

1 **DEFERRED DEPOSIT LENDING AND IDENTITY THEFT**

2 **AMENDMENTS**

3 2016 GENERAL SESSION

4 STATE OF UTAH

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

6 Senate Sponsor: Curtis S. Bramble

7

8 **LONG TITLE**

9 **General Description:**

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 registration requirements;
- 16 ▶ requires compliance with federal requirements related to loans to military personnel
17 and dependents;
- 18 ▶ addresses reporting requirements for deferred deposit lenders;
- 19 ▶ imposes requirements related to querying the database to determine ineligibility to
20 receive a deferred deposit loan;
- 21 ▶ imposes requirements related to the commissioner's annual report;
- 22 ▶ addresses penalties;
- 23 ▶ establishes what constitutes ineligibility to obtain a deferred deposit loan;
- 24 ▶ creates the Deferred Deposit Lending Database Program, which includes the
25 creation of the Deferred Deposit Lending Database;
- 26 ▶ permits the department to contract with a third party to establish and maintain the
27 database;



- 28 ▶ addresses various requirements related to the operation of the database;
- 29 ▶ grants rulemaking authority;
- 30 ▶ provides for the process to make a query to the database, including the payment of a
- 31 fee; and
- 32 ▶ makes technical and conforming amendments.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

- 39 7-23-102, as last amended by Laws of Utah 2013, Chapter 73
- 40 7-23-201, as last amended by Laws of Utah 2014, Chapter 131
- 41 7-23-401, as last amended by Laws of Utah 2014, Chapter 131
- 42 7-23-503, as last amended by Laws of Utah 2012, Chapter 323
- 43 7-23-504, as last amended by Laws of Utah 2008, Chapter 382 and renumbered and
- 44 amended by Laws of Utah 2008, Chapter 96

45 ENACTS:

- 46 7-23-601, Utah Code Annotated 1953
- 47 7-23-602, Utah Code Annotated 1953
- 48 7-23-603, Utah Code Annotated 1953



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

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

52 **7-23-102. Definitions.**

53 As used in this chapter:

- 54 (1) "Annual percentage rate" [~~has the same meaning as~~] means the same as that term is
- 55 defined in 15 U.S.C. Sec. 1606, as implemented by regulations issued under that section.
- 56 (2) "Business of cashing checks" means cashing a check for consideration.
- 57 (3) "Business of deferred deposit lending" means extending a deferred deposit loan.
- 58 (4) "Check" [~~is as~~] means the same as that term is defined in Section 70A-3-104.

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

60 (6) "Database" means the Deferred Deposit Lending Database created in Section

61 7-23-602.

62 (7) "Database provider" means:

63 (a) the department; or

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

65 ~~(6)~~ (8) "Deferred deposit lender" means a person that engages in the business of
66 deferred deposit lending.

67 ~~(7)~~ (9) (a) "Deferred deposit loan" means a transaction where:

68 ~~(a)~~ (i) a person:

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

70 or

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

73 ~~(b)~~ (ii) the deferred deposit lender:

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

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

78 (b) "Deferred deposit loan" includes:

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

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

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

84 ~~(8)~~ (10) (a) "Electronic payment" means an electronic method by which a person:

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

86 (ii) makes a payment to another person.

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

88 (i) an automated clearing house transaction;

89 (ii) an electronic check;

90 (iii) a stored value card; or

91 (iv) an Internet transfer.

92 (11) "Ineligible" means that a person is not eligible to obtain a deferred deposit loan
93 under Section 7-23-601.

94 (12) "Monthly gross income" means the income received by a person seeking a
95 deferred deposit loan in the 30-day period preceding the person's application for the deferred
96 deposit loan under this chapter and exclusive of any income other than regular gross pay
97 received, or as otherwise determined by the department by rule made in accordance with Title
98 63G, Chapter 3, Utah Administrative Rulemaking Act.

99 [~~9~~] (13) "Nationwide database" means the Nationwide Mortgage Licensing System
100 and Registry, authorized under federal licensing requirements for mortgage loan originators.

101 [~~10~~] (14) "Rollover" means the extension or renewal of the term of a deferred deposit
102 loan.

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

104 **7-23-201. Registration -- Rulemaking.**

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

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

108 (ii) maintains a valid registration.

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

111 (i) cashing checks; or

112 (ii) deferred deposit lending.

