

1 **CHECK CASHING AND DEFERRED DEPOSIT LENDING**

2 **AMENDMENTS**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Brad M. Daw**

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

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**LONG TITLE**

8 **General Description:**

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10 This bill modifies the Check Cashing and Deferred Deposit Lending Registration Act to  
11 address deferred deposit loans.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies definition provisions;
- 15 ▶ addresses reporting requirements for deferred deposit lenders;
- 16 ▶ imposes requirements related to querying the database to determine ineligibility to  
17 receive a deferred deposit loan;
- 18 ▶ imposes requirements related to the commissioner's annual report;
- 19 ▶ establishes what constitutes ineligibility to obtain a deferred deposit loan;
- 20 ▶ creates the Deferred Deposit Lending Database Program, which includes the  
21 creation of the Deferred Deposit Lending Database;
- 22 ▶ permits the department to contract with a third party to establish and maintain the  
23 database;
- 24 ▶ addresses various requirements related to the operation of the database;
- 25 ▶ grants rulemaking authority;
- 26 ▶ provides for the process to make a query to the database, including the payment of a  
27 fee; and



28           ▶ makes technical and conforming amendments.

29 **Money Appropriated in this Bill:**

30           None

31 **Other Special Clauses:**

32           None

33 **Utah Code Sections Affected:**

34 AMENDS:

35           7-23-102, as last amended by Laws of Utah 2013, Chapter 73

36           7-23-201, as last amended by Laws of Utah 2014, Chapter 131

37           7-23-401, as last amended by Laws of Utah 2014, Chapter 131

38           7-23-503, as last amended by Laws of Utah 2012, Chapter 323

39 ENACTS:

40           7-23-601, Utah Code Annotated 1953

41           7-23-602, Utah Code Annotated 1953

42           7-23-603, Utah Code Annotated 1953



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

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

46           **7-23-102. Definitions.**

47           As used in this chapter:

48           (1) "Annual percentage rate" [~~has the same meaning as~~] means the same as that term is  
49 defined in 15 U.S.C. Sec. 1606, as implemented by regulations issued under that section.

50           (2) "Business of cashing checks" means cashing a check for consideration.

51           (3) "Business of deferred deposit lending" means extending a deferred deposit loan.

52           (4) "Check" [~~is as~~] means the same as that term is defined in Section 70A-3-104.

53           (5) "Check cashier" means a person that engages in the business of cashing checks.

54           (6) "Database" means the Deferred Deposit Lending Database created in Section  
55 7-23-602.

56           (7) "Database provider" means:

57           (a) the department; or

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

59           ~~[(6)]~~ (8) "Deferred deposit lender" means a person that engages in the business of  
60 deferred deposit lending.

61           ~~[(7)]~~ (9) (a) "Deferred deposit loan" means a transaction where:

62           ~~[(a)]~~ (i) a person:

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

64 or

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

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

68           ~~[(i)]~~ (A) provides the person described in Subsection ~~[(7)(a)]~~ (9)(a)(i) an amount of  
69 money that is equal to the face value of the check or the amount of the debit less any fee or  
70 interest charged for the transaction; and

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

72           (b) "Deferred deposit loan" includes:

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

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

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

78           ~~[(8)]~~ (10) (a) "Electronic payment" means an electronic method by which a person:

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

80           (ii) makes a payment to another person.

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

82           (i) an automated clearing house transaction;

83           (ii) an electronic check;

84           (iii) a stored value card; or

85           (iv) an Internet transfer.

86           (11) "Ineligible" means that a person is not eligible to obtain a deferred deposit loan  
87 under Section [7-23-601](#).

88           ~~[(9)]~~ (12) "Nationwide database" means the Nationwide Mortgage Licensing System  
89 and Registry, authorized under federal licensing requirements for mortgage loan originators.

90            [~~(10)~~] (13) "Rollover" means the extension or renewal of the term of a deferred deposit  
91 loan.

