

# HB0066S01 compared with HB0066

~~{deleted text}~~ shows text that was in HB0066 but was deleted in HB0066S01.

inserted text shows text that was not in HB0066 but was inserted into HB0066S01.

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Representative Bradley M. Daw proposes the following substitute bill:

## DEFERRED DEPOSIT LENDING AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley M. Daw**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill modifies the Check Cashing and Deferred Deposit Lending Registration Act to address ~~{the establishment of a database to determine eligibility for deferred deposit loans and to address }~~reporting ~~{ and }~~ registration related to deferred deposit loans and implementation of a statewide technology system.

#### Highlighted Provisions:

This bill:

- ▶ modifies definition provisions;
- ▶ addresses reporting requirements for deferred deposit lenders;
- ▶ makes void a deferred deposit loan issued by a person required to be registered but who is not registered under the chapter;

~~{ → imposes requirements related to querying the database to determine ineligibility to~~

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- ~~receive a deferred deposit loan;~~
- ‡
  - imposes requirements related to the commissioner's annual report;
  - ~~{establishes what constitutes ineligibility to obtain a deferred deposit loan and addresses the amount of a loan;~~
- ~~creates the Deferred Deposit Lending Database Program, which includes the creation of the Deferred Deposit Lending Database;~~
- ~~permits the department to contract with a third party to establish and maintain the database;~~ requires the implementation of a statewide technology system;
  - addresses various requirements related to the operation of the ~~{database}~~ statewide technology system;
  - grants rulemaking authority;‡
- ~~addresses civil and criminal remedies for violation of part;~~
- ~~provides for the process to make a query to the database, including the payment of a fee;~~‡ and
  - makes technical and conforming amendments.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

7-23-102, as last amended by Laws of Utah 2008, Chapter 96

7-23-201, as last amended by Laws of Utah 2010, Chapter 102

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

‡ 7-23-503, as enacted by Laws of Utah 2008, Chapter 96

#### ENACTS:

7-23-601, Utah Code Annotated 1953

7-23-602, Utah Code Annotated 1953

7-23-603, Utah Code Annotated 1953

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

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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.

~~[(1)]~~ (2) "Business of cashing checks" means cashing a check for consideration.

~~[(2)]~~ (3) "Business of deferred deposit lending" means extending a deferred deposit loan.

~~[(3)]~~ (4) "Check" is as defined in Section 70A-3-104.

~~[(4)]~~ (5) "Check casher" means a person that engages in the business of cashing checks.

~~{~~ ~~(6) "Database" means the Deferred Deposit Lender Database created in Section 7-23-602.~~

~~\_\_\_\_\_~~ ~~(7) "Database provider" means:~~

~~\_\_\_\_\_~~ ~~(a) the department; or~~

~~\_\_\_\_\_~~ ~~(b) a third party with which the department contracts as provided in Section 7-23-602.~~

~~†~~ ~~[(5)]~~ ~~[(8)]~~ (6) "Deferred deposit lender" means a person that engages in the business of deferred deposit lending.

~~[(6)]~~ ~~[(9)]~~ (7) (a) "Deferred deposit loan" means a transaction where:

~~[(a)]~~ (i) a person:

~~[(i)]~~ (A) presents to a deferred deposit lender a check written on that person's account;

or

~~[(ii)]~~ (B) 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)]~~ (ii) the deferred deposit lender:

~~[(i)]~~ (A) provides the person described in Subsection ~~[(6)]~~ ~~[(9)]~~ (7)(a)(i) 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)]~~ (B) agrees not to cash the check or process the debit until a specific date.

(b) "Deferred deposit loan" includes:

(i) an agreement that through the automated clearing house the deferred deposit lender may debit the account of the person seeking a loan;

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(ii) a person presenting a physical check written on the person's account that the deferred deposit lender agrees to cash at a later date; or

(iii) an agreement to garnish the wages of the person seeking a loan.

~~(7)~~ ~~(10)~~ ~~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;

(ii) an electronic check;

(iii) a stored value card; or

(iv) an Internet transfer.

~~{ (11) "Ineligible" means that a person is not eligible to obtain a deferred deposit loan under Section 7-23-601.~~

~~‡~~ ~~(8)~~ ~~(12)~~ ~~9~~ "Rollover" means the extension or renewal of the term of a deferred deposit loan.

