

**CHECK CASHING AND DEFERRED DEPOSIT
LENDING REGISTRATION ACT**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

This bill modifies the Check Cashing Registration Act to be the Check Cashing and Deferred Deposit Lending Registration Act.

Highlighted Provisions:

This bill:

- ▶ modifies definition provisions;
- ▶ addresses references to a check casher or deferred deposit lender;
- ▶ requires a deferred deposit lender to file operation statements to renew registration;
- ▶ prohibits a deferred deposit lender from extending certain deferred deposit loans;
- ▶ requires the commissioner to report annually regarding deferred deposit lenders; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

7-1-325, as enacted by Laws of Utah 2006, Chapter 165

7-1-401, as last amended by Laws of Utah 2007, Chapter 277



- 28 **7-1-501**, as last amended by Laws of Utah 2003, Chapter 177
- 29 **7-15-1**, as last amended by Laws of Utah 2007, Chapter 87
- 30 **7-23-101**, as enacted by Laws of Utah 1999, Chapter 144
- 31 **7-23-102**, as last amended by Laws of Utah 2003, Chapter 236
- 32 **15-1-4**, as last amended by Laws of Utah 2005, Chapter 190

33 ENACTS:

34 **7-23-503**, Utah Code Annotated 1953

35 RENUMBERS AND AMENDS:

36 **7-23-103.1**, (Renumbered from 7-23-110, as enacted by Laws of Utah 1999, Chapter
37 144)

38 **7-23-104.1**, (Renumbered from 7-23-109, as enacted by Laws of Utah 1999, Chapter
39 144)

40 **7-23-201**, (Renumbered from 7-23-103, as last amended by Laws of Utah 2007,
41 Chapter 87)

42 **7-23-301**, (Renumbered from 7-23-104, as enacted by Laws of Utah 1999, Chapter 144)

43 **7-23-401**, (Renumbered from 7-23-105, as last amended by Laws of Utah 2007,
44 Chapter 87)

45 **7-23-402**, (Renumbered from 7-23-105.1, as enacted by Laws of Utah 2003, Chapter
46 236)

47 **7-23-501**, (Renumbered from 7-23-106, as last amended by Laws of Utah 2007,
48 Chapter 87)

49 **7-23-502**, (Renumbered from 7-23-107, as last amended by Laws of Utah 2007,
50 Chapter 87)

51 **7-23-504**, (Renumbered from 7-23-108, as last amended by Laws of Utah 2007,
52 Chapter 87)



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

55 Section 1. Section **7-1-325** is amended to read:

56 **7-1-325. Compliance with applicable federal law.**

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

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

- 59 (b) a final regulation:
- 60 (i) adopted by an administrative agency of the United States government; and
- 61 (ii) published in the code of federal regulations or the federal register.
- 62 (2) (a) An institution subject to the jurisdiction of the department violates this title if
- 63 the institution violates a federal law:
- 64 (i) that is applicable to the institution; and
- 65 (ii) pursuant to the terms of the federal law in effect on the day the institution violates
- 66 the federal law.
- 67 (b) The department shall by rule, made in accordance with Title 63, Chapter 46a, Utah
- 68 Administrative Rulemaking Act, and consistent with this title, designate which one or more
- 69 federal laws are applicable to an institution subject to the jurisdiction of the department.
- 70 (3) Except for criminal penalties, the department may enforce a violation described in
- 71 Subsection (2) by taking any action:
- 72 (a) permitted by:
- 73 (i) this part;
- 74 (ii) Chapter 2, Possession of Depository Institution by Commissioner;
- 75 (iii) Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies;
- 76 (iv) in the case of a check casher or deferred deposit lender, Chapter 23, Check
- 77 Cashing and Deferred Deposit Lending Registration Act; or
- 78 (v) in the case of a title lender, Chapter 24, Title Lending Registration Act; and
- 79 (b) including bringing an action permitted under this title in state court.
- 80 Section 2. Section **7-1-401** is amended to read:
- 81 **7-1-401. Fees payable to commissioner.**
- 82 (1) Except for an out-of-state depository institution with a branch in Utah, a depository
- 83 institution under the jurisdiction of the department shall pay an annual fee:
- 84 (a) computed by averaging the total assets of the depository institution shown on each
- 85 quarterly report of condition for the depository institution for the calendar year immediately
- 86 proceeding the date on which the annual fee is due under Section 7-1-402; and
- 87 (b) at the following rates:
- 88 (i) on the first \$5,000,000 of these assets, the greater of:
- 89 (A) 65 cents per \$1,000; or

- 90 (B) \$500;
- 91 (ii) on the next \$10,000,000 of these assets, 36 cents per \$1,000;
- 92 (iii) on the next \$35,000,000 of these assets, 17 cents per \$1,000;
- 93 (iv) on the next \$50,000,000 of these assets, 14 cents per \$1,000;
- 94 (v) on the next \$200,000,000 of these assets, 11 cents per \$1,000;
- 95 (vi) on the next \$300,000,000 of these assets, 7 cents per \$1,000; and
- 96 (vii) on all amounts over \$600,000,000 of these assets, 2.625 cents per \$1,000.

97 (2) A financial institution with a trust department shall pay a fee determined in
98 accordance with Subsection (7) for each examination of the trust department by a state
99 examiner.

100 (3) Notwithstanding Subsection (1), a credit union in its first year of operation shall
101 pay a basic fee of \$25 instead of the fee required under Subsection (1).

102 (4) A trust company that is not a depository institution or a subsidiary of a depository
103 institution holding company shall pay:

- 104 (a) an annual fee of \$500; and
- 105 (b) an additional fee determined in accordance with Subsection (7) for each
106 examination by a state examiner.

107 (5) Any person or institution under the jurisdiction of the department that does not pay
108 a fee under Subsections (1) through (4) shall pay:

- 109 (a) an annual fee of \$200; and
- 110 (b) an additional fee determined in accordance with Subsection (7) for each
111 examination by a state examiner.

112 (6) A person filing an application or request under Section 7-1-503, 7-1-702, 7-1-703,
113 7-1-704, 7-1-713, 7-5-3, or 7-18a-202 shall pay:

114 (a) (i) a filing fee of \$500 if on the day on which the application or request is filed the
115 person:

116 (A) is a person with authority to transact business as:

117 (I) a depository institution;

118 (II) a trust company; or

119 (III) any other person described in Section 7-1-501 as being subject to the jurisdiction
120 of the department; and

121 (B) has total assets in an amount less than \$5,000,000; or
122 (ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and
123 (b) all reasonable expenses incurred in processing the application.
124 (7) (a) Per diem assessments for an examination shall be calculated at the rate of \$55

125 per hour:

126 (i) for each examiner; and
127 (ii) per hour worked.

128 (b) For an examination of a branch or office of a financial institution located outside of
129 this state, in addition to the per diem assessment under this Subsection (7), the institution shall
130 pay all reasonable travel, lodging, and other expenses incurred by each examiner while
131 conducting the examination.

132 (8) In addition to a fee under Subsection (5), a person registering under Section
133 [~~7-23-103~~] 7-23-201 or 7-24-201 shall pay an original registration fee of \$300.

134 Section 3. Section **7-1-501** is amended to read:

135 **7-1-501. Institutions and persons subject to jurisdiction of department.**

136 (1) As provided in this title and the rules of the department, the persons and institutions
137 described in Subsection (2) are subject to:

138 (a) the jurisdiction of the department; and
139 (b) supervision and examination by the department.

140 (2) Subsection (1) applies to:

141 (a) all depository institutions chartered under the laws of this state, including any
142 out-of-state branches;

143 (b) all Utah depository institutions chartered by the federal government, but only to the
144 extent the application of this title is authorized by:

145 (i) federal law; or

146 (ii) the appropriate federal regulatory agency;

147 (c) all Utah branches of out-of-state depository institutions chartered under the laws of
148 another state;

149 (d) all Utah branches of out-of-state depository institutions chartered by the federal
150 government, but only to the extent the application of this title is authorized by:

151 (i) federal law; or

- 152 (ii) the appropriate federal regulatory agency;
- 153 (e) all service corporations and service organizations, including credit union service
- 154 organizations as defined in Section 7-9-3;
- 155 (f) all trust companies;
- 156 (g) all escrow companies;
- 157 (h) all persons or institutions engaged in this state in the business of:
- 158 (i) guaranteeing or insuring deposits, savings accounts, share accounts, or other
- 159 accounts in depository institutions;
- 160 (ii) operating a loan production office for:
- 161 (A) a Utah depository institution;
- 162 (B) an out-of-state depository institution; or
- 163 (C) a foreign depository institution;
- 164 (iii) allowing persons to effect third party payments from loan, charge, or other
- 165 accounts by checks, drafts, or other instruments or by electronic means; or
- 166 (iv) a check casher or deferred deposit lender, as defined in Section 7-23-102;
- 167 (i) all corporations or other business entities owning or controlling an institution
- 168 subject to the jurisdiction of the department;
- 169 (j) all subsidiaries and affiliates of an institution subject to the jurisdiction of the
- 170 department; and
- 171 (k) any person or institution that, with or without authority to do so, transacts business
- 172 as, or holds itself out as being, a depository institution, trust company, or any other person or
- 173 institution described in this section as being subject to the jurisdiction of the department.

174 Section 4. Section **7-15-1** is amended to read:

175 **7-15-1. Definitions -- Civil liability of issuer -- Notice of action -- Collection costs**
176 **-- Exemptions.**

- 177 (1) As used in this chapter:
- 178 (a) "Check" means a payment instrument on a depository institution including a:
- 179 (i) check;
- 180 (ii) draft;
- 181 (iii) order; or
- 182 (iv) other instrument.

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

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

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

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

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

191 (i) the check:

192 (A) is not honored upon presentment; and

193 (B) is marked "refer to maker";

194 (ii) the account upon which the check is made or drawn:

195 (A) does not exist;

196 (B) has been closed; or

197 (C) does not have sufficient funds or sufficient credit for payment in full of the check;

198 or

199 (iii) (A) the check is issued in partial or complete fulfillment of a valid and legally
200 binding obligation; and

201 (B) the issuer stops payment on the check with the intent to:

202 (I) fraudulently defeat a possessory lien; or

203 (II) otherwise defraud the holder of the check.

204 (b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:

205 (i) the check amount; and

206 (ii) a service charge of \$20.

207 (3) (a) The holder of a check that has been dishonored may:

208 (i) give written or oral notice of dishonor to the issuer of the check; and

209 (ii) waive all or part of the service charge imposed under Subsection (2)(b).

210 (b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored
211 may not collect and the issuer is not liable for the service charge imposed under Subsection
212 (2)(b) if:

213 (i) the holder redeposits the check; and

214 (ii) that check is honored.

215 (4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15
216 calendar days from the day on which the notice required under Subsection (5) is mailed, the
217 issuer is liable for:

218 (a) the amount owed under Subsection (2)(b); and

219 (b) collection costs not to exceed \$20.

220 (5) (a) A holder shall provide written notice to an issuer before:

221 (i) charging collection costs under Subsection (4) in addition to the amount owed under
222 Subsection (2)(b); or

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

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

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

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

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

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

232 (6) (a) Except as provided in Section [~~7-23-105~~] 7-23-401, if the issuer has not paid the
233 holder the amounts owed under Subsection (4) within 30 calendar days from the day on which
234 the notice required by Subsection (5) is mailed, the holder may offer to not file civil action
235 under this section if the issuer pays the holder:

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

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

238 (iii) an amount that:

239 (A) is equal to the greater of:

240 (I) \$50; or

241 (II) triple the check amount; and

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

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

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

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

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

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

253 (i) under Subsection (4); and

254 (ii) within 30 calendar days from the day on which the notice required by Subsection
255 (5) is mailed.

256 (b) Subject to Subsections (7)(c) and (d) and except as provided in Section [~~7-23-105~~]
257 7-23-401, in a civil action the issuer of the check is liable to the holder for:

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

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

260 (iii) interest;

261 (iv) court costs;

262 (v) reasonable attorney fees; and

263 (vi) damages:

264 (A) equal to the greater of:

265 (I) \$100; or

266 (II) triple the check amount; and

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

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

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

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

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

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

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

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

284 (i) a depository institution; or

285 (ii) a person that receives a payment on behalf of a depository institution.

286 (b) A holder exempt under Subsection (9)(a) may contract with an issuer for the
287 collection of fees or charges for the dishonor of a check.

288 Section 5. Section 7-23-101 is amended to read:

289 **CHAPTER 23. CHECK CASHING AND DEFERRED DEPOSIT**

290 **LENDING REGISTRATION ACT**

291 **7-23-101. Title.**

292 This chapter is known as the "Check Cashing and Deferred Deposit Lending
293 Registration Act."

294 Section 6. Section 7-23-102 is amended to read:

295 **7-23-102. Definitions.**

296 As used in this chapter:

297 (1) "Business of [~~a check casher~~] cashing checks" means[~~:(a)~~] cashing a check for
298 consideration[~~;~~or].

299 [~~(b)~~] (2) "Business of deferred deposit lending" means extending a deferred deposit
300 loan.

301 [~~(2)~~] (3) "Check" is as defined in Section 70A-3-104.

302 [~~(3)~~] (4) "Check casher" means a person that engages in the business of [~~a check~~
303 ~~cashier~~] cashing checks.

304 (5) "Deferred deposit lender" means a person that engages in the business of deferred
305 deposit lending.

306 [~~(4)~~] (6) "Deferred deposit loan" means a transaction where:

307 (a) a person:
308 (i) presents to a [~~check-casher~~] deferred deposit lender a check written on that person's
309 account; or

310 (ii) provides written or electronic authorization to a [~~check-casher~~] deferred deposit
311 lender to effect a debit from that person's account using an electronic payment; and

312 (b) the [~~check-casher~~] deferred deposit lender:

313 (i) provides the [~~maker~~] person described in Subsection (6)(a) an amount of money that
314 is equal to the face value of the check or the amount of the debit less any fee or interest charged
315 for the transaction; and

316 (ii) agrees not to cash the check or process the debit until a specific date.

317 [~~(5)~~] (7) (a) "Electronic payment" means [~~any~~] an electronic method by which a [~~check~~
318 ~~casher~~] person:

319 (i) accepts a payment from [~~a~~] another person; or

320 (ii) makes a payment to [~~a~~] another person.

321 (b) "Electronic payment" includes a payment made through:

322 (i) an automated clearing house transaction;

323 (ii) an electronic check;

324 (iii) a stored value card; or

325 (iv) an Internet transfer.

326 [~~(6)~~] (8) "Rollover" means the extension or renewal of the term of a deferred deposit
327 loan.

328 Section 7. Section **7-23-103.1**, which is renumbered from Section 7-23-110 is
329 renumbered and amended to read:

330 ~~[7-23-110]~~. **7-23-103.1. Exemptions.**

331 The following are not subject to the requirements of this chapter:

332 (1) a depository institution;

333 (2) a depository institution holding company;

334 (3) an institution directly or indirectly owned or controlled by one or more:

335 (a) depository institutions; or

336 (b) depository institution holding companies; or

337 (4) a person that cashes a check in a transaction:

- 338 (a) that is incidental to ~~the~~ a retail sale of goods or services; and
- 339 (b) for consideration that does not exceed the greater of:
- 340 (i) 1% of the amount of the check; or
- 341 (ii) \$1.

342 Section 8. Section **7-23-104.1**, which is renumbered from Section 7-23-109 is
 343 renumbered and amended to read:

344 ~~[7-23-109].~~ **7-23-104.1. No affect on civil liability.**

345 Nothing in this chapter is intended to limit any civil liability that may exist against a
 346 check casher or deferred deposit lender for:

- 347 (1) breach of contract;
- 348 (2) violation of federal law; or
- 349 (3) other unlawful act.

350 Section 9. Section **7-23-201**, which is renumbered from Section 7-23-103 is
 351 renumbered and amended to read:

352 **Part 2. Registration Requirements**

353 ~~[7-23-103].~~ **7-23-201. Registration -- Rulemaking.**

354 (1) (a) It is unlawful for a person to engage in the business of ~~[a check casher]~~ cashing
 355 checks or the business of deferred deposit lending in Utah or with a Utah resident unless the
 356 person:

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

359 (b) It is unlawful for a person to operate a mobile facility in this state to engage in the
 360 business of ~~[a check casher.]:~~

- 361 (i) cashing checks; or
- 362 (ii) deferred deposit lending.

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

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

- 366 (i) pay an original registration fee established under Subsection 7-1-401(8); and
- 367 (ii) submit a registration statement containing the information described in Subsection
- 368 (2)(d).

- 369 (c) To renew a registration under this section, a person shall:
- 370 (i) pay the annual fee established under Subsection 7-1-401(5); [~~and~~]
- 371 (ii) submit a renewal statement containing the information described in Subsection
- 372 (2)(d)[~~]; and~~
- 373 (iii) if the person engages in the business of deferred deposit lending, submit an
- 374 operations statement containing the information described in Subsection (2)(e).
- 375 (d) A registration or renewal statement shall state:
- 376 (i) the name of the person;
- 377 (ii) the name in which the business will be transacted if different from that required in
- 378 Subsection (2)(d)(i);
- 379 (iii) the address of the person's principal business office, which may be outside this
- 380 state;
- 381 (iv) the addresses of all offices in this state at which the person conducts the business
- 382 of [~~a check-casher~~];
- 383 (A) cashing checks; or
- 384 (B) deferred deposit lending;
- 385 (v) if the person conducts the business of [~~a check-casher~~] cashing checks or the
- 386 business of deferred deposit lending in this state but does not maintain an office in this state, a
- 387 brief description of the manner in which the business is conducted;
- 388 (vi) the name and address in this state of a designated agent upon whom service of
- 389 process may be made;
- 390 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any
- 391 crime involving moral turpitude with respect to that person or any officer, director, manager,
- 392 operator, or principal of that person; and
- 393 (viii) any other information required by the rules of the department.
- 394 (e) An operation statement required for a deferred deposit lender to renew a registration
- 395 shall state for the immediately preceding calendar year:
- 396 (i) the average deferred deposit loan amount that the deferred deposit lender extended;
- 397 (ii) the average number of days a deferred deposit loan is extended by the deferred
- 398 deposit lender before the deferred deposit loan is paid in full;
- 399 (iii) the minimum and maximum amount of interest or fees charged by the deferred

400 deposit lender for a deferred deposit loan:

401 (A) of \$100; and

402 (B) extended for one week; and

403 (iv) the total number of deferred deposit loans rescinded by the deferred deposit lender

404 at the request of the customer pursuant to Subsection 7-23-401(3)(b).

405 (3) Information provided by a deferred deposit lender under Subsection (2)(e) is:

406 (a) confidential in accordance with Section 7-1-802; and

407 (b) not subject to Title 63, Chapter 2, Government Records Access and Management

408 Act.

409 ~~[(e)(i)]~~ (4)(a) The commissioner may impose an administrative fine determined under

410 Subsection ~~[(2)(e)(ii)]~~ (4)(b) on a person if:

411 ~~[(A)]~~ (i) the person is required to be registered under this chapter;

412 ~~[(B)]~~ (ii) the person fails to register or renew a registration in accordance with this
413 chapter;

414 ~~[(C)]~~ (iii) the department notifies the person that the person is in violation of this
415 chapter for failure to be registered; and

416 ~~[(D)]~~ (iv) the person fails to register within 30 days after the day on which the person
417 receives the notice described in Subsection ~~[(2)(e)(i)(C)]~~ (4)(a)(iii).

418 ~~[(ii)]~~ (b) Subject to Subsection ~~[(2)(e)(iii)]~~ (4)(c), the administrative fine imposed
419 under this section is:

420 ~~[(A)]~~ (i) \$500 if the person:

421 ~~[(F)]~~ (A) has no office in this state at which the person conducts the business of [a
422 ~~check-casher; or~~];

423 (I) cashing checks; or

424 (II) deferred deposit lending; or

425 ~~[(H)]~~ (B) has one office in this state at which the person conducts the business of [a
426 ~~check-casher; or~~];

427 (I) cashing checks; or

428 (II) deferred deposit lending; or

429 ~~[(B)]~~ (ii) if the person has two or more offices in this state at which the person

430 conducts the business of [~~a check-casher~~] cashing checks or the business of deferred deposit

431 lending, \$500 for each office at which the person conducts the business of [~~a check-casher~~];

432 (A) cashing checks; or

433 (B) deferred deposit lending.

434 [~~(iii)~~] (c) The commissioner may reduce or waive a fine imposed under this Subsection

435 [~~(2)(e)~~] (4) if the person shows good cause.

436 [~~(3)~~] (5) If the information in a registration [~~or~~], renewal, or operations statement

437 required under Subsection (2) becomes inaccurate after filing, a person is not required to notify

438 the department until:

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

440 (b) the department specifically requests earlier notification.

441 [~~(4)~~] (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking

442 Act, the department may make rules consistent with this section providing for:

443 (a) the form, content, and filing of a registration and renewal statement described in

444 Subsection (2)(d); and

445 (b) the form and filing of an operations statement described in Subsection (2)(e).

446 Section 10. Section **7-23-301**, which is renumbered from Section 7-23-104 is

447 renumbered and amended to read:

448 **Part 3. Check Cashing Operations**

449 [~~7-23-104~~]. **7-23-301. Posting of fee schedules for cashing checks.**

450 (1) A check casher shall post a complete schedule of all fees for cashing a check in a

451 conspicuous location on its premises that can be viewed by a person cashing a check.

452 (2) The schedule of fees required to be posted under Subsection (1) shall state the fees

453 using dollar amounts.

454 Section 11. Section **7-23-401**, which is renumbered from Section 7-23-105 is

455 renumbered and amended to read:

456 **Part 4. Deferred Deposit Lending Operations**

457 [~~7-23-105~~]. **7-23-401. Operational requirements for deferred deposit loans.**

458 (1) If a [~~check-casher~~] deferred deposit lender extends a deferred deposit loan, the

459 [~~check-casher~~] deferred deposit lender shall:

460 (a) post in a conspicuous location on its premises that can be viewed by a person

461 seeking a deferred deposit loan:

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

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

466 (iii) a list of states where the ~~[check-casher]~~ deferred deposit lender is registered or
467 authorized to offer deferred deposit loans through the Internet or other electronic means;

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

469 (c) conspicuously disclose in the written contract:

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

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

476 (iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over
477 without the person receiving the deferred deposit loan requesting the rollover of the deferred
478 deposit loan;

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

483 (v) (A) the name and address of a designated agent required to be provided the
484 department under Subsection ~~[7-23-103]~~ 7-23-201(2)(d)(vi); and

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

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

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

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

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

492 (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make

493 a partial payment in increments of at least \$5 on the principal owed on the deferred deposit
494 loan without incurring additional charges above the charges provided in the written contract;

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

498 (v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over
499 without the person receiving the deferred deposit loan requesting the rollover of the deferred
500 deposit loan; and

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

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

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

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

511 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
512 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

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

514 (2) If a [~~check-casher~~] deferred deposit lender extends a deferred deposit loan through
515 the Internet or other electronic means, the [~~check-casher~~] deferred deposit lender shall provide
516 the information described in Subsection (1)(a) to the person receiving the deferred deposit loan:

517 (a) in a conspicuous manner; and

518 (b) prior to the person entering into the deferred deposit loan.

519 (3) A [~~check-casher~~] deferred deposit lender that engages in a deferred deposit loan
520 shall permit a person receiving a deferred deposit loan to:

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

524 (b) rescind the deferred deposit loan without incurring any charges by returning the
525 deferred deposit loan amount to the [~~check-casher~~] deferred deposit lender on or before 5 p.m.
526 the next business day following the deferred deposit loan transaction.

527 (4) A [~~check-casher~~] deferred deposit lender that engages in a deferred deposit loan
528 may not:

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

531 (b) roll over a deferred deposit loan without the person receiving the deferred deposit
532 loan requesting the rollover of the deferred deposit loan;

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

536 (d) extend a new deferred deposit loan to a person on the same business day that the
537 person makes a payment on another deferred deposit loan if the payment:

538 (i) is made at least 12 weeks after the day on which that deferred deposit loan is
539 extended; and

540 (ii) results in the principal of that deferred deposit loan being paid in full; or

541 [~~(d)~~] (e) threaten to use or use the criminal process in any state to collect on the
542 deferred deposit loan.

543 (5) Notwithstanding Subsections (4)(a) and (4)[~~(d)~~] (e), a [~~check-casher~~] deferred
544 deposit lender that is the holder of a check used to obtain a deferred deposit loan that [~~has~~
545 ~~been~~] is dishonored may use the remedies and notice procedures provided in Chapter 15,
546 Dishonored Instruments, except that the issuer, as defined in Section 7-15-1, of the check may
547 not be:

548 (a) asked by the holder to pay the amount described in Subsection 7-15-1(6)(a)(iii) as a
549 condition of the holder not filing a civil action; or

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

551 Section 12. Section ~~7-23-402~~, which is renumbered from Section 7-23-105.1 is
552 renumbered and amended to read:

553 [~~7-23-105.1~~]. **7-23-402. Electronic disbursement and collections.**

554 If a [~~check-casher~~] deferred deposit lender collects payment on a deferred deposit loan

555 through an electronic payment, the ~~[check casher]~~ deferred deposit lender shall, on the day the
556 loan is executed:

557 (1) credit the amount of the deferred deposit loan through an electronic payment to the
558 person receiving the deferred deposit loan; or

559 (2) make the amount of the deferred deposit loan immediately available to the person
560 receiving the deferred deposit loan.

561 Section 13. Section **7-23-501**, which is renumbered from Section 7-23-106 is
562 renumbered and amended to read:

563 **Part 5. Enforcement**

564 ~~[7-23-106].~~ **7-23-501. Enforcement by department -- Rulemaking.**

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

567 (a) receive and act on complaints;

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

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

571 (d) take action against ~~[any]~~ a check casher or deferred deposit lender that fails to:

572 (i) respond to the department, in writing within 30 business days of the day on which
573 the check casher or deferred deposit lender receives notice from the department of a complaint
574 filed with the department; or

575 (ii) submit information as requested by the department.

576 (2) The department may:

577 (a) counsel persons and groups on their rights and duties under this chapter;

578 (b) make rules in accordance with Title 63, Chapter 46a, Utah Administrative
579 Rulemaking Act, to:

580 (i) restrict or prohibit lending or servicing practices that are misleading, unfair, or
581 abusive;

582 (ii) promote or assure fair and full disclosure of the terms and conditions of agreements
583 and communications between ~~[check cashers and customers; or]~~ a customer and:

584 (A) a check casher; or

585 (B) a deferred deposit lender; and

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

588 (c) employ hearing examiners, clerks, and other employees and agents as necessary to
589 perform the department's duties under this chapter.

590 Section 14. Section ~~7-23-502~~, which is renumbered from Section 7-23-107 is
591 renumbered and amended to read:

592 ~~[7-23-107]~~. **7-23-502. Examination of books, accounts, and records by the**
593 **department.**

594 (1) At least annually the department shall, for each premise engaging in the business of
595 ~~[a check-casher]~~ cashing checks or the business of deferred deposit lending:

- 596 (a) examine the books, accounts, and records; and
- 597 (b) make investigations to determine compliance with this chapter.

598 (2) In accordance with Section 7-1-401, ~~[the check-casher]~~ a person examined under
599 Subsection (1) shall pay a fee for ~~[an]~~ the examination conducted under Subsection (1).

600 Section 15. Section ~~7-23-503~~ is enacted to read:

601 **7-23-503. Reporting by commissioner.**

602 (1) Subject to Subsection (2), as part of the commissioner's annual report to the
603 governor and Legislature under Section 7-1-211, the commissioner shall report to the governor
604 and Legislature on the operations on an aggregate basis of deferred deposit lenders operating in
605 the state.

606 (2) In preparing the report required by Subsection (1), the commissioner:

- 607 (a) shall include in the report for the immediately preceding calendar year aggregate
608 information from the one or more operation statements filed under Subsection 7-23-201(2)(e)
609 by deferred deposit lenders for that calendar year; and

610 (b) may not include in the report information from an operation statement filed with
611 the department that could identify a specific deferred deposit lender.

612 Section 16. Section ~~7-23-504~~, which is renumbered from Section 7-23-108 is
613 renumbered and amended to read:

614 ~~[7-23-108]~~. **7-23-504. Penalties.**

615 (1) A person who violates this chapter or who files materially false information with a
616 registration or renewal under Section ~~[7-23-103]~~ 7-23-201 is:

- 617 (a) guilty of a class B misdemeanor, except for a violation of:
- 618 (i) Subsection ~~[7-23-105]~~ 7-23-401(1)(f)(i), (ii), or (iii); or
- 619 (ii) rules made under Subsection ~~[7-23-106]~~ 7-23-501(2)(b); and
- 620 (b) subject to revocation of a person's registration under this chapter.
- 621 (2) Subject to Title 63, Chapter 46b, Administrative Procedures Act, if the department
- 622 determines that a person is engaging in the business of cashing checks or the business of
- 623 deferred deposit lending in violation of this chapter, the department may:
- 624 (a) revoke that person's registration under this chapter;
- 625 (b) issue a cease and desist order from committing any further violations;
- 626 (c) prohibit the person from continuing to engage in the business of ~~[a check-casher];~~
- 627 (i) cashing checks; or
- 628 (ii) deferred deposit lending;
- 629 (d) impose an administrative fine not to exceed \$1,000 per violation, except that:
- 630 (i) a fine imposed under Subsection ~~[7-23-103(2)(e)]~~ 7-23-201(4) shall comply with
- 631 Subsection ~~[7-23-103(2)(e)]~~ 7-23-201(4); and
- 632 (ii) the aggregate total of fines imposed under this chapter against a person in a
- 633 calendar year may not exceed \$30,000 for that calendar year; or
- 634 (e) take any combination of actions listed under this Subsection (2).
- 635 Section 17. Section **15-1-4** is amended to read:
- 636 **15-1-4. Interest on judgments.**
- 637 (1) As used in this section, "federal postjudgment interest rate" means the interest rate
- 638 established for the federal court system under 28 U.S.C. Sec. 1961, as amended.
- 639 (2) (a) Except as provided in Subsection (2)(b), a judgment rendered on a lawful
- 640 contract shall conform to the contract and shall bear the interest agreed upon by the parties,
- 641 which shall be specified in the judgment.
- 642 (b) A judgment rendered on a deferred deposit loan subject to Title 7, Chapter 23,
- 643 Check Cashing and Deferred Deposit Lending Registration Act, shall bear interest at the rate
- 644 imposed under Subsection (3) on an amount not exceeding the sum of:
- 645 (i) the total of the principal balance of the deferred deposit loan;
- 646 (ii) interest at the rate imposed by the deferred deposit loan agreement for a period not
- 647 exceeding 12 weeks as provided in Subsection ~~[7-23-105]~~ 7-23-401(4);

- 648 (iii) costs;
- 649 (iv) attorney fees; and
- 650 (v) other amounts allowed by law and ordered by the court.
- 651 (3) (a) Except as otherwise provided by law, other civil and criminal judgments of the
- 652 district court and justice court shall bear interest at the federal postjudgment interest rate as of
- 653 January 1 of each year, plus 2%.
- 654 (b) The postjudgment interest rate in effect at the time of the judgment shall remain the
- 655 interest rate for the duration of the judgment.
- 656 (c) The interest on criminal judgments shall be calculated on the total amount of the
- 657 judgment.
- 658 (d) Interest paid on state revenue shall be deposited in accordance with Section
- 659 63A-8-301.
- 660 (e) Interest paid on revenue to a county or municipality shall be paid to the general
- 661 fund of the county or municipality.

Legislative Review Note
as of 1-30-08 9:52 AM

Office of Legislative Research and General Counsel