

DEFERRED DEPOSIT LENDING AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Karen Mayne

Cosponsor: Laura Black

LONG TITLE

General Description:

This bill modifies the Check Cashing and Deferred Deposit Lending Registration Act to address operational requirements related to deferred deposit lending.

Highlighted Provisions:

This bill:

- ▶ addresses required information in annual operation statements;
- ▶ changes the permissible length of rollovers to 10 weeks;
- ▶ imposes restrictions related to communications at a place of employment;
- ▶ provides for an extended payment plan option; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

7-23-201, as last amended by Laws of Utah 2008, Chapter 382 and renumbered and 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

ENACTS:

30 7-23-403, Utah Code Annotated 1953



31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section 7-23-201 is amended to read:

34 **7-23-201. Registration -- Rulemaking.**

35 (1) (a) It is unlawful for a person to engage in the business of cashing checks or the
36 business of deferred deposit lending in Utah or with a Utah resident unless the person:

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

39 (b) It is unlawful for a person to operate a mobile facility in this state to engage in the
40 business of:

- 41 (i) cashing checks; or
- 42 (ii) deferred deposit lending.

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

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

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

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

- 50 (i) pay the annual fee established under Subsection 7-1-401(5);
- 51 (ii) submit a renewal statement containing the information described in Subsection
- 52 (2)(d); and

53 (iii) if the person engages in the business of deferred deposit lending, submit an
54 operations statement containing the information described in Subsection (2)(e).

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

- 56 (i) the name of the person;
- 57 (ii) the name in which the business will be transacted if different from that required in

58 Subsection (2)(d)(i);

59 (iii) the address of the person's principal business office, which may be outside this
60 state;

61 (iv) the addresses of all offices in this state at which the person conducts the business
62 of:

63 (A) cashing checks; or

64 (B) deferred deposit lending;

65 (v) if the person conducts the business of cashing checks or the business of deferred
66 deposit lending in this state but does not maintain an office in this state, a brief description of
67 the manner in which the business is conducted;

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

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

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

74 (e) An operations statement required for a deferred deposit lender to renew a
75 registration shall state for the immediately preceding calendar year:

76 (i) the average deferred deposit loan amount that the deferred deposit lender extended;

77 (ii) the average number of days a deferred deposit loan is extended by the deferred
78 deposit lender before the deferred deposit loan is paid in full;

79 (iii) of the deferred deposit loans that are paid in full 10 weeks or sooner after the day
80 on which the deferred deposit loan is executed, the average number of days a deferred deposit
81 loan is extended by the deferred deposit lender before the deferred deposit loan is paid in full;

82 [~~(iii)~~] (iv) the minimum and maximum amount of interest or fees charged by the
83 deferred deposit lender for a deferred deposit loan:

84 (A) of \$100; and

85 (B) extended for one week; [~~and~~]

86 [~~(iv)~~] (v) the total number of deferred deposit loans rescinded by the deferred deposit
87 lender at the request of the customer pursuant to Subsection 7-23-401(3)(b)[~~;~~];

88 (vi) the percentage of deferred deposit loans extended by the deferred deposit lender
89 that are not paid in full by 10 weeks after the day on which the deferred deposit loan is
90 executed; and

91 (vii) of the persons to whom the deferred deposit lender extended a deferred deposit
92 loan, the percentage that entered into an extended payment plan under Section 7-23-403.

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

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

95 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management
96 Act.

97 (4) (a) The commissioner may impose an administrative fine determined under
98 Subsection (4)(b) on a person if:

99 (i) the person is required to be registered under this chapter;

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

101 (iii) the department notifies the person that the person is in violation of this chapter for
102 failure to be registered; and

103 (iv) the person fails to register within 30 days after the day on which the person
104 receives the notice described in Subsection (4)(a)(iii).

