

1 **DEFERRED DEPOSIT LENDING AMENDMENTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Ron Allen**

5

LONG TITLE

6 **General Description:**

7 This bill modifies the Check Cashing Registration Act to address provisions related to
8 deferred deposit loans.
9

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ requires disclosure of annual percentage rate in advertisements;
- 14 ▶ requires disclosure of interest and fee schedule in the written contract;
- 15 ▶ establishes a cap on interest and fees;
- 16 ▶ limits the number of loans a check casher may extend at any one time to one person;
- 17 ▶ limits the amount of a deferred deposit loan based on the borrower's monthly gross
18 income;
- 19 ▶ prohibits certain provisions or waivers being a condition for extending a deferred
20 deposit loan;
- 21 ▶ provides for civil action; and
- 22 ▶ makes technical changes.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 7-23-102, as last amended by Chapter 236, Laws of Utah 2003

30 7-23-105, as last amended by Chapter 69, Laws of Utah 2003

31 ENACTS:

32 7-23-111, Utah Code Annotated 1953



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

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

36 **7-23-102. Definitions.**

37 As used in this chapter:

38 (1) (a) "Advertisement" means any written, oral, or graphic statement or representation
39 made by a check casher in connection with the solicitation of business.

40 (b) "Advertisement" includes communication by:

41 (i) television systems;

42 (ii) radio;

43 (iii) printed brochures;

44 (iv) newspapers;

45 (v) leaflets;

46 (vi) flyers;

47 (vii) circulars;

48 (viii) billboards;

49 (ix) banners; or

50 (x) signs.

51 (c) "Advertisement" does not include any oral, in person representation made to a
52 person seeking:

53 (i) to cash a check; or

54 (ii) a deferred deposit loan.

55 [(+) (2) "Business of a check casher" means:

56 (a) cashing a check for consideration; or

57 (b) extending a deferred deposit loan.

58 [(2) (3) "Check" is as defined in Section 70A-3-104.

59 [~~(3)~~] (4) "Check casher" means a person that engages in the business of a check casher.

60 [~~(4)~~] (5) "Deferred deposit loan" means a transaction where:

61 (a) a person:

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

63 (ii) provides written or electronic authorization to a check casher to effect a debit from
64 that person's account using an electronic payment; and

65 (b) the check casher:

66 (i) provides the maker an amount of money that is equal to the face value of the check
67 or the amount of the debit less any fee or interest charged for the transaction; and

68 (ii) agrees not to cash the check or process the debit until a specific date.

69 [~~(5)~~] (6) (a) "Electronic payment" means any electronic method by which a check
70 casher:

71 (i) accepts a payment from a person; or

72 (ii) makes a payment to a person.

73 (b) "Electronic payment" includes a payment made through:

74 (i) an automated clearing house transaction;

75 (ii) an electronic check;

76 (iii) a stored value card; or

77 (iv) an Internet transfer.

78 (7) (a) "Fee" means any money or other consideration, other than interest, that is paid
79 or promised to be paid for a deferred deposit loan.

80 (b) "Fee" includes:

81 (i) charges;

82 (ii) costs; or

83 (iii) expenses.

84 [~~(6)~~] (8) "Rollover" means the extension or renewal of the term of a deferred deposit
85 loan.

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

87 **7-23-105. Operational requirements for deferred deposit loans.**

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

89 (a) post in a conspicuous location on its premises that can be viewed by a person

90 seeking a deferred deposit loan:

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

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

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

97 (b) if an advertisement for a deferred deposit loan states the amount of any payment or
98 fee, state in the advertisement the amount of the payment or fee expressed as an annual
99 percentage rate:

100 (i) assuming a \$300 loan for a period of 14 days; and

101 (ii) (A) printed in the same font size as the majority of the text in the advertisement; or

102 (B) if there is no text in the advertisement, spoken so it may be easily understood;

103 [~~(b)~~] (c) enter into a written contract for the deferred deposit loan;

104 [~~(c)~~] (d) conspicuously disclose in the written contract[;];

105 (i) the information described in Subsection (1)(a)(i); and

106 (ii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over
107 beyond 12 weeks after the day on which the deferred deposit loan is executed;

108 [~~(d)~~] (e) provide the person seeking the deferred deposit loan a copy of the deferred
109 deposit contract;

110 [~~(e)~~] (f) orally review with the person seeking the deferred deposit loan the terms of the
111 deferred deposit loan including:

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

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

114 (iii) the fact that the deferred deposit loan may not be rolled over beyond 12 weeks
115 after the day on which the deferred deposit loan is executed; and

116 [~~(f)~~] (g) comply with:

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

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

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

120 (2) If a check casher extends a deferred deposit loan through the Internet or other

121 electronic means, the check casher shall provide the information described in Subsection (1)(a)
122 to the person receiving the deferred deposit loan in a conspicuous manner prior to the
123 completion of the deferred deposit loan.

124 (3) A check casher that engages in a deferred deposit loan shall permit a person
125 receiving a deferred deposit loan to:

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

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

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

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

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

138 (c) threaten to use or use the criminal process in any state to collect on the deferred
139 deposit loan[-];

140 (d) extend a deferred deposit loan if the total of all interest and fees in connection with
141 the deferred deposit loan equals or exceeds an annual percentage rate of 525%;

142 (e) have more than two deferred deposit loans extended to a person at any one time;

143 (f) extend a deferred deposit loan to a person in an amount that exceeds 25% of that
144 person's monthly gross income; or

145 (g) require as a condition for extending a deferred deposit loan:

146 (i) a promise by the person seeking the deferred deposit loan to hold the check casher
147 harmless;

148 (ii) a confession of judgment by the person seeking the deferred deposit loan;

149 (iii) an assignment or order for payment of wages or other compensation due the
150 person seeking the deferred deposit loan;

151 (iv) a waiver of the right to a jury trial, if applicable, in any action brought by or

152 against the person seeking the deferred deposit loan;

153 (v) an agreement to comply with a mandatory arbitration clause;

154 (vi) a waiver of any claim or defense arising out of the extension of the deferred

155 deposit loan;

156 (vii) a waiver of the right to have a court other than a small claims court decide an

157 action brought by or against the person seeking the deferred deposit loan;

158 (viii) a waiver of the right to serve in a representative capacity in an action including

159 as:

160 (A) a private attorney general; or

161 (B) parens patriae;

162 (ix) a waiver of the right to participate as a member of a class of claimants; or

163 (x) a waiver of any provision of this chapter.

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

167 Section 3. Section **7-23-111** is enacted to read:

168 **7-23-111. Civil action.**

169 (1) A check casher that violates this chapter when extending a deferred deposit loan is
170 liable:

171 (a) for each violation of the chapter related to the deferred deposit loan;

172 (b) to the person seeking the deferred deposit loan; and

173 (c) for the sum of:

174 (i) the greater of:

175 (A) actual damages; or

176 (B) \$500;

177 (ii) court costs; and

178 (iii) reasonable attorney fees.

179 (2) A person seeking a deferred deposit loan who is described in Subsection (1) may
180 bring a civil action in a court of competent jurisdiction to collect the amount owed under
181 Subsection (1).

Legislative Review Note

as of 1-8-04 9:44 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0037

Defferred Deposit Lending Aemndments

19-Jan-04

2:41 PM

State Impact

Any fiscal impact can be handled within existing budgets.

Individual and Business Impact

Costs to businesses and savings to consumers would be minimal.

Office of the Legislative Fiscal Analyst