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

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

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

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

120 (ii) submit a registration statement containing the information described in Subsection

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

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

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

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

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

131 (2)(d);

132 (iii) submit evidence satisfactory to the commissioner that the person is authorized to
133 conduct business in this state as a domestic or foreign entity pursuant to filings with the
134 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,
135 [~~Partnership~~] Unincorporated Business Entity Act;

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

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

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

141 (i) the name of the person;

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

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

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

148 (A) cashing checks; or

149 (B) deferred deposit lending;

150 (v) if the person conducts the business of cashing checks or the business of deferred
151 deposit lending in this state but does not maintain an office in this state, a brief description of

152 the manner in which the business is conducted;

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

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

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

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

161 (i) the average principal amount of the deferred deposit loans extended by the deferred
162 deposit lender;

163 (ii) for deferred deposit loans paid in full, the average number of days a deferred
164 deposit loan is outstanding for the duration of time that interest is charged;

165 ~~[(iii) the minimum and maximum dollar amount of interest and fees charged by the
166 deferred deposit lender for a deferred deposit loan of \$100 with a loan term of seven days;]~~

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

169 ~~[(v)]~~ (iv) of the persons to whom the deferred deposit lender extended a deferred
170 deposit loan, the percentage that entered into an extended payment plan under Section
171 7-23-403;

172 ~~[(vi)]~~ (v) the total dollar amount of deferred deposit loans rescinded by the deferred
173 deposit lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);

174 ~~[(vii)]~~ (vi) the average annual percentage rate charged on deferred deposit loans;

175 (vii) the range of annual percentage rates charged on deferred deposit loans extended
176 by the deferred deposit lender;

177 (viii) the average dollar amount of extended payment plans entered into under Section
178 7-23-403 by the deferred deposit lender;

179 (ix) the number of deferred deposit loans carried to the maximum 10 weeks;

180 (x) the total dollar amount of deferred deposit loans carried to the maximum 10 weeks;

181 (xi) the number of deferred deposit loans not paid in full at the end of 10 weeks; ~~[and]~~

182 (xii) the total dollar amount of deferred deposit loans not paid in full at the end of 10

183 weeks[-] after the day on which the deferred deposit loans are extended;

184 (xiii) the total number of deferred deposit loans the deferred deposit lender extended;

185 (xiv) the total dollar amount of deferred deposit loans extended by the deferred deposit
186 lender; and

187 (xv) the total number of individuals to whom the deferred deposit lender extended a
188 deferred deposit loan.

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

192 (3) Information provided by a deferred deposit lender under Subsection (2)(e) is:

193 (a) confidential in accordance with Section 7-1-802; and

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

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

198 (i) the person is required to be registered under this chapter;

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

200 (iii) the department notifies the person that the person is in violation of this chapter for
201 failure to be registered; and

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

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

205 (i) \$500 if the person:

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

207 (I) cashing checks; or

208 (II) deferred deposit lending; or

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

210 (I) cashing checks; or

211 (II) deferred deposit lending; or

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

214 which the person conducts the business of:

215 (A) cashing checks; or

216 (B) deferred deposit lending.

217 (c) The commissioner may reduce or waive a fine imposed under this Subsection (4) if

218 the person shows good cause.

219 (5) If the information in a registration, renewal, or operations statement required under

220 Subsection (2) becomes inaccurate after filing, a person is not required to notify the department

221 until:

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

223 (b) the department specifically requests earlier notification.

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

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

226 (a) the form, content, and filing of a registration and renewal statement described in

227 Subsection (2)(d); and

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

229 (7) A deferred deposit loan that is made by a person who is required to be registered

230 under this chapter but who is not registered is void, and the person may not collect, receive, or

231 retain any principal or other interest or fees in connection with the deferred deposit loan.

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

233 **7-23-401. Operational requirements for deferred deposit loans.**

234 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit

235 lender shall:

236 (a) post in a conspicuous location on its premises that can be viewed by a person

237 seeking a deferred deposit loan:

