

JAN 23 2015

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# A BILL FOR AN ACT

RELATING TO DEFERRED DEPOSITS.

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

1           SECTION 1. The deferred deposit of checks, commonly known  
2 as payday lending, provides small, short-term, unsecured loans  
3 to borrowers in exchange for their promise to repay the loan  
4 from their next paycheck or regular income payment, such as a  
5 public benefit check. State law allows a check casher, who  
6 "loans" the money by deferring deposit of the borrower's check,  
7 to charge up to 15 per cent of the face amount of the postdated  
8 check for an agreed-upon period of up to thirty-two days. While  
9 a fee of 15 per cent may appear to be reasonable, because payday  
10 loans are short-term, that fifteen per cent rate equates to a  
11 much higher, if not exorbitant, annual percentage rate or APR.  
12 For example, on a loan of \$100 borrowed for a term of fourteen-  
13 days at 15 per cent, the total cost or fee for the loan would be  
14 \$17.65, which translates to an APR of approximately 460 per  
15 cent. If extended to thirty-two days, the maximum statutory  
16 loan term allowed, the APR would be approximately 201 per cent.  
17 This fee of 15 per cent is significantly higher than the maximum



1 fee permitted for cashing a personal check without deferred  
2 deposit, which is capped at the greater of 10 per cent or \$5.  
3 Payday loans are also exempt from state usury laws applicable to  
4 other types of loans such as credit cards, which are subject to  
5 an 18 per cent APR cap.

6 Since Hawaii began regulating payday lending in 1999,  
7 several states' payday lending laws have either been repealed or  
8 struck down as unconstitutional, with the result that states are  
9 limiting payday loans to a more moderate APR-based maximum  
10 charge usually ranging from 24 to 36 per cent. In a sunrise  
11 analysis on a proposal to expand regulation of payday lenders,  
12 the state auditor recommended that the maximum fee charged for  
13 payday loans be reduced. *Sunrise Analysis: Check Cashing and*  
14 *Deferred Deposit Agreements (Payday Loans)*, Report No. 05-11.  
15 In 2007, a groundbreaking statement was made by Congress when,  
16 in response to reports about high-cost predatory lending  
17 targeting service members, it passed the Military Lending Act  
18 that established a 36 per cent APR cap on payday loans and other  
19 types of consumer loans made to service members and their  
20 dependents.



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

19           The legislature finds that excessive and disproportionate  
20 fees on payday loans are detrimental to borrowers and concludes  
21 that the maximum fee must be reduced to a more reasonable



1 figure. The purpose of this Act is to reduce the allowable  
2 maximum fee of a payday loan from 15 per cent to 7 per cent of  
3 the face amount of the deferred check, which for a \$100 loan  
4 corresponds to an APR of approximately 196 per cent for a  
5 fourteen-day term, and approximately 86 per cent for a thirty-  
6 two-day term.

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

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

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

19 SECTION 4. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



# S.B. NO. 731

1 SECTION 5. This Act shall take effect upon its approval.

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# S.B. NO. 731

**Report Title:**

Deferred Deposits; Payday Loan; Fees

**Description:**

Reduces the maximum fee a check casher may charge under a payday loan agreement for deferring the deposit of a check from 15% to 7% of the face value of the check.

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