

1 **CHECK CASHING AND DEFERRED DEPOSIT LENDING**

2 **AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Brad M. Daw**

6 Senate Sponsor: Curtis S. Bramble

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to check cashing and deferred deposit lending.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends the definition provision;
- 14 ▶ modifies requirements for registration under the Check Cashing and Deferred
- 15 Deposit Lending Registration Act;
- 16 ▶ grants rulemaking authority;
- 17 ▶ addresses restrictions on extensions of deferred deposit loans;
- 18 ▶ addresses examinations by the Department of Financial Institutions; and
- 19 ▶ makes technical and conforming amendments.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 7-23-102, as last amended by Laws of Utah 2013, Chapter 73

27 7-23-201, as last amended by Laws of Utah 2016, Chapter 248

28 7-23-401, as last amended by Laws of Utah 2016, Chapter 248

29 7-23-502, as renumbered and amended by Laws of Utah 2008, Chapter 96

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Be it enacted by the Legislature of the state of Utah:

Section 1. Section 7-23-102 is amended to read:

7-23-102. Definitions.

As used in this chapter:

- (1) "Annual percentage rate" has the same meaning as in 15 U.S.C. Sec. 1606, as implemented by regulations issued under that section.
- (2) "Business of cashing checks" means cashing a check for consideration.
- (3) "Business of deferred deposit lending" means extending a deferred deposit loan.
- (4) "Check" is as defined in Section 70A-3-104.
- (5) "Check casher" means a person that engages in the business of cashing checks.
- (6) "Deferred deposit lender" means a person that engages in the business of deferred deposit lending.
- (7) "Deferred deposit loan" means a transaction where:
 - (a) a person:
 - (i) presents to a deferred deposit lender a check written on that person's account; or
 - (ii) provides written or electronic authorization to a deferred deposit lender to effect a debit from that person's account using an electronic payment; and
 - (b) the deferred deposit lender:
 - (i) provides the person described in Subsection (7)(a) an amount of money that is equal to the face value of the check or the amount of the debit less any fee or interest charged for the transaction; and
 - (ii) agrees not to cash the check or process the debit until a specific date.
- (8) (a) "Electronic payment" means an electronic method by which a person:
 - (i) accepts a payment from another person; or
 - (ii) makes a payment to another person.
- (b) "Electronic payment" includes a payment made through:
 - (i) an automated clearing house transaction;

- 58 (ii) an electronic check;
- 59 (iii) a stored value card; or
- 60 (iv) an Internet transfer.

61 (9) "Nationwide database" means the Nationwide Mortgage Licensing System and
 62 Registry, authorized under federal licensing requirements for mortgage loan originators.

63 (10) (a) "Refinance" means a new deferred deposit loan transaction whose proceeds are
 64 meant to satisfy the term or amount owed on an existing deferred deposit loan.

65 (b) "Refinance" does not mean:

- 66 (i) an extended payment plan under Section 7-23-403; or
- 67 (ii) a rollover.

68 ~~[(10)]~~ (11) "Rollover" means the extension or renewal of the term of a deferred deposit
 69 loan.

70 Section 2. Section 7-23-201 is amended to read:

71 **7-23-201. Registration -- Rulemaking.**

72 (1) (a) It is unlawful for a person to engage in the business of cashing checks or the
 73 business of deferred deposit lending in Utah or with a Utah resident unless the person:

- 74 (i) registers with the department in accordance with this chapter; and
- 75 (ii) maintains a valid registration.

76 (b) It is unlawful for a person to operate a mobile facility in this state to engage in the
 77 business of:

- 78 (i) cashing checks; or
- 79 (ii) deferred deposit lending.

80 (2) (a) A registration and a renewal of a registration expires on December 31 of each
 81 year unless on or before that date the person renews the registration.

82 (b) To register under this section, a person shall:

- 83 (i) pay an original registration fee established under Subsection 7-1-401(8);
- 84 (ii) submit a registration statement containing the information described in Subsection

85 (2)(d);

86 (iii) submit evidence satisfactory to the commissioner that the person is authorized to
87 conduct business in this state as a domestic or foreign entity pursuant to filings with the
88 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,
89 Unincorporated Business Entity Act; and

90 (iv) if the person engages in the business of deferred deposit lending, submit evidence
91 satisfactory to the commissioner that the person is registered with the nationwide database.

