

1                                   **LENDING LAW AMENDMENTS**

2                                   2003 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Sponsor: Wayne A. Harper**

5   **This act modifies the Financial Institutions Code by requiring registration of title lenders,**  
6   **requiring persons extending deferred deposit loans and title loans to provide disclosures**  
7   **to consumers, and providing guidelines for deferred deposit loans and title loans**  
8   **extended through the Internet. The act limits rollovers for deferred deposit loans, and**  
9   **limits the total amounts and interest rates for deferred deposit loans and title loans. The**  
10   **act modifies the Utah Residential Mortgage Practices Act by imposing operational**  
11   **restrictions on high-cost dwelling loans, requiring disclosures and imposing operational**  
12   **restrictions on prepayment penalties, lending without consideration of the borrower's**  
13   **repayment ability, negative amortization, payments to home improvement contracts, loan**  
14   **refinancing, financing insurance premiums, acceleration, the amount of loans, and**  
15   **incomplete contracts. The act provides methods for borrowers and lenders to remedy a**  
16   **breach. The act makes technical changes.**

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

18   AMENDS:

19           **7-23-101**, as enacted by Chapter 144, Laws of Utah 1999

20           **7-23-102**, as enacted by Chapter 144, Laws of Utah 1999

21           **7-23-103**, as enacted by Chapter 144, Laws of Utah 1999

22           **7-23-104**, as enacted by Chapter 144, Laws of Utah 1999

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

24           **7-23-106**, as enacted by Chapter 144, Laws of Utah 1999

25           **7-23-107**, as enacted by Chapter 144, Laws of Utah 1999

26           **7-23-108**, as enacted by Chapter 144, Laws of Utah 1999

27           **7-23-109**, as enacted by Chapter 144, Laws of Utah 1999



28 ENACTS:

29 **7-23-105.5**, Utah Code Annotated 1953

30 **61-2c-501**, Utah Code Annotated 1953

31 **61-2c-502**, Utah Code Annotated 1953

32 **61-2c-503**, Utah Code Annotated 1953

33 **61-2c-504**, Utah Code Annotated 1953

34 **61-2c-505**, Utah Code Annotated 1953

35 **61-2c-506**, Utah Code Annotated 1953

36 **61-2c-507**, Utah Code Annotated 1953

37 **61-2c-508**, Utah Code Annotated 1953

38 **61-2c-509**, Utah Code Annotated 1953

39 **61-2c-510**, Utah Code Annotated 1953

40 **61-2c-511**, Utah Code Annotated 1953

41 **61-2c-512**, Utah Code Annotated 1953

42 **61-2c-513**, Utah Code Annotated 1953

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

44 Section 1. Section **7-23-101** is amended to read:

45 **CHAPTER 23. CHECK CASHING AND TITLE LOANS ACT**

46 **7-23-101. Title.**

47 This chapter is known as the "Check Cashing [~~Registration~~] and Title Loans Act."

48 Section 2. Section **7-23-102** is amended to read:

49 **7-23-102. Definitions.**

50 As used in this chapter:

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

52 (a) cashing a check for consideration; or

53 (b) extending a deferred deposit loan.

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

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

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

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

58 (b) the check casher:

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

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

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

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

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

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

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

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

68 (b) "Title loan" does not include:

69 (i) a purchase money loan; or

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

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

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

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

74 Section 3. Section **7-23-103** is amended to read:

75 **7-23-103. Registration -- Rulemaking.**

76 (1) (a) It is unlawful for a person to extend a title loan or engage in the business of a  
77 check casher in Utah or with a Utah resident unless the person:

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

79 (ii) maintains a valid registration.

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

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

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

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

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

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

90 (2)(d).

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

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

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

94 (2)(d).

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

96 (i) the name of the person;

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

98 Subsection (2)(d)(i);

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

101 (iv) the addresses of all offices in this state at which the person extends a title loan or  
102 conducts the business of a check casher;

103 (v) if the person extends a title loan or conducts the business of a check casher in this  
104 state but does not maintain an office in this state, a brief description of the manner in which the  
105 business is conducted;

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

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

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

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

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

115 (b) the department specifically requests earlier notification.