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

93            **7-23-201. Registration -- Rulemaking.**

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

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

97            (ii) maintains a valid registration.

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

100            (i) cashing checks; or

101            (ii) deferred deposit lending.

102            (c) If a person is registered under this chapter, an individual who is an officer or  
103 employee of a person required to be registered under Subsection (1)(a) is not required to be  
104 registered.

105            (2) (a) A registration and a renewal of a registration expires on December 31 of each  
106 year unless on or before that date the person renews the registration.

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

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

109            (ii) submit a registration statement containing the information described in Subsection  
110 (2)(d);

111            (iii) submit evidence satisfactory to the commissioner that the person is authorized to  
112 conduct business in this state as a domestic or foreign entity pursuant to filings with the  
113 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,  
114 Partnership - Unincorporated Business Entities; and

115            (iv) if the person engages in the business of deferred deposit lending, submit evidence  
116 satisfactory to the commissioner that the person is registered with the nationwide database.

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

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

119            (ii) submit a renewal statement containing the information described in Subsection  
120 (2)(d);

121 (iii) submit evidence satisfactory to the commissioner that the person is authorized to  
122 conduct business in this state as a domestic or foreign entity pursuant to filings with the  
123 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,  
124 Partnership - Unincorporated Business Entities;

125 (iv) if the person engages in the business of deferred deposit lending, submit evidence  
126 satisfactory to the commissioner that the person is registered with the nationwide database; and

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

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

130 (i) the name of the person;

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

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

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

137 (A) cashing checks; or

138 (B) deferred deposit lending;

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

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

144 (vii) disclosure of an injunction, judgment, administrative order, or conviction of a  
145 crime involving moral turpitude with respect to that person or an officer, director, manager,  
146 operator, or principal of that person; and

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

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

150 (i) the average principal amount of the deferred deposit loans extended by the deferred  
151 deposit lender;

- 152 (ii) for deferred deposit loans paid in full, the average number of days a deferred  
153 deposit loan is outstanding for the duration of time that interest is charged;
- 154 [~~(iii) the minimum and maximum dollar amount of interest and fees charged by the~~  
155 ~~deferred deposit lender for a deferred deposit loan of \$100 with a loan term of seven days;~~
- 156 [~~(iv)~~] (iii) the total number of deferred deposit loans rescinded by the deferred deposit  
157 lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);
- 158 [~~(v)~~] (iv) of the persons to whom the deferred deposit lender extended a deferred  
159 deposit loan, the percentage that entered into an extended payment plan under Section  
160 7-23-403;
- 161 [~~(vi)~~] (v) the total dollar amount of deferred deposit loans rescinded by the deferred  
162 deposit lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);
- 163 [~~(vii)~~] (vi) the average annual percentage rate charged on deferred deposit loans;
- 164 (vii) the range of annual percentage rates charged on deferred deposit loans extended  
165 by the deferred deposit lender;
- 166 (viii) the average dollar amount of extended payment plans entered into under Section  
167 7-23-403 by the deferred deposit lender;
- 168 (ix) the number of deferred deposit loans carried to the maximum 10 weeks;
- 169 (x) the total dollar amount of deferred deposit loans carried to the maximum 10 weeks;
- 170 (xi) the number of deferred deposit loans not paid in full at the end of 10 weeks; [~~and~~]
- 171 (xii) the total dollar amount of deferred deposit loans not paid in full at the end of 10  
172 weeks[-] after the day on which the deferred deposit loans are extended;
- 173 (xiii) the total number of deferred deposit loans the deferred deposit lender extended;
- 174 (xiv) the total dollar amount of deferred deposit loans extended by the deferred deposit  
175 lender; and
- 176 (xv) the total number of individuals to whom the deferred deposit lender extended a  
177 deferred deposit loan.
- 178 (f) The commissioner may by rule, made in accordance with Title 63G, Chapter 3,  
179 Utah Administrative Rulemaking Act, provide for the transition of persons registering with the  
180 nationwide database.
- 181 (3) Information provided by a deferred deposit lender under Subsection (2)(e) is:
- 182 (a) confidential in accordance with Section 7-1-802; and

