

Representative Wayne A. Harper proposes the following substitute bill:

LENDING LAW AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

This act modifies the Check Cashing Registration act to provide guidelines for deferred deposit loans extended through the Internet, require additional disclosures, and require the consideration of a borrower's repayment ability when making a deferred deposit loan. The act modifies the Financial Institutions Code to enact the Title Lending Registration Act, imposing registration requirements, operational and disclosure requirements, and enforcement provisions for title loans. The act makes technical changes.

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

AMENDS:

7-23-103, as enacted by Chapter 144, Laws of Utah 1999

7-23-105, as enacted by Chapter 144, Laws of Utah 1999

7-23-108, as enacted by Chapter 144, Laws of Utah 1999

ENACTS:

7-24-101, Utah Code Annotated 1953

7-24-102, Utah Code Annotated 1953

7-24-201, Utah Code Annotated 1953

7-24-202, Utah Code Annotated 1953

7-24-203, Utah Code Annotated 1953

7-24-204, Utah Code Annotated 1953

7-24-301, Utah Code Annotated 1953

7-24-302, Utah Code Annotated 1953



26 7-24-303, Utah Code Annotated 1953

27 7-24-304, Utah Code Annotated 1953

28 7-24-305, Utah Code Annotated 1953

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

30 Section 1. Section 7-23-103 is amended to read:

31 **7-23-103. Registration -- Rulemaking.**

32 (1) (a) It is unlawful for a person to engage in the business of a check casher in Utah or
33 with a Utah resident unless the person:

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

35 (ii) maintains a valid registration.

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

38 (c) Notwithstanding Subsection (1)(a), a person that is engaged in the business of a
39 check casher in this state on May 3, 1999, is not required to be registered under this section
40 until July 1, 1999.

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

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

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

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

46 (2)(d).

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

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

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

50 (2)(d).

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

52 (i) the name of the person;

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

54 Subsection (2)(d)(i);

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

56 state;

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

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

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

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

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

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

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

71 (b) the department specifically requests earlier notification.

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

75 Section 2. Section **7-23-105** is amended to read:

76 **7-23-105. Operational requirements for deferred deposit loans.**

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

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

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

82 (A) as dollar amounts; and

83 (B) as annual percentage rates; and

84 (ii) a telephone number [~~the~~] a person [~~can~~] may call to make a complaint to the
85 department regarding [~~the~~] a deferred deposit loan[?];

86 (b) enter into a written contract for the deferred deposit loan[?]; containing:

87 (i) the name of the person receiving the deferred deposit loan;

88 (ii) the transaction date;
89 (iii) the amount of the check;
90 (iv) a statement of the total amount of any interest or fees that may be charged for the
91 deferred deposit loan, expressed as:

92 (A) a dollar amount; and
93 (B) an annual percentage rate; and
94 (v) a date, not more than 12 weeks after the loan transaction date, upon which the
95 check casher may deposit or negotiate the check;

96 (c) provide the person seeking the deferred deposit loan a copy of the [~~deferred deposit~~
97 ~~contract~~] written contract described in Subsection (1)(b);

98 (d) prior to the execution of the deferred deposit loan, orally review with the person
99 seeking the deferred deposit loan the terms of the deferred deposit loan including:

100 (i) the amount of any interest rate or fee[~~;~~ ~~and~~], expressed as:

101 (A) a dollar amount; and
102 (B) an annual percentage rate; and

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

104 (e) comply with:

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

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

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

108 (2) If a check casher extends a deferred deposit loan through the Internet or other
109 electronic means, the check casher shall:

110 (a) provide the information described in Subsection (1)(a) to the person receiving the
111 deferred deposit loan in a conspicuous manner prior to the completion of the deferred deposit
112 loan; and

113 (b) in connection with the disclosure required under Subsection (2)(a), provide a list of
114 states where the check casher is registered or authorized to offer deferred deposit loans through
115 the Internet or other electronic means.

116 ~~(2)~~ (3) A check casher that engages in a deferred deposit loan may not;

117 (a) collect interest on a deferred deposit loan with an outstanding principal balance 12
118 weeks after the day on which the deferred deposit loan is executed;

119 (b) rollover a deferred deposit loan if the rollover requires a person to pay the amount
120 owed by the person under [a] the deferred deposit loan in whole or in part more than 12 weeks
121 from the day on which the deferred deposit loan is first executed[-]; or

122 (c) extend a deferred deposit loan without regard to the ability of the person seeking the
123 deferred deposit loan to repay the deferred deposit loan, including the person's:

124 (i) current and expected income;

125 (ii) current obligations; and

126 (iii) employment.

127 (4) A check casher has met the requirements of Subsection (3)(c) if the person seeking
128 a deferred deposit loan provides the check casher with a signed acknowledgment that:

129 (a) the person has provided the check casher with true and correct information
130 concerning the person's income, obligations, and employment; and

131 (b) the person has the ability to repay the deferred deposit loan.

132 Section 3. Section 7-23-108 is amended to read:

133 **7-23-108. Penalties.**

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

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

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

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

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

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

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

144 (3) A person is not subject to the penalties under this section for a violation of this
145 chapter that was not willful or intentional, including a violation resulting from a clerical error.

