

REGULATION OF CHECK CASHING

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Ed P. Mayne

AN ACT RELATING TO FINANCIAL INSTITUTIONS; REQUIRING REGISTRATION OF CHECK CASHERS; PRESCRIBING CERTAIN CONDUCT; PROVIDING ENFORCEMENT; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING EXEMPTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

7-1-401, as last amended by Chapter 91, Laws of Utah 1997

ENACTS:

7-23-101, Utah Code Annotated 1953

7-23-102, Utah Code Annotated 1953

7-23-103, Utah Code Annotated 1953

7-23-104, Utah Code Annotated 1953

7-23-105, Utah Code Annotated 1953

7-23-106, Utah Code Annotated 1953

7-23-107, Utah Code Annotated 1953

7-23-108, Utah Code Annotated 1953

7-23-109, Utah Code Annotated 1953

7-23-110, Utah Code Annotated 1953

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

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

7-1-401. Fees payable to commissioner.

(1) Each depository institution under the jurisdiction of the department, except an out-of-state depository institution with a branch in Utah, shall pay an annual fee computed upon the basis of aggregate assets, as shown upon the year-end report of condition at the following rates:

(a) on the first \$5,000,000 of these assets, 65 cents per \$1,000 or \$500, whichever is greater;

- (b) on the next \$10,000,000 of these assets, 35 cents per \$1,000;
- (c) on the next \$35,000,000 of these assets, 15 cents per \$1,000;
- (d) on the next \$50,000,000 of these assets, 12 cents per \$1,000;
- (e) on the next \$200,000,000 of these assets, 10 cents per \$1,000;
- (f) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and
- (g) on all amounts over \$600,000,000 of these assets, 4 cents per \$1,000.

(2) A financial institution with a trust department shall pay a fee for each examination of the trust department by state examiners.

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

(4) A trust company that is not a depository institution or a subsidiary of a depository institution holding company shall pay an annual fee of \$500 and an additional fee for each examination by state examiners.

(5) All other persons and institutions under the jurisdiction of the department that do not pay a fee under Subsections (1) through (4) shall pay:

- (a) an annual fee of \$100; and
- (b) an additional fee for each examination by state examiners.

(6) An applicant under Section 7-1-503, 7-1-702, 7-1-703, 7-1-704, 7-1-713, 7-5-3, or 7-18a-202 shall pay:

- (a) a filing fee of \$500; and
- (b) all reasonable expenses incurred in processing the application.

(7) Per diem assessments for examinations shall be calculated at the rate of \$40 per hour for each examiner up to a maximum of \$320 per examiner per day. For examination of branches or offices of financial institutions located outside of this state, the institution shall also pay all reasonable travel, lodging, and other expenses incurred by each examiner while conducting the examination.

(8) A person registering under Section 7-23-103 shall pay an original registration fee of \$300.

Section 2. Section **7-23-101** is enacted to read:

CHAPTER 23. CHECK CASHING REGISTRATION ACT

7-23-101. Title.

This chapter is known as the "Check Cashing Registration Act."

Section 3. Section **7-23-102** is enacted to read:

7-23-102. Definitions.

As used in this chapter:

(1) "Business of a check casher" means:

(a) cashing a check for consideration; or

(b) extending a deferred deposit loan.

(2) "Check" is as defined in Section 70A-3-104.

(3) "Check casher" means a person that engages in the business of a check casher.

(4) "Deferred deposit loan" means a transaction where:

(a) the person presents to a check casher a check written on that person's account; and

(b) the check casher:

(i) provides the maker an amount of money that is equal to the face value of the check less any fee or interest charged for the transaction; and

(ii) agrees not to cash the check until a specific date.

(5) "Rollover" means the extension or renewal of the term of a deferred deposit loan.

Section 4. Section **7-23-103** is enacted to read:

7-23-103. Registration -- Rulemaking.

(1) (a) It is unlawful for a person to engage in the business of a check casher unless the person:

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

(ii) maintains a valid registration.

(b) It is unlawful for a person to operate a mobile facility in this state to engage in the business of a check casher.

(c) Notwithstanding Subsection (1)(a), a person that is engaged in the business of a check

cashier in this state on May 3, 1999, is not required to be registered under this section until July 1, 1999.