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

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

- 187 (i) the person is required to be registered under this chapter;
- 188 (ii) the person fails to register or renew a registration in accordance with this chapter;
- 189 (iii) the department notifies the person that the person is in violation of this chapter for  
190 failure to be registered; and

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

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

194 (i) \$500 if the person:

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

- 196 (I) cashing checks; or
- 197 (II) deferred deposit lending; or

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

- 199 (I) cashing checks; or
- 200 (II) deferred deposit lending; or

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

- 204 (A) cashing checks; or
- 205 (B) deferred deposit lending.

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

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

- 211 (a) that person is required to renew the registration; or
- 212 (b) the department specifically requests earlier notification.

213 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

214 department may make rules consistent with this section providing for:

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

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

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

221 Section 3. Section **7-23-401** is amended to read:

222 **7-23-401. Operational requirements for deferred deposit loans.**

223 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit  
224 lender shall:

225 (a) post in a conspicuous location on its premises that can be viewed by a person  
226 seeking a deferred deposit loan:

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

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

231 (iii) a list of states where the deferred deposit lender is registered or authorized to offer  
232 deferred deposit loans through the Internet or other electronic means;

233 (b) enter into a written contract for the deferred deposit loan;

234 (c) conspicuously disclose in the written contract:

235 (i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a  
236 partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan  
237 without incurring additional charges above the charges provided in the written contract;

238 (ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind  
239 the deferred deposit loan on or before 5 p.m. of the next business day without incurring any  
240 charges;

241 (iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over  
242 without the person receiving the deferred deposit loan requesting the rollover of the deferred  
243 deposit loan;

244 (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the

245 rollover requires the person to pay the amount owed by the person under the deferred deposit  
246 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is  
247 executed; and

248 (v) (A) the name and address of a designated agent required to be provided the  
249 department under Subsection 7-23-201(2)(d)(vi); and

250 (B) a statement that service of process may be made to the designated agent;

251 (d) provide the person seeking the deferred deposit loan:

252 (i) a copy of the written contract described in Subsection (1)(c); and

253 (ii) written notice that the person seeking the deferred deposit loan is eligible to enter  
254 into an extended payment plan described in Section 7-23-403;

255 (e) orally review with the person seeking the deferred deposit loan the terms of the  
256 deferred deposit loan including:

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

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

259 (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make  
260 a partial payment in increments of at least \$5 on the principal owed on the deferred deposit  
261 loan without incurring additional charges above the charges provided in the written contract;

262 (iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may  
263 rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring  
264 any charges;

265 (v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over  
266 without the person receiving the deferred deposit loan requesting the rollover of the deferred  
267 deposit loan; and

268 (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the  
269 rollover requires the person to pay the amount owed by the person under the deferred deposit  
270 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is  
271 executed;

272 (f) comply with the following as in effect on the date the deferred deposit loan is  
273 extended:

274 (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal  
275 regulations;

276 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal  
277 regulations;

278 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and  
279 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

280 (iv) Title 70C, Utah Consumer Credit Code;

281 (g) in accordance with Subsection (6), make an inquiry to determine whether a person  
282 attempting to receive a deferred deposit loan has the ability to repay the deferred deposit loan  
283 in the ordinary course, which may include rollovers or extended payment plans as allowed  
284 under this chapter; [~~and~~]

285 (h) in accordance with Subsection (7), receive a signed acknowledgment from a person  
286 attempting to receive a deferred deposit loan that the person has the ability to repay the  
287 deferred deposit loan, which may include rollovers or extended payment plans as allowed by  
288 this chapter[.]; and

289 (i) on and after October 1, 2015, before extending a deferred deposit loan, query the  
290 database to determine if the person seeking the deferred deposit loan is ineligible.

