

**DEPARTMENT OF FINANCIAL INSTITUTIONS**

**AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: James A. Dunnigan

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**LONG TITLE**

**Committee Note:**

The Business and Labor Interim Committee recommended this bill.

**General Description:**

This bill modifies provisions related to persons subject to the jurisdiction of the Department of Financial Institutions.

**Highlighted Provisions:**

This bill:

- ▶ provides for fees payable to the commissioner by money transmitters;
- ▶ defines "nationwide database" and requires certain persons under the jurisdiction of the Department of Financial Institutions to register with the nationwide database;
- ▶ grants rulemaking authority related to the transition of persons registering with the nationwide database;
- ▶ enacts the Money Transmitter Act, including:
  - defining terms;
  - granting rulemaking authority;
  - requiring licensure;
  - providing exemptions;
  - establishing license qualifications;
  - creating the licensure process;



- 28 • requiring a surety bond;
- 29 • providing for the renewal of a license;
- 30 • requiring reporting of certain events;
- 31 • addressing authorized agent contracts and conduct;
- 32 • authorizing examinations;
- 33 • addressing confidentiality of information;
- 34 • authorizing termination or suspension of authorized agent activity;
- 35 • addressing licensee liability;
- 36 • imposing criminal and civil penalties; and
- 37 • permitting consent and emergency orders; and
- 38 ▶ makes technical and conforming amendments.

39 **Money Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 AMENDS:

- 45 **7-1-401**, as last amended by Laws of Utah 2014, Chapter 345
- 46 **7-22-101**, as last amended by Laws of Utah 2013, Chapter 73
- 47 **7-22-103**, as last amended by Laws of Utah 1996, Chapter 182
- 48 **7-24-102**, as last amended by Laws of Utah 2005, Chapter 2
- 49 **7-24-201**, as last amended by Laws of Utah 2008, Chapter 382
- 50 **70D-2-102**, as last amended by Laws of Utah 2013, Chapter 399
- 51 **70D-2-201**, as last amended by Laws of Utah 2014, Chapter 97
- 52 **70D-2-203**, as last amended by Laws of Utah 2014, Chapter 97

53 ENACTS:

- 54 **7-25-101**, Utah Code Annotated 1953
- 55 **7-25-102**, Utah Code Annotated 1953
- 56 **7-25-103**, Utah Code Annotated 1953
- 57 **7-25-201**, Utah Code Annotated 1953
- 58 **7-25-202**, Utah Code Annotated 1953

- 59 [7-25-203](#), Utah Code Annotated 1953
- 60 [7-25-204](#), Utah Code Annotated 1953
- 61 [7-25-205](#), Utah Code Annotated 1953
- 62 [7-25-206](#), Utah Code Annotated 1953
- 63 [7-25-301](#), Utah Code Annotated 1953
- 64 [7-25-302](#), Utah Code Annotated 1953
- 65 [7-25-303](#), Utah Code Annotated 1953
- 66 [7-25-304](#), Utah Code Annotated 1953
- 67 [7-25-305](#), Utah Code Annotated 1953
- 68 [7-25-401](#), Utah Code Annotated 1953
- 69 [7-25-402](#), Utah Code Annotated 1953
- 70 [7-25-403](#), Utah Code Annotated 1953
- 71 [7-25-404](#), Utah Code Annotated 1953
- 72 [7-25-405](#), Utah Code Annotated 1953
- 73 [7-25-406](#), Utah Code Annotated 1953
- 74 [7-25-407](#), Utah Code Annotated 1953

75 REPEALS:

76 [70D-2-202](#), as renumbered and amended by Laws of Utah 2009, Chapter 72



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

79 Section 1. Section **7-1-401** is amended to read:

80 **7-1-401. Fees payable to commissioner.**

81 (1) Except for an out-of-state depository institution with a branch in Utah, a depository  
82 institution under the jurisdiction of the department shall pay an annual fee:

83 (a) computed by averaging the total assets of the depository institution shown on each  
84 quarterly report of condition for the depository institution for the calendar year immediately  
85 proceeding the date on which the annual fee is due under Section [7-1-402](#); and

86 (b) at the following rates:

87 (i) on the first \$5,000,000 of these assets, the greater of:

88 (A) 65 cents per \$1,000; or

89 (B) \$500;

- 90 (ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;
- 91 (iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;
- 92 (iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;
- 93 (v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;
- 94 (vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and
- 95 (vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.

96 (2) A financial institution with a trust department shall pay a fee determined in  
97 accordance with Subsection (7) for each examination of the trust department by a state  
98 examiner.

99 (3) Notwithstanding Subsection (1), a credit union in its first year of operation shall  
100 pay a basic fee of \$25 instead of the fee required under Subsection (1).

101 (4) A trust company that is not a depository institution or a subsidiary of a depository  
102 institution holding company shall pay:

- 103 (a) an annual fee of \$500; and
- 104 (b) an additional fee determined in accordance with Subsection (7) for each  
105 examination by a state examiner.

106 (5) Any person or institution under the jurisdiction of the department that does not pay  
107 a fee under Subsections (1) through (4) shall pay:

- 108 (a) an annual fee of \$200; and
- 109 (b) an additional fee determined in accordance with Subsection (7) for each  
110 examination by a state examiner.