105 (b) Subject to Subsection (4)(c), the administrative fine imposed under this section is:

106 (i) \$500 if the person:

107 (A) has no office in this state at which the person conducts the business of:

108 (I) cashing checks; or

109 (II) deferred deposit lending; or

110 (B) has one office in this state at which the person conducts the business of:

111 (I) cashing checks; or

112 (II) deferred deposit lending; or

113 (ii) if the person has two or more offices in this state at which the person conducts the

114 business of cashing checks or the business of deferred deposit lending, \$500 for each office at
115 which the person conducts the business of:

- 116 (A) cashing checks; or
- 117 (B) deferred deposit lending.

118 (c) The commissioner may reduce or waive a fine imposed under this Subsection (4) if
119 the person shows good cause.

120 (5) If the information in a registration, renewal, or operations statement required under
121 Subsection (2) becomes inaccurate after filing, a person is not required to notify the
122 department until:

- 123 (a) that person is required to renew the registration; or
- 124 (b) the department specifically requests earlier notification.

125 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
126 the department may make rules consistent with this section providing for:

- 127 (a) the form, content, and filing of a registration and renewal statement described in
128 Subsection (2)(d); and
- 129 (b) the form and filing of an operations statement described in Subsection (2)(e).

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

131 **7-23-401. Operational requirements for deferred deposit loans.**

132 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit
133 lender shall:

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

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

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

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

- 142 (b) enter into a written contract for the deferred deposit loan;
- 143 (c) conspicuously disclose in the written contract:
 - 144 (i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a
 - 145 partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan
 - 146 without incurring additional charges above the charges provided in the written contract;
 - 147 (ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may
 - 148 rescind the deferred deposit loan on or before 5 p.m. of the next business day without
 - 149 incurring any charges;
 - 150 (iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over
 - 151 without the person receiving the deferred deposit loan requesting the rollover of the deferred
 - 152 deposit loan;
 - 153 (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if
 - 154 the rollover requires the person to pay the amount owed by the person under the deferred
 - 155 deposit loan in whole or in part more than ~~[+2]~~ 10 weeks after the day on which the deferred
 - 156 deposit loan is executed; and
 - 157 (v) (A) the name and address of a designated agent required to be provided the
 - 158 department under Subsection 7-23-201(2)(d)(vi); and
 - 159 (B) a statement that service of process may be made to the designated agent;
 - 160 (d) provide the person seeking the deferred deposit loan:
 - 161 (i) a copy of the ~~[deferred deposit contract;]~~ written contract described in Subsection
 - 162 (1)(c); and
 - 163 (ii) written notice that if the person seeking the deferred deposit loan is eligible to
 - 164 enter into an extended payment plan, the deferred deposit lender provides an extended
 - 165 payment plan described in Section 7-23-403;
 - 166 (e) orally review with the person seeking the deferred deposit loan the terms of the
 - 167 deferred deposit loan including:
 - 168 (i) the amount of any interest rate or fee;
 - 169 (ii) the date on which the full amount of the deferred deposit loan is due;

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

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

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

179 (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if
180 the rollover requires the person to pay the amount owed by the person under the deferred
181 deposit loan in whole or in part more than [~~12~~] 10 weeks after the day on which the deferred
182 deposit loan is executed; and

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

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

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

189 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
190 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

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

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

195 (a) in a conspicuous manner; and

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

197 (3) A deferred deposit lender that engages in a deferred deposit loan shall permit a

198 person receiving a deferred deposit loan to:

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

202 (b) rescind the deferred deposit loan without incurring any charges by returning the
203 deferred deposit loan amount to the deferred deposit lender on or before 5 p.m. the next
204 business day following the deferred deposit loan transaction.