291 (2) If a deferred deposit lender extends a deferred deposit loan through the Internet or  
292 other electronic means, the deferred deposit lender shall provide the information described in  
293 Subsection (1)(a) to the person receiving the deferred deposit loan:

294 (a) in a conspicuous manner; and

295 (b) prior to the person entering into the deferred deposit loan.

296 (3) A deferred deposit lender that engages in a deferred deposit loan shall permit a  
297 person receiving a deferred deposit loan to:

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

301 (b) rescind the deferred deposit loan without incurring any charges by returning the  
302 deferred deposit loan amount to the deferred deposit lender on or before 5 p.m. the next  
303 business day following the deferred deposit loan transaction.

304 (4) A deferred deposit lender that engages in a deferred deposit loan may not:

305 (a) collect additional interest on a deferred deposit loan with an outstanding principal  
306 balance 10 weeks after the day on which the deferred deposit loan is executed;

307 (b) roll over a deferred deposit loan without the person receiving the deferred deposit  
308 loan requesting the rollover of the deferred deposit loan;

309 (c) roll over a deferred deposit loan if the rollover requires a person to pay the amount  
310 owed by the person under a deferred deposit loan in whole or in part more than 10 weeks from  
311 the day on which the deferred deposit loan is first executed;

312 (d) extend a new deferred deposit loan to a person on the same business day that the  
313 person makes a payment on another deferred deposit loan if the payment:

314 (i) is made at least 10 weeks after the day on which that deferred deposit loan is  
315 extended; and

316 (ii) results in the principal of that deferred deposit loan being paid in full;

317 (e) threaten to use or use the criminal process in any state to collect on the deferred  
318 deposit loan;

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

324 (g) modify by contract the venue provisions in Title 78B, Chapter 3, Actions and  
325 Venue.

326 (5) Notwithstanding Subsections (4)(a) and (e), a deferred deposit lender that is the  
327 holder of a check used to obtain a deferred deposit loan that is dishonored may use the  
328 remedies and notice procedures provided in Chapter 15, Dishonored Instruments, except that  
329 the issuer, as defined in Section 7-15-1, of the check may not be:

330 (a) asked by the holder to pay the amount described in Subsection 7-15-1(6)(a)(iii) as a  
331 condition of the holder not filing a civil action; or

332 (b) held liable for the damages described in Subsection 7-15-1(7)(b)(vi).

333 (6) (a) The inquiry required by Subsection (1)(g) applies solely to the initial period of a  
334 deferred deposit loan transaction with a person and does not apply to any rollover or extended  
335 payment plan of a deferred deposit loan.

336 (b) A deferred deposit lender is in compliance with Subsection (1)(g) if the deferred  
337 deposit lender, at the time of the initial period of the deferred deposit loan transaction, obtains

338 one of the following regarding the person seeking the deferred deposit loan:

339 (i) a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting  
340 agency, as defined in 15 U.S.C. Sec. 1681a;

341 (ii) written proof or verification of income from the person seeking the deferred deposit  
342 loan; or

343 (iii) prior repayment history with the deferred deposit loan from the records of the  
344 deferred deposit lender.

345 (7) A deferred deposit lender is in compliance with Subsection (1)(h) if the deferred  
346 deposit lender obtains from the person seeking the deferred deposit loan a signed  
347 acknowledgment that is in 14-point bold font, that the person seeking the deferred deposit loan  
348 has:

349 (a) reviewed the payment terms of the deferred deposit loan agreement;

350 (b) received a disclosure that a deferred deposit loan may not be rolled over if the  
351 rollover requires the person to pay the amount owed by the person under the deferred deposit  
352 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is  
353 first executed;

354 (c) received a disclosure explaining the extended payment plan options; and

355 (d) acknowledged the ability to repay the deferred deposit loan in the ordinary course,  
356 which may include rollovers, or extended payment plans as allowed under this chapter.

