

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

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9   **LONG TITLE**

10 **General Description:**

11           This bill modifies the Financial Institutions Act, Utah Uniform Consumer Credit Act,  
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 Act 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 banks, bank subsidiaries, and persons employed or  
26 appointed by banks or bank subsidiaries; and

27           ▶ makes technical changes.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **7-23-105**, as last amended by Chapter 69, Laws of Utah 2003

35 **7-23-108**, as enacted by Chapter 144, Laws of Utah 1999

36 **7-24-202**, as enacted by Chapter 236, Laws of Utah 2003

37 **7-24-303**, as enacted by Chapter 236, Laws of Utah 2003

38 **70C-8-104**, as enacted by Chapter 159, Laws of Utah 1985

39 **70D-1-14**, as enacted by Chapter 172, Laws of Utah 1990

40 ENACTS:

41 **7-1-325**, Utah Code Annotated 1953

42 REPEALS:

43 **7-3-3.1**, as enacted by Chapter 267, Laws of Utah 1989



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

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

47 **7-1-325. Compliance with applicable federal law.**

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

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

50 (b) a final regulation:

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

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

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

54 the institution violates a federal law:

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

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

57 the federal law.

58 (b) The department shall by rule, made in accordance with Title 63, Chapter 46a, Utah

59 Administrative Rulemaking Act, and consistent with this title, designate which one or more  
60 federal laws are applicable to an institution subject to the jurisdiction of the department.

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

63 (a) permitted by:

64 (i) this part;

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

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

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

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

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

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

71 **7-23-105. Operational requirements for deferred deposit loans.**

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

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

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

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

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

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

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

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

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

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

- 90 (ii) the date on which the full amount of the deferred deposit loan is due; and
- 91 (iii) the fact that the deferred deposit loan may not be rolled over beyond 12 weeks
- 92 after the day on which the deferred deposit loan is executed; and
- 93 (f) comply with the following as in effect on the date the deferred deposit loan is
- 94 extended:
- 95 (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq. and its implementing federal
- 96 regulations;
- 97 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691 and its implementing federal
- 98 regulations;
- 99 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
- 100 31 U.S.C. Sec. 5311 through 5332; and
- 101 [~~(iii)~~] (iv) Title 70C, Utah Consumer Credit Code.
- 102 (2) If a check casher extends a deferred deposit loan through the Internet or other
- 103 electronic means, the check casher shall provide the information described in Subsection (1)(a)
- 104 to the person receiving the deferred deposit loan in a conspicuous manner prior to the
- 105 completion of the deferred deposit loan.
- 106 (3) A check casher that engages in a deferred deposit loan shall permit a person
- 107 receiving a deferred deposit loan to:
- 108 (a) make partial payments in increments of at least \$5 on the principal owed on the
- 109 deferred deposit loan at any time prior to maturity without incurring additional charges above
- 110 the charges provided in the written contract; and
- 111 (b) rescind the deferred deposit loan without incurring any charges by returning the
- 112 deferred deposit loan amount to the check casher on or before 5 p.m. the next business day
- 113 following the loan transaction.
- 114 (4) A check casher that engages in a deferred deposit loan may not:
- 115 (a) collect additional interest on a deferred deposit loan with an outstanding principal
- 116 balance 12 weeks after the day on which the deferred deposit loan is executed;
- 117 (b) rollover a deferred deposit loan if the rollover requires a person to pay the amount
- 118 owed by the person under a deferred deposit loan in whole or in part more than 12 weeks from
- 119 the day on which the deferred deposit loan is first executed; or
- 120 (c) threaten to use or use the criminal process in any state to collect on the deferred

121 deposit loan.

