

LENDING REGISTRATION ACTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ed Mayne

House Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

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

Highlighted Provisions:

- This bill:
- ▶ addresses dishonored instrument remedies available to a check casher;
 - ▶ provides for an administrative fine under certain circumstances related to the failure to be registered under the registration acts;
 - ▶ expands requirements for contracts of loans under the registration acts;
 - ▶ adds to the operational requirements of lenders under the registration acts, including requirements for rolling over a deferred deposit loan;
 - ▶ addresses timing of examinations;
 - ▶ addresses enforcement, including providing for the imposition of administrative fines in general; and
 - ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 7-15-1, as last amended by Chapter 163, Laws of Utah 2005

30 7-15-2, as last amended by Chapters 100 and 171, Laws of Utah 1999

31 7-23-103, as last amended by Chapter 69, Laws of Utah 2003

32 7-23-105, as last amended by Chapter 165, Laws of Utah 2006

33 7-23-106, as last amended by Chapter 69, Laws of Utah 2003

34 7-23-107, as last amended by Chapter 69, Laws of Utah 2003

35 7-23-108, as last amended by Chapter 165, Laws of Utah 2006

36 7-24-201, as enacted by Chapter 236, Laws of Utah 2003

37 7-24-202, as last amended by Chapter 165, Laws of Utah 2006

38 7-24-301, as enacted by Chapter 236, Laws of Utah 2003

39 7-24-303, as last amended by Chapter 165, Laws of Utah 2006

40

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

42 Section 1. Section 7-15-1 is amended to read:

43 **7-15-1. Definitions -- Civil liability of issuer -- Notice of action -- Collection costs**

44 **-- Exemptions.**

45 (1) As used in this chapter:

46 (a) "Check" means a payment instrument on a depository institution including a:

47 (i) check;

48 (ii) draft;

49 (iii) order; or

50 (iv) other instrument.

51 (b) "Issuer" means a person who makes, draws, signs, or issues a check, whether as
52 corporate agent or otherwise, for the purpose of:

53 (i) obtaining from any person any money, merchandise, property, or other thing of
54 value; or

55 (ii) paying for any service, wages, salary, or rent.

56 (c) "Mailed" means the day that a notice is properly deposited in the United States
57 mail.

58 (2) (a) An issuer of a check is liable to the holder of the check if:

- 59 (i) the check:
- 60 (A) is not honored upon presentment; and
- 61 (B) is marked "refer to maker";
- 62 (ii) the account upon which the check is made or drawn:
- 63 (A) does not exist;
- 64 (B) has been closed; or
- 65 (C) does not have sufficient funds or sufficient credit for payment in full of the check;
- 66 or
- 67 (iii) (A) the check is issued in partial or complete fulfillment of a valid and legally
- 68 binding obligation; and
- 69 (B) the issuer stops payment on the check with the intent to:
- 70 (I) fraudulently defeat a possessory lien; or
- 71 (II) otherwise defraud the holder of the check.
- 72 (b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:
- 73 (i) the check amount; and
- 74 (ii) a service charge of \$20.
- 75 (3) (a) The holder of a check that has been dishonored may:
- 76 (i) give written or oral notice of dishonor to the issuer of the check; and
- 77 (ii) waive all or part of the service charge imposed under Subsection (2)(b).
- 78 (b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored
- 79 may not collect and the issuer is not liable for the service charge imposed under Subsection
- 80 (2)(b) if:
- 81 (i) the holder redeposits the check; and
- 82 (ii) that check is honored.
- 83 (4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15
- 84 calendar days from the day on which the notice required under Subsection (5) is mailed, the
- 85 issuer is liable for:
- 86 (a) the amount owed under Subsection (2)(b); and
- 87 (b) collection costs not to exceed \$20.
- 88 (5) (a) A holder shall provide written notice to an issuer before:
- 89 (i) charging collection costs under Subsection (4) in addition to the amount owed under

90 Subsection (2)(b); or

91 (ii) filing an action based upon this section.