357 (8) (a) Before initiating a civil action against a person who owes money on a deferred  
358 deposit loan, a deferred deposit lender shall provide the person at least 10 days notice of  
359 default, describing that the person must remedy the default and that the deferred deposit lender  
360 intends to initiate a civil action against the person if the person fails to cure the default within  
361 the 10-day period.

362 (b) A deferred deposit lender may provide the notice required under this Subsection  
363 (8):

364 (i) by sending written notice to the address provided by the person to the deferred  
365 deposit lender;

366 (ii) by sending an electronic transmission to a person if electronic contact information  
367 is provided to the deferred deposit lender; or

368 (iii) pursuant to the Utah Rules of Civil Procedure.

369 (9) (a) On and after October 1, 2015, a deferred deposit lender may not extend a  
370 deferred deposit loan to a person who, on the basis of a query to the database required under  
371 Subsection (1)(i), is ineligible.

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

375 Section 4. Section **7-23-503** is amended to read:

376 **7-23-503. Reporting by commissioner.**

377 (1) Subject to Subsection (2), as part of the commissioner's annual report to the  
378 governor and Legislature under Section [7-1-211](#), the commissioner shall report to the governor  
379 and Legislature on:

380 (a) the operations on an aggregate basis of deferred deposit lenders operating in the  
381 state[-]; and

382 (b) the information required to be reported under Section [7-23-602](#).

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

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

387 (b) shall include in the report:

388 (i) the total number of written complaints concerning issues material to deferred  
389 deposit loan transactions received by the department in a calendar year from persons who have  
390 entered into a deferred deposit loan with a deferred deposit lender;

391 (ii) for deferred deposit lenders who are registered with the department:

392 (A) the number of the complaints described in Subsection (2)(b)(i) that the department  
393 considers resolved; and

394 (B) the number of the complaints described in Subsection (2)(b)(i) that the department  
395 considers unresolved; and

396 (iii) for deferred deposit lenders who are not registered with the department:

397 (A) the number of the complaints described in Subsection (2)(b)(i) that the department  
398 considers resolved; and

399 (B) the number of the complaints described in Subsection (2)(b)(i) that the department

400 considers unresolved; ~~and~~

401 (c) for the information reported under Subsection (2)(a), shall determine the  
402 information to be reported in accordance with Subsection (3);

403 (d) shall include the information required under Section 7-23-602; and

404 ~~(e)]~~ (e) may not include in the report information from an operations statement filed  
405 with the department or the database that could identify a specific deferred deposit lender.

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

412 (b) To comply with Subsection (3)(a), the department may create two or more  
413 categories of deferred deposit lenders providing the information collected under Subsection  
414 7-23-201(2)(e) by:

415 (i) volume of deferred deposit loans extended by the different deferred deposit lenders;

416 (ii) dollar amount of deferred deposit loans extended; or

417 (iii) other category.

418 Section 5. Section 7-23-601 is enacted to read:

419 **Part 6. Deferred Deposit Lending Database Program**

420 **7-23-601. Ineligibility to obtain a deferred deposit loan.**

421 (1) On and after October 1, 2015, a person is ineligible to obtain a deferred deposit  
422 loan if the person:

423 (a) owes \$500 or more in the aggregate in principal for one or more deferred deposit  
424 loans subject to this chapter that are not closed at the time the person applies for a new deferred  
425 deposit loan; or

426 (b) has two deferred deposit loans subject to this chapter that are not closed at the time  
427 the person applies for a new deferred deposit loan.

428 (2) If the person seeking a deferred deposit loan is not ineligible under Subsection (1),  
429 a deferred deposit lender may extend a deferred deposit loan to that person in any amount to  
430 which both parties agree.

431 Section 6. Section 7-23-602 is enacted to read:

432 **7-23-602. Deferred Deposit Lending Database Program.**

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

436 (b) The program shall be administered by the department to implement by October 1,  
437 2015, a common database with real-time access by deferred deposit lenders through an Internet  
438 connection or other electronic means.