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

119 Section 4. Section **7-23-104** is amended to read:

120 **7-23-104. Posting of fee schedules for cashing checks.**

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

123 (2) The schedule of fees required to be posted under Subsection (1) shall state the fees  
124 [~~using dollar amounts~~]:

125 (a) as dollar amounts; and

126 (b) as annual percentage rates.

127 Section 5. Section **7-23-105** is amended to read:

128 **7-23-105. Operational requirements for deferred deposit loans.**

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

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

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

134 (A) as dollar amounts; and

135 (B) as annual percentage rates; and

136 (ii) a telephone number [the] a person can call to make a complaint to the department  
137 regarding the deferred deposit loan; and

138 (iii) a list of states where the check casher is properly registered and authorized to offer  
139 deferred deposit loans through the Internet or other electronic means;

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

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

142 (ii) the transaction date;

143 (iii) the amount of the check;

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

146 (A) a dollar amount; and

147 (B) an annual percentage rate; and

148 (v) a date, not more than six weeks after the loan transaction date, upon which the  
149 check casher may deposit or negotiate the check;

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

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

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

155 (A) a dollar amount; and

156 (B) an annual percentage rate; and

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

158 (e) comply with:

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

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

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

162 (2) If a check casher extends a deferred deposit loan through the Internet or other  
163 electronic means, the check casher shall provide the information described in Subsection (1)(a)  
164 to the person receiving the deferred deposit loan in a conspicuous manner prior to the  
165 completion of the deferred deposit loan.

166 [~~2~~] (3) A check casher that engages in a deferred deposit loan may not:

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

170 (b) extend a deferred deposit loan if the total of all interest or fees in connection with  
171 the deferred deposit loan exceeds an annual percentage rate of 105%; or

172 (c) extend a deferred deposit loan to a person if the total amount of all deferred deposit  
173 loans extended by the check casher to that person exceeds \$350.

174 Section 6. Section **7-23-105.5** is enacted to read:

175 **7-23-105.5. Operational requirements for title loans.**

176 (1) A title lender shall:

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

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

181 (A) as dollar amounts; and

182 (B) as annual percentage rates;

- 183 (ii) a telephone number a person can call to make a complaint to the department  
184 regarding the title loan; and
- 185 (iii) a list of states where the title lender is properly registered and authorized to offer  
186 title loans through the Internet or other electronic means;
- 187 (b) enter into a written contract for the title loan containing:
- 188 (i) the name of the person receiving the title loan;  
189 (ii) the transaction date;  
190 (iii) the amount of the title loan; and  
191 (iv) a statement of the total amount of any interest or fees that may be charged for the  
192 title loan, expressed as:
- 193 (A) a dollar amount; and  
194 (B) an annual percentage rate;  
195 (c) provide the person seeking the title loan a copy of the written contract described in  
196 Subsection (1)(b):
- 197 (d) prior to the execution of the title loan, orally review with the person seeking the  
198 title loan the terms of the title loan including:
- 199 (i) the amount of any interest rate or fee, expressed as:  
200 (A) a dollar amount; and  
201 (B) an annual percentage rate; and  
202 (ii) the date on which the full amount of the title loan is due; and  
203 (e) comply with:
- 204 (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et. seq.;  
205 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691; and  
206 (iii) Title 70C, Utah Consumer Credit Code.
- 207 (2) If a title lender extends a title loan through the Internet or other electronic means,  
208 the title lender shall provide the information described in Subsection (1)(a) to the person  
209 receiving the title loan in a conspicuous manner prior to the completion of the title loan.
- 210 (3) A title lender may not:
- 211 (a) extend a title loan if the total of all interest or fees in connection with the title loan  
212 exceeds an annual percentage rate of 105%; or  
213 (b) extend a title loan to a person if the total amount of all title loans extended by the

214 title lender to that person exceeds \$350.

215 Section 7. Section **7-23-106** is amended to read:

216 **7-23-106. Enforcement by department -- Rulemaking.**

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

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

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

221 (c) commence administrative or judicial proceedings on ~~[its]~~ the department's own

222 initiative to enforce compliance with this chapter;

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

224 (3) make rules to:

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

226 abusive;

227 (b) promote or assure fair and full disclosure of the terms and conditions of agreements

228 and communications between customers and:

229 (i) check cashers ~~[and customers]~~; or

230 (ii) title lenders; or

231 (c) promote or assure uniform application of or to resolve ambiguities in applicable

232 state or federal laws or federal regulations; and

233 (4) employ hearing examiners, clerks, and other employees and agents as necessary to

234 perform ~~[its]~~ the department's duties under this chapter.

