

Senator Ed P. Mayne proposes the following substitute bill:

LENDING LAW AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

This act modifies the Check Cashing Registration Act to enact provisions governing the extension of a deferred deposit loan through electronic means, and to require immediate payment to a person receiving a deferred deposit loan through electronic means. The act modifies the Financial Institutions Code to enact the Title Lending Registration Act, imposing registration requirements, operational and disclosure requirements, and enforcement provisions for title loans. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

7-1-401, as last amended by Chapter 97, Laws of Utah 2001

7-23-102, as enacted by Chapter 144, Laws of Utah 1999

ENACTS:

7-23-105.1, Utah Code Annotated 1953

7-24-101, Utah Code Annotated 1953

7-24-102, Utah Code Annotated 1953

7-24-201, Utah Code Annotated 1953

7-24-202, Utah Code Annotated 1953

7-24-203, Utah Code Annotated 1953

7-24-204, Utah Code Annotated 1953

7-24-301, Utah Code Annotated 1953

7-24-302, Utah Code Annotated 1953

7-24-303, Utah Code Annotated 1953



26 **7-24-304**, Utah Code Annotated 1953

27 **7-24-305**, Utah Code Annotated 1953

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

29 Section 1. Section **7-1-401** is amended to read:

30 **7-1-401. Fees payable to commissioner.**

31 (1) Except for an out-of-state depository institution with a branch in Utah, a depository
32 institution under the jurisdiction of the department shall pay an annual fee:

33 (a) computed by averaging the total assets of the depository institution shown on each
34 quarterly report of condition for the depository institution for the calendar year immediately
35 proceeding the date the annual fee is due under Section 7-1-402; and

36 (b) at the following rates:

37 (i) on the first \$5,000,000 of these assets, the greater of:

38 (A) 65 cents per \$1,000; or

39 (B) \$500;

40 (ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;

41 (iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;

42 (iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;

43 (v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;

44 (vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and

45 (vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.

46 (2) A financial institution with a trust department shall pay a fee determined in
47 accordance with Subsection (7) for each examination of the trust department by state
48 examiners.

49 (3) Notwithstanding Subsection (1), a credit union in its first year of operation shall pay
50 a basic fee of \$25 instead of the fee required under Subsection (1).

51 (4) A trust company that is not a depository institution or a subsidiary of a depository
52 institution holding company shall pay:

53 (a) an annual fee of \$500; and

54 (b) an additional fee determined in accordance with Subsection (7) for each
55 examination by state examiners.

56 (5) Any person or institution under the jurisdiction of the department that does not pay a

57 fee under Subsections (1) through (4) shall pay:

58 (a) an annual fee of \$100; and

59 (b) an additional fee determined in accordance with Subsection (7) for each
60 examination by state examiners.

61 (6) A person filing an application or request under Section 7-1-503, 7-1-702, 7-1-703,
62 7-1-704, 7-1-713, 7-5-3, or 7-18a-202 shall pay:

63 (a) a filing fee of \$500; and

64 (b) all reasonable expenses incurred in processing the application.

65 (7) (a) Per diem assessments for an examination shall be calculated at the rate of \$40
66 per hour:

67 (i) for each examiner; and

68 (ii) per hour worked.

69 (b) For an examination of a branch or office of a financial institution located outside of
70 this state, in addition to the per diem assessment under this Subsection (7), the institution shall
71 pay all reasonable travel, lodging, and other expenses incurred by each examiner while
72 conducting the examination.

73 (8) In addition to a fee under Subsection (5), a person registering under Section
74 7-23-103 or 7-24-201 shall pay an original registration fee of \$300.

75 Section 2. Section **7-23-102** is amended to read:

76 **7-23-102. Definitions.**

77 As used in this chapter:

78 (1) "Business of a check casher" means:

79 (a) cashing a check for consideration; or

80 (b) extending a deferred deposit loan.

81 (2) "Check" is as defined in Section 70A-3-104.

82 (3) "Check casher" means a person that engages in the business of a check casher.