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

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

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

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

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

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

(ii) submit a renewal statement containing the information described in Subsection (2)(d).

(d) A registration or renewal statement shall state:

(i) the name of the person;

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

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

(iv) the addresses of all offices in this state at which the person conducts the business of a check cashier;

(v) if the person conducts the business of a check cashier in this state but does not maintain an office in this state, a brief description of the manner in which the business is conducted;

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

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

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

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

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

(b) the department specifically requests earlier notification.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department may make rules consistent with this section providing for the form, content, and filing of a registration and renewal statement.

Section 5. Section **7-23-104** is enacted to read:

7-23-104. Posting of fee schedules for cashing checks.

(1) A check casher shall post a complete schedule of all fees for cashing a check in a conspicuous location on its premises that can be viewed by a person cashing a check.

(2) The schedule of fees required to be posted under Subsection (1) shall state the fees using dollar amounts.

Section 6. Section **7-23-105** is enacted to read:

7-23-105. Operational requirements for deferred deposit loans.

(1) If a check casher extends a deferred deposit loan, the check casher shall:

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

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

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

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

(c) provide the person seeking the deferred deposit loan a copy of the deferred deposit contract;

(d) orally review with the person seeking the deferred deposit loan the terms of the deferred deposit loan including:

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

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

(e) comply with:

(i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et. seq.;

(ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691; and

(iii) Title 70C, Utah Consumer Credit Code.

(2) A check casher that engages in a deferred deposit loan may not rollover a deferred deposit loan if the rollover requires a person to pay the amount owed by the person under a deferred deposit loan in whole or in part more than 12 weeks from the day on which the deferred deposit loan is first executed.

Section 7. Section **7-23-106** is enacted to read:

7-23-106. Enforcement by department -- Rulemaking.

Subject to the requirements of Title 63, Chapter 46b, Administrative Procedures Act, the department may:

(1) (a) receive and act on complaints;

(b) take action designed to obtain voluntary compliance with this chapter; or

(c) commence administrative or judicial proceedings on its own initiative to enforce compliance with this chapter;

(2) counsel persons and groups on their rights and duties under this chapter;

(3) make rules to:

(a) restrict or prohibit lending or servicing practices that are misleading, unfair, or abusive;

(b) promote or assure fair and full disclosure of the terms and conditions of agreements and communications between check cashers and customers; or

(c) promote or assure uniform application of or to resolve ambiguities in applicable state or federal laws or federal regulations; and

(4) employ hearing examiners, clerks, and other employees and agents as necessary to perform its duties under this chapter.

Section 8. Section **7-23-107** is enacted to read:

7-23-107. Examination of books, accounts, and records by the department.

(1) The department may examine the books, accounts, and records of a check casher and may make investigations to determine compliance with this chapter.

(2) In accordance with Section 7-1-401, the department may charge fees for an examination

conducted under Subsection (1).

Section 9. Section **7-23-108** is enacted to read:

7-23-108. Penalties.

(1) A person who violates this chapter or who files materially false information with a registration or renewal under Section 7-23-103 is:

(a) guilty of a class B misdemeanor; and

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

(2) Subject to Title 63, Chapter 46b, Administrative Procedures Act, if the department determines that a person is engaging in the business of cashing checks in violation of this chapter, the department may:

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

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

(c) prohibit the person from continuing to engage in the business of a check casher.

Section 10. Section **7-23-109** is enacted to read:

7-23-109. Civil liability.

Nothing in this chapter is intended to limit any civil liability that may exist against a check casher for:

(1) breach of contract;

(2) violation of federal law; or

(3) other unlawful act.

Section 11. Section **7-23-110** is enacted to read:

7-23-110. Exemptions.

The following are not subject to the requirements of this chapter:

(1) a depository institution;

(2) a depository institution holding company;

(3) an institution directly or indirectly owned or controlled by one or more:

(a) depository institutions; or

(b) depository institution holding companies; or

- (4) a person that cashes a check in a transaction:
 - (a) that is incidental to the retail sale of goods or services; and
 - (b) for consideration that does not exceed the greater of:
 - (i) 1% of the amount of the check; or
 - (ii) \$1.