

1 **AMENDMENTS RELATED TO DEFERRED DEPOSIT**

2 **LENDING**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jim Dabakis**

6 House Sponsor: _____

7

LONG TITLE

8 **General Description:**

9 This bill modifies provisions related to deferred deposit lending.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ amends venue requirements for civil actions brought by deferred deposit lenders;

13 and

14 ▶ makes technical and conforming amendments.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **7-23-401**, as last amended by Laws of Utah 2014, Chapter 131

22

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

23 Section 1. Section **7-23-401** is amended to read:

24 **7-23-401. Operational requirements for deferred deposit loans.**

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



28 lender shall:

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

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

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

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

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

38 (c) conspicuously disclose in the written contract:

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

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

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

48 (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
49 rollover requires the person to pay the amount owed by the person under the deferred deposit
50 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
51 executed; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

82 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
83 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

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

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

89 (h) in accordance with Subsection (7), receive a signed acknowledgment from a person

90 attempting to receive a deferred deposit loan that the person has the ability to repay the
91 deferred deposit loan, which may include rollovers or extended payment plans as allowed by
92 this chapter.

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

- 96 (a) in a conspicuous manner; and
- 97 (b) prior to the person entering into the deferred deposit loan.

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

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

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

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

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

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

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

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

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

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

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

121 (f) in connection with the collection of money owed on a deferred deposit loan,
122 communicate with a person who owes money on a deferred deposit loan at the person's place of
123 employment if the person or the person's employer communicates, orally or in writing, to the
124 deferred deposit lender that the person's employer prohibits the person from receiving these
125 communications~~[; or]~~.

126 ~~[(g) modify by contract the venue provisions in Title 78B, Chapter 3, Actions and~~
127 ~~Venue.]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

164 (b) A deferred deposit lender may provide the notice required under this Subsection
165 (8):

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

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

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

171 (9) Notwithstanding Section 78B-3-304, a deferred deposit lender bringing a civil
172 action against a person who owes money on a deferred deposit loan shall bring the action in a
173 justice court or district court that has jurisdiction over the county or municipality where the
174 defendant resides.