83 (4) "Deferred deposit loan" means a transaction where:

84 (a) ~~the~~ a person:

85 (i) presents to a check casher a check written on that person's account; ~~and~~ or

86 (ii) provides written or electronic authorization to a check casher to effect a debit from

87 that person's account using an electronic payment; and

- 88 (b) the check casher:
- 89 (i) provides the maker an amount of money that is equal to the face value of the check
- 90 or the amount of the debit less any fee or interest charged for the transaction; and
- 91 (ii) agrees not to cash the check or process the debit until a specific date.
- 92 (5) (a) "Electronic payment" means any electronic method by which a check casher:
- 93 (i) accepts a payment from a person; or
- 94 (ii) makes a payment to a person.
- 95 (b) "Electronic payment" includes a payment made through:
- 96 (i) an automated clearing house transaction;
- 97 (ii) an electronic check;
- 98 (iii) a stored value card; or
- 99 (iv) an Internet transfer.

100 [~~5~~] (6) "Rollover" means the extension or renewal of the term of a deferred deposit
 101 loan.

102 Section 3. Section **7-23-105.1** is enacted to read:

103 **7-23-105.1. Electronic disbursement and collections.**

104 If a check casher collects payment on a deferred deposit loan through an electronic
 105 payment, the check casher shall, on the day the loan is executed:

- 106 (1) credit the amount of the deferred deposit loan through an electronic payment to the
 107 person receiving the deferred deposit loan; or
- 108 (2) make the amount of the deferred deposit loan immediately available to the person
 109 receiving the deferred deposit loan.

110 Section 4. Section **7-24-101** is enacted to read:

111 **CHAPTER 24. TITLE LENDING REGISTRATION ACT**

112 **Part 1. General Provisions**

113 **7-24-101. Title.**

114 This chapter is known as the "Title Lending Registration Act."

115 Section 5. Section **7-24-102** is enacted to read:

116 **7-24-102. Definitions.**

117 As used in this chapter:

- 118 (1) "Rollover" means the extension or renewal of the term of a title loan.

119 (2) (a) "Title lender" means a person that extends a title loan.

120 (b) "Title lender" includes a person that:

121 (i) arranges a title loan on behalf of a title lender;

122 (ii) acts as an agent for a title lender; or

123 (iii) assists a title lender in the extension of a title loan.

124 (3) (a) "Title loan" means a loan secured by the title to a:

125 (i) motor vehicle, as defined in Section 41-6-1;

126 (ii) mobile home, as defined in Section 41-6-1; or

127 (iii) motorboat, as defined in Section 73-18-2.

128 (b) "Title loan" includes a title loan extended at the same premise on which any of the
129 following are sold:

130 (i) a motor vehicle, as defined in Section 41-6-1;

131 (ii) a mobile home, as defined in Section 41-6-1; or

132 (iii) a motorboat, as defined in Section 73-18-2.

133 (c) "Title loan" does not include:

134 (i) a purchase money loan;

135 (ii) a loan made in connection with the sale of a:

136 (A) motor vehicle, as defined in Section 41-6-1;

137 (B) mobile home, as defined in Section 41-6-1; or

138 (C) motorboat, as defined in Section 73-18-2; or

139 (iii) a loan extended by an institution listed in Section 7-24-305.

140 Section 6. Section **7-24-201** is enacted to read:

141 **Part 2. Requirements**

142 **7-24-201. Registration -- Rulemaking.**

143 (1) (a) It is unlawful for a person to extend a title loan in Utah or with a Utah resident
144 unless the person:

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

146 (ii) maintains a valid registration.

147 (b) It is unlawful for a person to operate a mobile facility in this state to extend a title
148 loan.

149 (c) Notwithstanding Subsection (1)(a), a person that is a title lender in this state on

150 May 5, 2003, is not required to be registered under this section until July 1, 2003.

151 (2) (a) A registration and a renewal of a registration expires on April 30 of each year
152 unless on or before that date the person renews the registration.

