

**DEFERRED DEPOSIT LOANS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaWanna Lou Shurtliff**

Senate Sponsor: \_\_\_\_\_

Cosponsor: Phil Riesen

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**LONG TITLE****General Description:**

This bill modifies provisions related to deferred deposit loans.

**Highlighted Provisions:**

This bill:

- ▶ addresses operational restrictions including:
  - the contents of the required written contract;
  - prohibitions on the number, term, and amount of a deferred deposit loan; and
  - prohibitions on unfair, deceptive, or fraudulent practices;
- ▶ addresses treatment of payments;
- ▶ requires recordkeeping;
- ▶ requires annual reports related to deferred deposit loans by check cashers and the department; and
- ▶ makes technical changes and conforming amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



7-23-103, as last amended by Chapter 69, Laws of Utah 2003

7-23-105, as last amended by Chapter 165, Laws of Utah 2006

7-23-105.1, as enacted by Chapter 236, Laws of Utah 2003

7-23-106, as last amended by Chapter 69, Laws of Utah 2003

7-23-108, as last amended by Chapter 165, Laws of Utah 2006

ENACTS:

7-23-105.2, Utah Code Annotated 1953

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

Section 1. Section 7-23-103 is amended to read:

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

(1) (a) It is unlawful for a person to engage in the business of a check casher 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 engage in the business of a check casher.

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

(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) ~~[-]; and~~

(iii) file an annual report in accordance with Section 7-23-105.2.

- (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 conducts the business of a check casher;
  - (v) if the person conducts the business of a check casher 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, or annual report 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 2. Section **7-23-105** is amended to read:
- 7-23-105. Operational requirements for deferred deposit loans.**
- (1) If a check casher extends a deferred deposit loan, the check casher shall:
- (a) post in a conspicuous location on its premises that can be viewed by a person seeking a deferred deposit loan:
  - (i) a complete schedule of any interest or fees charged for a deferred deposit loan that

states the interest and fees using dollar amounts;

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

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

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

(i) the check casher's name, address, and phone number; and

(ii) the name and title of the individual who signs the written contract on behalf of the check casher;

(c) conspicuously disclose in the written contract:

(i) that, under Subsection (4)(b), the deferred deposit loan may not be rolled over beyond 12 weeks after the day on which the deferred deposit loan is executed; and

(ii) in at least 14-point bold typeface, a statement placed immediately preceding the signature of the person obtaining the deferred deposit loan that "you cannot be criminally prosecuted to collect this loan";

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

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

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

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

(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 the following as in effect on the date the deferred deposit loan is extended:

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

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

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

121 (iv) Title 70C, Utah Consumer Credit Code.

122 (2) If a check casher extends a deferred deposit loan through the Internet or other  
123 electronic means, the check casher shall provide the information described in Subsection (1)(a)  
124 to the person receiving the deferred deposit loan in a conspicuous manner prior to the  
125 ~~[completion of]~~ person entering into the deferred deposit loan.

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

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

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

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

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

137 (b) ~~[rollover]~~ roll over a deferred deposit loan if the rollover requires a person to pay  
138 the amount owed by the person under a deferred deposit loan in whole or in part more than 12  
139 weeks from the day on which the deferred deposit loan is first executed; ~~[or]~~

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

142 (d) extend a deferred deposit loan to a person who on the day on which the deferred  
143 deposit loan is extended owes money on another deferred deposit loan extended by that check  
144 casher;

145 (e) extend a deferred deposit loan for an original term of less than 30 calendar days;

146 (f) extend a deferred deposit loan if the principal owed under the deferred deposit loan  
147 exceeds \$500; or

148 (g) engage in any unfair, deceptive, or fraudulent practice in extending or collecting a  
149 deferred deposit loan, including the following:

150 (i) altering the date or any other information on a check used in a deferred deposit loan  
151 transaction;

(ii) using a device or agreement that would have the effect of charging or collecting more interest or fees than allowed under this chapter, including entering into a different type of transaction with the person that seeks or obtains a deferred deposit loan; or

(iii) engaging in a deferred deposit loan transaction that is unconscionable as provided in Section 70C-7-106.

(5) 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 may use the remedies and notice procedures provided in Chapter 15, Dishonored Instruments.

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

**7-23-105.1. Disbursement and collections.**

(1) A check casher shall after each payment made under a deferred deposit loan give the person making the payment a written receipt that:

(a) is signed;

(b) is dated; and

(c) shows the amount paid and the balance due on the deferred deposit loan.

(2) If a check casher collects payment on a deferred deposit loan through an electronic payment, the check casher shall[;]:

(a) on the day the loan is executed:

~~[(+)]~~ (i) credit the amount of the deferred deposit loan through an electronic payment to the person receiving the deferred deposit loan; or

~~[(2)]~~ (ii) make the amount of the deferred deposit loan immediately available to the person receiving the deferred deposit loan[;]; and

(b) comply with Subsection (1) as soon as reasonably possible.

Section 4. Section **7-23-105.2** is enacted to read:

**7-23-105.2. Books, accounts, and records related to deferred deposits -- Annual reports.**

(1) A check casher that extends a deferred deposit loan shall keep the books, accounts, and records necessary for the commissioner to determine if the check casher complies with this chapter.

(2) The commissioner shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

183 (a) describing:

184 (i) the books, accounts, and records required by this section; and

185 (ii) the form of any book, account, or record required by this section; and

186 (b) consistent with this section and Subsection 7-1-301(7).

187 (3) A book, account, or record required to be kept under this section shall be kept:

188 (a) for at least four years after the day on which the last entry on the deferred deposit  
189 loan recorded in the book, account, or record is made in any book, account, or record of the  
190 check casher; and

191 (b) in accordance with generally accepted accounting procedures.

192 (4) A check casher that extends a deferred deposit loan shall file an annual report with  
193 the department:

194 (a) with a renewal statement required by Section 7-23-103 for the calendar year  
195 immediately proceeding the calendar year on which the renewal statement is filed;

196 (b) in the form prescribed by the department by rule;

197 (c) verified by the oath or affirmation of:

198 (i) the owner of the check casher; or

199 (ii) an officer, director, manager, operator, or principal of the check casher; and

200 (d) that includes a detailed disclosure of the following for the calendar year being  
201 reported:

202 (i) any financial information required by the department by rule;

203 (ii) the total number of deferred deposit loans extended;

204 (iii) the total number of deferred deposit loans outstanding as of December 31 of the  
205 calendar year being reported;

206 (iv) the minimum and maximum dollar amount of a check whose deposit is deferred  
207 during the calendar year;

208 (v) the minimum and maximum annual percentage rate of a deferred deposit loan  
209 extended by the check casher in the calendar year; and

210 (vi) the maximum number of days a deposit of a check is deferred during the calendar  
211 year.

212 (5) The department shall compile an annual report of deferred deposit lending in this  
213 state from the information provided under this section that:

214 (a) does not include individual identifiers related to:  
215 (i) a deferred deposit loan;  
216 (ii) a check casher; or  
217 (iii) a person that seeks or obtains a deferred deposit loan;  
218 (b) is provided to the governor and the Legislature at the same time as the report  
219 required by Section 7-1-211; and  
220 (c) is made available to the public.  
221 Section 5. Section **7-23-106** is amended to read:  
222 **7-23-106. Enforcement by department -- Rulemaking.**  
223 (1) Subject to the requirements of Title 63, Chapter 46b, Administrative Procedures  
224 Act, the department may:  
225 [(1)] (a) receive and act on complaints;  
226 (b) take action designed to obtain voluntary compliance with this chapter;  
227 (c) commence administrative or judicial proceedings on its own initiative to enforce  
228 compliance with this chapter; or  
229 (d) take action against any check casher that fails to:  
230 (i) respond to the department, in writing within 30 days, to a complaint; or  
231 (ii) submit information as requested by the department[.];  
232 (2) The department may:  
233 [(2)] (a) counsel persons and groups on their rights and duties under this chapter;  
234 [(3)] (b) make rules in accordance with Title 63, Chapter 46a, Utah Administrative  
235 Rulemaking Act, to:  
236 [(a)] (i) subject to Subsection 7-23-105(4), restrict or prohibit lending or servicing  
237 practices that are [misleading,] unfair, ~~deceptive, fraudulent,~~ or abusive;  
238 [(b)] (ii) promote or assure fair and full disclosure of the terms and conditions of  
239 agreements and communications between check cashers and customers; or  
240 [(c)] (iii) promote or assure uniform application of or to resolve ambiguities in  
241 applicable state or federal laws or federal regulations; and  
242 [(4)] (c) employ hearing examiners, clerks, and other employees and agents as  
243 necessary to perform [its] the department's duties under this chapter.  
244 Section 6. Section **7-23-108** is amended to read:

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

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

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

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

(ii) rules made under Subsection 7-23-106[~~(3)~~](2)(b); 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 engaging in the business of cashing checks 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 engage in the business of a check casher.

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**Legislative Review Note**

as of 1-23-07 6:31 AM

Office of Legislative Research and General Counsel

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**H.B. 329 - Deferred Deposit Loans**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations. Existing staff would see some reassignment in their work priorities to handle the additional workload estimated at 260 hours annually.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Check cashers would experience some increased costs to provide the required information and to design new contracts.

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*1/25/2007, 4:54:53 PM, Lead Analyst: Eckersley, S.*

**Office of the Legislative Fiscal Analyst**