92 (b) The written notice required under Subsection (5)(a) shall notify the issuer of the
93 dishonored check that:

94 (i) if the amount owed under Subsection (2)(b) is not paid within 15 calendar days
95 from the day on which the notice is mailed, the issuer is liable for:

96 (A) the amount owed under Subsection (2)(b); and

97 (B) collection costs under Subsection (4); and

98 (ii) the holder may file civil action if the issuer does not pay to the holder the amount
99 owed under Subsection (4) within 30 calendar days from the day on which the notice is mailed.

100 (6) (a) [Hf] Except as provided in Section 7-23-105, if the issuer has not paid the holder
101 the amounts owed under Subsection (4) within 30 calendar days from the day on which the
102 notice required by Subsection (5) is mailed, the holder may offer to not file civil action under
103 this section if the issuer pays the holder:

104 (i) the amount owed under Subsection (2)(b);

105 (ii) the collection costs under Subsection (4);

106 (iii) an amount that:

107 (A) is equal to the greater of:

108 (I) \$50; or

109 (II) triple the check amount; and

110 (B) does not exceed the check amount plus \$250; and

111 (iv) if the holder retains an attorney to recover on the dishonored check, reasonable
112 attorney's fees not to exceed \$50.

113 (b) (i) Notwithstanding Subsection (6)(a), all amounts charged or collected under
114 Subsection (6)(a)(iii) shall be paid to and be the property of the original payee of the check.

115 (ii) A person who is not the original payee may not retain any amounts charged or
116 collected under Subsection (6)(a)(iii).

117 (iii) The original payee of a check may not contract for a person to retain any amounts
118 charged or collected under Subsection (6)(a)(iii).

119 (7) (a) A civil action may not be filed under this section unless the issuer fails to pay
120 the amounts owed:

121 (i) under Subsection (4); and
122 (ii) within 30 calendar days from the day on which the notice required by Subsection
123 (5) is mailed.

124 (b) Subject to Subsections (7)(c) and (d) and except as provided in Section 7-23-105,
125 in a civil action the issuer of the check is liable to the holder for:

126 (i) the amount owed under Subsection (2)(b);

127 (ii) the collection costs under Subsection (4);

128 (iii) interest;

129 (iv) court costs;

130 (v) reasonable [~~attorneys'~~] attorney fees; and

131 (vi) damages:

132 (A) equal to the greater of:

133 (I) \$100; or

134 (II) triple the check amount; and

135 (B) not to exceed the check amount plus \$500.

136 (c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection
137 (7)(b), a court may waive any amount owed under Subsections (7)(b)(iii) through (vi) upon a
138 finding of good cause.

139 (d) If a holder of a check violates this section by filing a civil action under this section
140 before 31 calendar days from the day on which the notice required by Subsection (5) is mailed,
141 an issuer may not be held liable for an amount in excess of the check amount.

142 (e) (i) Notwithstanding Subsection (7)(b), all amounts charged or collected under
143 Subsection (7)(b)(vi) shall be paid to and be the property of the original payee of the check.

144 (ii) A person who is not the original payee may not retain any amounts charged or
145 collected under Subsection (7)(b)(vi).

146 (iii) The original payee of a check may not contract for a person to retain any amounts
147 charged or collected under Subsection (7)(b)(vi).

148 (8) This section may not be construed to prohibit the holder of the check from seeking
149 relief under any other applicable statute or cause of action.

150 (9) (a) Notwithstanding the other provisions of this section, a holder of a check is
151 exempt from this section if the holder is:

- 152 (i) a depository institution; or
- 153 (ii) a person that receives a payment on behalf of a depository institution.
- 154 (b) A holder exempt under Subsection (9)(a) may contract with an issuer for the
- 155 collection of fees or charges for the dishonor of a check.

156 Section 2. Section **7-15-2** is amended to read:

157 **7-15-2. Notice -- Form.**

158 (1) (a) "Notice" means notice given to the issuer of a check either orally or in writing.

159 (b) Written notice may be given by United States mail that is:

160 (i) first class; and

161 (ii) postage prepaid.

162 (c) Notwithstanding Subsection (1)(b), written notice is conclusively presumed to have
163 been given when the notice is:

164 (i) properly deposited in the United States mail;

165 (ii) postage prepaid;

166 (iii) certified or registered mail;

167 (iv) return receipt requested; and

168 (v) addressed to the signer at the signer's:

169 (A) address as it appears on the check; or

170 (B) last-known address.