111 (6) A person filing an application or request under Section [7-1-503](#), [7-1-702](#), [7-1-703](#),  
112 [7-1-704](#), [7-1-713](#), [7-5-3](#), or [7-18a-202](#) shall pay:

- 113 (a) (i) a filing fee of \$500 if on the day on which the application or request is filed the  
114 person:
  - 115 (A) is a person with authority to transact business as:
    - 116 (I) a depository institution;
    - 117 (II) a trust company; or
    - 118 (III) any other person described in Section [7-1-501](#) as being subject to the jurisdiction  
119 of the department; and
  - 120 (B) has total assets in an amount less than \$5,000,000; or

121 (ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and

122 (b) all reasonable expenses incurred in processing the application.

123 (7) (a) Per diem assessments for an examination shall be calculated at the rate of \$55  
124 per hour:

125 (i) for each examiner; and

126 (ii) per hour worked.

127 (b) For an examination of a branch or office of a financial institution located outside of  
128 this state, in addition to the per diem assessment under this Subsection (7), the institution shall  
129 pay all reasonable travel, lodging, and other expenses incurred by each examiner while  
130 conducting the examination.

131 (8) In addition to a fee under Subsection (5), a person registering under Section  
132 [7-23-201](#) or [7-24-201](#) shall pay an original registration fee of \$300.

133 (9) In addition to a fee under Subsection (5), a person applying for licensure under  
134 Chapter 25, Money Transmitter Act, shall pay an original license fee of \$300.

135 Section 2. Section **7-22-101** is amended to read:

136 **7-22-101. Definitions -- Exemptions.**

137 (1) As used in this chapter:

138 (a) "Escrow" means an agreement, express or implied, that provides for one or more  
139 parties to deliver or entrust money, a certificate of deposit, a security, a negotiable instrument, a  
140 deed, or other property or asset to another person to be held, paid, or delivered in accordance  
141 with terms and conditions prescribed in the agreement.

142 (b) "Escrow agent" means a person that provides or offers to provide escrow services  
143 to the public.

144 (c) "Nationwide database" means the Nationwide Mortgage Licensing System and  
145 Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan  
146 originators.

147 (2) This chapter does not apply to:

148 (a) a trust company authorized to engage in the trust business in Utah in accordance  
149 with Chapter 5, Trust Business;

150 (b) a person other than an escrow agent regulated under this chapter that is exempted  
151 from the definition of trust business in Subsection [7-5-1\(1\)](#);

152 (c) a depository institution chartered by a state or the federal government that is  
153 engaged in business as a depository institution in Utah;

154 (d) the State Board of Regents, the Utah Higher Education Assistance Authority, or the  
155 State Treasurer; and

156 (e) a person licensed under Title 31A, Insurance Code.

157 Section 3. Section 7-22-103 is amended to read:

158 **7-22-103. Registration -- Fees -- Qualifications.**

159 (1) (a) ~~[Each]~~ An escrow agent shall register with the department annually on or before  
160 ~~[July 15]~~ December 31 of each year and pay a registration fee of \$100.

161 (b) Registration of an escrow agent in accordance with this section includes all  
162 directors, officers, employees, and representatives of the escrow agent while acting in the  
163 course of ~~[its]~~ the escrow agent's business.

164 (2) ~~[Each]~~ To register under this chapter an escrow agent shall provide the department:

165 (a) evidence satisfactory to the commissioner that the person is registered with the  
166 nationwide database;

167 (b) a financial statement; and

168 (c) any other information requested by the department ~~[when submitting each annual~~  
169 ~~application for registration]~~.

170 (3) The commissioner may by rule, made in accordance with Title 63G, Chapter 3,  
171 Utah Administrative Rulemaking Act, provide for the transition of persons registering with the  
172 nationwide database.

173 Section 4. Section 7-24-102 is amended to read:

174 **7-24-102. Definitions.**

175 As used in this chapter:

176 (1) "Nationwide database" means the Nationwide Mortgage Licensing System and  
177 Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan  
178 originators.

179 ~~[(+)]~~ (2) "Rollover" means the extension or renewal of the term of a title loan.

180 ~~[(2)]~~ (3) (a) "Title lender" means a person that extends a title loan.

181 (b) "Title lender" includes a person that:

182 (i) arranges a title loan on behalf of a title lender;

- 183 (ii) acts as an agent for a title lender; or
- 184 (iii) assists a title lender in the extension of a title loan.

185 [~~3~~] (4) (a) "Title loan" means a loan secured by the title to a:

- 186 (i) motor vehicle, as defined in Section 41-6a-102;
- 187 (ii) mobile home, as defined in Section 41-6a-102; or
- 188 (iii) motorboat, as defined in Section 73-18-2.

189 (b) "Title loan" includes a title loan extended at the same premise on which any of the  
190 following are sold:

- 191 (i) a motor vehicle, as defined in Section 41-6a-102;
- 192 (ii) a mobile home, as defined in Section 41-6a-102; or
- 193 (iii) a motorboat, as defined in Section 73-18-2.
- 194 (c) "Title loan" does not include:
  - 195 (i) a purchase money loan;
  - 196 (ii) a loan made in connection with the sale of a:
    - 197 (A) motor vehicle, as defined in Section 41-6a-102;
    - 198 (B) mobile home, as defined in Section 41-6a-102; or
    - 199 (C) motorboat, as defined in Section 73-18-2; or
  - 200 (iii) a loan extended by an institution listed in Section 7-24-305.

201 Section 5. Section 7-24-201 is amended to read:

202 **7-24-201. Registration -- Rulemaking.**

203 (1) (a) It is unlawful for a person to extend a title loan in Utah or with a Utah resident  
204 unless the person:

- 205 (i) registers with the department in accordance with this chapter; and
- 206 (ii) maintains a valid registration.

207 (b) It is unlawful for a person to operate a mobile facility in this state to extend a title  
208 loan.

209 (2) (a) A registration and a renewal of a registration expires on [~~April 30~~] December 31  
210 of each year unless on or before that date the person renews the registration.

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

- 212 (i) pay an original registration fee established under Subsection 7-1-401(8); and
- 213 (ii) submit a registration statement containing the information described in Subsection

214 (2)(d).

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

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

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

218 (2)(d).

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

220 (i) the name of the person;

221 (ii) the name in which the business will be transacted if different from that required in

222 Subsection (2)(d)(i);

223 (iii) the address of the person's principal business office, which may be outside this

224 state;

225 (iv) the addresses of all offices in this state at which the person extends title loans;

226 (v) if the person extends title loans in this state but does not maintain an office in this

227 state, a brief description of the manner in which the business is conducted;

228 (vi) the name and address in this state of a designated agent upon whom service of

229 process may be made;

230 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any

231 crime involving moral turpitude with respect to that person or any officer, director, manager,

232 operator, or principal of that person; [and]

233 (viii) evidence satisfactory to the department that the person is registered with the

234 nationwide database; and

235 [~~viii~~] (ix) any other information required by the rules of the department.

236 (e) (i) The commissioner may impose an administrative fine determined under

237 Subsection (2)(e)(ii) on a person if:

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

239 (B) the person fails to register or renew a registration in accordance with this chapter;

240 (C) the department notifies the person that the person is in violation of this chapter for

241 failure to be registered; and

242 (D) the person fails to register within 30 days after the day on which the person

243 receives the notice described in Subsection (2)(e)(i)(C).

244 (ii) Subject to Subsection (2)(e)(iii), the administrative fine imposed under this



245 Subsection (2)(e) is:

246 (A) \$500 if the person:

247 (I) has no office in this state at which the person extends a title loan; or

248 (II) has one office in this state at which the person extends a title loan; or

249 (B) if the person has two or more offices in this state at which the person extends a title  
250 loan, \$500 for each office at which the person extends a title loan.

251 (iii) The commissioner may reduce or waive a fine imposed under this Subsection  
252 (2)(e) if the person shows good cause.

253 (3) If the information in a registration or renewal statement required under Subsection  
254 (2) becomes inaccurate after filing, a person is not required to notify the department until:

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

256 (b) the department specifically requests earlier notification.

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

259 (a) providing for the form, content, and filing of a registration and renewal  
260 statement[-]; and

261 (b) providing for the transition of persons registering with the nationwide database.

262 Section 6. Section 7-25-101 is enacted to read:

263 **CHAPTER 25. MONEY TRANSMITTER ACT**

264 **Part 1. General Provisions**

265 **7-25-101. Title.**

266 This chapter is known as the "Money Transmitter Act."

267 Section 7. Section 7-25-102 is enacted to read:

268 **7-25-102. Definitions.**

269 As used in this chapter:

270 (1) "Applicant" means a person filing an application for a license under this chapter.

271 (2) "Authorized agent" means a person designated by the licensee under this chapter to  
272 sell or issue payment instruments or engage in the business of transmitting money on behalf of  
273 a licensee.

274 (3) "Executive officer" means the licensee's president, chair of the executive  
275 committee, executive vice president, treasurer, chief financial officer, or any other person who

276 performs similar functions.

277 (4) "Key shareholder" means a person, or group of persons acting in concert, who is the  
278 owner of 20% or more of a class of an applicant's stock.

279 (5) "Licensee" means a person licensed under this chapter.

280 (6) "Material litigation" means litigation that, according to generally accepted  
281 accounting principles, is considered significant to a person's financial health and would be  
282 required to be referenced in an annual audited financial statement, report to shareholders, or  
283 similar document.

284 (7) "Money transmission" means the sale or issuance of a payment instrument or  
285 engaging in the business of receiving money for transmission or transmitting money within the  
286 United States or to locations abroad by any and all means, including payment instrument, wire,  
287 facsimile, or electronic transfer.

288 (8) "Nationwide database" means the Nationwide Mortgage Licensing System and  
289 Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan  
290 originators.

291 (9) "Outstanding payment instrument" means a payment instrument issued by the  
292 licensee that has been sold in the United States directly by the licensee or a payment instrument  
293 issued by the licensee that has been sold and reported to the licensee as having been sold by an  
294 authorized agent of the licensee in the United States, and that has not yet been paid by or for  
295 the licensee.

296 (10) (a) "Payment instrument" means a check, draft, money order, travelers check, or  
297 other instrument or written order for the transmission or payment of money, sold or issued to  
298 one or more persons, whether or not the instrument is negotiable.

299 (b) "Payment instrument" does not include a credit card voucher, letter of credit, or  
300 instrument that is redeemable by the issuer in goods or services.

301 (11) "Remit" means either to make direct payment of the money to the licensee or its  
302 representatives authorized to receive the money, or to deposit the money in a depository  
303 institution in an account in the name of the licensee.

304 Section 8. Section **7-25-103** is enacted to read:

305 **7-25-103. Rules.**

306 The commissioner may make a rule authorized by this chapter in accordance with Title

307 63G, Chapter 3, Utah Administrative Procedures Act, including to:

- 308 (1) restrict or prohibit practices that are misleading, unfair, or abusive;
- 309 (2) promote or assure fair and full disclosure of the terms and conditions of agreements
- 310 and communications between a customer and a money transmitter; and
- 311 (3) promote or assure uniform application of or to resolve ambiguities in applicable
- 312 state or federal laws or federal regulations.

313 Section 9. Section **7-25-201** is enacted to read:

314 **Part 2. Licensing**

315 **7-25-201. Licensing required.**

- 316 (1) Unless exempt under Section [7-25-202](#), a person may not engage in the business of
- 317 money transmission without a license.
- 318 (2) A licensee may conduct its business in this state at one or more locations, directly
- 319 or indirectly owned, or through one or more authorized agents, or both, pursuant to the single
- 320 license granted to the licensee.

321 Section 10. Section **7-25-202** is enacted to read:

322 **7-25-202. Exemptions.**

323 This chapter does not apply to:

- 324 (1) the United States or a department or agency of the United States;
- 325 (2) the state or a political subdivision of the state; or
- 326 (3) a depository institution or a trust company organized under the laws of a state or the
- 327 United States.

328 Section 11. Section **7-25-203** is enacted to read:

329 **7-25-203. License qualifications.**

- 330 (1) An applicant for a license shall:
- 331 (a) demonstrate, and a licensee shall maintain, a net worth of not less than \$1,000,000
- 332 as demonstrated by a financial statement for the most recent fiscal year that is prepared and
- 333 certified by an independent auditor and is satisfactory to the commissioner; and
- 334 (b) demonstrate experience, character, and general fitness to command the confidence
- 335 of the public and warrant the belief that the business to be operated will be operated lawfully
- 336 and fairly.
- 337 (2) A corporate applicant, at the time of filing of an application for a license under this

338 chapter and at all times after a license is issued, shall be in good standing in the state of its  
339 incorporation. A noncorporate applicant shall, at the time of the filing of an application for a  
340 license under this chapter and at all times after a license is issued, be qualified to do business in  
341 the state.

342 (3) Subject to the commissioner's discretion, a person may not be licensed under this  
343 chapter to do business in the state:

344 (a) if the person has been convicted of, or pled guilty or no contest to, a felony:

345 (i) during the seven years preceding the day on which the individual files an  
346 application; or

347 (ii) at any time, if the felony involves an act of:

348 (A) fraud;

349 (B) dishonesty;

350 (C) breach of trust; or

351 (D) money laundering; or

352 (b) if an executive officer, key shareholder, or director of the person has been  
353 convicted of, or pled guilty or no contest to, a felony:

354 (i) during the seven years preceding the day on which the individual files an  
355 application; or

356 (ii) at any time, if the felony involves an act of:

357 (A) fraud;

358 (B) dishonesty;

359 (C) breach of trust; or

360 (D) money laundering.

361 (4) The applicant shall submit evidence satisfactory to the commissioner that the  
362 person is registered with the nationwide database.

363 (5) The commissioner may by rule, made in accordance with Title 63G, Chapter 3,  
364 Utah Administrative Rulemaking Act, provide for the transition of persons being licensed  
365 under this chapter.

366 Section 12. Section **7-25-204** is enacted to read:

367 **7-25-204. License application -- Bond.**

368 (1) To apply for a license under this chapter, a person shall:

- 369           (a) submit an application in writing;  
370           (b) pay the original license fee required by Section 7-1-401; and  
371           (c) submit a surety bond in accordance with Subsection (3).  
372           (2) An application shall contain:  
373           (a) the exact name of the applicant, the applicant's principal address, any fictitious or  
374 trade name used by the applicant in the conduct of its business, and the location of the  
375 applicant's business records;  
376           (b) the history of the applicant's material litigation and criminal convictions for the  
377 seven-year period before the date the application is submitted;  
378           (c) a description of the activities conducted by the applicant and a history of  
379 operations;  
380           (d) a description of the business activities in which the applicant seeks to be engaged in  
381 the state;  
382           (e) a list identifying the applicant's authorized agents in the state, if any, at the time of  
383 the filing of the license application;  
384           (f) a sample authorized agent contract, if applicable;  
385           (g) a sample form of payment instrument, if applicable;  
386           (h) the one or more locations at which the applicant and its authorized agents, if any,  
387 propose to conduct the licensed activities in the state; and  
388           (i) other information the commissioner requires by rule made in accordance with Title  
389 63G, Chapter 3, Utah Administrative Rulemaking Act.  
390           (3) (a) An applicant shall submit with an application filed under this chapter a surety  
391 bond satisfactory to the commissioner in the minimum sum of \$50,000 to reimburse the state  
392 for expenses of any kind or nature that the department may incur in connection with an  
393 administrative or judicial proceeding against a licensee, former licensee, or seller relating to the  
394 issuance or sale of a payment instrument in the state.  
395           (b) A licensee shall maintain a surety bond meeting the requirements of Subsection  
396 (3)(a) for three years after the licensee ceases money transmission operations in the state.  
397 Except that the commissioner may permit the surety bond to be reduced or eliminated before  
398 the end of the three-year period to the extent that the amount of the licensee's payment  
399 instruments outstanding in this state are reduced.

400 (c) A surety bond shall remain in effect until cancellation, which may occur only after  
401 30 days' written notice to the commissioner. Cancellation may not affect liability incurred or  
402 accrued during that period.

403 Section 13. Section **7-25-205** is enacted to read:

404 **7-25-205. Issuance of license.**

405 (1) Upon the filing of a complete application, the commissioner shall investigate the  
406 financial condition and responsibility, financial and business experience, character, and general  
407 fitness of the applicant. The commissioner may conduct an on-site investigation of the  
408 applicant, the reasonable cost of which is to be borne by the applicant in accordance with  
409 Subsection [7-1-401\(7\)](#).

410 (2) The commissioner shall issue a license to the applicant authorizing the applicant to  
411 engage in the licensed activities in this state if the commissioner finds that:

412 (a) the applicant's business will be conducted honestly, fairly, and in a manner  
413 commanding the confidence and trust of the community;

414 (b) the applicant has fulfilled the requirements imposed by this chapter; and

415 (c) the applicant has paid the required original license fee under Section [7-1-401](#).

416 Section 14. Section **7-25-206** is enacted to read:

417 **7-25-206. Renewal of license.**

418 (1) A license issued or renewed pursuant to this chapter expires on December 31. A  
419 licensee may renew the license through the nationwide database for the ensuing 12-month  
420 period upon application by the license holder showing continued compliance with the  
421 requirements of Sections [7-25-201](#), [7-25-203](#), and [7-25-204](#), and the payment of the license  
422 renewal fee required by Section [7-1-401](#) to the commissioner.

423 (2) The licensee shall include in its renewal application:

424 (a) a copy of the licensee's most recent audited unconsolidated annual financial  
425 statement, including balance sheet, statement of income or loss, statement of changes in  
426 shareholder's equity, and statement of changes in financial position, except that a licensee may  
427 provide the most recent audited consolidated annual financial statement of the parent  
428 corporation if the statement separately includes the balance sheet, statement of income or loss,  
429 statement of changes in shareholder's equity, and statement of changes of financial position of  
430 the licensee;

431 (b) material changes to the information submitted by the licensee on its original  
432 application that have not previously been reported to the commissioner on any other report  
433 required to be filed under this chapter;

434 (c) a list of the locations within this state at which business regulated by this chapter is  
435 conducted by either the licensee or its authorized agent;

436 (d) notification of material litigation or litigation relating to money transmission; and

437 (e) other information the commissioner requires by rule made in accordance with Title  
438 63G, Chapter 3, Utah Administrative Rulemaking Act.

439 (3) Failure to pay the renewal fee or to submit a completed renewal application  
440 between November 1 and December 31 shall cause the license to expire at the close of business  
441 on December 31.

442 Section 15. Section **7-25-301** is enacted to read:

443 **Part 3. Operational Requirements**

444 **7-25-301. Reporting requirements.**

445 (1) Within 15 days of the occurrence of an event listed in this Subsection (1), a licensee  
446 shall file a written report with the commissioner describing the event and its expected impact  
447 on the licensee's activities in the state:

448 (a) the filing for bankruptcy or reorganization by the licensee;

449 (b) the institution of revocation or suspension proceedings against the licensee by a  
450 state or governmental authority with regard to the licensee's money transmission activities;

451 (c) a felony indictment of the licensee or any of its officers, directors, or principals  
452 related to money transmission activities;

453 (d) a felony conviction of the licensee or any of its officers, directors, or principals  
454 related to money transmission activities; and

455 (e) any other event that the commissioner may determine by rule made in accordance  
456 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

457 (2) An authorized agent shall report to the licensee the theft or loss of payment  
458 instruments valued at \$5,000 or more within 24 hours from the time the authorized agent knew  
459 or should have known of the theft or loss. Upon the receipt of the report, the licensee shall  
460 immediately provide the information to the commissioner.

461 Section 16. Section **7-25-302** is enacted to read:

462 7-25-302. Changes in control of a licensee.

463 (1) A change in control of a licensee shall require prior notice to the commissioner. In  
464 the case of a publicly traded corporation, notification shall be made in writing within 15 days  
465 of a change or acquisition of control of a licensee. Upon notification, the commissioner may  
466 require information considered necessary to determine whether an application for a license is  
467 required. The commissioner may waive the filing of an application if, in the commissioner's  
468 discretion, the change in control does not pose a risk to the interests of the public.

469 (2) Whenever control of a licensee is acquired or exercised in violation of this section,  
470 the license of the licensee shall be considered revoked as of the date of the unlawful acquisition  
471 of control. The licensee, or its controlling person, shall surrender the license to the  
472 commissioner on demand.

473 Section 17. Section **7-25-303** is enacted to read:

474 7-25-303. Authorized agent contracts.

475 A licensee desiring to conduct licensed activities through authorized agents shall  
476 authorize each authorized agent to operate pursuant to an express written contract, which shall,  
477 at a minimum, provide the following:

478 (1) that the licensee appoints the person as its agent with authority to sell payment  
479 instruments or transmit money on behalf of the licensee in compliance with state and federal  
480 law;

481 (2) that neither a licensee nor an authorized agent may authorize a subagent without the  
482 written consent of the commissioner;

483 (3) that licensees are subject to supervision and regulation by the commissioner;

484 (4) an acknowledgment that the authorized agent consents to the commissioner's  
485 inspection, with or without prior notice to the licensee or authorized agent, of the records of the  
486 authorized agent or agents of the licensee; and

487 (5) that an authorized agent is under a duty to act only as authorized under the contract  
488 with the licensee and that an authorized agent who exceeds its authority is subject to  
489 cancellation of its contract by the licensee and disciplinary action by the commissioner.

490 Section 18. Section **7-25-304** is enacted to read:

491 7-25-304. Authorized agent conduct.

492 (1) An authorized agent may not make a fraudulent or false statement or



493 misrepresentation to a licensee or to the commissioner.

494 (2) A money transmission, sale, or issuance of payment instrument activity conducted  
495 by an authorized agent shall be strictly in accordance with the licensee's written procedures  
496 provided to the authorized agent.

497 (3) An authorized agent shall remit the money owing to the licensee in accordance with  
498 the terms of the contract between the licensee and the authorized agent. The failure of an  
499 authorized agent to remit money owing to a licensee within the contractual time period shall  
500 result in liability of the authorized agent to the licensee for three times the licensee's actual  
501 damages. The commissioner shall have the discretion to set, by rule made in accordance with  
502 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the maximum remittance time.

503 (4) The money, less fees, received by an authorized agent of a licensee from the sale or  
504 delivery of a payment instrument issued by a licensee or received by an authorized agent for  
505 transmission shall, from the time the money is received by the authorized agent until the time  
506 when the money or an equivalent amount is remitted by the authorized agent to the licensee,  
507 constitute trust funds owned by and belonging to the licensee. If an authorized agent  
508 commingles the money with any other money or property owned or controlled by the  
509 authorized agent, the commingled proceeds and other property shall be impressed with a trust  
510 in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

511 Section 19. Section **7-25-305** is enacted to read:

512 **7-25-305. Instrument to bear name of licensee.**

513 A payment instrument issued by a licensee for sale in Utah, or which is sold in Utah,  
514 shall state on its face the name of the licensee issuer.

515 Section 20. Section **7-25-401** is enacted to read:

516 **Part 4. Enforcement**

517 **7-25-401. Examinations.**

518 (1) (a) The commissioner may conduct periodic on-site examinations of a licensee.

519 The commissioner may examine a licensee's authorized or apparent agents. At the  
520 commissioner's discretion, written notice of the examination may be provided to the licensee or  
521 an authorized or apparent agent.

522 (b) In conducting an examination, the commissioner or the commissioner's staff:

523 (i) shall have full and free access to all the records of the licensee and its authorized or

524 apparent agents; and

525 (ii) may summon and qualify as witnesses, under oath, and examine the directors,  
526 officers, members, agents, and employees of a licensee or authorized or apparent agent, and any  
527 other person concerning the condition and affairs of the licensee.

528 (c) In accordance with Section 7-1-401, the licensee shall pay the reasonable costs of  
529 an examination under this section.

530 (d) An on-site examination may be conducted in conjunction with examinations to be  
531 performed by representatives of agencies of another state or states.

532 (e) The commissioner, in lieu of an on-site examination, may accept the examination  
533 report of an agency of another state, or a report prepared by an independent accounting firm,  
534 and a report so accepted is considered for all purposes as an official report of the  
535 commissioner.

536 (2) Upon reasonable cause, the commissioner may conduct an on-site examination of  
537 an unlicensed person to determine whether violations of this chapter have occurred or are  
538 occurring. In conducting the examination, the commissioner has the applicable powers  
539 provided pursuant to Section 7-25-204.

540 Section 21. Section 7-25-402 is enacted to read:

541 **7-25-402. Confidentiality of information.**

542 (1) Information obtained by the commissioner under this chapter is confidential in  
543 accordance with Section 7-1-802.

544 (2) Subsection (1) does not prohibit the commissioner from releasing to the public a  
545 list of persons licensed under this chapter or from releasing aggregated financial data on the  
546 licensees.

547 Section 22. Section 7-25-403 is enacted to read:

548 **7-25-403. Termination or suspension of authorized agent activity.**

549 (1) (a) The commissioner may issue an order suspending or barring an authorized agent  
550 from continuing to be or becoming an authorized agent of a licensee during the period for  
551 which the order is in effect, if subject to Title 63G, Chapter 4, Administrative Procedures Act,  
552 the commissioner finds that an authorized agent of a licensee or a director, officer, employee,  
553 or controlling person of the authorized agent has:

554 (i) violated this chapter or a rule or order issued under this chapter;

555 (ii) engaged or participated in an unsafe or unsound act with respect to the business of  
556 selling or issuing payment instruments of the licensee or the business of money transmission;  
557 or

558 (iii) made or caused to be made in an application or report filed with the commissioner  
559 or a proceeding before the commissioner, a statement that was at the time and in the  
560 circumstances under which it was made, false or misleading with respect to a material fact, or  
561 has omitted to state in the application or report a material fact that is required to be stated in the  
562 application or report.

563 (b) Upon issuance of the order, the licensee shall terminate its relationship with the  
564 authorized agent according to the terms of the order.

565 (2) An authorized agent to whom an order is issued under this section may apply to the  
566 commissioner to modify or rescind the order. The commissioner may not grant the application  
567 unless the commissioner finds that it is in the public interest to do so and that it is reasonable to  
568 believe that the person will, if and when the person is permitted to resume being an authorized  
569 agent of a licensee, comply with all applicable provisions of this chapter and a rule or order  
570 issued under this title.

571 Section 23. Section **7-25-404** is enacted to read:

572 **7-25-404. Licensee liability.**

573 A licensee's responsibility to a person who purchases a payment instrument or money  
574 transmission transaction from a licensee or a licensee's authorized agent is limited to the face  
575 amount of the payment instrument or money transmission transaction purchased.

576 Section 24. Section **7-25-405** is enacted to read:

577 **7-25-405. Criminal and civil penalties.**

578 (1) A person who violates this chapter or who files materially false information with a  
579 license application or renewal under this chapter is:

580 (a) guilty of a class B misdemeanor; and

581 (b) subject to revocation of the person's license under this chapter.

582 (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the  
583 commissioner determines that a person is engaging in the business of money transmission in  
584 violation of this chapter, the commissioner may:

585 (a) suspend, revoke, or not renew that person's license under this chapter;

586 (b) issue a cease and desist order from committing any further violation;

587 (c) prohibit the person from continuing to engage in the business of money  
588 transmission;

589 (d) impose an administrative fine not to exceed \$1,000 per violation, except that the  
590 aggregate total of fines imposed under this chapter against a person in a calendar year may not  
591 exceed \$30,000 for that calendar year; or

592 (e) take any combination of actions listed under this Subsection (2).

593 (3) If the commissioner revokes a license, the department is not required to refund any  
594 portion of the licensee's filing or renewal fee for the remainder of the period for which the fee  
595 is paid.

596 Section 25. Section **7-25-406** is enacted to read:

597 **7-25-406. Consent orders -- Emergency order.**

598 (1) The commissioner may enter into consent orders at any time with any person to  
599 resolve any matter arising under this chapter. A consent order must be signed by the person to  
600 whom it is issued or a duly authorized representative, and must indicate agreement to the terms  
601 contained in the consent order. A consent order need not constitute an admission by any  
602 person that any provision of this chapter, or any rule or order made or issued under this chapter,  
603 has been violated, nor need it constitute a finding by the commissioner that the person has  
604 violated any provision of this chapter or any rule or order made or issued under this chapter.

605 (2) Notwithstanding the issuance of a consent order, the commissioner may seek civil  
606 or criminal penalties or compromise civil penalties concerning matters encompassed by the  
607 consent order.

608 (3) In cases involving extraordinary circumstances requiring immediate action, the  
609 commissioner may take any enforcement action authorized by this chapter without providing  
610 the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an  
611 application to rescind the action taken, which is filed with the commissioner within 20 days of  
612 the receipt of the notice of the commissioner's emergency action.

613 Section 26. Section **7-25-407** is enacted to read:

614 **7-25-407. Required deposits.**

615 If the commissioner finds any reasonable cause to believe that a licensee is in an unsafe  
616 or unsound condition or is unwilling or unable to pay its payment instruments when they come

617 due, it may require the licensee to deposit funds in a financial institution acceptable to the  
618 commissioner in such amounts, for such period, and upon such conditions as the commissioner  
619 may specify, and may prohibit the licensee from issuing payment instruments for sale in Utah  
620 in an aggregate unpaid amount exceeding the amount of any such required deposit or the  
621 amount actually deposited pursuant to such a requirement, whichever is less.

622 Section 27. Section **70D-2-102** is amended to read:

623 **70D-2-102. Definitions.**

624 As used in this chapter:

625 (1) (a) Except as provided in Subsection (1)(b), "broker" means a person who in the  
626 regular course of business assists a person in obtaining a mortgage loan for a fee or other  
627 consideration paid directly or indirectly.

628 (b) "Broker" does not include a person solely because of the person's:

629 (i) real estate brokerage activities; or

630 (ii) activities as an attorney licensed to practice law in this state who, in the course of  
631 the attorney's practice as an attorney, assists a person in obtaining a mortgage loan.

632 (2) "Business as a lender, broker, or servicer" means a person who engages in an act for  
633 compensation or in the expectation of compensation that makes the person a lender, broker, or  
634 servicer.

635 (3) (a) Except as provided in Subsection (3)(b), "lender" means a person who in the  
636 regular course of business originates a loan secured by a mortgage.

637 (b) "Lender" does not include a person who:

638 (i) as a seller only receives one or more mortgages as security for a purchase money  
639 obligation; or

640 (ii) only receives a mortgage as security for an obligation:

641 (A) payable on an installment or deferred payment basis; and

642 (B) arising out of materials furnished or services rendered in the improvement of real  
643 property.

644 (4) "Manufactured home" means a transportable factory built housing unit that:

645 (a) is constructed:

646 (i) on or after June 15, 1976, according to the National Manufactured Housing

647 Construction and Safety Standards Act of 1974; and

648 (ii) in one or more sections, which:

649 (A) in the traveling mode, is eight body feet or more in width or 40 body feet or more  
650 in length; or

651 (B) when erected on site, is 400 or more square feet;

652 (b) is built on a permanent chassis;

653 (c) is designed to be used as a dwelling with or without a permanent foundation when  
654 connected to the required utilities; and

655 (d) includes the plumbing, heating, air-conditioning, and electrical systems.

656 (5) "Mobile home" means a transportable factory built housing unit built before June  
657 15, 1976, in accordance with a state mobile home code that existed before the National  
658 Manufactured Housing Construction and Safety Standards Act of 1974.

659 (6) "Modular home" means a modular unit as defined in Section [15A-1-302](#).

660 (7) "Nationwide database" means the Nationwide Mortgage Licensing System and  
661 Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan  
662 originators.

663 ~~[(7)]~~ (8) "Permanently affixed" means anchored to, and supported by, a permanent  
664 foundation or installed in accordance with the manufactured housing installation standard code  
665 referred to in Section [15A-1-202](#).

666 ~~[(8)]~~ (9) "Servicer" means a person who in the regular course of business assumes  
667 responsibility for servicing and accepting payments for a mortgage loan.

668 Section 28. Section **70D-2-201** is amended to read:

669 **70D-2-201. Registration -- Exemptions.**

670 (1) (a) Except as provided in Subsection (2), a person may not engage in business as a  
671 lender, broker, or servicer in this state before the day on which the person:

672 ~~[(a) files written notification with the commissioner in accordance with Section~~  
673 ~~[70D-2-202](#); and]~~

674 (i) provides evidence satisfactory to the commissioner that the person is registered with  
675 the nationwide database; and

676 ~~[(b)]~~ (ii) pays a fee required by Section [70D-2-203](#).

677 (b) The commissioner may by rule, made in accordance with Title 63G, Chapter 3,  
678 Utah Administrative Rulemaking Act, provide for the transition of persons registering with the

679 nationwide database.

680 (2) The following persons are exempt from this part, except for a reimbursement or fee  
681 described in Subsection 70D-2-203(2):

682 (a) a federally insured depository institution;

683 (b) a wholly owned subsidiary of a depository institution described in Subsection  
684 (2)(a); and

685 (c) a person who:

686 (i) is required to be licensed with the Division of Real Estate pursuant to Title 61,  
687 Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; and

688 (ii) is not a servicer.

689 Section 29. Section 70D-2-203 is amended to read:

690 **70D-2-203. Fees -- Examination.**

691 (1) (a) A person required to [~~file notification~~] register under this part shall pay to the  
692 commissioner:

693 (i) a fee of \$200 with the person's initial [~~notification~~] registration; and

694 (ii) an annual fee, on or before [~~January~~] December 31 of each year, in an amount to be  
695 set by rule of the commissioner subject to Subsection (1)(b).

696 (b) The commissioner:

697 (i) subject to Subsection (1)(b)(ii), shall set the annual renewal fee at an amount that  
698 generates sufficient revenue to cover the department's costs of administering this chapter; and

699 (ii) may not set an annual renewal fee that exceeds \$100 per renewal.

700 (2) (a) The commissioner may require a lender, broker, or servicer to make a record of  
701 the lender, broker, or servicer relating to its activities as a lender, broker, or servicer available  
702 to the commissioner or the commissioner's authorized representative for examination.

703 (b) A lender, broker, or servicer described in Subsection (2)(a) shall:

704 (i) reimburse the department for travel and other reasonable and necessary costs  
705 incurred in the examination described in Subsection (2)(a); and

706 (ii) pay to the commissioner a fee set by the commissioner based on an hourly rate per  
707 each examiner, not to exceed \$55 per hour for each examiner.

708 (3) No portion of a fee paid or owed to the commissioner under this section is  
709 refundable because a person voluntarily or involuntarily ceases to do business as a lender,

710 broker, or servicer:

711 (a) during the period covered by the fee; or

712 (b) before the time of an examination by the commissioner of a record pertaining to a

713 transaction preceding the day on which the person ceases to do business as a lender, broker, or

714 servicer.

715 Section 30. **Repealer.**

716 This bill repeals:

717 Section **70D-2-202**, **Form of notice.**

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**Legislative Review Note**

**as of 11-20-14 3:46 PM**

**Office of Legislative Research and General Counsel**