

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: _____

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;
- ▶ 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



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 7-23-102, as last amended by Laws of Utah 2008, Chapter 96

31 7-23-201, as last amended by Laws of Utah 2010, Chapter 102

32 7-23-503, as enacted by Laws of Utah 2008, Chapter 96

33 ENACTS:

34 7-23-601, Utah Code Annotated 1953

35 7-23-602, Utah Code Annotated 1953

36 7-23-603, Utah Code Annotated 1953



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

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

40 **7-23-102. Definitions.**

41 As used in this chapter:

42 (1) "Annual percentage rate" has the same meaning as in 15 U.S.C. Sec. 1606, as
43 implemented by regulations issued under that section.

44 [~~(1)~~] (2) "Business of cashing checks" means cashing a check for consideration.

45 [~~(2)~~] (3) "Business of deferred deposit lending" means extending a deferred deposit
46 loan.

47 [~~(3)~~] (4) "Check" is as defined in Section 70A-3-104.

48 [~~(4)~~] (5) "Check cashier" means a person that engages in the business of cashing checks.

49 [~~(5)~~] (6) "Deferred deposit lender" means a person that engages in the business of
50 deferred deposit lending.

51 [~~(6)~~] (7) (a) "Deferred deposit loan" means a transaction where:

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

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

54 or

55 [~~(ii)~~] (B) provides written or electronic authorization to a deferred deposit lender to
56 effect a debit from that person's account using an electronic payment; and

57 ~~[(b)]~~ (ii) the deferred deposit lender:

58 ~~[(+)]~~ (A) provides the person described in Subsection ~~[(6)]~~ (7)(a)(i) an amount of
59 money that is equal to the face value of the check or the amount of the debit less any fee or
60 interest charged for the transaction; and

61 ~~[(+)]~~ (B) agrees not to cash the check or process the debit until a specific date.

62 (b) "Deferred deposit loan" includes:

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

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

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

68 ~~[(7)]~~ (8) (a) "Electronic payment" means an electronic method by which a person:

69 (i) accepts a payment from another person; or

70 (ii) makes a payment to another person.

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

72 (i) an automated clearing house transaction;

73 (ii) an electronic check;

74 (iii) a stored value card; or

75 (iv) an Internet transfer.

76 ~~[(8)]~~ (9) "Rollover" means the extension or renewal of the term of a deferred deposit
77 loan.

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

79 **7-23-201. Registration -- Rulemaking.**

80 (1) (a) It is unlawful for a person to engage in the business of cashing checks or the
81 business of deferred deposit lending in Utah or with a Utah resident unless the person:

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

83 (ii) maintains a valid registration.

84 (b) It is unlawful for a person to operate a mobile facility in this state to engage in the
85 business of:

86 (i) cashing checks; or

87 (ii) deferred deposit lending.

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

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

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

92 (ii) submit a registration statement containing the information described in Subsection
93 (2)(d).

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

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

96 (ii) submit a renewal statement containing the information described in Subsection
97 (2)(d); and

98 (iii) if the person engages in the business of deferred deposit lending, submit an
99 operations statement containing the information described in Subsection (2)(e).

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

101 (i) the name of the person;

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

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

106 (iv) the addresses of all offices in this state at which the person conducts the business
107 of:

108 (A) cashing checks; or

109 (B) deferred deposit lending;

110 (v) if the person conducts the business of cashing checks or the business of deferred
111 deposit lending in this state but does not maintain an office in this state, a brief description of
112 the manner in which the business is conducted;

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

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

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

- 119 (e) An operations statement required for a deferred deposit lender to renew a
120 registration shall state for the immediately preceding calendar year:
- 121 (i) the average deferred deposit loan amount that the deferred deposit lender extended;
122 (ii) the average number of days a deferred deposit loan is extended by the deferred
123 deposit lender before the deferred deposit loan is paid in full;
124 (iii) of the deferred deposit loans that are paid in full 10 weeks or sooner after the day
125 on which the deferred deposit loan is executed, the average number of days a deferred deposit
126 loan is extended by the deferred deposit lender before the deferred deposit loan is paid in full;
127 ~~[(iv) the minimum and maximum amount of interest or fees charged by the deferred~~
128 ~~deposit lender for a deferred deposit loan.]~~
- 129 ~~[(A) of \$100; and]~~
130 ~~[(B) extended for one week;]~~
- 131 ~~[(v)]~~ (iv) the total number of deferred deposit loans rescinded by the deferred deposit
132 lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);
- 133 ~~[(vi)]~~ (v) the percentage of deferred deposit loans extended by the deferred deposit
134 lender that are not paid in full by 10 weeks after the day on which the deferred deposit loan is
135 executed; ~~[and]~~
- 136 (vi) the total dollar amount of deferred deposit loans that are not paid in full by 10
137 weeks after the day on which the deferred deposit loans are executed;
- 138 (vii) of the persons to whom the deferred deposit lender extended a deferred deposit
139 loan, the percentage that entered into an extended payment plan under Section 7-23-403[-];
- 140 (viii) the total number of deferred deposit loans the deferred deposit lender extended;
141 (ix) the total dollar amount of deferred deposit loans extended by the deferred deposit
142 lender;
- 143 (x) the total number of individuals to whom the deferred deposit lender extended a
144 deferred deposit loan;
- 145 (xi) the range of annual percentage rates charged on deferred deposit loans extended by
146 the deferred deposit lender; and
- 147 (xii) the average annual percentage rate charged on a deferred deposit loan extended by
148 the deferred deposit lender.
- 149 (3) Information provided by a deferred deposit lender under Subsection (2)(e) is:

