

**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;
- ▶ 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

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 7-23-102, as last amended by Laws of Utah 2008, Chapter 96

30 7-23-201, as last amended by Laws of Utah 2010, Chapter 102

31 ENACTS:

32 7-23-601, Utah Code Annotated 1953

33 7-23-602, Utah Code Annotated 1953

34 7-23-603, Utah Code Annotated 1953



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

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

38 **7-23-102. Definitions.**

39 As used in this chapter:

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

42 [~~(1)~~] (2) "Business of cashing checks" means cashing a check for consideration.

43 [~~(2)~~] (3) "Business of deferred deposit lending" means extending a deferred deposit  
44 loan.

45 [~~(3)~~] (4) "Check" is as defined in Section 70A-3-104.

46 [~~(4)~~] (5) "Check casher" means a person that engages in the business of cashing checks.

47 [~~(5)~~] (6) "Deferred deposit lender" means a person that engages in the business of  
48 deferred deposit lending.

49 [~~(6)~~] (7) "Deferred deposit loan" means a transaction where:

50 (a) a person:

51 (i) presents to a deferred deposit lender a check written on that person's account; or

52 (ii) provides written or electronic authorization to a deferred deposit lender to effect a  
53 debit from that person's account using an electronic payment; and

54 (b) the deferred deposit lender:

55 (i) provides the person described in Subsection [~~(6)~~] (7)(a)(i) an amount of money that  
56 is equal to the face value of the check or the amount of the debit less any fee or interest charged

57 for the transaction; and

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

59 [~~7~~] (8) (a) "Electronic payment" means an electronic method by which a person:

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

61 (ii) makes a payment to another person.

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

63 (i) an automated clearing house transaction;

64 (ii) an electronic check;

65 (iii) a stored value card; or

66 (iv) an Internet transfer.

67 [~~8~~] (9) "Rollover" means the extension or renewal of the term of a deferred deposit  
68 loan.

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

70 **7-23-201. Registration -- Rulemaking.**

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

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

74 (ii) maintains a valid registration.

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

77 (i) cashing checks; or

78 (ii) deferred deposit lending.

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

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

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

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

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

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

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

88 (2)(d); and

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

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

92 (i) the name of the person;

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

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

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

99 (A) cashing checks; or

100 (B) deferred deposit lending;

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

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

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

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

110 (e) An operations statement required for a deferred deposit lender to renew a  
111 registration shall state for the immediately preceding calendar year:

112 (i) the average deferred deposit loan amount that the deferred deposit lender extended;

113 (ii) the average number of days a deferred deposit loan is extended by the deferred  
114 deposit lender before the deferred deposit loan is paid in full;

115 (iii) of the deferred deposit loans that are paid in full 10 weeks or sooner after the day  
116 on which the deferred deposit loan is executed, the average number of days a deferred deposit  
117 loan is extended by the deferred deposit lender before the deferred deposit loan is paid in full;

118 ~~[(iv) the minimum and maximum amount of interest or fees charged by the deferred~~

119 deposit lender for a deferred deposit loan:]

120 [~~(A)~~ of \$100, and]

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

122 [~~(v)~~] (iv) the total number of deferred deposit loans rescinded by the deferred deposit  
123 lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);

124 (v) the total dollar amount of deferred deposit loans rescinded by the deferred deposit  
125 lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);

126 (vi) the number of deferred deposit loans extended by the deferred deposit lender that  
127 are not paid in full by 10 weeks after the day on which the deferred deposit loan is executed;

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

131 (viii) the total dollar amount of deferred deposit loans extended by the deferred deposit  
132 lender that are not paid in full by 10 weeks after the day on which the deferred deposit loans are  
133 executed;

134 [~~(vii)~~] (ix) of the persons to whom the deferred deposit lender extended a deferred  
135 deposit loan, the percentage that entered into an extended payment plan under Section  
136 7-23-403[-];

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

138 (xi) the total dollar amount of deferred deposit loans extended by the deferred deposit  
139 lender;

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

142 (xiii) the range of annual percentage rates charged on deferred deposit loans extended  
143 by the deferred deposit lender;

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

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

148 (xvi) the total dollar amount of deferred deposit loans that are carried to the end of the  
149 10th week after the day on which the deferred deposit loans are executed.

150 (3) Information provided by a deferred deposit lender under Subsection (2)(e) is:  
151 (a) confidential in accordance with Section 7-1-802; and  
152 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management  
153 Act.

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

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

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

163 (i) \$500 if the person:

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

165 (I) cashing checks; or

166 (II) deferred deposit lending; or

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

168 (I) cashing checks; or

169 (II) deferred deposit lending; or

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

173 (A) cashing checks; or

174 (B) deferred deposit lending.

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

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

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

181 (b) the department specifically requests earlier notification.

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

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

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

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

190 Section 3. Section **7-23-601** is enacted to read:

191 **Part 6. Statewide Technology System**

192 **7-23-601. Commissioner to develop and implement statewide technology system.**

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

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

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

203 (i) whether the person has an outstanding deferred deposit loan;

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

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

206 (iv) whether the person is rolling over a deferred deposit loan; and

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

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

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

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

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

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

219           **7-23-602. Deferred deposit lenders to enter data -- Fees -- Use of data.**

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

226           (2) A service provider with whom the commissioner contracts under Subsection  
227 7-23-601(1) may charge a deferred deposit lender one or more fees to access or use the  
228 statewide technology system:

229           (a) in an amount that the commissioner approves by rule made in accordance with Title  
230 63G, Chapter 3, Utah Administrative Rulemaking Act; and

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

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

235           Section 5. Section **7-23-603** is enacted to read:

236           **7-23-603. Reporting to Legislature.**

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