

AMENDMENTS RELATED TO LENDING

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David L. Hogue

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Check Cashing Registration Act and the Title Lending Registration Act.

Highlighted Provisions:

This bill:

- ▶ requires a check casher or title lender extending a loan to post a current certificate of examination;
- ▶ imposes limitations on interest that may be charged on a deferred deposit or title loan;
- ▶ limits what a check casher or title lender may recover if a check, draft, order, or other instrument used in a deferred deposit or title loan is dishonored;
- ▶ modifies examination requirements including requiring the Department of Financial Institutions to provide certificates of examination; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 **7-23-105**, as last amended by Chapter 69, Laws of Utah 2003

29 **7-23-107**, as last amended by Chapter 69, Laws of Utah 2003

30 **7-24-202**, as enacted by Chapter 236, Laws of Utah 2003

31 **7-24-204**, as enacted by Chapter 236, Laws of Utah 2003

32 **7-24-302**, as enacted by Chapter 236, Laws of Utah 2003

33

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

35 Section 1. Section **7-23-105** is amended to read:

36 **7-23-105. Operational requirements for deferred deposit loans.**

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

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

40 (i) subject to Subsection (6), a complete schedule of any interest or fees charged for a
41 deferred deposit loan that states the interest and fees using dollar amounts;

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

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

46 (iv) beginning with an examination completed on or after May 1, 2006, a current
47 certificate of examination obtained in accordance with Section 7-23-107;

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

49 (c) conspicuously disclose in the written contract that, under Subsection (4)(b), the
50 deferred deposit loan may not be rolled over beyond 12 weeks after the day on which the
51 deferred deposit loan is executed;

52 (d) provide the person seeking the deferred deposit loan a copy of the deferred deposit
53 contract;

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

56 (i) subject to Subsection (6), the amount of any interest rate or fee;

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

58 (iii) the fact that the deferred deposit loan may not be rolled over beyond 12 weeks

after the day on which the deferred deposit loan is executed; and

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

(3) A check casher that engages in a deferred deposit loan shall permit a person receiving a deferred deposit loan to:

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

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

(4) A check casher that engages in a deferred deposit loan may not:

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

(b) ~~[rollover]~~ roll over 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; ~~[or]~~

(c) threaten to use or use the criminal process in any state to collect on the deferred deposit loan~~[-]; or~~

(d) charge interest or fees in excess of the interest or fees allowed under Subsection (6).

(5) ~~[Notwithstanding]~~ (a) Subject to Subsection (5)(b) and notwithstanding
Subsections (4)(a) and (4)(c), a check casher that is the holder of a check, draft, order, or other instrument that has been dishonored as part of a deferred deposit loan may use the remedies and notice procedures provided in ~~[Title 7,]~~ Chapter 15, Dishonored Instruments, against a
person who obtains a deferred deposit loan and is the issuer of the check, draft, order, or other

instrument that has been dishonored.

(b) Notwithstanding Chapter 15, Dishonored Instruments, the person described in Subsection (5)(a) that is the issuer of the check, draft, order, or other instrument that has been dishonored is liable to the check casher for the dishonor in the amount equal to the lesser of:

(i) the amount owed under Chapter 15, Dishonored Instruments; or

(ii) (A) the amount owed under Subsection 7-15-1(2)(b);

(B) the collection costs under Subsection 7-15-1(4);

(C) interest;

(D) court costs; and

(E) reasonable attorneys' fees.

(6) (a) If the total of interest and fees charged by a check casher for a deferred deposit loan exceeds 8% annual percentage rate, the check casher may charge that amount of interest and fees only to the extent that they accrue during the period of time:

(i) beginning the day on which the deferred deposit loan is extended; and

(ii) ending 30 calendar days after the day on which the deferred deposit loan is extended.

(b) The total of interest and fees charged under a deferred deposit loan beginning the day following the end of the period of time described in Subsection (6) may not exceed 8% annual percentage rate.

(c) This Subsection (6) does not affect the prohibition under Subsection (4) that a check casher that extends a deferred deposit loan may not:

(i) collect additional interest on the deferred deposit loan with an outstanding principal balance 12 weeks after the day on which the deferred deposit loan is executed; or

(ii) roll over the 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 2. Section 7-23-107 is amended to read:

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

(1) At least [~~once every calendar year~~] annually the department shall, for each premise engaging in the business of a check casher:

(a) examine the books, accounts, and records; and

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

122 (2) In accordance with Section 7-1-401, the check casher shall pay a fee for an
123 examination conducted under Subsection (1).

124 (3) Once the examination required by this section is completed to the satisfaction of the
125 department, the department shall provide the check casher a certificate of examination that
126 states the day on which the examination is considered completed by the department.

127 Section 3. Section **7-24-202** is amended to read:

128 **7-24-202. Operational requirements for title loans.**

129 (1) A title lender shall:

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

132 (i) subject to Subsection (5), a complete schedule of any interest or fees charged for a
133 title loan that states the interest and fees:

134 (A) as dollar amounts; and

135 (B) as annual percentage rates; [~~and~~]

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

138 (iii) beginning with an examination completed on or after May 1, 2006, a current
139 certificate of examination obtained in accordance with Section 7-24-302;

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

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

142 (ii) the transaction date;

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

144 (iv) subject to Subsection (5), a statement of the total amount of any interest or fees
145 that may be charged for the title loan, expressed as:

146 (A) a dollar amount; and

147 (B) an annual percentage rate;

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

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

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

including:

(A) subject to Subsection (5), 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]~~ roll over 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~~[-]; or~~

(e) charge interest or fees in excess of the interest or fees allowed under Subsection (5).

(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.

(5) (a) If the total of interest and fees charged by a title lender for a title loan exceeds 8% annual percentage rate, the title lender may charge that amount of interest and fees only to the extent that they accrue during the period of time:

(i) beginning the day on which the title loan is extended; and

(ii) ending 30 calendar days after the day on which the title loan is extended.

(b) The total of interest and fees charged under a title loan beginning the day following the end of the period of time described in Subsection (5)(a) may not exceed 8% annual percentage rate.

Section 4. Section **7-24-204** is amended to read:

7-24-204. Remedy for default.

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

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

~~[(2)]~~ (b) the title lender may not pursue the borrower personally for:

~~[(a)]~~ (i) repayment of the loan; or

~~[(b)]~~ (ii) any deficiency after repossession and sale of the property securing the loan;

and

~~[(3)]~~ (c) 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.

(2) (a) Subject to Subsection (2)(b), a title lender that is the holder of a check, draft, order, or other instrument that has been dishonored as part of a title loan transaction may use the remedies and notice procedures provided in Chapter 15, Dishonored Instruments, against a person who obtains the title loan and is the issuer of the check, draft, order, or other instrument that has been dishonored.

(b) Notwithstanding Chapter 15, Dishonored Instruments, the person described in Subsection (2)(a) who is the issuer of the check, draft, order, or other instrument that has been

dishonored is liable to the title lender for the dishonor of the check, draft, order, or other instrument in an amount equal to the lesser of:

(i) the amount owed under Chapter 15, Dishonored Instruments; or

(ii) (A) the amount owed under Subsection 7-15-1(2)(b);

(B) the collection costs under Subsection 7-15-1(4);

(C) interest;

(D) court costs; and

(E) reasonable attorneys' fees.

Section 5. Section 7-24-302 is amended to read:

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

(1) [The] At least annually the department [may] shall 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).

(3) Once the examination required by this section is completed to the satisfaction of the department, the department shall provide a title lender a certificate of examination that states the day on which the examination is considered completed by the department.

Legislative Review Note

as of 2-10-06 11:33 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0462

Amendments Related to Lending*15-Feb-06**10:09 AM*

State Impact

No fiscal impact.

Individual and Business Impact

Potential earnings of check cashers/payday lenders and title lenders could see a significant reduction in revenue (from a typical \$10 per \$100 per week to \$.15 per \$100 per week). A corresponding savings goes to consumers. The bill also limits the amount these lenders can collect on a dishonored instrument to \$40 plus court costs and reasonable attorney fees or less.

Office of the Legislative Fiscal Analyst