439 (c) The database shall be accessible to the department and a deferred deposit lender to  
440 verify:

441 (i) the aggregate amount owed on deferred deposit loans outstanding for a particular  
442 person; and

443 (ii) the number of deferred deposit loans outstanding for a particular person.

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

448 (ii) If the department contracts with a third party, the department shall:

449 (A) ensure that the third party provider selected as the database provider operates the  
450 database pursuant to this part;

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

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

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

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

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

461 (f) The department shall investigate violations of and enforce this part. The

462 department may not delegate its responsibilities under this Subsection (1)(f).

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

465 (a) a deferred deposit lender can efficiently:

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

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

468 (b) the designated agent complies with any applicable federal and state laws to prevent  
469 identity theft.

470 (3) The department shall by rule made in accordance with Title 63G, Chapter 3, Utah  
471 Administrative Rulemaking Act, provide:

472 (a) for the reporting by a deferred deposit lender to the database the information  
473 required to determine ineligibility under Section 7-23-601;

474 (b) an outline of the information provided by the database to the deferred deposit  
475 lender who makes a query of the database;

476 (c) that when the database provider receives notification that a deferred deposit loan is  
477 closed, the database provider shall designate the transaction as closed in the database  
478 immediately, but in no event after 11:59 p.m. on the day the database provider receives the  
479 notification;

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

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

484 (f) that data about a deferred deposit loan in the database be deleted from the archive of  
485 the database the later of:

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

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

489 (g) for the database provider to establish and maintain a process for responding to  
490 queries that due to technical difficulties the deferred deposit lender cannot access through the  
491 Internet or other electronic means.

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

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

495 (b) may not obtain or access a Social Security number, driver license number, or other  
496 state-issued identification number in the database except as provided in this Subsection (4).

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

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

500 (b) reports inaccurate information required to be reported under Subsection (3).

501 (6) (a) Except as provided in Subsection (6)(b), information regarding a person's  
502 transactional history provided to, maintained in, or accessed from the database is not subject to  
503 Title 63G, Chapter 2, Government Records Access and Management Act, and may not be used  
504 in a judicial or administrative action.

505 (b) The restrictions of Subsection (6)(a) do not apply to a judicial or administrative  
506 action brought to enforce this chapter.

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

508 (a) places false information in the database; or

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

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

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

516 (10) The department shall include in the report required under Section [7-23-503](#)  
517 aggregate information regarding the number of times in a calendar year a person is found  
518 ineligible after a query by a deferred deposit lender.

519 (11) (a) A deferred deposit lender shall notify the database provider if the deferred  
520 deposit lender stops extending deferred deposit loans.

521 (b) If a deferred deposit lender stops providing deferred deposit loans, the database  
522 provider shall designate all open transactions with that deferred deposit lender closed in the  
523 database 60 days after the date the deferred deposit lender stops offering deferred deposit loans,

524 unless the deferred deposit lender reports to the database provider before the expiration of the  
525 60-day period which of its transactions remain open and the specific reason each transaction  
526 remains open.

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

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

537 (e) A transaction closed under this Subsection (11) is closed only for purposes of the  
538 database and the closure does not impair the deferred deposit lender from continuing to collect  
539 on the deferred deposit loan.

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

541 **7-23-603. Query to database.**

542 (1) On and after October 1, 2015, before extending a deferred deposit loan, a deferred  
543 deposit lender shall query the database to determine if the person seeking the deferred deposit  
544 loan is ineligible.

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

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

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

552 (i) inform the person that the person is ineligible; and

553 (ii) explain that the person may ask the database provider or department, at the  
554 department's discretion, regarding the specific details of why the person is ineligible.

555            (b) Only a person found ineligible to obtain a deferred deposit loan may make a direct  
556 inquiry to request a more detailed explanation of a particular transaction that was the basis for  
557 the ineligibility determination.

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

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**Legislative Review Note**  
as of 1-19-15 2:49 PM

**Office of Legislative Research and General Counsel**