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

206 (a) collect additional interest on a deferred deposit loan with an outstanding principal
207 balance [~~12~~] 10 weeks after the day on which the deferred deposit loan is executed;

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

210 (c) roll over a deferred deposit loan if the rollover requires a person to pay the amount
211 owed by the person under a deferred deposit loan in whole or in part more than [~~12~~] 10 weeks
212 from the day on which the deferred deposit loan is first executed;

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

215 (i) is made at least [~~12~~] 10 weeks after the day on which that deferred deposit loan is
216 extended; and

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

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

220 (f) in connection with the collection of money owed on a deferred deposit loan,
221 communicate with a person who owes money on a deferred deposit loan at the person's place
222 of employment if the person or the person's employer communicates, orally or in writing, to
223 the deferred deposit lender that the person's employer prohibits the person from receiving these
224 communications.

225 (5) Notwithstanding Subsections (4)(a) and [~~4~~] (e), a deferred deposit lender that is

226 the holder of a check used to obtain a deferred deposit loan that is dishonored may use the
227 remedies and notice procedures provided in Chapter 15, Dishonored Instruments, except that
228 the issuer, as defined in Section 7-15-1, of the check may not be:

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

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

232 Section 3. Section **7-23-403** is enacted to read:

233 **7-23-403. Extended payment plan.**

234 (1) (a) If a person who owes money on a deferred deposit loan requests to enter into an
235 extended payment plan, the deferred deposit lender who extended the deferred deposit loan
236 shall allow the person to enter into an extended payment plan that meets the requirements of
237 this section at least once during a 12-month period to pay the money owed.

238 (b) A deferred deposit lender is not required to enter into an extended payment plan
239 with a person who owes money on a deferred deposit loan more than one time during a
240 12-month period.

241 (2) An extended payment plan shall include the following:

242 (a) A deferred deposit lender shall require a person who receives a deferred deposit
243 loan and wants to enter an extended payment plan to enter into a written agreement:

244 (i) with the deferred deposit lender;

245 (ii) that is executed:

246 (A) no sooner than the day before the last day of the initial term of the deferred deposit
247 loan; and

248 (B) no later than the end of the deferred deposit lender's business day before the day
249 on which the deferred deposit loan is due; and

250 (iii) that states:

251 (A) a payment schedule; and

252 (B) the money owed under the extended payment plan.

253 (b) A payment schedule for an extended payment plan shall provide that the money

254 owed may be paid:

255 (i) in at least four equal payments; and

256 (ii) over a time period that is at least 60 days.

257 (c) The money owed under an extended payment plan shall equal the money owed
258 under the deferred deposit loan, including interest and fees, that would be due if the deferred
259 deposit loan is paid in full on the last day of the most current term of the deferred deposit loan.

260 (3) A deferred deposit lender may not charge interest or fees as part of an extended
261 payment plan, except that if the person who receives the deferred deposit loan defaults under
262 the extended payment plan, the deferred deposit lender may:

263 (a) accelerate the requirement to pay the money owed under the extended payment
264 plan;

265 (b) charge a fee not to exceed \$20;

266 (c) terminate the extended payment plan; and

267 (d) subject to the other requirements of this chapter, reinstate the original deferred
268 deposit loan terms.

269 (4) A deferred deposit loan may not penalize a person who enters into an extended
270 payment plan for paying to the deferred deposit lender money owed under the extended
271 payment plan before the money is due.

272 (5) A deferred deposit lender may not initiate collection activities for a deferred
273 deposit loan that is subject to an extended payment plan during the period that the person
274 owing money under the extended payment plan is in compliance with the extended payment
275 plan.

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

277 **15-1-4. Interest on judgments.**

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

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

282 which shall be specified in the judgment.

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

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

287 (ii) interest at the rate imposed by the deferred deposit loan agreement for a period not
288 exceeding [~~12~~] 10 weeks as provided in Subsection 7-23-401(4);

289 (iii) costs;

290 (iv) attorney fees; and

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

292 (3) (a) Except as otherwise provided by law, other civil and criminal judgments of the
293 district court and justice court shall bear interest at the federal postjudgment interest rate as of
294 January 1 of each year, plus 2%.

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

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

299 (d) Interest paid on state revenue shall be deposited in accordance with Section
300 63A-8-301.

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