

DEFERRED DEPOSIT LENDING AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Karen Mayne

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

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



28 7-23-401, as renumbered and amended by Laws of Utah 2008, Chapter 96

29 15-1-4, as last amended by Laws of Utah 2008, Chapter 96

30 ENACTS:

31 7-23-403, Utah Code Annotated 1953



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

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

35 **7-23-201. Registration -- Rulemaking.**

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

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

39 (ii) maintains a valid registration.

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

42 (i) cashing checks; or

43 (ii) deferred deposit lending.

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

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

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

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

49 (2)(d).

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

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

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

53 (2)(d); and

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

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

57 (i) the name of the person;

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

- 59 Subsection (2)(d)(i);
- 60 (iii) the address of the person's principal business office, which may be outside this
61 state;
- 62 (iv) the addresses of all offices in this state at which the person conducts the business
63 of:
- 64 (A) cashing checks; or
65 (B) deferred deposit lending;
- 66 (v) if the person conducts the business of cashing checks or the business of deferred
67 deposit lending in this state but does not maintain an office in this state, a brief description of
68 the manner in which the business is conducted;
- 69 (vi) the name and address in this state of a designated agent upon whom service of
70 process may be made;
- 71 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any
72 crime involving moral turpitude with respect to that person or any officer, director, manager,
73 operator, or principal of that person; and
- 74 (viii) any other information required by the rules of the department.
- 75 (e) An operations statement required for a deferred deposit lender to renew a
76 registration shall state for the immediately preceding calendar year:
- 77 (i) the average deferred deposit loan amount that the deferred deposit lender extended;
78 (ii) the average number of days a deferred deposit loan is extended by the deferred
79 deposit lender before the deferred deposit loan is paid in full;
- 80 (iii) of the deferred deposit loans that are paid in full 10 weeks or sooner after the day
81 on which the deferred deposit loan is executed, the average number of days a deferred deposit
82 loan is extended by the deferred deposit lender before the deferred deposit loan is paid in full;
- 83 [~~(iii)~~] (iv) the minimum and maximum amount of interest or fees charged by the
84 deferred deposit lender for a deferred deposit loan:
- 85 (A) of \$100; and
86 (B) extended for one week; [~~and~~]
- 87 [~~(iv)~~] (v) the total number of deferred deposit loans rescinded by the deferred deposit
88 lender at the request of the customer pursuant to Subsection 7-23-401(3)(b)[~~7~~];
- 89 (vi) the percentage of deferred deposit loans extended by the deferred deposit lender

90 that are not paid in full by 10 weeks after the day on which the deferred deposit loan is
91 executed; and
92 (vii) of the persons to whom the deferred deposit lender extended a deferred deposit
93 loan, the percentage that entered into an extended payment plan under Section 7-23-403.
94 (3) Information provided by a deferred deposit lender under Subsection (2)(e) is:
95 (a) confidential in accordance with Section 7-1-802; and
96 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management
97 Act.
98 (4) (a) The commissioner may impose an administrative fine determined under
99 Subsection (4)(b) on a person if:
100 (i) the person is required to be registered under this chapter;
101 (ii) the person fails to register or renew a registration in accordance with this chapter;
102 (iii) the department notifies the person that the person is in violation of this chapter for
103 failure to be registered; and
104 (iv) the person fails to register within 30 days after the day on which the person
105 receives the notice described in Subsection (4)(a)(iii).
106 (b) Subject to Subsection (4)(c), the administrative fine imposed under this section is:
107 (i) \$500 if the person:
108 (A) has no office in this state at which the person conducts the business of:
109 (I) cashing checks; or
110 (II) deferred deposit lending; or
111 (B) has one office in this state at which the person conducts the business of:
112 (I) cashing checks; or
113 (II) deferred deposit lending; or
114 (ii) if the person has two or more offices in this state at which the person conducts the
115 business of cashing checks or the business of deferred deposit lending, \$500 for each office at
116 which the person conducts the business of:
117 (A) cashing checks; or
118 (B) deferred deposit lending.
119 (c) The commissioner may reduce or waive a fine imposed under this Subsection (4) if
120 the person shows good cause.

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

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

125 (b) the department specifically requests earlier notification.

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

128 (a) the form, content, and filing of a registration and renewal statement described in
129 Subsection (2)(d); and

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

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

132 **7-23-401. Operational requirements for deferred deposit loans.**

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

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

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

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

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

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

144 (c) conspicuously disclose in the written contract:

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

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

151 (iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over

152 without the person receiving the deferred deposit loan requesting the rollover of the deferred
153 deposit loan;

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

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

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

161 (d) provide the person seeking the deferred deposit loan;

162 (i) a copy of the [~~deferred deposit contract;~~] written contract described in Subsection
163 (1)(c); and

164 (ii) written notice that if the person seeking the deferred deposit loan is eligible to enter
165 into an extended payment plan, the deferred deposit lender provides an extended payment plan
166 described in Section 7-23-403;

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

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

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

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

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

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

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

183 loan is executed; and

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

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

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

190 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
191 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

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

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

196 (a) in a conspicuous manner; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

234 **7-23-403. Extended payment plan.**

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

239 (b) A deferred deposit lender is not required to enter into an extended payment plan
240 with a person who owes money on a deferred deposit loan more than one time during a
241 12-month period.

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

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

245 (i) with the deferred deposit lender;
246 (ii) that is executed:
247 (A) no sooner than the day before the last day of the initial term of the deferred deposit
248 loan; and
249 (B) no later than the end of the deferred deposit lender's business day before the day on
250 which the deferred deposit loan is due; and
251 (iii) that states:
252 (A) a payment schedule; and
253 (B) the money owed under the extended payment plan.
254 (b) A payment schedule for an extended payment plan shall provide that the money
255 owed may be paid:
256 (i) in at least four equal payments; and
257 (ii) over a time period that is at least 60 days.
258 (c) The money owed under an extended payment plan shall equal the money owed
259 under the deferred deposit loan, including interest and fees, that would be due if the deferred
260 deposit loan is paid in full on the last day of the most current term of the deferred deposit loan.
261 (3) A deferred deposit lender may not charge interest or fees as part of an extended
262 payment plan, except that if the person who receives the deferred deposit loan defaults under
263 the extended payment plan, the deferred deposit lender may:
264 (a) accelerate the requirement to pay the money owed under the extended payment
265 plan;
266 (b) charge a fee not to exceed \$20;
267 (c) terminate the extended payment plan; and
268 (d) subject to the other requirements of this chapter, reinstate the original deferred
269 deposit loan terms.
270 (4) A deferred deposit loan may not penalize a person who enters into an extended
271 payment plan for paying to the deferred deposit lender money owed under the extended
272 payment plan before the money is due.
273 (5) A deferred deposit lender may not initiate collection activities for a deferred deposit
274 loan that is subject to an extended payment plan during the period that the person owing money
275 under the extended payment plan is in compliance with the extended payment 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 the
296 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.

Legislative Review Note
as of 11-19-09 8:39 AM

Office of Legislative Research and General Counsel

H.B. 15 - Deferred Deposit Lending Amendments

Fiscal Note

2010 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. Businesses and individuals may be affected by this proposed change in statute.