92 (c) To renew a registration under this section, a person shall:

93 (i) pay the annual fee established under Subsection 7-1-401(5);

94 (ii) submit a renewal statement containing the information described in Subsection
95 (2)(d);

96 (iii) submit evidence satisfactory to the commissioner that the person is authorized to
97 conduct business in this state as a domestic or foreign entity pursuant to filings with the
98 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,
99 Unincorporated Business Entity Act;

100 (iv) if the person engages in the business of deferred deposit lending, submit evidence
101 satisfactory to the commissioner that the person is registered with the nationwide database; and

102 (v) if the person engages in the business of deferred deposit lending, submit an
103 operations statement containing the information described in Subsection (2)(e).

104 (d) A registration or renewal statement shall state:

105 (i) the name of the person;

106 (ii) the name in which the business will be transacted if different from that required in
107 Subsection (2)(d)(i);

108 (iii) the address of the person's principal business office, which may be outside this
109 state;

110 (iv) the addresses of all offices in this state at which the person conducts the business
111 of:

112 (A) cashing checks; or

113 (B) deferred deposit lending;

114 (v) if the person conducts the business of cashing checks or the business of deferred
 115 deposit lending in this state but does not maintain an office in this state, a brief description of
 116 the manner in which the business is conducted;

117 (vi) the name and address in this state of a designated agent upon whom service of
 118 process may be made;

119 (vii) ~~[disclosure of an injunction, judgment, administrative order, or]~~ whether there is a
 120 conviction of a crime;

121 (A) involving ~~[moral turpitude]~~ an act of fraud, dishonesty, breach of trust, or money
 122 laundering; and

123 (B) with respect to that person ~~[or]~~, an officer, director, manager, operator, or principal
 124 of that person, or an employee of that person engaged in the business described in this chapter;
 125 and

126 (viii) any other information required by the rules of the department.

127 (e) An operations statement required for a deferred deposit lender to renew a
 128 registration shall state for the immediately preceding calendar year:

129 (i) the average principal amount of the deferred deposit loans extended by the deferred
 130 deposit lender;

131 (ii) for deferred deposit loans paid in full, the average number of days a deferred
 132 deposit loan is outstanding for the duration of time that interest is charged;

133 (iii) the minimum and maximum dollar amount of interest and fees charged by the
 134 deferred deposit lender for a deferred deposit loan of \$100 with a loan term of seven days;

135 (iv) the total number of deferred deposit loans rescinded by the deferred deposit lender
 136 at the request of the customer pursuant to Subsection 7-23-401(3)(b);

137 (v) of the persons to whom the deferred deposit lender extended a deferred deposit
 138 loan, the percentage that entered into an extended payment plan under Section 7-23-403;

139 (vi) the total dollar amount of deferred deposit loans rescinded by the deferred deposit
 140 lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);

141 (vii) the average annual percentage rate charged on deferred deposit loans;

142 (viii) the average dollar amount of extended payment plans entered into under Section
143 7-23-403 by the deferred deposit lender;

144 (ix) the number of deferred deposit loans carried to the maximum 10 weeks;

145 (x) the total dollar amount of deferred deposit loans carried to the maximum 10 weeks;

146 (xi) the number of deferred deposit loans not paid in full at the end of 10 weeks;

147 (xii) the total dollar amount of deferred deposit loans not paid in full at the end of 10
148 weeks;

149 (xiii) the percentage of deferred deposit loans against which the deferred deposit lender
150 initiates civil action to collect on the deferred deposit loan; and

151 (xiv) for the civil actions described in Subsection (2)(e)(xiii), the percentage of those
152 civil actions whose deferred deposit loans have the following payment history:

153 (A) no payments;

154 (B) one payment;

155 (C) two payments;

156 (D) three payments;

157 (E) four payments;

158 (F) five payments;

159 (G) six payments;

160 (H) seven payments;

161 (I) eight payments;

162 (J) nine payments; and

163 (K) 10 or more payments.

164 (f) The commissioner may by rule, made in accordance with Title 63G, Chapter 3,
165 Utah Administrative Rulemaking Act, provide for the transition of persons registering with the
166 nationwide database.

167 (3) Information provided by a deferred deposit lender under Subsection (2)(e) is:

168 (a) confidential in accordance with Section 7-1-802; and

169 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management

170 Act.

171 (4) (a) The commissioner may impose an administrative fine determined under

172 Subsection (4)(b) on a person if:

173 (i) the person is required to be registered under this chapter;

174 (ii) the person fails to register or renew a registration in accordance with this chapter;

175 (iii) the department notifies the person that the person is in violation of this chapter for
176 failure to be registered; and

177 (iv) the person fails to register within 30 days after the day on which the person
178 receives the notice described in Subsection (4)(a)(iii).

