

## HB0066S02 compared with HB0066S01

~~{deleted text}~~ shows text that was in HB0066S01 but was deleted in HB0066S02.

inserted text shows text that was not in HB0066S01 but was inserted into HB0066S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

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 reporting, 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 the commissioner's annual report;

} ▶ requires the implementation of a statewide technology system;

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- ▶ addresses various requirements related to the operation of the statewide technology system;
- ▶ grants rulemaking authority; 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

~~{ 7-23-503, 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:*

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 cashier" means a person that engages in the business of cashing checks.

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

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~~[(6)] (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)] (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;~~

~~(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)~~ ~~(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.

~~(8)~~ ~~(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:

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- (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).

(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;

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 rescinded by the deferred deposit lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);

(vi) the number 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;

~~[(vi)]~~ (vii) 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)]~~ (viii) the total dollar amount 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 loans are executed;

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~~(vii)~~ (ix) 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)~~ x the total number of deferred deposit loans the deferred deposit lender extended;

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

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

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

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

(xv) the number of deferred deposit loans that are carried to the end of the 10th week after the day on which the deferred deposit loans are executed; and

(xvi) the total dollar amount of deferred deposit loans that are carried to the end of the 10th week after the day on which the deferred deposit loans are executed.

(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;

(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:

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(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 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 ~~{7-23-503}~~7-23-601 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 the operations on an aggregate basis of deferred deposit lenders operating in~~

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~~the state:~~

- ~~—— (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]~~
- ~~—— (b) for the information reported under Subsection (2)(a), determine the information to be reported in accordance with Subsection (3); and~~
- ~~—— [(b)] (c) may not include in the report information from an operations statement filed with the department 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 4. Section 7-23-601 is enacted to read:~~

~~†~~enacted to read:

### **Part 6. Statewide Technology System**

#### **7-23-601. Commissioner to develop and implement statewide technology system.**

(1) By no later than ~~July~~October 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

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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 loan:

- (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; and
- (v) the number of times the person rolls over the same deferred deposit loan;

(b) is accessible to and usable by a deferred deposit lender 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 ~~commissioner~~ commissioner shall by rule establish requirements for the retention, archiving, and deletion of data entered into or stored by the statewide technology system.

Section ~~7-23-4~~4. Section 7-23-602 is enacted to read:

### **7-23-602. Deferred deposit lenders to enter data -- Fees -- Use of data.**

(1) Once the statewide technology system is implemented, a deferred deposit lender subject to this chapter shall enter into the statewide technology system the data that is required by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. 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 one or more fees to access or use the statewide technology system:

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(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 transaction.

(3) The commissioner shall use the data gathered under this part to streamline the examination process under Section 7-23-503.

Section ~~6~~5. Section 7-23-603 is enacted to read:

### **7-23-603. Reporting to Legislature.**

Beginning ~~July~~October 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.