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

236 **7-23-107. Examination of books, accounts, and records by the department.**

237 (1) The department may:

238 (a) examine the books, accounts, and records of a:

239 (i) check cashier ~~[and may]~~; or

240 (ii) title lender; and

241 (b) make investigations to determine compliance with this chapter.

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

243 examination conducted under Subsection (1).

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



245 **7-23-108. Penalties.**

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

- 248 (a) guilty of a class B misdemeanor; and
- 249 (b) subject to revocation of a person's registration under this chapter.

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

- 253 (a) revoke that person's registration under this chapter;
- 254 (b) issue a cease and desist order from committing any further violations; or
- 255 (c) prohibit the person from continuing to engage in the business of a check casher.

256 (3) Subject to Title 63, Chapter 46b, Administrative Procedures Act, if the department  
257 determines that a title lender has violated this chapter, the department may:

- 258 (a) revoke that person's registration under this chapter;
- 259 (b) issue a cease and desist order from committing any further violations; or
- 260 (c) prohibit the person from continuing to extend title loans.

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

262 **7-23-109. Civil liability.**

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

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

268 Section 11. Section **61-2c-501** is enacted to read:

269 **Part 5. High-Cost Dwelling Loans**

270 **61-2c-501. Definitions.**

271 As used in this part:

272 (1) "Accelerate" means a demand for immediate repayment of the entire balance of a  
273 residential mortgage loan.

274 (2) "Borrower" means a person that:

- 275 (a) seeks a high-cost dwelling loan; or

276 (b) is obligated under a high-cost dwelling loan.

277 (3) "High-cost dwelling loan" means a residential mortgage loan with a closing date on  
278 or after May 5, 2003 under which:

279 (a) the annual percentage rate at the closing of the residential mortgage loan exceeds by  
280 more than eight percentage points the yield on treasury securities having comparable periods of  
281 maturity on the 15 day of the month immediately preceding the month in which the application  
282 for the residential mortgage loan is received by the lender; or

283 (b) the total points and fees payable by the borrower at or before closing of the  
284 residential mortgage loan exceeds 6% of the total loan amount.

285 (4) "Lender" means a person that:

286 (a) offers a high-cost dwelling loan; or

287 (b) extends a high-cost dwelling loan.

288 Section 12. Section **61-2c-502** is enacted to read:

289 **61-2c-502. Disclosure statement.**

290 (1) A lender may not originate a high-cost dwelling loan unless the lender provides to  
291 the borrower a disclosure form no later than three business days prior to the day of the signing  
292 of the high-cost dwelling loan documents. The disclosure form shall be adopted by the  
293 division as provided in Subsection (2).

294 (2) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
295 the division shall adopt a disclosure form for high-cost dwelling loans that complies with this  
296 Subsection (2).

297 (b) The division shall specify by rule:

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

299 (A) generally available alternatives to a high-cost dwelling loan;

300 (B) the consequences of obtaining a high-cost dwelling loan;

301 (C) the consequences of defaulting on a high-cost dwelling loan;

302 (D) the consequences of consolidating consumer debt into a high-cost dwelling loan;

303 (E) the responsibility for property taxes and homeowner's insurance;

304 (F) factors that may influence a person's credit rating;

305 (G) factors that may influence:

306 (I) interest rates;

307           (II) closing costs; or  
308           (III) other fees;  
309           (H) methods of obtaining credit counseling or other financial advice;  
310           (I) the responsibility for:  
311           (I) property taxes; and  
312           (II) homeowner's insurance; and  
313           (J) that signing a loan application does not obligate a consumer to complete a loan  
314 agreement;  
315           (ii) the type size of the disclosure form; and  
316           (iii) the manner in which a lender conspicuously shall provide the disclosure form to a  
317 borrower.  
318           (3) A lender may not originate a high-cost dwelling loan unless the lender verbally  
319 discusses with the borrower each of the items from the disclosure form listed in Subsection  
320 (2)(b)(i).  
321           (4) There is a rebuttable presumption that a lender has provided the disclosures  
322 required under this section if the borrower provides the lender with a signed acknowledgment  
323 that:  
324           (a) the borrower received a copy of the disclosure form required under Subsection (1);  
325 and  
326           (b) the borrower received the verbal disclosures required under Subsection (3).  
327           Section 13. Section **61-2c-503** is enacted to read:  
328           **61-2c-503. Prepayment fees and penalties.**  
329           (1) A high-cost dwelling loan may not include a prepayment fee or penalty on or after  
330 the first 24 months after the day of the closing of the high-cost dwelling loan.  
331           (2) A high-cost dwelling loan may include a prepayment fee or penalty up to the first  
332 24 months after the day of the closing of the high-cost home loan only if:  
333           (a) the prepayment fee or penalty is not more than:  
334           (i) 2% of the total amount of the high-cost dwelling loan in the first 12 months after the  
335 day of the closing of the high-cost dwelling loan; and  
336           (ii) 1% of the total amount of the high-cost dwelling loan in the second 12 months after  
337 the day of the closing of the high-cost dwelling loan;

338 (b) the lender offers the borrower a choice of a loan without a prepayment fee or  
339 penalty;

340 (c) the lender discloses in writing to the borrower at least three business days prior to  
341 the day of the closing of the loan:

342 (i) the terms of the prepayment fee or penalty to the borrower for accepting the  
343 high-cost dwelling loan with the prepayment penalty; and

344 (ii) the rates, points, and fees that would be available to the borrower for accepting a  
345 loan without a prepayment penalty;

346 (d) the prepayment fee or penalty does not apply if the high-cost dwelling loan is  
347 accelerated as a result of default; and

348 (e) the lender does not finance a prepayment fee or penalty through a new loan  
349 originated by the same lender or an affiliate of that lender.

350 Section 14. Section **61-2c-504** is enacted to read:

351 **61-2c-504. Negative amortization.**

352 A high-cost dwelling loan may not include terms under which the outstanding principal  
353 balance will increase at any time over the course of the high-cost dwelling loan because the  
354 payments do not cover the full amount of the interest.

355 Section 15. Section **61-2c-505** is enacted to read:

356 **61-2c-505. Consideration of the borrower's repayment ability.**

357 A lender may not originate a high-cost dwelling loan to a borrower based on the  
358 borrower's collateral without regard to the borrower's ability to repay the high-cost dwelling  
359 loan, including the borrower's:

360 (1) current and expected income;

361 (2) current obligations; and

362 (3) employment.

363 Section 16. Section **61-2c-506** is enacted to read:

364 **61-2c-506. Payments under home-improvement contracts.**

365 (1) A lender may not pay a contractor under a home-improvement contract from the  
366 proceeds of a high-cost dwelling loan other than:

367 (a) by an instrument payable to:

368 (i) the borrower; or

369 (ii) jointly to:  
370 (A) the borrower; and  
371 (B) the contractor; or  
372 (b) at the election of the borrower, to a third-party escrow agent under a written escrow  
373 agreement signed, prior to the disbursement of funds, by the:

374 (i) borrower;  
375 (ii) lender; and  
376 (iii) contractor.

377 (2) (a) A lender may not make a payment described in Subsection (1) unless the  
378 borrower presents to the lender a signed and dated completion certificate showing that the  
379 home-improvement contract was completed to the satisfaction of the borrower.

380 (b) Subsection (2)(a) does not apply to progress payments for home-improvement work  
381 that the borrower certifies is completed.

382 Section 17. Section **61-2c-507** is enacted to read:

383 **61-2c-507. Loan refinancing.**

384 A lender may not originate a high-cost dwelling loan to a borrower that refinances an  
385 existing residential mortgage loan that was closed less than five years prior to the day of the  
386 closing of the high-cost dwelling loan unless the high-cost dwelling loan provides a reasonable,  
387 tangible, net benefit to the borrower considering all the circumstances, including:

388 (1) the terms of both the new and refinanced loans;  
389 (2) the cost of the new high-cost dwelling loan; and  
390 (3) the borrower's circumstances.

391 Section 18. Section **61-2c-508** is enacted to read:

392 **61-2c-508. Financing insurance premiums.**

393 (1) A high-cost dwelling loan may not finance, directly or indirectly, the premiums for:

394 (a) credit insurance, as defined in Section 31A-1-301;

395 (b) any other premium for life insurance or health insurance, as defined in Section  
396 31A-1-301; or

397 (c) payments for any debt cancellation or suspension agreement.

398 (2) Subsection (1) does not prohibit a lender from financing an insurance premium or  
399 charge calculated and paid on a periodic basis that is not added to the principal of the loan.

400 Section 19. Section **61-2c-509** is enacted to read:

401 **61-2c-509. Acceleration.**

402 (1) A high-cost dwelling loan may not contain nor may a person enforce a provision in  
403 a high-cost dwelling loan that permits the lender, in the lender's sole discretion, to accelerate  
404 the indebtedness.

405 (2) Subsection (1) does not apply if:

406 (a) acceleration of repayment of the loan is justified by:

407 (i) a default in which the borrower fails to meet the repayment terms of the agreement  
408 for any outstanding balance on the high-cost dwelling loan; or

409 (ii) a due-on-sale provision in the high-cost dwelling loan;

410 (b) there is fraud or material misrepresentation by a borrower in connection with the  
411 high-cost dwelling loan;

412 (c) there is a provision in the high-cost dwelling loan permitting acceleration if the  
413 lender, in good faith, believes that:

414 (i) the lender is materially insecure; or

415 (ii) the prospect of future payment has become materially impaired; or

416 (d) there is any action or inaction by the borrower that adversely affects:

417 (i) the lender's security for the high-cost dwelling loan; or

418 (ii) any rights of the lender in the lender's security for the high-cost dwelling loan.

419 (3) (a) If a lender asserts that grounds for acceleration of a high-cost dwelling loan  
420 exist and requires the payment in full of all sums secured by the security instrument, the  
421 borrower or anyone authorized to act on the borrower's behalf may, at any time until title is  
422 transferred, cure the default and reinstate the high-cost dwelling loan by tendering the total  
423 amount in arrears, excluding any acceleration fees, of the following:

424 (i) principal;

425 (ii) interest;

426 (iii) late fees; and

427 (iv) escrow deposits.

428 (b) Cure of a default on a high-cost dwelling loan as provided in this section:

429 (i) reinstates the borrower to the same position as if the default had not occurred; and

430 (ii) nullifies as of the day of the cure any acceleration of the high-cost dwelling loan.

431 (4) A lender may not require a borrower to pay any of the following to cure a default  
432 on a high-cost dwelling loan:

433 (a) a charge, fee, or penalty attributable to the exercise of the right to cure a default,  
434 other than the fees allowed by this section;

435 (b) any attorney fees relating to the borrower's default that are incurred by the lender  
436 prior to or within 30 days after the day on which the notice required under Subsection (6) is  
437 delivered to the borrower; or

438 (c) any attorney fees in excess of \$100 incurred by the lender:

439 (i) more than 30 days after delivery of the notice required under Subsection (6); and

440 (ii) before the day on which the lender files a foreclosure action or takes other action to  
441 seize or transfer ownership of the dwelling.

442 (5) (a) If a default on a high-cost dwelling loan is cured prior to the initiation of any  
443 action to foreclose, seize, or transfer a dwelling, the lender may not initiate the foreclosure  
444 proceeding or other action for that default.

445 (b) If a default on a high-cost dwelling loan is cured after the initiation of any action to  
446 foreclose, seize, or transfer a dwelling, the lender shall terminate the foreclosure proceeding or  
447 other action.

448 (6) At least 30 days before any action under a high-cost dwelling loan is filed to  
449 foreclose, seize, or transfer ownership of a dwelling, the lender shall deliver to the borrower a  
450 notice of the right to cure the default informing the borrower of:

451 (a) the nature of the default claimed on the high-cost dwelling loan;

452 (b) the borrower's right to cure the default by paying the sum of money required to cure  
453 the default;

454 (c) if the amount necessary to cure the default will change during the 30-day period  
455 after the effective date of the notice, sufficient information to enable the borrower to calculate  
456 the amount at any point during the 30-day period;

457 (d) the date by which the borrower shall cure the default to avoid acceleration and  
458 initiation of foreclosure or other action to seize the dwelling which date shall not be less than  
459 30 days after the date the notice is effective;

460 (e) the name, address, and phone number of a person to whom the payment or tender  
461 shall be made;

462 (f) that if the borrower does not cure the default by the date specified, the lender may  
463 take steps to terminate the borrower's ownership in the property by commencing a foreclosure  
464 proceeding or other action to seize the dwelling; and

465 (g) the name and address of the lender and the telephone number of a representative of  
466 the lender whom the borrower may contact if the borrower disagrees with:

467 (i) the assertion that a default has occurred; or

468 (ii) the correctness of the calculation of the amount required to cure the default.

