

1 **DEPARTMENT OF FINANCIAL**
2 **INSTITUTIONS ENFORCEMENT OF**
3 **APPLICABLE LAW**

4 2006 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Lyle W. Hillyard**

7 House Sponsor: David Clark

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the Financial Institutions Act, Utah Uniform Consumer Credit Code,
12 and the Mortgage Lending and Servicing Act to address enforcement of federal, state,
13 or local law.

14 **Highlighted Provisions:**

15 This bill:

16 ▶ makes a violation of applicable federal law a violation of the Financial Institutions
17 Act and provides for enforcement;

18 ▶ expands the federal laws enforced under certain registration acts;

19 ▶ clarifies enforcement of federal law under certain registration acts;

20 ▶ clarifies enforcement of rules under certain registration acts;

21 ▶ addresses enforcement under the Utah Uniform Consumer Credit Code including
22 enforcement of federal law;

23 ▶ makes a violation of applicable federal law a violation of the Mortgage Lending and
24 Servicing Act that can be enforced by the department;

25 ▶ repeals language related to compliance with other applicable law related to banks,
26 bank subsidiaries, and persons employed or appointed by banks or bank
27 subsidiaries; and

28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **7-23-105**, as last amended by Chapter 69, Laws of Utah 2003

36 **7-23-108**, as enacted by Chapter 144, Laws of Utah 1999

37 **7-24-202**, as enacted by Chapter 236, Laws of Utah 2003

38 **7-24-303**, as enacted by Chapter 236, Laws of Utah 2003

39 **70C-8-104**, as enacted by Chapter 159, Laws of Utah 1985

40 **70D-1-14**, as enacted by Chapter 172, Laws of Utah 1990

41 ENACTS:

42 **7-1-325**, Utah Code Annotated 1953

43 REPEALS:

44 **7-3-3.1**, as enacted by Chapter 267, Laws of Utah 1989



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

47 Section 1. Section **7-1-325** is enacted to read:

48 **7-1-325. Compliance with applicable federal law.**

49 (1) As used in this section, "federal law" means:

50 (a) a statute passed by the Congress of the United States; or

51 (b) a final regulation;

52 (i) adopted by an administrative agency of the United States government; and

53 (ii) published in the code of federal regulations or the federal register.

54 (2) (a) An institution subject to the jurisdiction of the department violates this title if

55 the institution violates a federal law:

56 (i) that is applicable to the institution; and

57 (ii) pursuant to the terms of the federal law in effect on the day the institution violates

58 the federal law.

59 (b) The department shall by rule, made in accordance with Title 63, Chapter 46a, Utah
60 Administrative Rulemaking Act, and consistent with this title, designate which one or more
61 federal laws are applicable to an institution subject to the jurisdiction of the department.

62 (3) Except for criminal penalties, the department may enforce a violation described in
63 Subsection (2) by taking any action:

64 (a) permitted by:

65 (i) this part;

66 (ii) Chapter 2, Possession of Depository Institution by Commissioner;

67 (iii) Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies;

68 (iv) in the case of a check casher, Chapter 23, Check Cashing Registration Act; or

69 (v) in the case of a title lender, Chapter 24, Title Lending Registration Act; and

70 (b) including bringing an action permitted under this title in state court.

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

72 **7-23-105. Operational requirements for deferred deposit loans.**

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

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

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

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

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

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

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

86 (d) provide the person seeking the deferred deposit loan a copy of the deferred deposit
87 contract;

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

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

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

92 (iii) the fact that the deferred deposit loan may not be rolled over beyond 12 weeks
93 after the day on which the deferred deposit loan is executed; and

94 (f) comply with the following as in effect on the date the deferred deposit loan is
95 extended:

96 (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal
97 regulations;

98 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal
99 regulations;

100 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
101 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

102 [~~iii~~] (iv) Title 70C, Utah Consumer Credit Code.

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

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

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

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

114 following the loan transaction.

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

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

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

121 (c) threaten to use or use the criminal process in any state to collect on the deferred
122 deposit loan.

123 (5) Notwithstanding Subsections (4)(a) and (4)(c), a check casher that is the holder of a
124 check, draft, order, or other instrument that has been dishonored may use the remedies and
125 notice procedures provided in [~~Title 7,~~] Chapter 15, Dishonored Instruments.

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

127 **7-23-108. Penalties.**

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

130 (a) guilty of a class B misdemeanor, except for a violation of:

131 (i) Subsection 7-23-105(1)(f)(i), (ii), or (iii); or

132 (ii) rules made under Subsection 7-23-106(3); and

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

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

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

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

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

140 Section 4. Section **7-24-202** is amended to read:

141 **7-24-202. Operational requirements for title loans.**

142 (1) A title lender shall:
143 (a) post in a conspicuous location on its premises that can be viewed by a person
144 seeking a title loan:
145 (i) a complete schedule of any interest or fees charged for a title loan that states the
146 interest and fees:
147 (A) as dollar amounts; and
148 (B) as annual percentage rates; and
149 (ii) a telephone number a person may call to make a complaint to the department
150 regarding a title loan;
151 (b) enter into a written contract for the title loan containing:
152 (i) the name of the person receiving the title loan;
153 (ii) the transaction date;
154 (iii) the amount of the title loan; and
155 (iv) a statement of the total amount of any interest or fees that may be charged for the
156 title loan, expressed as:
157 (A) a dollar amount; and
158 (B) an annual percentage rate;
159 (c) provide the person seeking the title loan a copy of the written contract described in
160 Subsection (1)(b);
161 (d) prior to the execution of the title loan:
162 (i) orally review with the person seeking the title loan the terms of the title loan
163 including:
164 (A) the amount of any interest rate or fee, expressed as:
165 (I) a dollar amount; and
166 (II) an annual percentage rate; and
167 (B) the date on which the full amount of the title loan is due; and
168 (ii) provide the person seeking the title loan a copy of the disclosure form adopted by
169 the department under Section 7-24-203; and

170 (e) comply with the following as in effect on the date the title loan is extended:

171 (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal
172 regulations;

173 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal
174 regulations;

175 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
176 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

177 [~~(iii)~~] (iv) Title 70C, Utah Consumer Credit Code.

178 (2) If a title lender extends a title loan through the Internet or other electronic means,
179 the title lender shall:

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

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

185 (3) A title lender may not:

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

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

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

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

193 (i) current and expected income;

194 (ii) current obligations; and

195 (iii) employment.

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

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

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

201 Section 5. Section **7-24-303** is amended to read:

202 **7-24-303. Penalties.**

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

205 (a) guilty of a class B misdemeanor except for a violation of:

206 (i) Subsection 7-24-202(1)(e)(i), (ii), or (iii); or

207 (ii) rules made under Subsection 7-24-301(3); and

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

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

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

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

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

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

217 Section 6. Section **70C-8-104** is amended to read:

218 **70C-8-104. Enforcement proceedings.**

219 (1) [~~if the~~] (a) The department may take an action described in Subsection (1)(b) if the
220 department determines that any party engaging in activities subject to this title is violating or
221 has violated or the department has reasonable cause to believe is about to violate;

222 (i) any applicable provision of this title[~~;~~];

223 (ii) any rule[~~;~~regulation,] or order[~~;~~or] under this title;

224 (iii) any condition imposed in writing in connection with the granting of any
225 application or other request by the party[~~;~~]; or

226 (iv) any federal statute[~~, rule,~~] or regulation pertaining to consumer credit[~~, the~~] in
227 effect at the time of the determination described in Subsection (1)(a).

228 (b) If the department makes a determination described in Subsection (1)(a), the
229 department may:

230 (i) order the party to cease and desist from committing any further violations[~~;~~]; and

231 (ii) in the most serious instances [~~may~~], prohibit a party from making further
232 extensions of credit to consumers.

233 (c) The department shall by rule, made in accordance with Title 63, Chapter 46a, Utah
234 Administrative Rulemaking Act, and consistent with this chapter, designate which one or more
235 federal statutes or regulations are federal statutes or regulations pertaining to consumer credit
236 for purposes of this Subsection (1).

237 (2) The department shall afford an opportunity for hearing upon request of any party
238 [~~alleged to have violated this title~~] described in Subsection (1)(a) if the request is filed with the
239 department within 30 days after the party requesting the hearing first receives notice of the
240 allegations.

241 (3) (a) If the department determines that a practice [~~which~~] that it has alleged is
242 unlawful should be enjoined during the pendency of any proceedings incident to that allegation,
243 [~~it~~] the department may issue a temporary order:

244 (i) at the commencement of the proceedings; or

245 (ii) at any time [~~thereafter which shall be~~] after commencement of the proceeding.

246 (b) The temporary order described in this Subsection (3) is fully binding on the party to
247 whom the temporary order is directed until:

248 (i) the proceedings are concluded; or

249 (ii) the temporary order is modified or dissolved by the department.

250 (c) Any party to whom a temporary order is directed may request a hearing concerning
251 the order, which shall be held:

252 (i) at the earliest mutually convenient time, but in no event more than ten days, after
253 the party's request is received by the department; or

254 (ii) at any other time the parties may mutually agree upon.

255 (d) Every temporary order shall include findings and conclusions in support of [it] the
256 order. [~~No~~]

257 (e) A temporary order may not be issued unless the department finds from specific
258 facts supported by sworn statement or the records of a party subject to the order that consumers
259 are otherwise likely to suffer immediate and irreparable injury, loss, or damage before
260 proceedings, incident to a final order, can be completed.

261 (4) The department may not award damages or penalties against a creditor.

262 (5) (a) Any order issued by the department under authority of this title shall:

263 (i) be in writing[;];

264 (ii) be delivered to or served upon the party affected[;]; and

265 (iii) specify its effective date, which may be immediate or at a later date. [~~The~~]

266 (b) An order described in Subsection (5)(a) shall remain in effect until:

267 (i) withdrawn by the department; or [~~until~~]

268 (ii) terminated by a court order. [~~The~~]

269 (c) (i) An order of the department, upon application made on or after the effective date
270 of the order by the department to a court of general jurisdiction in the county in which an office
271 or the residence of the party is located, may be enforced ex parte and without notice by an order
272 to comply entered by the court.

273 (ii) If the proceeding involves more than one party and each of the parties do not have
274 an office or residence in one county, the department may file its application in any county of
275 this state where one of the parties has an office or residence.

276 (iii) If no party to the proceeding has an office or residence in the state [~~of Utah then~~],
277 the department's application shall be filed in the Third District Court.

278 Section 7. Section **70D-1-14** is amended to read:

279 **70D-1-14. Enforcement by department -- Rulemaking -- Federal loan.**

280 (1) The department has the power, within the limitations provided by Title 63, Chapter
281 46b, [~~the~~] Administrative Procedures Act, to:

- 282 (a) (i) receive and act on complaints;
- 283 (ii) take action designed to obtain voluntary compliance with this chapter; or
- 284 (iii) commence proceedings on its own initiative to enforce compliance with this
- 285 chapter;
- 286 (b) counsel persons and groups on their rights and duties under this chapter;
- 287 (c) adopt, amend, and repeal rules to:
- 288 (i) restrict or prohibit lending or servicing practices which are misleading, unfair, or
- 289 abusive;
- 290 (ii) promote or assure fair and full disclosure of the terms and conditions of agreements
- 291 and communications between mortgage lenders or servicers and borrowers; or
- 292 (iii) promote or assure uniform application of or to resolve ambiguities in applicable
- 293 state or federal laws or federal regulations; and
- 294 (d) employ hearing examiners, clerks, and other employees and agents as necessary to
- 295 perform its duties under this chapter.
- 296 (2) ~~[No]~~ A rule or any part of a rule adopted by the department pursuant to this chapter
- 297 may not be determined by any judicial or other authority to be invalid in whole or in part unless
- 298 the judicial or other authority expressly finds that the rule or a part of it:
- 299 (a) is arbitrary, capricious, constitutes an abuse of discretion[;];
- 300 (b) exceeds the authority granted to the department by this chapter[;]; or
- 301 (c) is otherwise unlawful.
- 302 (3) (a) A person subject to this chapter violates this chapter if the person violates a
- 303 federal law:
- 304 (i) that is applicable to the person because of the activities that make the person subject
- 305 to this chapter; and
- 306 (ii) pursuant to the terms of the federal law in effect on the day the person violates the
- 307 federal law.
- 308 (b) The department shall by rule, made in accordance with Title 63, Chapter 46a, Utah
- 309 Administrative Rulemaking Act, and consistent with this chapter, designate which one or more

310 federal laws are applicable to a person described in Subsection (3)(a).

311 (c) (i) Notwithstanding the other provisions of this chapter, only the department may
312 enforce or bring an action under this chapter for a violation described in this Subsection (3).

313 (ii) The department may bring an action under this Subsection (3) in state court.

314 **Section 8. Repealer.**

315 This bill repeals:

316 **Section 7-3-3.1, Compliance with other applicable law.**