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

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

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

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

- 245 (c) conspicuously disclose in the written contract:
- 246 (i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a
247 partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan
248 without incurring additional charges above the charges provided in the written contract;
- 249 (ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind
250 the deferred deposit loan on or before 5 p.m. of the next business day without incurring any
251 charges;
- 252 (iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over
253 without the person receiving the deferred deposit loan requesting the rollover of the deferred
254 deposit loan;
- 255 (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
256 rollover requires the person to pay the amount owed by the person under the deferred deposit
257 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
258 executed; and
- 259 (v) (A) the name and address of a designated agent required to be provided the
260 department under Subsection 7-23-201(2)(d)(vi); and
- 261 (B) a statement that service of process may be made to the designated agent;
- 262 (d) provide the person seeking the deferred deposit loan:
- 263 (i) a copy of the written contract described in Subsection (1)(c); and
264 (ii) written notice that the person seeking the deferred deposit loan is eligible to enter
265 into an extended payment plan described in Section 7-23-403;
- 266 (e) orally review with the person seeking the deferred deposit loan the terms of the
267 deferred deposit loan including:
- 268 (i) the amount of any interest rate or fee;
- 269 (ii) the date on which the full amount of the deferred deposit loan is due;
- 270 (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make
271 a partial payment in increments of at least \$5 on the principal owed on the deferred deposit
272 loan without incurring additional charges above the charges provided in the written contract;
- 273 (iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may
274 rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring
275 any charges;

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

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

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

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

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

289 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
290 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; ~~and~~

291 (iv) 10 U.S.C. Sec. 987, and its implementing regulations, except that a deferred
292 deposit lender shall determine whether a person seeking a deferred deposit loan is a covered
293 borrower by verifying the person's status on the database maintained by the United States
294 Department of Defense; and

295 ~~(iv)~~ (v) Title 70C, Utah Consumer Credit Code;

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

300 (h) in accordance with Subsection (7), receive a signed acknowledgment from a person
301 attempting to receive a deferred deposit loan that the person has the ability to repay the
302 deferred deposit loan, which may include rollovers or extended payment plans as allowed by
303 this chapter~~[-]; and~~

304 (i) on and after October 1, 2016, before extending a deferred deposit loan, query the
305 database to determine if the person seeking the deferred deposit loan is ineligible.

306 (2) If a deferred deposit lender extends a deferred deposit loan through the Internet or

307 other electronic means, the deferred deposit lender shall provide the information described in
308 Subsection (1)(a) to the person receiving the deferred deposit loan:

309 (a) in a conspicuous manner; and

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

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

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

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

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

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

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

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

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

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

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

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

334 (f) in connection with the collection of money owed on a deferred deposit loan,
335 communicate with a person who owes money on a deferred deposit loan at the person's place of
336 employment if the person or the person's employer communicates, orally or in writing, to the
337 deferred deposit lender that the person's employer prohibits the person from receiving these

338 communications; or

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

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

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

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

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

351 (b) A deferred deposit lender is in compliance with Subsection (1)(g) if the deferred
352 deposit lender, at the time of the initial period of the deferred deposit loan transaction, obtains
353 one of the following regarding the person seeking the deferred deposit loan:

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

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

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

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

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

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

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

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

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

377 (b) A deferred deposit lender may provide the notice required under this Subsection
378 (8):

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

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

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

384 (9) (a) On and after October 1, 2016, a deferred deposit lender may not extend a
385 deferred deposit loan to a person who, on the basis of a query to the database required under
386 Subsection (1)(i), is ineligible.

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

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

391 **7-23-503. Reporting by commissioner.**

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

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

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

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

399 (a) shall include in the report for the immediately preceding calendar year aggregate

400 information from the one or more operations statements filed under Subsection 7-23-201(2)(e)
401 by deferred deposit lenders for that calendar year;

402 (b) shall include in the report:

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

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

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

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

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

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

414 (B) the number of the complaints described in Subsection (2)(b)(i) that the department
415 considers unresolved; ~~and~~

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

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

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

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

428 (b) To comply with Subsection (3)(a), the department may create two or more
429 categories of deferred deposit lenders providing the information collected under Subsection
430 7-23-201(2)(e) by:

- 431 (i) volume of deferred deposit loans extended by the different deferred deposit lenders;
 432 (ii) dollar amount of deferred deposit loans extended; or
 433 (iii) other category.

434 Section 5. Section **7-23-504** is amended to read:

435 **7-23-504. Penalties.**

436 (1) A person who violates this chapter or who files materially false information with a
 437 registration or renewal under Section **7-23-201** is:

438 (a) guilty of a class B misdemeanor, except for a violation of:

- 439 (i) Subsection **7-23-401**(1)(f)(i), (ii), [~~or~~] (iii), or (iv); or
 440 (ii) rules made under Subsection **7-23-501**(2)(b); and

441 (b) subject to revocation of a person's registration under this chapter.

442 (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the department
 443 determines that a person is engaging in the business of cashing checks or the business of
 444 deferred deposit lending in violation of this chapter, the department may:

445 (a) revoke that person's registration under this chapter;

446 (b) issue a cease and desist order from committing any further violations;

447 (c) prohibit the person from continuing to engage in the business of:

448 (i) cashing checks; or

449 (ii) deferred deposit lending;

450 (d) impose an administrative fine not to exceed \$1,000 per violation, except that:

451 (i) a fine imposed under Subsection **7-23-201**(4) shall comply with Subsection
 452 **7-23-201**(4); and

453 (ii) the aggregate total of fines imposed under this chapter against a person in a
 454 calendar year may not exceed \$30,000 for that calendar year; or

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

456 Section 6. Section **7-23-601** is enacted to read:

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

458 **7-23-601. Ineligibility to obtain a deferred deposit loan.**

459 (1) On and after October 1, 2016, a person is ineligible to obtain a deferred deposit
 460 loan if the person:

461 (a) after the extension of the deferred deposit loan, owes more in the aggregate than

462 25% of the person's monthly gross income in principal for one or more deferred deposit loans
463 subject to this chapter as determined by the database provider after reasonable effort has been
464 made to determine the person's monthly gross income;

465 (b) has two deferred deposit loans subject to this chapter that are not closed at the time
466 the person applies for a new deferred deposit loan; or

467 (c) is listed on the database as having a fraud alert.

468 (2) To establish a fraud alert, the department shall create a process by rule, made in
469 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for a person to
470 contact the deferred deposit database provider to prevent the extension of a deferred deposit
471 loan subject to this chapter under that person's name.

472 Section 7. Section 7-23-602 is enacted to read:

473 **7-23-602. Deferred Deposit Lending Database Program.**

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

477 (b) The program shall be administered by the department to implement by October 1,
478 2016, a common database with real-time access by deferred deposit lenders through an Internet
479 connection or other electronic means.

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

482 (i) the aggregate amount owed on deferred deposit loans outstanding for a particular
483 person as compared to the person's gross monthly income;

484 (ii) the number of deferred deposit loans outstanding for a particular person; and

485 (iii) whether there exists a fraud alert for the person seeking the deferred deposit loan.

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

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

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

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

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

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

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

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

503 (f) The department shall investigate violations of and enforce this part. The
504 department may not delegate its responsibilities under this Subsection (1)(f).

505 (2) The department shall establish guidelines to be followed by the database provider
506 so that:

507 (a) a deferred deposit lender can efficiently:

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

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

510 (b) the database provider complies with any applicable federal and state laws to prevent
511 identity theft; and

512 (c) a person seeking a deferred deposit loan who is found ineligible may have a means
513 to determine whether there is an error made by the database provider, and if an error exists, to
514 correct the error.

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

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

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

521 (c) that when the database provider receives notification that a deferred deposit loan is
522 closed, the database provider shall designate the transaction as closed in the database
523 immediately, but in no event later than 11:59 p.m. on the day the database provider receives the

524 notification;

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

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

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

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

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

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

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

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

540 (b) may not obtain or access a social security number, driver license number, or other
541 state-issued identification number in the database except as provided in this Subsection (4).

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

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

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

546 (6) Information regarding a person's transactional history provided to, maintained in, or
547 accessed from the database is not subject to public disclosure under Title 63G, Chapter 2,
548 Government Records Access and Management Act, and is confidential in accordance with
549 Section [7-1-802](#).

550 (7) A person is guilty of a class A misdemeanor if that person knowingly releases or
551 discloses information from the database for a purpose other than those authorized in this part or
552 to a person who is not entitled to the information.

553 (8) A person injured by a designated agent's violation of this part may maintain a civil
554 cause of action against the designated agent and may recover actual damages plus reasonable

555 attorney fees and court costs.

556 (9) The state is not liable to any person for the gathering, managing, or use of the
557 information in the database.

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

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

563 (b) If a deferred deposit lender stops providing deferred deposit loans, the database
564 provider shall designate all open transactions with that deferred deposit lender closed in the
565 database 60 days after the date the deferred deposit lender stops offering deferred deposit loans,
566 unless the deferred deposit lender reports to the database provider before the expiration of the
567 60-day period which of its transactions remain open and the specific reason each transaction
568 remains open.

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

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

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

582 Section 8. Section 7-23-603 is enacted to read:

583 **7-23-603. Query to database.**

584 (1) On and after October 1, 2016, before extending a deferred deposit loan, a deferred
585 deposit lender shall query the database to determine if the person seeking the deferred deposit

586 loan is ineligible.

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

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

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

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

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel