

DEFERRED DEPOSIT LENDING AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Laura Black

Senate Sponsor: _____

LONG TITLE**General Description:**

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

Highlighted Provisions:

This bill:

- defines terms;
- modifies the time period for which a deferred deposit loan may be rolled over;
- imposes restrictions on interest or fees; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:****7-23-102**, as last amended by Laws of Utah 2008, Chapter 96**7-23-401**, as renumbered and amended by Laws of Utah 2008, Chapter 96**15-1-4**, as last amended by Laws of Utah 2008, Chapter 96

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **7-23-102** is amended to read:

7-23-102. Definitions.

As used in this chapter:

(1) "Annual percentage rate" has the same meaning as in the Truth and Lending Act, Sec. 107, 15 U.S.C. 1606, as implemented by regulations of the Board of Governors of the Federal Reserve System.

~~[(1)]~~ (2) "Business of cashing checks" means cashing a check for consideration.

~~[(2)]~~ (3) "Business of deferred deposit lending" means extending a deferred deposit loan.

~~[(3)]~~ (4) "Check" is as defined in Section 70A-3-104.

~~[(4)]~~ (5) "Check casher" means a person that engages in the business of cashing checks.

~~[(5)]~~ (6) "Deferred deposit lender" means a person that engages in the business of deferred deposit lending.

~~[(6)]~~ (7) "Deferred deposit loan" means a transaction where:

(a) a person:

(i) presents to a deferred deposit lender a check written on that person's account; or

(ii) provides written or electronic authorization to a deferred deposit lender to effect a debit from that person's account using an electronic payment; and

(b) the deferred deposit lender:

(i) provides the person described in Subsection ~~[(6)]~~ (7)(a) an amount of money that is equal to the face value of the check or the amount of the debit less ~~[any fee or]~~ interest or fees charged for the transaction; and

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

~~[(7)]~~ (8) (a) "Electronic payment" means an electronic method by which a person:

(i) accepts a payment from another person; or

(ii) makes a payment to another person.

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

(i) an automated clearing house transaction;

(ii) an electronic check;

(iii) a stored value card; or

(iv) an Internet transfer.

(9) "Interest or fees" ~~H~~→ [includes the cost elements associated with the extension of credit,

including:

~~(a) a fee;~~

~~(b) a charge, such as:~~

~~(i) a service charge; or~~

~~(ii) a renewal charge;~~

~~(c) a credit insurance premium;~~

~~(d) an ancillary product sold with any extension of credit; and~~

~~(e) any other charge or premium with respect to the extension of credit.] has the same~~

meaning as "finance charge" is defined in 15 U.S.C. 1605, and as implemented by regulations of the Board of Governors of the Federal Reserve System. ←H

~~[(8)] (10)~~ "Rollover" means the extension or renewal of the term of a deferred deposit loan.

Section 2. Section **7-23-401** is amended to read:

7-23-401. Operational requirements for deferred deposit loans.

(1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit lender 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]~~ or 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 deferred deposit lender 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;

(c) conspicuously disclose in the written contract:

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

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

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

(iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than ~~[+2]~~ four weeks after the day on which the deferred deposit loan is executed; and

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

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

(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]~~ fees;

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

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

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

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

(vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than ~~[+2]~~ four 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

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

(2) If a deferred deposit lender extends a deferred deposit loan through the Internet or other electronic means, the deferred deposit lender shall provide the information described in Subsection (1)(a) to the person receiving the deferred deposit loan:

(a) in a conspicuous manner; and

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

(3) A deferred deposit lender that engages in a deferred deposit loan shall permit a person receiving a deferred deposit loan to:

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

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

(4) A deferred deposit lender that engages in a deferred deposit loan may not:

(a) collect additional interest or fees on a deferred deposit loan with an outstanding principal balance ~~[12]~~ four weeks after the day on which the deferred deposit loan is executed;

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

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

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

(i) is made at least [~~12~~] four weeks after the day on which that deferred deposit loan is extended; and

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

(e) threaten to use or use the criminal process in any state to collect on [~~the~~] a deferred deposit loan[~~;~~]; or

(f) charge interest or fees on a deferred deposit loan that in the aggregate is greater than an annual percentage rate of 100%.

(5) Notwithstanding Subsections (4)(a) and (4) (e), a deferred deposit lender that is the holder of a check used to obtain a deferred deposit loan that is dishonored may use the remedies and notice procedures provided in Chapter 15, Dishonored Instruments, except that the issuer, as defined in Section 7-15-1, of the check may not be:

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

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

Section 3. Section **15-1-4** is amended to read:

15-1-4. Interest on judgments.

(1) As used in this section, "federal postjudgment interest rate" means the interest rate established for the federal court system under 28 U.S.C. Sec. 1961, as amended.

(2) (a) Except as provided in Subsection (2)(b), a judgment rendered on a lawful contract shall conform to the contract and shall bear the interest agreed upon by the parties, which shall be specified in the judgment.

(b) A judgment rendered on a deferred deposit loan subject to Title 7, Chapter 23, Check Cashing and Deferred Deposit Lending Registration Act, shall bear interest at the rate imposed under Subsection (3) on an amount not exceeding the sum of:

(i) the total of the principal balance of the deferred deposit loan;

(ii) interest at the rate imposed by the deferred deposit loan agreement for a period not exceeding [~~12~~] four weeks as provided in Subsection 7-23-401(4);

(iii) costs;

(iv) attorney fees; and

(v) other amounts allowed by law and ordered by the court.

(3) (a) Except as otherwise provided by law, other civil and criminal judgments of the

183 district court and justice court shall bear interest at the federal postjudgment interest rate as of
184 January 1 of each year, plus 2%.

185 (b) The postjudgment interest rate in effect at the time of the judgment shall remain the
186 interest rate for the duration of the judgment.

187 (c) The interest on criminal judgments shall be calculated on the total amount of the
188 judgment.

189 (d) Interest paid on state revenue shall be deposited in accordance with Section
190 63A-8-301.

191 (e) Interest paid on revenue to a county or municipality shall be paid to the general
192 fund of the county or municipality.

Legislative Review Note
as of 1-20-09 11:15 AM

Office of Legislative Research and General Counsel

H.B. 111 - Deferred Deposit Lending Amendments

Fiscal Note

2009 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 local governments. Business may be impacted due to changes in statute and restrictions on the amount of interest that they could charge consumers. Individuals may benefit from this change in statute and would save some money due to lower interest rates that consumer would have to pay.