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

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

126 **7-23-108. Penalties.**

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

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

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

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

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

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

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

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

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

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

140 **7-24-202. Operational requirements for title loans.**

141 (1) A title lender shall:

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

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

146 (A) as dollar amounts; and

147 (B) as annual percentage rates; and

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

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

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

152 (ii) the transaction date;

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

154 (iv) a statement of the total amount of any interest or fees that may be charged for the

155 title loan, expressed as:

156 (A) a dollar amount; and

157 (B) an annual percentage rate;

158 (c) provide the person seeking the title loan a copy of the written contract described in

159 Subsection (1)(b);

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

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

162 including:

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

164 (I) a dollar amount; and

165 (II) an annual percentage rate; and

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

167 (ii) provide the person seeking the title loan a copy of the disclosure form adopted by

168 the department under Section 7-24-203; and

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

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

171 regulations;

172 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691 and its implementing federal

173 regulations;

174 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and

175 31 U.S.C. Sec. 5311 through 5332; and

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

177 (2) If a title lender extends a title loan through the Internet or other electronic means,

178 the title lender shall:

179 (a) provide the information described in Subsection (1)(a) to the person receiving the

180 title loan in a conspicuous manner prior to the completion of the title loan; and

181 (b) in connection with the disclosure required under Subsection (2)(a), provide a list of

182 states where the title lender is registered or authorized to offer title loans through the Internet or

183 other electronic means.

184 (3) A title lender may not:

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

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

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

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

192 (i) current and expected income;

193 (ii) current obligations; and

194 (iii) employment.

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

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

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

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

201 **7-24-303. Penalties.**

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

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

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

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

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

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

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

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

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

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

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

217 **70C-8-104. Enforcement proceedings.**

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

221 (i) any applicable provision of this title~~[-or]~~;

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

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

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

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

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

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

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

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

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

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

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



245 (b) The temporary order described in this Subsection (3) is fully binding on the [party]  
 246 person to whom the temporary order is directed until;

247 (i) the proceedings are concluded; or

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

249 (c) Any [party] person to whom a temporary order is directed may request a hearing  
 250 concerning the order, which shall be held;

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

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

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

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

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

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

262 (i) be in writing[;];

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

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

265 (b) An order described in Subsection (5)(a) shall remain in effect until;

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

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

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

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

275 (iii) If no party to the proceeding has an office or residence in the state [of Utah then],

276 the department's application shall be filed in the Third District Court.

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

278 **70D-1-14. Enforcement by department -- Rulemaking -- Federal loan.**

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

- 281 (a) (i) receive and act on complaints;
- 282 (ii) take action designed to obtain voluntary compliance with this chapter; or
- 283 (iii) commence proceedings on its own initiative to enforce compliance with this

284 chapter;

285 (b) counsel persons and groups on their rights and duties under this chapter;

286 (c) adopt, amend, and repeal rules to:

- 287 (i) restrict or prohibit lending or servicing practices which are misleading, unfair, or
- 288 abusive;

289 (ii) promote or assure fair and full disclosure of the terms and conditions of agreements  
290 and communications between mortgage lenders or servicers and borrowers; or

291 (iii) promote or assure uniform application of or to resolve ambiguities in applicable  
292 state or federal laws or federal regulations; and

293 (d) employ hearing examiners, clerks, and other employees and agents as necessary to  
294 perform its duties under this chapter.

295 (2) [No] A rule or any part of a rule adopted by the department pursuant to this chapter  
296 may not be determined by any judicial or other authority to be invalid in whole or in part unless  
297 the judicial or other authority expressly finds that the rule or a part of it:

- 298 (a) is arbitrary, capricious, constitutes an abuse of discretion[;];
- 299 (b) exceeds the authority granted to the department by this chapter[;]; or
- 300 (c) is otherwise unlawful.

301 (3) (a) A person subject to this chapter violates this chapter if the person violates a  
302 federal law:

303 (i) that is applicable to the person because of the activities that make the person subject  
304 to this chapter; and

305 (ii) pursuant to the terms of the federal law in effect on the day the person violates the  
306 federal law.

307            (b) The department shall by rule, made in accordance with Title 63, Chapter 46a, Utah  
308 Administrative Rulemaking Act, and consistent with this chapter, designate which one or more  
309 federal laws are applicable to a person described in Subsection (3)(a).

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

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

313            **Section 8. Repealer.**

314            This bill repeals:

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

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**Legislative Review Note**  
**as of 1-19-06 3:46 PM**

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**