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

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

(1) (a) It is unlawful for a person to engage in the business of cashing checks or the business of deferred deposit lending 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:

(i) cashing checks; or

(ii) deferred deposit lending.

(2) (a) A registration and a renewal of a registration expires on 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).

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- (c) To renew a registration under this section, a person shall:
  - (i) pay the annual fee established under Subsection 7-1-401(5);
  - (ii) submit a renewal statement containing the information described in Subsection (2)(d); and
  - (iii) if the person engages in the business of deferred deposit lending, submit an operations statement containing the information described in Subsection (2)(e).
- (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) cashing checks; or
    - (B) deferred deposit lending;
  - (v) if the person conducts the business of cashing checks or the business of deferred deposit lending 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.
- (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 deferred deposit loan amount that the deferred deposit lender extended;
  - (ii) the average number of days a deferred deposit loan is extended by the deferred deposit lender before the deferred deposit loan is paid in full;
  - (iii) of the deferred deposit loans that are paid in full 10 weeks or sooner after the day

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on which the deferred deposit loan is executed, the average number of days a deferred deposit loan is extended by the deferred deposit lender before the deferred deposit loan is paid in full;

~~[(iv) the minimum and maximum amount of interest or fees charged by the deferred deposit lender for a deferred deposit loan:]~~

~~[(A) of \$100; and]~~

~~[(B) extended for one week;]~~

~~(v)~~ (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);

~~(vi)~~ (v) the percentage of deferred deposit loans extended by the deferred deposit lender that are not paid in full by 10 weeks after the day on which the deferred deposit loan is executed; ~~and]~~

(vi) the total dollar amount of deferred deposit loans that are not paid in full by 10 weeks after the day on which the deferred deposit loans are executed;

(vii) 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[-];

(viii) the total number of deferred deposit loans the deferred deposit lender extended;

(ix) the total dollar amount of deferred deposit loans extended by the deferred deposit lender;

(x) the total number of individuals to whom the deferred deposit lender extended a deferred deposit loan;

(xi) the range of annual percentage rates charged on deferred deposit loans extended by the deferred deposit lender; and

(xii) the average annual percentage rate charged on a deferred deposit loan extended by the deferred deposit lender.

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

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

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

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

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

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

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

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

(i) \$500 if the person:

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

(I) cashing checks; or

(II) deferred deposit lending; or

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

(I) cashing checks; or

(II) deferred deposit lending; or

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

(A) cashing checks; or

(B) deferred deposit lending.

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

(5) If the information in a registration, renewal, or operations 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.

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

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

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

(7) A deferred deposit loan that is made by a person who is required to be registered

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under this chapter but who is not registered is void, and the person may not collect, receive, or retain any principal or other interest or fees in connection with the deferred deposit loan.

Section 3. Section ~~{7-23-401}~~7-23-503 is amended to read:

~~{~~ ~~7-23-401. Operational requirements for deferred deposit loans.~~

~~—— (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit lender 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;~~

~~—— (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 deferred deposit lender 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:~~

~~—— (i) 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;~~

~~—— (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~~

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- ~~—— (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~~

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- ~~—— (iv) Title 70C, Utah Consumer Credit Code[.], and~~
- ~~—— (g) on and after October 1, 2012, before extending a deferred deposit loan, query the database to determine if the person seeking the deferred deposit loan is ineligible under Section 7-23-601.~~
- ~~—— (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~~
  - ~~—— (b) prior to the person entering into the deferred deposit loan.~~~~
- ~~—— (3) A deferred deposit lender that engages in a deferred deposit loan 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 deferred deposit lender on or before 5 p.m. the next business day following the deferred deposit loan transaction.~~~~
- ~~—— (4) A deferred deposit lender that engages in a deferred deposit loan may not:
  - ~~—— (a) collect additional interest on a deferred deposit loan with an outstanding principal balance 10 weeks after the day on which the deferred deposit loan is executed;~~
  - ~~—— (b) roll over a deferred deposit loan without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan;~~
  - ~~—— (c) roll over 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 10 weeks from the day on which the deferred deposit loan is first executed;~~
  - ~~—— (d) extend a new deferred deposit loan to a person on the same business day that the person makes a payment on another deferred deposit loan if the payment:
    - ~~—— (i) is made at least 10 weeks after the day on which that deferred deposit loan is extended; and~~
    - ~~—— (ii) results in the principal of that deferred deposit loan being paid in full;~~~~
  - ~~—— (e) threaten to use or use the criminal process in any state to collect on the deferred~~~~

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deposit loan; or

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

~~—— (5) Notwithstanding Subsections (4)(a) and (c), 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) On and after October 1, 2012, a deferred deposit lender may not extend a deferred deposit loan to a person who, on the basis of a query to the database required by Subsection (1)(g), is ineligible.~~

~~—— (b) A deferred deposit lender shall keep a record of a query made under Subsection (1)(g) in accordance with rules made by the department pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~—— Section 4. Section 7-23-503 is amended to read:~~

### ~~‡~~ **7-23-503. Reporting by commissioner.**

(1) Subject to Subsection (2), as part of the commissioner's annual report to the governor and Legislature under Section 7-1-211, the commissioner shall report to the governor and Legislature on ~~‡~~

~~—— (a) ‡ the operations on an aggregate basis of deferred deposit lenders operating in the state ~~{‡}~~. ~~{‡}~~; and~~

~~—— (b) the information required to be reported under Section 7-23-602.‡~~

(2) In preparing the report required by Subsection (1), the commissioner:

(a) shall include in the report for the immediately preceding calendar year aggregate information from the one or more operations statements filed under Subsection 7-23-201(2)(e) by deferred deposit lenders for that calendar year; ~~[and]~~

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(b) for the information reported under Subsection (2)(a), determine the information to be reported in accordance with Subsection (3);

~~— (c) shall include the information required under Section 7-23-602;~~ and

~~[(b)]~~ ~~(f)(d)(c)~~ may not include in the report information from an operations statement filed with the department ~~{ or the database }~~ that could identify a specific deferred deposit lender.

(3) (a) By rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall develop a method by which the department reports the information collected under Subsection 7-23-201(2)(e) in a manner that the department determines most accurately reports the information on a statewide basis after taking into consideration the different volume of deferred deposit loans extended by the different deferred deposit lenders providing the information collected under Subsection 7-23-201(2)(e).

(b) To comply with Subsection (3)(a), the department may create two or more categories of deferred deposit lenders providing the information collected under Subsection 7-23-201(2)(e) by:

- (i) volume of deferred deposit loans extended by the different deferred deposit lenders;
- (ii) dollar amount of deferred deposit loans extended; or
- (iii) other category.

Section ~~{5}~~4. Section 7-23-601 is enacted to read:

**Part 6. ~~{Deferred Deposit Lending Database Program}~~ Statewide Technology System  
7-23-601. ~~{Ineligibility to obtain}~~ Commissioner to develop and implement statewide technology system.**

(1) By no later than July 1, 2012, the commissioner shall develop and implement a statewide technology system that meets the requirements of this part. The commissioner may contract in accordance with Title 63G, Chapter 6, Utah Procurement Code, with a service provider to establish or maintain the statewide technology system.

(2) The commissioner, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may specify the form and contents of the statewide technology system, but shall at a minimum ensure that the data entered into or stored by the statewide technology system:

- (a) gathers the following data about a person seeking or rolling over a deferred deposit

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loan:

~~(1) On and after October 1, 2012, a person is ineligible to obtain~~ i) whether the person has an outstanding deferred deposit loan;

(ii) the number of deferred deposit loans the person has outstanding, if any;

(iii) the total borrowed amount the consumer has outstanding statewide;

(iv) whether the person is rolling over a deferred deposit loan ~~if the person owes \$500 or more in the aggregate in principal for one or more~~; and

(v) the number of times the person rolls over the same deferred deposit loans subject to this chapter that are not closed at the time the person applies for a new deferred deposit loan.

~~(2) If the person seeking a deferred deposit loan is not ineligible under Subsection (1),~~ loan;

(b) is accessible to and usable by a deferred deposit lender ~~may extend a deferred deposit loan to that person in any amount to which both parties agree.~~

~~Section 6~~ and the commissioner through electronic means; and

(c) is secured against public disclosure, tampering, theft, or unauthorized acquisition or use.

(3) The data gathered under the statewide technology system is not subject to public disclosure, is not a record for purposes of Title 63G, Chapter 2, Government Records Access and Management Act, and is not subject to discovery, subpoena, or other compulsory process except in an action brought under this chapter.

(4) The commission shall by rule establish requirements for the retention, archiving, and deletion of data entered into or stored by the statewide technology system.

Section 5. Section 7-23-602 is enacted to read:

7-23-602. Deferred ~~{Deposit Lending Database Program:~~

~~(1) (a) There is created the Deferred Deposit Lending Database Program to establish a Deferred Deposit Lending Database to verify whether under Section 7-23-601 a person is ineligible to obtain a deferred deposit loan;~~

~~(b) The program shall be administered by the department to implement by October 1, 2012, a common database with real-time access by deferred~~ deposit lenders ~~{through an Internet connection or other electronic means;~~

~~(c) The database shall be accessible to the department and~~ to enter data -- Fees --

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### Use of data.

(1) Once the statewide technology system is implemented, a deferred deposit lender }to verify the aggregate amount owed on deferred deposit loans outstanding for a particular person:

—— (d) (i) The department may contract in accordance with Title 63G, Chapter 6, Utah Procurement Code, with a third party to establish and maintain the database for the purpose of determining whether under Section 7-23-601 a person is ineligible to obtain a deferred deposit loan:

—— (ii) If the department contracts with a third party, }subject to this chapter shall enter into the statewide technology system the data that is required by the commissioner {shall:

—— (A) ensure that the third party provider selected as the database provider operates the database pursuant to this part:

—— (B) consider cost of service and ability to meet the requirements of this part; and

—— (C) ensure that the third party provider can provide accurate and secure receipt, transmission, and storage of data:

—— (iii) The contract may not obligate the department to pay a third party database provider more money than is paid in fees collected under Subsection 7-23-603(2):

—— (iv) A third party database provider under contract under this section is the department's designated agent, and shall develop and maintain the database from the information provided by deferred deposit lenders:

—— (e) A designated agent shall use the data collected under this part only as prescribed in this part and the contract with the department and for no other purpose:

—— (f) The department shall investigate violations of and enforce this part. The department may not delegate its responsibilities under this Subsection (1)(f):

—— (2) The department shall establish guidelines to be followed by the designated agent so that:

—— (a) a deferred deposit lender can efficiently:

—— (i) report information to the database under Subsection (3); and

—— (ii) access the database under Section 7-23-603; and

—— (b) the designated agent complies with any applicable federal and state laws to prevent identity theft:

—— (3) The department shall }by rule made in accordance with Title 63G, Chapter 3, Utah

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Administrative Rulemaking Act; ~~provide:~~

~~— (a) for the reporting by;~~ The deferred deposit lender shall enter the data at the time of entering into the deferred deposit loan on each deferred deposit loan transaction entered into after the date of implementation.

(2) A service provider with whom the commissioner contracts under Subsection 7-23-601(1) may charge a deferred deposit lender ~~to the database the information required to determine ineligibility under Section 7-23-601;~~

~~— (b) that when the database provider receives notification that~~ one or more fees to access or use the statewide technology system:

(a) in an amount that the commissioner approves by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) except that in no event may the aggregate of fees exceed \$1 for a deferred deposit loan ~~is closed, the database provider shall designate the }transaction{ as closed in the database immediately, but in no event after 11:59 p.m. on the day the database provider receives the notification;~~

~~— (c) that data on a deferred deposit loan in the database be archived one year after the deferred deposit loan is closed unless needed for a pending enforcement or legal action;~~

~~— (d) that any identifying information for a person who had a deferred deposit loan be deleted from the database when data is archived;~~

~~— (e) that data about a deferred deposit loan in the database be deleted from the archive of the database the later of:~~

~~— (i) three years after the deferred deposit loan is closed; or~~

~~— (ii) if an administrative, legal, or law enforcement action is pending, three years after the administrative, legal, or law enforcement action is completed; and~~

~~— (f) for the database provider to establish and maintain a process for responding to queries that due to technical difficulties the deferred deposit lender cannot access through the Internet or other electronic means;~~

~~— (4) If the department contracts with a third party provider, the department:~~

~~— (a) may maintain access to data in the database, including transactions archived under Subsection (3) for examination, investigation, or legislative or policy review; and~~

~~— (b) may not obtain or access a Social Security number, driver license number, or other~~

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~~state-issued identification number in the database except as provided in this Subsection (4):~~

~~—— (5) A deferred deposit lender violates this chapter if the deferred deposit lender knowingly or with reckless disregard:~~