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

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

155 (ii) submit a registration statement containing the information described in Subsection

156 (2)(d).

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

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

159 (ii) submit a renewal statement containing the information described in Subsection

160 (2)(d).

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

162 (i) the name of the person;

163 (ii) the name in which the business will be transacted if different from that required in

164 Subsection (2)(d)(i);

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

167 (iv) the addresses of all offices in this state at which the person extends title loans;

168 (v) if the person extends title loans in this state but does not maintain an office in this
169 state, a brief description of the manner in which the business is conducted;

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

172 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any
173 crime involving moral turpitude with respect to that person or any officer, director, manager,

174 operator, or principal of that person; and

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

176 (3) If the information in a registration or renewal statement required under Subsection

177 (2) becomes inaccurate after filing, a person is not required to notify the department until:

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

179 (b) the department specifically requests earlier notification.

180 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

181 department may make rules consistent with this section providing for the form, content, and
182 filing of a registration and renewal statement.

183 Section 7. Section **7-24-202** is enacted to read:

184 **7-24-202. Operational requirements for title loans.**

185 (1) A title lender shall:

186 (a) post in a conspicuous location on its premises that can be viewed by a person
187 seeking a title loan:

188 (i) a complete schedule of any interest or fees charged for a title loan that states the
189 interest and fees:

190 (A) as dollar amounts; and

191 (B) as annual percentage rates; and

192 (ii) a telephone number a person may call to make a complaint to the department
193 regarding a title loan;

194 (b) enter into a written contract for the title loan containing:

195 (i) the name of the person receiving the title loan;

196 (ii) the transaction date;

197 (iii) the amount of the title loan; and

198 (iv) a statement of the total amount of any interest or fees that may be charged for the
199 title loan, expressed as:

200 (A) a dollar amount; and

201 (B) an annual percentage rate;

202 (c) provide the person seeking the title loan a copy of the written contract described in

203 Subsection (1)(b);

204 (d) prior to the execution of the title loan:

205 (i) orally review with the person seeking the title loan the terms of the title loan

206 including:

207 (A) the amount of any interest rate or fee, expressed as:

208 (I) a dollar amount; and

209 (II) an annual percentage rate; and

210 (B) the date on which the full amount of the title loan is due; and

211 (ii) provide the person seeking the title loan a copy of the disclosure form adopted by

212 the department under Section 7-24-203; and

213 (e) comply with:

214 (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et. seq.;

215 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691; and

216 (iii) Title 70C, Utah Consumer Credit Code.

217 (2) If a title lender extends a title loan through the Internet or other electronic means,

218 the title lender shall:

219 (a) provide the information described in Subsection (1)(a) to the person receiving the

220 title loan in a conspicuous manner prior to the completion of the title loan; and

221 (b) in connection with the disclosure required under Subsection (2)(a), provide a list of

222 states where the title lender is registered or authorized to offer title loans through the Internet or

223 other electronic means.

224 (3) A title lender may not:

225 (a) rollover a title loan unless the person receiving the title loan requests a rollover of

226 the title loan;

227 (b) extend more than one title loan on any vehicle at one time;

228 (c) extend a title loan that exceeds the fair market value of the vehicle securing the title

229 loan; or

230 (d) extend a title loan without regard to the ability of the person seeking the title loan to

231 repay the title loan, including the person's:

232 (i) current and expected income;

233 (ii) current obligations; and

234 (iii) employment.

235 (4) A title lender has met the requirements of Subsection (3)(d) of the person seeking a

236 title loan provides the title lender with a signed acknowledgment that:

237 (a) the person has provided the title lender with true and correct information

238 concerning the person's income, obligations, and employment; and

239 (b) the person has the ability to repay the title loan.

240 Section 8. Section **7-24-203** is enacted to read:

241 **7-24-203. Disclosure form for title loans.**

242 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

243 department shall adopt a disclosure form for title loans that complies with this section.