469 Section 20. Section **61-2c-510** is enacted to read:

470 **61-2c-510. Limit on loan amount.**

471 (1) A high-cost dwelling loan may not contain a principal amount that, when added to  
472 the aggregate total of the outstanding principal balances of all other primary or subordinate  
473 loans secured by the same property, exceeds the fair market value of the property on the day of  
474 the closing of the high-cost dwelling loan.

475 (2) For purposes of Subsection (1), a person originating a high-cost dwelling loan may  
476 rely on a written appraisal of the property:

477 (a) made by an independent third-party appraiser licensed under Title 61, Chapter 2b,  
478 Real Estate Appraiser Licensing and Certification; and

479 (b) prepared in compliance with Section 61-2b-27.

480 Section 21. Section **61-2c-511** is enacted to read:

481 **61-2c-511. Blanks in loan documents.**

482 A lender may not use a document evidencing or securing a high-cost dwelling loan if  
483 the document contains one or more blanks to be filled in after the closing of the high-cost  
484 dwelling loan.

485 Section 22. Section **61-2c-512** is enacted to read:

486 **61-2c-512. Advertising disclosures.**

487 A person advertising that refinancing a preexisting debt with a high-cost dwelling loan  
488 will reduce a borrower's aggregate monthly debt payment shall conspicuously disclose in the  
489 advertisement that the high-cost dwelling loan may increase:

490 (1) the borrower's aggregate number of monthly debt payments; and

491 (2) the aggregate amount paid by the borrower over the term of the high-cost dwelling  
492 loan.



493 Section 23. Section **61-2c-513** is enacted to read:

494 **61-2c-513. Remedy for lender violation.**

495 A lender is not liable civilly or administratively for violations of this part if the lender  
496 establishes that the violation meets the following criteria:

497 (1) the violation was not willful or intentional, including violations resulting from the  
498 following:

499 (a) clerical error;

500 (b) calculation error;

501 (c) computer malfunction;

502 (d) computer programming error; and

503 (e) printing error;

504 (2) the violation occurred notwithstanding the maintenance of procedures reasonably  
505 adopted to avoid errors; and

506 (3) the violation is corrected within 45 days after:

507 (a) receipt of a complaint from:

508 (i) a borrower; or

509 (ii) the division; or

510 (b) discovery of the error.

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**Legislative Review Note**

**as of 1-10-03 10:26 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**State Impact**

The portion of the bill that affects Financial Institutions will generate \$11,500 in revenue to the General Fund Restricted - Financial Institutions. Those funds will be spent by the Department to regulate title and deferred deposit lenders. The real estate lender portions of the bill will require \$79,000 from the Commerce Service Fund to pay for an auditor. Second year costs are \$69,000. There are 1,400 mortgage companies in Utah. Appropriations from the Commerce Service Fund affect the amount available for transfer to the General Fund.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
Restricted Funds	\$11,500	\$11,500	\$11,500	\$11,500
Commerce Service Fund	\$79,000	\$69,000	\$0	\$0
<b>TOTAL</b>	<b>\$90,500</b>	<b>\$80,500</b>	<b>\$11,500</b>	<b>\$11,500</b>

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**Individual and Business Impact**

As written, the bill would limit refinancing by banks and credit unions of loans for motor vehicles, mobile homes, and motorboats to \$350. Total losses to banks and credit unions is large but not estimated. Businesses would lose interest revenue and consumers would save interest charges as interest rates on deferred deposit loans are lowered from 520 percent to 104 percent. With regard to the deferred deposit provisions only, annual industry losses, and consumer gains are estimated at \$3,000,000.

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**Office of the Legislative Fiscal Analyst**