150 (a) confidential in accordance with Section 7-1-802; and
151 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management
152 Act.

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

- 155 (i) the person is required to be registered under this chapter;
- 156 (ii) the person fails to register or renew a registration in accordance with this chapter;
- 157 (iii) the department notifies the person that the person is in violation of this chapter for
158 failure to be registered; and
- 159 (iv) the person fails to register within 30 days after the day on which the person
160 receives the notice described in Subsection (4)(a)(iii).

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

162 (i) \$500 if the person:

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

164 (I) cashing checks; or

165 (II) deferred deposit lending; or

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

167 (I) cashing checks; or

168 (II) deferred deposit lending; or

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

172 (A) cashing checks; or

173 (B) deferred deposit lending.

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

176 (5) If the information in a registration, renewal, or operations statement required under
177 Subsection (2) becomes inaccurate after filing, a person is not required to notify the department
178 until:

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

180 (b) the department specifically requests earlier notification.

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

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

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

186 (7) A deferred deposit loan that is made by a person who is required to be registered
187 under this chapter but who is not registered is void, and the person may not collect, receive, or
188 retain any principal or other interest or fees in connection with the deferred deposit loan.

189 Section 3. Section **7-23-503** is amended to read:

190 **7-23-503. Reporting by commissioner.**

191 (1) Subject to Subsection (2), as part of the commissioner's annual report to the
192 governor and Legislature under Section 7-1-211, the commissioner shall report to the governor
193 and Legislature on the operations on an aggregate basis of deferred deposit lenders operating in
194 the state.

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

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

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

201 ~~(b)~~ (c) may not include in the report information from an operations statement filed
202 with the department that could identify a specific deferred deposit lender.

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

209 (b) To comply with Subsection (3)(a), the department may create two or more
210 categories of deferred deposit lenders providing the information collected under Subsection
211 7-23-201(2)(e) by:

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

215 Section 4. Section **7-23-601** is enacted to read:

216 **Part 6. Statewide Technology System**

217 **7-23-601. Commissioner to develop and implement statewide technology system.**

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

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

226 (a) gathers the following data about a person seeking or rolling over a deferred deposit
227 loan:

- 228 (i) whether the person has an outstanding deferred deposit loan;
- 229 (ii) the number of deferred deposit loans the person has outstanding, if any;
- 230 (iii) the total borrowed amount the consumer has outstanding statewide;
- 231 (iv) whether the person is rolling over a deferred deposit loan; and
- 232 (v) the number of times the person rolls over the same deferred deposit loan;

233 (b) is accessible to and usable by a deferred deposit lender and the commissioner
234 through electronic means; and

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

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

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

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

244 **7-23-602. Deferred deposit lenders to enter data -- Fees -- Use of data.**

245 (1) Once the statewide technology system is implemented, a deferred deposit lender
246 subject to this chapter shall enter into the statewide technology system the data that is required
247 by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah
248 Administrative Rulemaking Act. The deferred deposit lender shall enter the data at the time of
249 entering into the deferred deposit loan on each deferred deposit loan transaction entered into
250 after the date of implementation.

251 (2) A service provider with whom the commissioner contracts under Subsection
252 7-23-601(1) may charge a deferred deposit lender one or more fees to access or use the
253 statewide technology system:

254 (a) in an amount that the commissioner approves by rule made in accordance with Title
255 63G, Chapter 3, Utah Administrative Rulemaking Act; and

256 (b) except that in no event may the aggregate of fees exceed \$1 for a deferred deposit
257 loan transaction.

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

260 Section 6. Section **7-23-603** is enacted to read:

261 **7-23-603. Reporting to Legislature.**

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