244 (2) The department shall specify by rule:

245 (a) the information to be provided in the disclosure form including:

246 (i) the costs of obtaining a title loan;

247 (ii) the consequences of defaulting on a title loan;

248 (iii) generally available alternatives to a title loan; and

249 (iv) methods of obtaining credit counseling or other financial advice;

250 (b) the type size of the disclosure form; and

251 (c) the manner in which a title lender shall conspicuously provide the disclosure form
252 to a person seeking a title loan.

253 Section 9. Section **7-24-204** is enacted to read:

254 **7-24-204. Remedy for default.**

255 Except in the event of fraud by a borrower, if a borrower defaults on a title loan:

256 (1) the title lender's sole remedy is to seek repossession and sale of the property
257 securing the title loan;

258 (2) the title lender may not pursue the borrower personally for:

259 (a) repayment of the loan; or

260 (b) any deficiency after repossession and sale of the property securing the loan; and

261 (3) after repossession and sale of the property securing the title loan, the title lender
262 shall return to the borrower any proceeds from the sale in excess of the amount owed on the
263 title loan.

264 Section 10. Section **7-24-301** is enacted to read:

265 **Part 3. Enforcement**

266 **7-24-301. Enforcement by department -- Rulemaking.**

267 Subject to the requirements of Title 63, Chapter 46b, Administrative Procedures Act,
268 the department may:

269 (1) (a) receive and act on complaints;

270 (b) take action designed to obtain voluntary compliance with this chapter; or

271 (c) commence administrative or judicial proceedings on its own initiative to enforce
272 compliance with this chapter;

273 (2) counsel persons and groups on their rights and duties under this chapter;

- 274 (3) make rules to:
275 (a) restrict or prohibit lending or servicing practices that are misleading, unfair, or
276 abusive;
277 (b) promote or assure fair and full disclosure of the terms and conditions of agreements
278 and communications between title lenders and customers; or
279 (c) promote or assure uniform application of or to resolve ambiguities in applicable
280 state or federal laws or federal regulations; and
281 (4) employ hearing examiners, clerks, and other employees and agents as necessary to
282 perform the department's duties under this chapter.

283 Section 11. Section **7-24-302** is enacted to read:

284 **7-24-302. Examination of books, accounts, and records by the department.**

- 285 (1) The department may examine the books, accounts, and records of a title lender and
286 may make investigations to determine compliance with this chapter.
287 (2) In accordance with Section 7-1-401, a title lender shall pay a fee for an examination
288 conducted under Subsection (1).

289 Section 12. Section **7-24-303** is enacted to read:

290 **7-24-303. Penalties.**

- 291 (1) A person who violates this chapter or who files materially false information with a
292 registration or renewal under Section 7-24-201 is:
293 (a) guilty of a class B misdemeanor; and
294 (b) subject to revocation of a person's registration under this chapter.
295 (2) Subject to Title 63, Chapter 46b, Administrative Procedures Act, if the department
296 determines that a person is extending title loans in violation of this chapter, the department
297 may:
298 (a) revoke that person's registration under this chapter;
299 (b) issue a cease and desist order from committing any further violations; or
300 (c) prohibit the person from continuing to extend title loans.
301 (3) A person is not subject to the penalties under this section for a violation of this
302 chapter that was not willful or intentional, including a violation resulting from a clerical error.

303 Section 13. Section **7-24-304** is enacted to read:

304 **7-24-304. Civil liability.**

305 Nothing in this chapter is intended to limit any civil liability that may exist against a
306 title lender for:

- 307 (1) breach of contract;
- 308 (2) violation of federal law; or
- 309 (3) other unlawful act.

310 Section 14. Section **7-24-305** is enacted to read:

311 **7-24-305. Exemptions.**

312 The following are not subject to the requirements of this chapter:

- 313 (1) a depository institution;
- 314 (2) a depository institution holding company; or
- 315 (3) an institution directly or indirectly owned or controlled by one or more:
 - 316 (a) depository institutions; or
 - 317 (b) depository institution holding companies.