179 (b) Subject to Subsection (4)(c), the administrative fine imposed under this section is:

180 (i) \$500 if the person:

181 (A) has no office in this state at which the person conducts the business of:

182 (I) cashing checks; or

183 (II) deferred deposit lending; or

184 (B) has one office in this state at which the person conducts the business of:

185 (I) cashing checks; or

186 (II) deferred deposit lending; or

187 (ii) if the person has two or more offices in this state at which the person conducts the
188 business of cashing checks or the business of deferred deposit lending, \$500 for each office at
189 which the person conducts the business of:

190 (A) cashing checks; or

191 (B) deferred deposit lending.

192 (c) The commissioner may reduce or waive a fine imposed under this Subsection (4) if
193 the person shows good cause.

194 (5) If the information in a registration, renewal, or operations statement required under
195 Subsection (2) becomes inaccurate after filing, a person is not required to notify the department
196 until:

197 (a) that person is required to renew the registration; or

198 (b) the department specifically requests earlier notification.

199 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
200 department may make rules consistent with this section providing for:

201 (a) the form, content, and filing of a registration and renewal statement described in
202 Subsection (2)(d); and

203 (b) the form and filing of an operations statement described in Subsection (2)(e).

204 (7) A deferred deposit loan that is made by a person who is required to be registered
205 under this chapter but who is not registered is void, and the person may not collect, receive, or
206 retain any principal or other interest or fees in connection with the deferred deposit loan.

207 (8) (a) At the time a person registers under this section, the person shall disclose a
208 conviction of a crime described in Subsection (2)(d)(vii) that is:

209 (i) known to the person; or

210 (ii) included in:

211 (A) a Utah Bureau of Criminal Identification report; or

212 (B) a background check acceptable to the department that provides information similar
213 to a Utah Bureau of Criminal Identification report.

214 (b) To comply with Subsection (8)(a), a person registered under this chapter shall, for
215 each individual described in Subsection (2)(d)(vii):

216 (i) obtain a Utah Bureau of Criminal Identification report; or

217 (ii) conduct a background check acceptable to the commissioner that provides
218 information similar to a Utah Bureau of Criminal Identification report.

219 (c) A person registered under this section shall keep a record of the information
220 described in Subsection (8)(b) for the time period required by the department by rule made in
221 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

222 Section 3. Section **7-23-401** is amended to read:

223 **7-23-401. Operational requirements for deferred deposit loans.**

224 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit
225 lender shall:

226 (a) post in a conspicuous location on its premises that can be viewed by a person
227 seeking a deferred deposit loan:

228 (i) a complete schedule of any interest or fees charged for a deferred deposit loan that
229 states the interest and fees using dollar amounts;

230 (ii) a number the person can call to make a complaint to the department regarding the
231 deferred deposit loan; and

232 (iii) a list of states where the deferred deposit lender is registered or authorized to offer
233 deferred deposit loans through the Internet or other electronic means;

234 (b) enter into a written contract for the deferred deposit loan;

235 (c) conspicuously disclose in the written contract:

236 (i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a
237 partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan
238 without incurring additional charges above the charges provided in the written contract;

239 (ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind
240 the deferred deposit loan on or before 5 p.m. of the next business day without incurring any
241 charges;

242 (iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over
243 without the person receiving the deferred deposit loan requesting the rollover of the deferred
244 deposit loan;

245 (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
246 rollover requires the person to pay the amount owed by the person under the deferred deposit
247 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
248 executed; and

249 (v) (A) the name and address of a designated agent required to be provided the
250 department under Subsection 7-23-201(2)(d)(vi); and

251 (B) a statement that service of process may be made to the designated agent;

252 (d) provide the person seeking the deferred deposit loan:

253 (i) a copy of the written contract described in Subsection (1)(c); and

254 (ii) written notice that the person seeking the deferred deposit loan is eligible to enter
255 into an extended payment plan described in Section 7-23-403;

256 (e) orally review with the person seeking the deferred deposit loan the terms of the
257 deferred deposit loan including:

258 (i) the amount of any interest rate or fee;

259 (ii) the date on which the full amount of the deferred deposit loan is due;

260 (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make
261 a partial payment in increments of at least \$5 on the principal owed on the deferred deposit
262 loan without incurring additional charges above the charges provided in the written contract;

