

LENDING LAW AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

This act modifies the Check Cashing Registration Act to enact provisions governing the extension of a deferred deposit loan through electronic means, and to require immediate payment to a person receiving a deferred deposit loan through electronic means. 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:

7-1-401, as last amended by Chapter 97, Laws of Utah 2001

7-23-102, as enacted by Chapter 144, Laws of Utah 1999

ENACTS:

7-23-105.1, Utah Code Annotated 1953

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

7-24-303, Utah Code Annotated 1953

7-24-304, Utah Code Annotated 1953

7-24-305, 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) Except for an out-of-state depository institution with a branch in Utah, a depository institution under the jurisdiction of the department shall pay an annual fee:

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

(b) at the following rates:

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

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

(B) \$500;

(ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;

(iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;

(iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;

(v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;

(vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and

(vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.

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

(3) Notwithstanding Subsection (1), 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:

(a) an annual fee of \$500; and

(b) an additional fee determined in accordance with Subsection (7) for each examination by state examiners.

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

(a) an annual fee of \$100; and

(b) an additional fee determined in accordance with Subsection (7) for each examination by state examiners.

(6) A person filing an application or request 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) (a) Per diem assessments for an examination shall be calculated at the rate of \$40 per hour:

(i) for each examiner; and

(ii) per hour worked.

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

(8) In addition to a fee under Subsection (5), a person registering under Section 7-23-103 or 7-24-201 shall pay an original registration fee of \$300.

Section 2. Section **7-23-102** is amended 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~~ a person:

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

(ii) provides written or electronic authorization to a check casher to effect a debit from

that person's account using an electronic payment; and

(b) the check casher:

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

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

(5) (a) "Electronic payment" means any electronic method by which a check casher:

(i) accepts a payment from a person; or

(ii) makes a payment to a person.

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

(i) an automated clearing house transaction;

(ii) an electronic check;

(iii) a stored value card; or

(iv) an Internet transfer.

[~~(5)~~] (6) "Rollover" means the extension or renewal of the term of a deferred deposit loan.

Section 3. Section **7-23-105.1** is enacted to read:

7-23-105.1. Electronic disbursement and collections.

If a check casher collects payment on a deferred deposit loan through an electronic payment, the check casher shall, on the day the loan is executed:

(1) credit the amount of the deferred deposit loan through an electronic payment to the person receiving the deferred deposit loan; or

(2) make the amount of the deferred deposit loan immediately available to the person receiving the deferred deposit loan.

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

CHAPTER 24. TITLE LENDING REGISTRATION ACT

Part 1. General Provisions

7-24-101. Title.

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

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

7-24-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

(i) motor vehicle, as defined in Section 41-6-1;

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

(iii) motorboat, as defined in Section 73-18-2.

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

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

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

(iii) a motorboat, as defined in Section 73-18-2.

(c) "Title loan" does not include:

(i) a purchase money loan;

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

(A) motor vehicle, as defined in Section 41-6-1;

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

(C) motorboat, as defined in Section 73-18-2; or

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

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

Part 2. Requirements

7-24-201. Registration -- Rulemaking.

(1) (a) It is unlawful for a person to extend a title loan in Utah or with a Utah resident 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 extend a title loan.

(c) Notwithstanding Subsection (1)(a), a person that is a title lender in this state on May 5, 2003, is not required to be registered under this section until July 1, 2003.

(2) (a) A registration and a renewal of a registration expires on April 30 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 extends title loans;

(v) if the person extends title loans 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 7. Section **7-24-202** is enacted to read:

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

(1) A title lender shall:

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

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

(A) as dollar amounts; and

(B) as annual percentage rates; and

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

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

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

(ii) the transaction date;

(iii) the amount of the title loan; and

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

(A) a dollar amount; and

(B) an annual percentage rate;

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

(d) prior to the execution of the title loan:

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

(A) the amount of any interest rate or fee, expressed as:

(I) a dollar amount; and

(II) an annual percentage rate; and

(B) the date on which the full amount of the title loan is due; and

(ii) provide the person seeking the title loan a copy of the disclosure form adopted by the department under Section 7-24-203; 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) If a title lender extends a title loan through the Internet or other electronic means, the title lender shall:

(a) provide the information described in Subsection (1)(a) to the person receiving the title loan in a conspicuous manner prior to the completion of the title loan; and

(b) in connection with the disclosure required under Subsection (2)(a), provide a list of states where the title lender is registered or authorized to offer title loans through the Internet or other electronic means.

(3) A title lender may not:

(a) rollover a title loan unless the person receiving the title loan requests a rollover of the title loan;

(b) extend more than one title loan on any vehicle at one time;

(c) extend a title loan that exceeds the fair market value of the vehicle securing the title loan; or

(d) extend a title loan without regard to the ability of the person seeking the title loan to repay the title loan, including the person's:

(i) current and expected income;

(ii) current obligations; and

(iii) employment.

(4) A title lender has met the requirements of Subsection (3)(d) if the person seeking a title loan provides the title lender with a signed acknowledgment that:

(a) the person has provided the title lender with true and correct information concerning the person's income, obligations, and employment; and

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

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

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

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

(2) The department shall specify by rule:

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

(i) the costs of obtaining a title loan;

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

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

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

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

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

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

7-24-204. Remedy for default.

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

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

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

(a) repayment of the loan; or

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

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

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

Part 3. Enforcement

7-24-301. 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 title lenders 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 the department's duties under this chapter.

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

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

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

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

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

7-24-303. Penalties.

(1) A person who violates this chapter or who files materially false information with a registration or renewal under Section 7-24-201 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 extending title loans 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 extend title loans.

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

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

7-24-304. Civil liability.

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

- (1) breach of contract;
- (2) violation of federal law; or
- (3) other unlawful act.

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

7-24-305. Exemptions.

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

- (1) a depository institution;

(2) a depository institution holding company; or

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

(a) depository institutions; or

(b) depository institution holding companies.