171 (2) Written notice under Subsection 7-15-1(5) shall take substantially the following
172 form:

173 Date: _____

174 To: _____

175 You are hereby notified that the check(s) described below issued by you has (have)
176 been returned to us unpaid:

177 Check date: _____

178 Check number: _____

179 Originating institution: _____

180 Amount: _____

181 Reason for dishonor (marked on check): _____

182 In accordance with Section 7-15-1, Utah Code Annotated, you are liable for this check

183 together with a service charge of \$20, which must be paid to the undersigned.

184 If you do not pay the check amount and the \$20 service charge within 15 calendar days
185 from the day on which this notice was mailed, you are required to pay within 30 calendar days
186 from the day on which this notice is mailed:

- 187 (1) the check amount;
- 188 (2) the \$20 service charge; and
- 189 (3) collection costs not to exceed \$20.

190 If you do not pay the check amount, the \$20 service charge, and the collection costs
191 within 30 calendar days from the day on which this notice is mailed, in accordance with
192 Section 7-15-1, Utah Code Annotated, an appropriate civil legal action may be filed against
193 you for:

- 194 (1) the check amount;
- 195 (2) interest;
- 196 (3) court costs;
- 197 (4) attorneys' fees;
- 198 (5) actual costs of collection as provided by law; and
- 199 (6) damages in an amount equal to the greater of \$100 or triple the check amount,

200 except:

201 (a) that damages recovered under this Subsection (6) may not exceed the check amount
202 by more than \$500[-]; and

203 (b) you are not liable for these damages for a check used to obtain a deferred deposit
204 loan.

205 In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated, that
206 any person who issues or passes a check for the payment of money, for the purpose of
207 obtaining from any person, firm, partnership, or corporation, any money, property, or other
208 thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be
209 paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check.

210 The civil action referred to in this notice does not preclude the right to prosecute under
211 the criminal code of the state.

212 (Signed) _____

213 Name of Holder: _____

214 Address of Holder: _____

215 Telephone Number: _____

216 (3) Notwithstanding the other provisions of this section, a holder exempt under
217 Subsection 7-15-1(9) is exempt from this section.

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

219 **7-23-103. Registration -- Rulemaking.**

220 (1) (a) It is unlawful for a person to engage in the business of a check casher in Utah or
221 with a Utah resident unless the person:

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

223 (ii) maintains a valid registration.

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

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

229 (2) (a) A registration and a renewal of a registration expires on April 30 of each year
230 unless on or before that date the person renews the registration.

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

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

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

234 (2)(d).

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

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

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

238 (2)(d).

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

240 (i) the name of the person;

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

242 Subsection (2)(d)(i);

243 (iii) the address of the person's principal business office, which may be outside this

244 state;

245 (iv) the addresses of all offices in this state at which the person conducts the business
246 of a check casher;

247 (v) if the person conducts the business of a check casher in this state but does not
248 maintain an office in this state, a brief description of the manner in which the business is
249 conducted;

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

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

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

256 (e) (i) The commissioner may impose an administrative fine determined under
257 Subsection (2)(e)(ii) on a person if:

258 (A) the person is required to be registered under this chapter:

259 (B) the person fails to register or renew a registration in accordance with this chapter;

260 (C) the department notifies the person that the person is in violation of this chapter for
261 failure to be registered; and

262 (D) the person fails to register within 30 days after the day on which the person
263 receives the notice described in Subsection (2)(e)(i)(C).

264 (ii) Subject to Subsection (2)(e)(iii), the administrative fine imposed under this section
265 is:

266 (A) \$500 if the person:

267 (I) has no office in this state at which the person conducts the business of a check
268 cashier; or

269 (II) has one office in this state at which the person conducts the business of a check
270 cashier; or

271 (B) if the person has two or more offices in this state at which the person conducts the
272 business of a check cashier, \$500 for each office at which the person conducts the business of a
273 check cashier.

274 (iii) The commissioner may reduce or waive a fine imposed under this Subsection
275 (2)(e) if the person shows good cause.

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

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

279 (b) the department specifically requests earlier notification.

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

283 Section 4. Section **7-23-105** is amended to read:

284 **7-23-105. Operational requirements for deferred deposit loans.**

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

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

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

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

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

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

295 (c) conspicuously disclose in the written contract:

296 (i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a
297 partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan
298 without incurring additional charges above the charges provided in the written contract;

299 (ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind
300 the deferred deposit loan on or before 5 p.m. of the next business day without incurring any
301 charges;

302 (iii) that[;] under Subsection (4)(b), the deferred deposit loan may not be rolled over
303 [beyond] without the person receiving the deferred deposit loan requesting the rollover of the
304 deferred deposit loan;

305 (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
306 rollover requires the person to pay the amount owed by the person under the deferred deposit

307 loan in whole or in part more than 12 weeks after the day on which the deferred deposit loan is
308 executed; and

309 (v) (A) the name and address of a designated agent required to be provided the
310 department under Subsection 7-23-103(2)(d)(vi); and

311 (B) a statement that service of process may be made to the designated agent;

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

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

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

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

318 (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make
319 a partial payment in increments of at least \$5 on the principal owed on the deferred deposit
320 loan without incurring additional charges above the charges provided in the written contract;

321 (iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may
322 rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring
323 any charges;

324 [~~(iii) the fact~~] (v) that under Subsection (4)(b), the deferred deposit loan may not be
325 rolled over [~~beyond~~] without the person receiving the deferred deposit loan requesting the
326 rollover of the deferred deposit loan; and

327 (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
328 rollover requires the person to pay the amount owed by the person under the deferred deposit
329 loan in whole or in part more than 12 weeks after the day on which the deferred deposit loan is
330 executed; and

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

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

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

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

338 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

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

340 (2) If a check casher extends a deferred deposit loan through the Internet or other
341 electronic means, the check casher shall provide the information described in Subsection (1)(a)
342 to the person receiving the deferred deposit loan;

343 (a) in a conspicuous manner; and

344 (b) prior to the ~~[completion of]~~ person entering into the deferred deposit loan.

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

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

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

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

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

356 (b) ~~[rollover]~~ roll over a deferred deposit loan without the person receiving the deferred
357 deposit loan requesting the rollover of the deferred deposit loan;

358 (c) roll over a deferred deposit loan if the rollover requires a person to pay the amount
359 owed by the person under a deferred deposit loan in whole or in part more than 12 weeks from
360 the day on which the deferred deposit loan is first executed; or

361 ~~[(c)]~~ (d) threaten to use or use the criminal process in any state to collect on the
362 deferred deposit loan.

363 (5) Notwithstanding Subsections (4)(a) and (4)~~[(c)]~~(d), a check casher that is the holder
364 of a check~~[-, draft, order, or other instrument]~~ used to obtain a deferred deposit loan that has
365 been dishonored may use the remedies and notice procedures provided in Chapter 15,
366 Dishonored Instruments~~[-]~~, except that the issuer, as defined in Section 7-15-1, of the check
367 may not be:

368 (a) asked by the holder to pay the amount described in Subsection 7-15-1(6)(a)(iii) as a

369 condition of the holder not filing a civil action; or

370 (b) held liable for the damages described in Subsection 7-15-1(7)(b)(vi).

371 Section 5. Section **7-23-106** is amended to read:

372 **7-23-106. Enforcement by department -- Rulemaking.**

373 (1) Subject to the requirements of Title 63, Chapter 46b, Administrative Procedures
374 Act, the department may:

375 ~~[(1)]~~ (a) receive and act on complaints;

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

377 (c) commence administrative or judicial proceedings on its own initiative to enforce
378 compliance with this chapter; or

379 (d) take action against any check casher that fails to:

380 (i) respond to the department, in writing within 30 business days~~[-to]~~ of the day on
381 which the check casher receives notice from the department of a complaint filed with the
382 department; or

383 (ii) submit information as requested by the department~~[-]~~.

384 (2) The department may:

385 ~~[(2)]~~ (a) counsel persons and groups on their rights and duties under this chapter;

386 ~~[(3)]~~ (b) make rules in accordance with Title 63, Chapter 46a, Utah Administrative
387 Rulemaking Act, to:

388 ~~[(a)]~~ (i) restrict or prohibit lending or servicing practices that are misleading, unfair, or
389 abusive;

390 ~~[(b)]~~ (ii) promote or assure fair and full disclosure of the terms and conditions of
391 agreements and communications between check cashers and customers; or

392 ~~[(c)]~~ (iii) promote or assure uniform application of or to resolve ambiguities in
393 applicable state or federal laws or federal regulations; and

394 ~~[(4)]~~ (c) employ hearing examiners, clerks, and other employees and agents as
395 necessary to perform ~~[its]~~ the department's duties under this chapter.

396 Section 6. Section **7-23-107** is amended to read:

397 **7-23-107. Examination of books, accounts, and records by the department.**

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

- 400 (a) examine the books, accounts, and records; and
- 401 (b) make investigations to determine compliance with this chapter.
- 402 (2) In accordance with Section 7-1-401, the check casher shall pay a fee for an
- 403 examination conducted under Subsection (1).

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

405 **7-23-108. Penalties.**

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

- 408 (a) guilty of a class B misdemeanor, except for a violation of:
 - 409 (i) Subsection 7-23-105(1)(f)(i), (ii), or (iii); or
 - 410 (ii) rules made under Subsection 7-23-106~~(3)~~(2)(b); and
- 411 (b) subject to revocation of a person's registration under this chapter.

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

- 415 (a) revoke that person's registration under this chapter;
- 416 (b) issue a cease and desist order from committing any further violations; ~~[or]~~
- 417 (c) prohibit the person from continuing to engage in the business of a check casher~~[-]~~;
- 418 (d) impose an administrative fine not to exceed \$1,000 per violation, except that:
- 419 (i) a fine imposed under Subsection 7-23-103(2)(e) shall comply with Subsection
- 420 7-23-103(2)(e); and
- 421 (ii) the aggregate total of fines imposed under this chapter against a person in a
- 422 calendar year may not exceed \$30,000 for that calendar year; or
- 423 (e) take any combination of actions listed under this Subsection (2).

424 Section 8. Section **7-24-201** is amended to read:

425 **7-24-201. Registration -- Rulemaking.**

426 (1) (a) It is unlawful for a person to extend a title loan in Utah or with a Utah resident
427 unless the person:

- 428 (i) registers with the department in accordance with this chapter; and
- 429 (ii) maintains a valid registration.

430 (b) It is unlawful for a person to operate a mobile facility in this state to extend a title

431 loan.

432 ~~[(c) Notwithstanding Subsection (1)(a), a person that is a title lender in this state on~~
433 ~~May 5, 2003, is not required to be registered under this section until July 1, 2003.]~~

434 (2) (a) A registration and a renewal of a registration expires on April 30 of each year
435 unless on or before that date the person renews the registration.

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

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

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

439 (2)(d).

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

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

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

443 (2)(d).

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

445 (i) the name of the person;

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

447 Subsection (2)(d)(i);

448 (iii) the address of the person's principal business office, which may be outside this

449 state;

450 (iv) the addresses of all offices in this state at which the person extends title loans;

451 (v) if the person extends title loans in this state but does not maintain an office in this

452 state, a brief description of the manner in which the business is conducted;

453 (vi) the name and address in this state of a designated agent upon whom service of

454 process may be made;

455 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any

456 crime involving moral turpitude with respect to that person or any officer, director, manager,

457 operator, or principal of that person; and

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

459 (e) (i) The commissioner may impose an administrative fine determined under

460 Subsection (2)(e)(ii) on a person if:

461 (A) the person is required to be registered under this chapter;

462 (B) the person fails to register or renew a registration in accordance with this chapter;

463 (C) the department notifies the person that the person is in violation of this chapter for
464 failure to be registered; and

465 (D) the person fails to register within 30 days after the day on which the person
466 receives the notice described in Subsection (2)(e)(i)(C).