263 (iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may
264 rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring
265 any charges;

266 (v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over
267 without the person receiving the deferred deposit loan requesting the rollover of the deferred
268 deposit loan; and

269 (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
270 rollover requires the person to pay the amount owed by the person under the deferred deposit
271 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
272 executed;

273 (f) comply with the following as in effect on the date the deferred deposit loan is
274 extended:

275 (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal
276 regulations;

277 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal
278 regulations;

279 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
280 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

281 (iv) Title 70C, Utah Consumer Credit Code;

282 (g) in accordance with Subsection (6), make an inquiry to determine whether a person
283 attempting to receive a deferred deposit loan has the ability to repay the deferred deposit loan
284 in the ordinary course, which may include rollovers or extended payment plans as allowed
285 under this chapter;

286 (h) in accordance with Subsection (7), receive a signed acknowledgment from a person
287 attempting to receive a deferred deposit loan that the person has the ability to repay the
288 deferred deposit loan, which may include rollovers or extended payment plans as allowed by
289 this chapter; and

290 (i) report the original loan amount, payment in full, or default of a deferred deposit
291 loan to a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a, in accordance with
292 procedures established by the consumer reporting agency.

293 (2) If a deferred deposit lender extends a deferred deposit loan through the Internet or
294 other electronic means, the deferred deposit lender shall provide the information described in
295 Subsection (1)(a) to the person receiving the deferred deposit loan:

296 (a) in a conspicuous manner; and

297 (b) prior to the person entering into the deferred deposit loan.

298 (3) A deferred deposit lender that engages in a deferred deposit loan shall permit a
299 person receiving a deferred deposit loan to:

300 (a) make partial payments in increments of at least \$5 on the principal owed on the
301 deferred deposit loan at any time prior to maturity without incurring additional charges above
302 the charges provided in the written contract; and

303 (b) rescind the deferred deposit loan without incurring any charges by returning the
304 deferred deposit loan amount to the deferred deposit lender on or before 5 p.m. the next
305 business day following the deferred deposit loan transaction.

306 (4) A deferred deposit lender that engages in a deferred deposit loan may not:

307 (a) collect additional interest on a deferred deposit loan with an outstanding principal
308 balance 10 weeks after the day on which the deferred deposit loan is executed;

309 (b) roll over a deferred deposit loan without the person receiving the deferred deposit

310 loan requesting the rollover of the deferred deposit loan;

311 (c) roll over a deferred deposit loan if the rollover requires a person to pay the amount
312 owed by the person under a deferred deposit loan in whole or in part more than 10 weeks from
313 the day on which the deferred deposit loan is first executed;

314 (d) extend a new deferred deposit loan to a person on the same business day that the
315 person makes a payment on another deferred deposit loan if ~~[the payment]:~~

316 ~~[(i) is made at least 10 weeks after the day on which that deferred deposit loan is~~
317 ~~extended; and]~~

318 ~~[(ii)]~~ (i) the payment results in the principal of that deferred deposit loan being paid in
319 full; and

320 (ii) the combined terms of the original deferred deposit loan and the new deferred
321 deposit loan total more than 10 weeks of consecutive interest;

322 (e) avoid the limitations of Subsections (4)(a) and (4)(c) by extending a new deferred
323 deposit loan whose proceeds are used to satisfy or refinance any portion of an existing deferred
324 deposit loan;

325 ~~[(e)]~~ (f) threaten to use or use the criminal process in any state to collect on the
326 deferred deposit loan;

327 ~~[(f)]~~ (g) in connection with the collection of money owed on a deferred deposit loan,
328 communicate with a person who owes money on a deferred deposit loan at the person's place of
329 employment if the person or the person's employer communicates, orally or in writing, to the
330 deferred deposit lender that the person's employer prohibits the person from receiving these
331 communications; or

332 ~~[(g)]~~ (h) modify by contract the venue provisions in Title 78B, Chapter 3, Actions and
333 Venue.

334 (5) Notwithstanding Subsections (4)(a) and ~~[(e)]~~ (f), a deferred deposit lender that is
335 the holder of a check used to obtain a deferred deposit loan that is dishonored may use the
336 remedies and notice procedures provided in Chapter 15, Dishonored Instruments, except that
337 the issuer, as defined in Section 7-15-1, of the check may not be:

338 (a) asked by the holder to pay the amount described in Subsection 7-15-1(6)(a)(iii) as a
339 condition of the holder not filing a civil action; or

340 (b) held liable for the damages described in Subsection 7-15-1(7)(b)(vi).

