A BILL FOR AN ACT

RELATING TO DEFERRED DEPOSITS.

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

SECTION 1. The deferred deposit of checks, commonly known as payday lending, provides small, short-term, unsecured loans to borrowers in exchange for their promise to repay the loan from their next paycheck or regular income payment, such as a public benefit check. State law allows a check casher, who "loans" the money by deferring deposit of the borrower's check, to charge up to fifteen per cent of the face amount of the postdated check for an agreed-upon period of up to thirty-two days. While a fee of fifteen per cent may appear to be reasonable, because payday loans are short-term, that fifteen per cent rate equates to a much higher, if not exorbitant, annual percentage rate or APR. For example, on a loan of $100 borrowed for a term of fourteen days at fifteen per cent, the total cost or fee for the loan would be $17.65, which translates to an APR of approximately four hundred sixty per cent. If extended to thirty-two days, the maximum statutory loan term allowed, the APR would be approximately two hundred one per
cent. This fee of fifteen per cent is significantly higher than the maximum fee permitted for cashing a personal check without deferred deposit, which is capped at the greater of ten per cent or $5. Payday loans are also exempt from state usury laws.

Since Hawai'i began regulating payday lending in 1999, several states' payday lending laws have either been repealed or struck down as unconstitutional, with the result that states are limiting payday loans to a more moderate APR-based maximum charge, usually ranging from twenty-four to thirty-six per cent.

In a sunrise analysis on a proposal to expand regulation of payday lenders, the state auditor recommended that the maximum fee charged for payday loans be reduced. *Sunrise Analysis: Check Cashing and Deferred Deposit Agreements (Payday Loans),* Report No. 05-11. In 2007, a groundbreaking statement was made by Congress when, in response to reports about high-cost predatory lending targeting service members, it passed the Military Lending Act that established a thirty-six per cent APR cap on payday loans and other types of consumer loans made to service members and their dependents.

During discussion of prior measures to lower the maximum fee allowed and to further regulate payday lenders operating in
the State, concerns were raised that such legislation would reduce the number of Hawai‘i-based lenders and result in residents turning to payday loans made via internet lenders. The legislature notes that data from the Pew Charitable Trusts' report *Payday Lending in America: Who Borrows, Where They Borrow, and Why* shows that borrowers do not turn to online lenders in the absence of physical payday loan stores. Additionally, the legislature acknowledges that any payday lender making loans to individuals in Hawai‘i is subject to Hawai‘i laws regardless of where the lender is located. Recent enforcement actions commenced against payday lenders by other states, notably Arkansas, Georgia, Iowa, New York, Pennsylvania, and West Virginia, upheld the application of state laws to payday loans made by internet lenders not only within the state, but even where the lender is based out-of-state or affiliated with a Native American tribal entity.

The legislature finds that excessive and disproportionate fees on payday loans are detrimental to borrowers and concludes that the maximum fee must be reduced to a more reasonable figure.
The purpose of this Act is to reduce the allowable maximum fee of a payday loan from fifteen per cent to seven per cent of the face amount of the deferred check, which for a $100 loan corresponds to an APR of approximately one hundred ninety-six per cent for a fourteen-day term, and approximately eighty-six per cent for a thirty-two-day term.

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

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

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

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.
SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: [Signature]
Report Title:
Deferred Deposits; Payday Loan; Fees

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

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