~~—— (a) fails to report information required to be reported under Subsection (3); or~~

~~—— (b) reports inaccurate information required to be reported under Subsection (3):~~

~~—— (6) (a) Information regarding a person's transactional history provided to, maintained in, or accessed from the database is confidential and, except as provided in Subsection (6)(b):~~

~~—— (i) is not subject to discovery, subpoena, or similar compulsory process in any civil, judicial, administrative, or legislative proceeding;~~

~~—— (ii) a person with lawful access to the information may not be compelled to testify with regard to the information; and~~

~~—— (iii) is not subject to Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~—— (b) The restrictions of Subsections (6)(a)(i) and (ii) do not apply to a civil, judicial, or administrative action brought to enforce this chapter.~~

~~—— (7) A person who knowingly engages in the following is guilty of a third degree felony:~~

~~—— (a) places false information on the database; or~~

~~—— (b) releases or discloses information from the database for a purpose other than those authorized in this part or to a person who is not entitled to the information.~~

~~—— (8) A person injured by a designated agent's violation of this part may maintain a civil cause of action against the designated agent and may recover actual damages plus reasonable attorney fees and court costs.~~

~~—— (9) The state is not liable to any person for gathering, managing, or using the information in the database.~~

~~—— (10) The department shall include in the report required under }.~~

(3) The commissioner shall use the data gathered under this part to streamline the examination process under Section 7-23-503 { aggregate information regarding the number of times in a calendar year a person is found ineligible after a query by a deferred deposit lender.

~~—— (11) (a) A deferred deposit lender shall notify the database provider if it stops extending deferred deposit loans.~~

~~—— (b) If a deferred deposit lender stops providing deferred deposit loans, the database~~

## HB0066S01 compared with HB0066

~~provider shall designate all open transactions with that deferred deposit lender closed in the database 60 days after the date the deferred deposit lender stops offering deferred deposit loans; unless the deferred deposit lender reports to the database provider before the expiration of the 60-day period which of its transactions remain open and the specific reason each transaction remains open.~~

~~—— (c) A deferred deposit lender that no longer extends deferred deposit loans shall provide to the commissioner a reasonably acceptable plan that outlines how the deferred deposit lender will continue to update the database after it stops offering deferred deposit loans. The commissioner shall promptly approve or disapprove the plan and immediately notify the deferred deposit lender of the decision. If the plan is disapproved, the deferred deposit lender may submit a new plan or may submit a modified plan for the deferred deposit lender to follow.~~

~~—— (d) If at any time the commissioner reasonably determines that a deferred deposit lender that has stopped offering deferred deposit loans is not updating the database in accordance with its approved plan, the commissioner shall instruct the database provider to immediately close all remaining open transactions of that deferred deposit lender}.~~

Section ~~{7}~~6. Section 7-23-603 is enacted to read:

### 7-23-603. Query to database.

~~—— (1) On and after October 1, 2012, before extending a deferred deposit loan, a deferred deposit lender shall query the database to determine if the person seeking the deferred deposit loan is ineligible.~~

~~—— (2) The database provider may collect a fee from a deferred deposit lender that is established by the department and that does not exceed \$1 for a query to the database that results in the making of a deferred deposit loan.~~

~~—— (3) In response to a query by a deferred deposit lender under Subsection (1), the database shall state whether a person is ineligible.~~

~~—— (4) (a) If in response to a query by a deferred deposit lender the database states that a person is ineligible, the deferred deposit lender shall:~~

~~—— (i) inform the person that the person is ineligible; and~~

~~—— (ii) explain that the person may ask the database provider regarding the specific details of why the person is ineligible.~~

~~—— (b) Only a person found ineligible to obtain a deferred deposit loan may make a~~

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~~direct inquiry to the database provider to request a more detailed explanation of a particular transaction that was the basis for the ineligibility determination:~~

~~(5) If a deferred deposit lender accurately and promptly submits data to the database as required under Section 7-23-602, a deferred deposit lender may rely on the database, and may not be held liable if the information in the database is inaccurate:~~

### Legislative Review Note

~~as of 1-12-12 9:42 AM~~

### Office of Legislative Research and General Counsel Reporting to Legislature.

Beginning July 1, 2013, the commissioner shall annually by July 1 of each year issue a report to the Legislature regarding the implementation of the statewide technology system and the data obtained from the statewide technology system on an aggregate basis.