146 Section 4. Section 7-24-101 is enacted to read:

147 **CHAPTER 24. TITLE LENDING REGISTRATION ACT**

148 **Part 1. General Provisions**

149 **7-24-101. Title.**

150 This chapter is known as the "Title Lending Registration Act."

151 Section 5. Section **7-24-102** is enacted to read:

152 **7-24-102. Definitions.**

153 As used in this chapter:

154 (1) "Rollover" means the extension or renewal of the term of a title loan.

155 (2) (a) "Title lender" means a person that extends a title loan.

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

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

158 (ii) acts as an agent for a title lender; or

159 (iii) assists a title lender in the extension of a title loan.

160 (3) (a) "Title loan" means a loan secured by the title to a:

161 (i) motor vehicle, as defined in Section 41-6-1; ~~h~~ OR ~~h~~

162 ~~h~~ [(ii) mobile home, as defined in Section 41-6-1; or

163 ~~(iii)] (ii) ~~h~~ motorboat, as defined in Section 73-18-2.~~

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

166 (i) a motor vehicle, as defined in Section 41-6-1; ~~h~~ OR ~~h~~

167 ~~h~~ [(ii) a mobile home, as defined in Section 41-6-1; or

168 ~~(iii)] (ii) ~~h~~ a motorboat, as defined in Section 73-18-2.~~

169 (c) "Title loan" does not include:

170 (i) a purchase money loan;

171 (ii) a loan made in connection with the sale of a:

172 (A) motor vehicle, as defined in Section 41-6-1; ~~h~~ OR ~~h~~

173 ~~h~~ [(B) mobile home, as defined in Section 41-6-1; or

174 ~~(C)] (B) ~~h~~ motorboat, as defined in Section 73-18-2; or~~

175 (iii) a loan extended by an institution listed in Section 7-24-305.

176 Section 6. Section **7-24-201** is enacted to read:

177 **Part 2. Requirements**

178 **7-24-201. Registration -- Rulemaking.**

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

- 181 (i) registers with the department in accordance with this chapter; and
182 (ii) maintains a valid registration.
- 183 (b) It is unlawful for a person to operate a mobile facility in this state to extend a title
184 loan.
- 185 (c) Notwithstanding Subsection (1)(a), a person that is a title lender in this state on
186 May 5, 2003, is not required to be registered under this section until July 1, 2003.
- 187 (2) (a) A registration and a renewal of a registration expires on April 30 of each year
188 unless on or before that date the person renews the registration.
- 189 (b) To register under this section, a person shall:
190 (i) pay an original registration fee established under Subsection 7-1-401(8); and
191 (ii) submit a registration statement containing the information described in Subsection
192 (2)(d).
- 193 (c) To renew a registration under this section, a person shall:
194 (i) pay the annual fee established under Subsection 7-1-401(5); and
195 (ii) submit a renewal statement containing the information described in Subsection
196 (2)(d).
- 197 (d) A registration or renewal statement shall state:
198 (i) the name of the person;
199 (ii) the name in which the business will be transacted if different from that required in
200 Subsection (2)(d)(i);
201 (iii) the address of the person's principal business office, which may be outside this
202 state;
203 (iv) the addresses of all offices in this state at which the person extends title loans;
204 (v) if the person extends title loans in this state but does not maintain an office in this
205 state, a brief description of the manner in which the business is conducted;
206 (vi) the name and address in this state of a designated agent upon whom service of
207 process may be made;
208 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any
209 crime involving moral turpitude with respect to that person or any officer, director, manager,
210 operator, or principal of that person; and
211 (viii) any other information required by the rules of the department.

212 (3) If the information in a registration or renewal statement required under Subsection
213 (2) becomes inaccurate after filing, a person is not required to notify the department until:
214 (a) that person is required to renew the registration; or
215 (b) the department specifically requests earlier notification.
216 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
217 department may make rules consistent with this section providing for the form, content, and
218 filing of a registration and renewal statement.

219 Section 7. Section **7-24-202** is enacted to read:

220 **7-24-202. Operational requirements for title loans.**

221 (1) A title lender shall:

222 (a) post in a conspicuous location on its premises that can be viewed by a person
223 seeking a title loan:

224 (i) a complete schedule of any interest or fees charged for a title loan that states the
225 interest and fees:

226 (A) as dollar amounts; and

227 (B) as annual percentage rates; and

228 (ii) a telephone number a person may call to make a complaint to the department
229 regarding a title loan;

230 (b) enter into a written contract for the title loan containing:

231 (i) the name of the person receiving the title loan;

232 (ii) the transaction date;

233 (iii) the amount of the title loan; and

234 (iv) a statement of the total amount of any interest or fees that may be charged for the
235 title loan, expressed as:

236 (A) a dollar amount; and

237 (B) an annual percentage rate;

238 (c) provide the person seeking the title loan a copy of the written contract described in
239 Subsection (1)(b);

240 (d) prior to the execution of the title loan;