467 (ii) Subject to Subsection (2)(e)(iii), the administrative fine imposed under this
468 Subsection (2)(e) is:

469 (A) \$500 if the person:

470 (I) has no office in this state at which the person extends a title loan; or

471 (II) has one office in this state at which the person extends a title loan; or

472 (B) if the person has two or more offices in this state at which the person extends a title
473 loan, \$500 for each office at which the person extends a title loan.

474 (iii) The commissioner may reduce or waive a fine imposed under this Subsection
475 (2)(e) if the person shows good cause.

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

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

479 (b) the department specifically requests earlier notification.

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

483 Section 9. Section **7-24-202** is amended to read:

484 **7-24-202. Operational requirements for title loans.**

485 (1) A title lender shall:

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

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

490 (A) as dollar amounts; and

491 (B) as annual percentage rates; and

492 (ii) a telephone number a person may call to make a complaint to the department

493 regarding a title loan;

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

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

496 (ii) the transaction date;

497 (iii) the amount of the title loan; [~~and~~]

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

499 title loan, expressed as:

500 (A) a dollar amount; and

501 (B) an annual percentage rate; and

502 (v) (A) the name and address of the designated agent required to be provided the

503 department under Subsection 7-24-201(2)(d)(vi); and

504 (B) a statement that service of process may be made to the designated agent;

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

506 Subsection (1)(b);

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

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

509 including:

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

511 (I) a dollar amount; and

512 (II) an annual percentage rate; and

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

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

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

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

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

518 regulations;

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

520 regulations;

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

522 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

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

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

526 (a) provide the information described in Subsection (1)(a) to the person receiving the
527 title loan;

528 (i) in a conspicuous manner; and

529 (ii) prior to the [~~completion of~~] person entering into the title loan; and

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

533 (3) A title lender may not:

534 (a) rollover a title loan unless the person receiving the title loan requests a rollover of
535 the title loan;

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

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

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

541 (i) current and expected income;

542 (ii) current obligations; and

543 (iii) employment.

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

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

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

549 Section 10. Section **7-24-301** is amended to read:

550 **7-24-301. Enforcement by department -- Rulemaking.**

551 (1) Subject to the requirements of Title 63, Chapter 46b, Administrative Procedures
552 Act, the department may:

553 [(H)] (a) receive and act on complaints;

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

555 (c) commence administrative or judicial proceedings on its own initiative to enforce
556 compliance with this chapter[;].

557 (2) The department may:

558 [~~(2)~~] (a) counsel persons and groups on their rights and duties under this chapter;

559 [~~(3)~~] (b) make rules to:

560 [~~(a)~~] (i) restrict or prohibit lending or servicing practices that are misleading, unfair, or
561 abusive;

562 [~~(b)~~] (ii) promote or assure fair and full disclosure of the terms and conditions of
563 agreements and communications between title lenders and customers; or

564 [~~(c)~~] (iii) promote or assure uniform application of or to resolve ambiguities in
565 applicable state or federal laws or federal regulations; and

566 [~~(4)~~] (c) employ hearing examiners, clerks, and other employees and agents as
567 necessary to perform the department's duties under this chapter.

568 Section 11. Section **7-24-303** is amended to read:

569 **7-24-303. Penalties.**

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

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

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

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

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

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

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

580 (b) issue a cease and desist order from committing any further violations; [~~or~~]

581 (c) prohibit the person from continuing to extend title loans[;];

582 (d) impose an administrative fine not to exceed \$1,000 per violation, except that:

583 (i) a fine imposed under Subsection 7-24-201(2)(e) shall comply with Subsection
584 7-24-201(2)(e); and

585 (ii) the aggregate total of fines imposed under this chapter against a person in a

586 calendar year may not exceed \$30,000 for that calendar year; or
587 (e) take any combination of actions listed under this Subsection (2).
588 (3) A person is not subject to the penalties under this section for a violation of this
589 chapter that was not willful or intentional, including a violation resulting from a clerical error.

Legislative Review Note
as of 11-17-06 11:21 AM

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-18-06 10:19 AM

The Business and Labor Interim Committee recommended this bill.

S.B. 16 - Lending Registration Acts

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/3/2007, 11:22:27 AM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst