

CONSUMER LENDING AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill modifies provisions related to deferred deposit loans.

Highlighted Provisions:

This bill:

- modifies the reporting requirements for deferred deposit lenders;
- imposes additional requirements before the extension of a deferred deposit loan;
- prohibits a deferred deposit contract from modifying statutory venue provisions;
- requires notice before initiating a civil action;
- modifies provisions related to extended payment plans; and
- makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

29 7-23-201, as last amended by Laws of Utah 2013, Chapter 73

30 7-23-401, as last amended by Laws of Utah 2010, Chapter 102

31 7-23-403, as enacted by Laws of Utah 2010, Chapter 102

32

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

34 Section 1. Section 7-23-201 is amended to read:

35 **7-23-201. Registration -- Rulemaking.**

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

38 (i) registers with the department in accordance with this chapter; and

39 (ii) maintains a valid registration.

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

42 (i) cashing checks; or

43 (ii) deferred deposit lending.

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

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

47 (i) pay an original registration fee established under Subsection 7-1-401(8);

48 (ii) submit a registration statement containing the information described in Subsection
49 (2)(d);

50 (iii) submit evidence satisfactory to the commissioner that the person is authorized to
51 conduct business in this state as a domestic or foreign entity pursuant to filings with the
52 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,
53 Partnership; and

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

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

- 57 (i) pay the annual fee established under Subsection 7-1-401(5);
- 58 (ii) submit a renewal statement containing the information described in Subsection
- 59 (2)(d);
- 60 (iii) submit evidence satisfactory to the commissioner that the person is authorized to
- 61 conduct business in this state as a domestic or foreign entity pursuant to filings with the
- 62 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,
- 63 Partnership;
- 64 (iv) if the person engages in the business of deferred deposit lending, submit evidence
- 65 satisfactory to the commissioner that the person is registered with the nationwide database; and
- 66 (v) if the person engages in the business of deferred deposit lending, submit an
- 67 operations statement containing the information described in Subsection (2)(e).
- 68 (d) A registration or renewal statement shall state:
- 69 (i) the name of the person;
- 70 (ii) the name in which the business will be transacted if different from that required in
- 71 Subsection (2)(d)(i);
- 72 (iii) the address of the person's principal business office, which may be outside this
- 73 state;
- 74 (iv) the addresses of all offices in this state at which the person conducts the business
- 75 of:
- 76 (A) cashing checks; or
- 77 (B) deferred deposit lending;
- 78 (v) if the person conducts the business of cashing checks or the business of deferred
- 79 deposit lending in this state but does not maintain an office in this state, a brief description of
- 80 the manner in which the business is conducted;
- 81 (vi) the name and address in this state of a designated agent upon whom service of
- 82 process may be made;
- 83 (vii) disclosure of an injunction, judgment, administrative order, or conviction of a
- 84 crime involving moral turpitude with respect to that person or an officer, director, manager,

operator, or principal of that person; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

113 (a) confidential in accordance with Section 7-1-802; and
114 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management
115 Act.

116 (4) (a) The commissioner may impose an administrative fine determined under
117 Subsection (4)(b) on a person if:

118 (i) the person is required to be registered under this chapter;
119 (ii) the person fails to register or renew a registration in accordance with this chapter;
120 (iii) the department notifies the person that the person is in violation of this chapter for
121 failure to be registered; and

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

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

125 (i) \$500 if the person:

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

127 (I) cashing checks; or

128 (II) deferred deposit lending; or

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

130 (I) cashing checks; or

131 (II) deferred deposit lending; or

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

135 (A) cashing checks; or

136 (B) deferred deposit lending.

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

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

141 until:

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

143 (b) the department specifically requests earlier notification.

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

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

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

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

152 Section 2. Section **7-23-401** is amended to read:

153 **7-23-401. Operational requirements for deferred deposit loans.**

154 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit
155 lender shall:

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

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

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

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

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

165 (c) conspicuously disclose in the written contract:

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

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

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

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

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

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

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

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

(ii) written notice that [if] the person seeking the deferred deposit loan is eligible to enter into an extended payment plan[~~the deferred deposit lender provides an extended payment plan~~] described in Section 7-23-403;

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

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

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

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

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

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

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

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

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

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

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

(iv) Title 70C, Utah Consumer Credit Code[-];

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

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

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

(a) in a conspicuous manner; and

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

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

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

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

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

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

237 (b) roll over a deferred deposit loan without the person receiving the deferred deposit
238 loan requesting the rollover of the deferred deposit loan;

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

242 (d) extend a new deferred deposit loan to a person on the same business day that the
243 person makes a payment on another deferred deposit loan if the payment:

244 (i) is made at least 10 weeks after the day on which that deferred deposit loan is
245 extended; and

246 (ii) results in the principal of that deferred deposit loan being paid in full;

247 (e) threaten to use or use the criminal process in any state to collect on the deferred
248 deposit loan; [or]

249 (f) in connection with the collection of money owed on a deferred deposit loan,
250 communicate with a person who owes money on a deferred deposit loan at the person's place of
251 employment if the person or the person's employer communicates, orally or in writing, to the
252 deferred deposit lender that the person's employer prohibits the person from receiving these

communications[-]; or

(g) modify by contract the venue provisions in Title 78B, Chapter 3, Actions and Venue.

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

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

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

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

(b) A deferred deposit lender is in compliance with Subsection (1)(g) if the deferred deposit lender, at the time of the initial period of the deferred deposit loan transaction, obtains one of the following regarding the person seeking the deferred deposit loan:

(i) a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a;

(ii) written proof or verification of income from the person seeking the deferred deposit loan; or

(iii) prior repayment history with the deferred deposit loan from the records of the deferred deposit lender.

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

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

(b) received a disclosure that a deferred deposit loan may not be rolled over if the

rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is first executed;

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

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

(8) (a) Before initiating a civil action against a person who owes money on a deferred deposit loan, a deferred deposit lender shall provide the person at least 10 days notice of default, describing that the person must remedy the default and that the deferred deposit lender intends to initiate a civil action against the person if the person fails to cure the default within the 10-day period.

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

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

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

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

Section 3. Section 7-23-403 is amended to read:

7-23-403. Extended payment plan.

(1) (a) If a person who owes money on a deferred deposit loan requests to enter into an extended payment plan, the deferred deposit lender who extended the deferred deposit loan shall allow the person to enter into an extended payment plan that meets the requirements of this section at least once during a 12-month period to pay the money owed.

(b) A deferred deposit lender is not required to enter into an extended payment plan with a person who owes money on a deferred deposit loan more than one time during a 12-month period.

(c) Notwithstanding the other provisions of this Subsection (1), if a person is charged

10 continuous weeks of interest or fees on a deferred deposit loan, including rollovers, at the end of the 10-week period:

(i) the person may request to repay the deferred deposit loan and rollovers under an extended payment plan that meets the requirements of this section; and

(ii) the deferred deposit lender shall execute the extended payment plan in accordance with this section.

(2) An extended payment plan shall include the following:

(a) A deferred deposit lender shall require a person who receives a deferred deposit loan and wants to enter an extended payment plan to enter into a written agreement:

(i) with the deferred deposit lender;

(ii) that is executed:

(A) no sooner than the day before the last day of the initial term of the deferred deposit loan; and

(B) no later than the end of the deferred deposit lender's business day before the day on which the deferred deposit loan is due; and

(iii) that states:

(A) a payment schedule; and

(B) the money owed under the extended payment plan.

(b) A payment schedule for an extended payment plan shall provide that the money owed may be paid:

(i) in at least four equal payments; and

(ii) over a time period that is at least 60 days.

(c) The money owed under an extended payment plan shall equal the money owed under the deferred deposit loan, including interest and fees, that would be due if the deferred deposit loan is paid in full on the last day of the most current term of the deferred deposit loan.

(3) (a) A deferred deposit lender may not charge interest or fees as part of an extended payment plan~~[, except that if]~~.

(b) A deferred deposit loan may not be considered in default during the extended

337 payment plan period if the person who receives the deferred deposit loan complies with the
338 terms of the extended payment plan.

339 (c) If a person who receives a deferred deposit loan defaults ~~under~~ during the
340 extended payment plan period, the deferred deposit lender may:

341 ~~[(a)]~~ (i) accelerate the requirement to pay the money owed under the extended payment
342 plan;

343 ~~[(b)]~~ (ii) charge a fee not to exceed \$20;

344 ~~[(c)]~~ (iii) terminate the extended payment plan; and

345 ~~[(d)]~~ (iv) subject to the other requirements of this chapter, reinstate the original
346 deferred deposit loan terms.

347 (4) A deferred deposit loan may not penalize a person who enters into an extended
348 payment plan for paying to the deferred deposit lender money owed under the extended
349 payment plan before the money is due.

350 (5) A deferred deposit lender may not initiate collection activities for a deferred deposit
351 loan that is subject to an extended payment plan during the period that the person owing money
352 under the extended payment plan is in compliance with the extended payment plan.

353 (6) A deferred deposit lender may not collect additional interest or fees on a deferred
354 deposit loan, except for the fee imposed under Subsection (3)(c)(ii), from a person who has
355 been charged 10 weeks interest and defaults under the extended payment plan described in
356 Subsection (1)(c).