

**REGULATIONS OF CHECK CASHERS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Ed P. Mayne**

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**This act modifies the Check Cashing Registration Act by requiring deferred deposit lenders to allow borrowers to make partial payments or to rescind the loan by the next business day, applying certain provisions to deferred deposit loans extended through the Internet, and requiring additional disclosures. The act prohibits a deferred deposit lender from threatening to use or using the criminal process to collect a loan, and requires the Department of Financial Institutions to examine every check casher at least once every year. The act makes technical changes.**

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

AMENDS:

**7-23-103**, as enacted by Chapter 144, Laws of Utah 1999

**7-23-105**, as enacted by Chapter 144, Laws of Utah 1999

**7-23-106**, as enacted by Chapter 144, Laws of Utah 1999

**7-23-107**, as enacted by Chapter 144, Laws of Utah 1999

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

Section 1. Section **7-23-103** is amended to read:

**7-23-103. Registration -- Rulemaking.**

(1) (a) It is unlawful for a person to engage in the business of a check casher in Utah or with a Utah resident unless the person:

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

(b) It is unlawful for a person to operate a mobile facility in this state to engage in the business of a check casher.

(c) Notwithstanding Subsection (1)(a), a person that is engaged in the business of a check casher in this state on May 3, 1999, is not required to be registered under this section

until July 1, 1999.

(2) (a) A registration and a renewal of a registration expires on [~~January 31~~] April 30 of each year unless on or before that date the person renews the registration.

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

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

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

(2)(d).

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

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

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

(2)(d).

(d) A registration or renewal statement shall state:

(i) the name of the person;

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

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

(iv) the addresses of all offices in this state at which the person conducts the business of a check casher;

(v) if the person conducts the business of a check casher in this state but does not maintain an office in this state, a brief description of the manner in which the business is conducted;

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

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

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

(3) If the information in a registration or renewal statement required under Subsection (2)

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

- (a) that person is required to renew the registration; or
- (b) the department specifically requests earlier notification.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department may make rules consistent with this section providing for the form, content, and filing of a registration and renewal statement.

Section 2. Section **7-23-105** is amended to read:

**7-23-105. Operational requirements for deferred deposit loans.**

(1) If a check casher extends a deferred deposit loan, the check casher shall:

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

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

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

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

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

(c) conspicuously disclose in the written contract that, under Subsection (4)(b), the deferred deposit loan may not be rolled over beyond 12 weeks after the day on which the deferred deposit loan is executed;

~~(d)~~ (d) provide the person seeking the deferred deposit loan a copy of the deferred deposit contract;

~~(e)~~ (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; ~~and~~

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

(iii) the fact that the deferred deposit loan may not be rolled over beyond 12 weeks after

the day on which the deferred deposit loan is executed; and

~~[(e)]~~ (f) comply with:

- (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et. seq.;
- (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691; and
- (iii) Title 70C, Utah Consumer Credit Code.

(2) If a check casher extends a deferred deposit loan through the Internet or other electronic means, the check casher shall provide the information described in Subsection (1)(a) to the person receiving the deferred deposit loan in a conspicuous manner prior to the completion of the deferred deposit loan.

~~[(2)]~~ (3) A check casher that engages in a deferred deposit loan ~~[may not]~~ shall permit a person receiving a deferred deposit loan to:

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

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

(4) A check casher that engages in a deferred deposit loan may not:

(a) collect additional interest on a deferred deposit loan with an outstanding principal balance 12 weeks after the day on which the deferred deposit loan is executed;

(b) rollover a deferred deposit loan if the rollover requires a person to pay the amount owed by the person under a deferred deposit loan in whole or in part more than 12 weeks from the day on which the deferred deposit loan is first executed[-]; or

(c) threaten to use or use the criminal process in any state to collect on the deferred deposit loan.

(5) Notwithstanding Subsections (4)(a) and (4)(c), a check casher that is the holder of a check, draft, order, or other instrument that has been dishonored may use the remedies and notice procedures provided in Title 7, Chapter 15, Dishonored Instruments.

Section 3. Section **7-23-106** is amended to read:

**7-23-106. Enforcement by department -- Rulemaking.**

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

- (1) (a) receive and act on complaints;
- (b) take action designed to obtain voluntary compliance with this chapter; ~~or~~
- (c) commence administrative or judicial proceedings on its own initiative to enforce compliance with this chapter; or
  - (d) take action against any check casher that fails to:
    - (i) respond to the department, in writing within 30 days, to a complaint; or
    - (ii) submit information as requested by the department;
- (2) counsel persons and groups on their rights and duties under this chapter;
- (3) make rules to:
  - (a) restrict or prohibit lending or servicing practices that are misleading, unfair, or abusive;
  - (b) promote or assure fair and full disclosure of the terms and conditions of agreements and communications between check cashers and customers; or
  - (c) promote or assure uniform application of or to resolve ambiguities in applicable state or federal laws or federal regulations; and
  - (4) employ hearing examiners, clerks, and other employees and agents as necessary to perform its duties under this chapter.

Section 4. Section **7-23-107** is amended to read:

**7-23-107. Examination of books, accounts, and records by the department.**

- (1) ~~[The department may]~~ At least once every calendar year the department shall, for each premise engaging in the business of a check casher:
  - (a) examine the books, accounts, and records [of a check casher]; and [may]
  - (b) make investigations to determine compliance with this chapter.
- (2) In accordance with Section 7-1-401, the ~~[department may charge fees]~~ check casher

shall pay a fee for an examination conducted under Subsection (1).