341 (6) (a) The inquiry required by Subsection (1)(g) applies solely to the initial period of a
342 deferred deposit loan transaction with a person and does not apply to any rollover or extended
343 payment plan of a deferred deposit loan.

344 (b) Subject to Subsection (6)(c), a deferred deposit lender is in compliance with
345 Subsection (1)(g) if the deferred deposit lender, at the time of the initial period of the deferred
346 deposit loan transaction[;]:

347 (i) obtains one of the following regarding the person seeking the deferred deposit loan:

348 [(i)] (A) a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer
349 reporting agency, as defined in 15 U.S.C. Sec. 1681a; or

350 [(ii)] (B) written proof or verification of income from the person seeking the deferred
351 deposit loan; or

352 [(iii)] (ii) relies on the prior repayment history with the deferred deposit [~~loan~~] lender
353 from the records of the deferred deposit lender.

354 (c) If a person seeking a deferred deposit loan has not previously received a deferred
355 deposit loan from that deferred deposit lender, to be in compliance with Subsection (1)(g), the
356 deferred deposit lender, at the time of the initial period of the deferred deposit loan transaction,
357 shall obtain a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting
358 agency, as defined in 15 U.S.C. Sec. 1681a.

359 (7) A deferred deposit lender is in compliance with Subsection (1)(h) if the deferred
360 deposit lender obtains from the person seeking the deferred deposit loan a signed
361 acknowledgment that is in 14-point bold font, that the person seeking the deferred deposit loan
362 has:

363 (a) reviewed the payment terms of the deferred deposit loan agreement;

364 (b) received a disclosure that a deferred deposit loan may not be rolled over if the
365 rollover requires the person to pay the amount owed by the person under the deferred deposit

366 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
367 first executed;

368 (c) received a disclosure explaining the extended payment plan options; and

369 (d) acknowledged the ability to repay the deferred deposit loan in the ordinary course,
370 which may include rollovers, or extended payment plans as allowed under this chapter.

371 (8) (a) Before initiating a civil action against a person who owes money on a deferred
372 deposit loan, a deferred deposit lender shall provide the person at least 10 days notice of
373 default, describing that:

374 (i) the person must remedy the default; and

375 (ii) the deferred deposit lender may initiate a civil action against the person if the
376 person fails to cure the default within the 10-day period or through an extended payment plan
377 meeting the requirements of Section [7-23-403](#).

378 (b) A deferred deposit lender may provide the notice required under this Subsection
379 (8):

380 (i) by sending written notice to the address provided by the person to the deferred
381 deposit lender;

382 (ii) by sending an electronic transmission to a person if electronic contact information
383 is provided to the deferred deposit lender; or

384 (iii) pursuant to the Utah Rules of Civil Procedure.

385 (c) A notice under this Subsection (8), in addition to complying with Subsection (8)(a),
386 shall:

387 (i) be in English, if the initial transaction is conducted in English;

388 (ii) state the date by which the person must act to enter into an extended payment plan;

389 (iii) explain the procedures the person must follow to enter into an extended payment
390 plan;

391 (iv) subject to Subsection [7-23-403](#)(7), if the deferred deposit lender requires the
392 person to make an initial payment to enter into an extended payment plan:

393 (A) explain the requirement; and

394 (B) state the amount of the initial payment and the date the initial payment shall be
395 made;

396 (v) state that the person has the opportunity to enter into an extended payment plan for
397 a time period meeting the requirements of Subsection 7-23-403(2)(b); and

398 (vi) include the following amounts:

399 (A) the remaining balance on the original deferred deposit loan;

400 (B) the total payments made on the deferred deposit loan;

401 (C) any charges added to the deferred deposit loan amount allowed pursuant to this
402 chapter; and

403 (D) the total amount due if the person enters into an extended payment plan.

404 Section 4. Section 7-23-502 is amended to read:

405 **7-23-502. Examination of books, accounts, and records by the department.**

406 (1) At least annually the department shall, for each [~~premise~~] person registered under
407 this chapter and engaging in the business of cashing checks or the business of deferred deposit
408 lending:

409 (a) examine the books, accounts, and records; and

410 (b) make investigations to determine compliance with this chapter.

411 (2) In accordance with Section 7-1-401, a person examined under Subsection (1) shall
412 pay a fee for the examination conducted under Subsection (1).