241 (i) orally review with the person seeking the title loan the terms of the title loan
242 including:

243 (A) the amount of any interest rate or fee, expressed as:
244 (I) a dollar amount; and
245 (II) an annual percentage rate; and
246 (B) the date on which the full amount of the title loan is due; and
247 (ii) provide the person seeking the title loan a copy of the disclosure form adopted by
248 the department under Section 7-24-203; and
249 (e) comply with:
250 (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et. seq.;
251 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691; and
252 (iii) Title 70C, Utah Consumer Credit Code.
253 (2) If a title lender extends a title loan through the Internet or other electronic means,
254 the title lender shall:
255 (a) provide the information described in Subsection (1)(a) to the person receiving the
256 title loan in a conspicuous manner prior to the completion of the title loan; and
257 (b) in connection with the disclosure required under Subsection (2)(a), provide a list of
258 states where the title lender is registered or authorized to offer title loans through the Internet or
259 other electronic means.
260 (3) A title lender may not:
261 (a) rollover a title loan unless the person receiving the title loan requests a rollover of
262 the title loan;
263 (b) extend more than one title loan on any vehicle at one time;
264 (c) extend a title loan that exceeds the fair market value of the vehicle securing the title
265 loan; or
266 (d) extend a title loan without regard to the ability of the person seeking the title loan to
267 repay the title loan, including the person's:
268 (i) current and expected income;
269 (ii) current obligations; and
270 (iii) employment.
271 (4) A title lender has met the requirements of Subsection (3)(d) of the person seeking a
272 title loan provides the title lender with a signed acknowledgment that:
273 (a) the person has provided the title lender with true and correct information

274 concerning the person's income, obligations, and employment; and

275 (b) the person has the ability to repay the title loan.

276 Section 8. Section **7-24-203** is enacted to read:

277 **7-24-203. Disclosure form for title loans.**

278 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
279 department shall adopt a disclosure form for title loans that complies with this section.

280 (2) The department shall specify by rule:

281 (a) the information to be provided in the disclosure form including:

282 (i) the costs of obtaining a title loan;

283 (ii) the consequences of defaulting on a title loan;

284 (iii) generally available alternatives to a title loan; and

285 (iv) methods of obtaining credit counseling or other financial advice;

286 (b) the type size of the disclosure form; and

287 (c) the manner in which a title lender shall conspicuously provide the disclosure form
288 to a person seeking a title loan.

289 Section 9. Section **7-24-204** is enacted to read:

290 **7-24-204. Remedy for default.**

291 Except in the event of fraud by a borrower, if a borrower defaults on a title loan:

292 (1) the title lender's sole remedy is to seek repossession and sale of the property
293 securing the title loan;

294 (2) the title lender may not pursue the borrower personally for:

295 (a) repayment of the loan; or

296 (b) any deficiency after repossession and sale of the property securing the loan; and

297 (3) after repossession and sale of the property securing the title loan, the title lender
298 shall return to the borrower any proceeds from the sale in excess of the amount owed on the
299 title loan.

300 Section 10. Section **7-24-301** is enacted to read:

301 **Part 3. Enforcement**

302 **7-24-301. Enforcement by department -- Rulemaking.**

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

305 (1) (a) receive and act on complaints;
306 (b) take action designed to obtain voluntary compliance with this chapter; or
307 (c) commence administrative or judicial proceedings on its own initiative to enforce
308 compliance with this chapter;

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

310 (3) make rules to:

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

313 (b) promote or assure fair and full disclosure of the terms and conditions of agreements
314 and communications between title lenders and customers; or

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

317 (4) employ hearing examiners, clerks, and other employees and agents as necessary to
318 perform the department's duties under this chapter.

319 Section 11. Section **7-24-302** is enacted to read:

320 **7-24-302. Examination of books, accounts, and records by the department.**

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

323 (2) In accordance with Section 7-1-401, a title lender shall pay a fee for an examination
324 conducted under Subsection (1).

325 Section 12. Section **7-24-303** is enacted to read:

326 **7-24-303. Penalties.**

327 (1) A person who violates this chapter or who files materially false information with a
328 registration or renewal under Section 7-24-201 is:

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

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

331 (2) Subject to Title 63, Chapter 46b, Administrative Procedures Act, if the department
332 determines that a person is extending title loans in violation of this chapter, the department
333 may:

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

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

336 (c) prohibit the person from continuing to extend title loans.

337 (3) A person is not subject to the penalties under this section for a violation of this
338 chapter that was not willful or intentional, including a violation resulting from a clerical error.

339 Section 13. Section **7-24-304** is enacted to read:

340 **7-24-304. Civil liability.**

341 Nothing in this chapter is intended to limit any civil liability that may exist against a
342 title lender for:

343 (1) breach of contract;

344 (2) violation of federal law; or

345 (3) other unlawful act.

346 Section 14. Section **7-24-305** is enacted to read:

347 **7-24-305. Exemptions.**

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

349 (1) a depository institution;

350 (2) a depository institution holding company; or

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

352 (a) depository institutions; or

353 (b) depository institution holding companies.