTE examiner positions, funded via the compliance resolution fund, to carry out the purposes of the small dollar installment loan program.

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

