

DEFERRED DEPOSIT LENDING AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley M. Daw

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Check Cashing and Deferred Deposit Lending Registration Act to address when a person is ineligible to obtain a deferred deposit loan and to provide for the creation of a database.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes requirements related to extending a deferred deposit loan;
- ▶ provides when a person is ineligible to obtain a deferred deposit loan;
- ▶ provides for the creation of a database;
- ▶ creates a process for reporting to and making a query of the database;
- ▶ provides for rulemaking;
- ▶ provides for reporting; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 7-23-102, as last amended by Laws of Utah 2008, Chapter 96
- 29 7-23-401, as last amended by Laws of Utah 2010, Chapter 102
- 30 7-23-503, as enacted by Laws of Utah 2008, Chapter 96

31 ENACTS:

- 32 7-23-601, Utah Code Annotated 1953
- 33 7-23-602, Utah Code Annotated 1953
- 34 7-23-603, Utah Code Annotated 1953

35

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

37 Section 1. Section 7-23-102 is amended to read:

38 **7-23-102. Definitions.**

39 As used in this chapter:

- 40 (1) "Business of cashing checks" means cashing a check for consideration.
- 41 (2) "Business of deferred deposit lending" means extending a deferred deposit loan.
- 42 (3) "Check" is as defined in Section 70A-3-104.
- 43 (4) "Check casher" means a person that engages in the business of cashing checks.
- 44 (5) "Database" means the Deferred Deposit Lending Database created under Section
- 45 7-23-602.

46 (6) "Default" means that a person owes money on a deferred deposit loan after the day

47 on which the deferred deposit loan is due.

48 [~~5~~] (7) "Deferred deposit lender" means a person that engages in the business of

49 deferred deposit lending.

50 [~~6~~] (8) "Deferred deposit loan" means a transaction where:

- 51 (a) a person:
 - 52 (i) presents to a deferred deposit lender a check written on that person's account; or
 - 53 (ii) provides written or electronic authorization to a deferred deposit lender to effect a
 - 54 debit from that person's account using an electronic payment; and
- 55 (b) the deferred deposit lender:
 - 56 (i) provides the person described in Subsection [~~6~~] (8)(a) an amount of money that is
 - 57 equal to the face value of the check or the amount of the debit less any fee or interest charged
 - 58 for the transaction; and

- 59 (ii) agrees not to cash the check or process the debit until a specific date.
- 60 [~~7~~] (9) (a) "Electronic payment" means an electronic method by which a person:
- 61 (i) accepts a payment from another person; or
- 62 (ii) makes a payment to another person.
- 63 (b) "Electronic payment" includes a payment made through:
- 64 (i) an automated clearing house transaction;
- 65 (ii) an electronic check;
- 66 (iii) a stored value card; or
- 67 (iv) an Internet transfer.
- 68 (10) "Ineligible" means that a person is ineligible to obtain a deferred deposit loan

69 under Section 7-23-601.

70 [~~8~~] (11) "Rollover" means the extension or renewal of the term of a deferred deposit
71 loan.

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

73 **7-23-401. Operational requirements for deferred deposit loans.**

74 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit
75 lender shall:

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

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

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

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

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

85 (c) conspicuously disclose in the written contract:

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

89 (ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind

90 the deferred deposit loan on or before 5 p.m. of the next business day without incurring any
91 charges;

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

95 (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
96 rollover requires the person to pay the amount owed by the person under the deferred deposit
97 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
98 executed; and

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

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

102 (d) provide the person seeking the deferred deposit loan:

103 (i) a copy of the written contract described in Subsection (1)(c); ~~and~~

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

107 (iii) written notice that a person may request to be placed on the database to be
108 ineligible to obtain a deferred deposit loan after the person is listed on the database;

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

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

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

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

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

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

121 deposit loan; ~~and~~

122 (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
123 rollover requires the person to pay the amount owed by the person under the deferred deposit
124 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
125 executed; and

126 (vii) that a person may request to be placed on the database to be ineligible to obtain a
127 deferred deposit loan after the person is placed on the database;

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

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

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

134 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
135 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

136 (iv) Title 70C, Utah Consumer Credit Code~~[-];~~ and

137 (g) on and after October 1, 2011, before extending the deferred deposit loan, in
138 accordance with Section 7-23-603, query the database to determine if the person seeking the
139 deferred deposit loan is ineligible.

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

143 (a) in a conspicuous manner; and

144 (b) ~~[prior to the person entering]~~ before the person enters into the deferred deposit loan.

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

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

150 (b) rescind the deferred deposit loan without incurring any charges by returning the
151 deferred deposit loan amount to the deferred deposit lender on or before 5 p.m. the next

152 business day following the deferred deposit loan transaction.

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

154 (a) collect additional interest on a deferred deposit loan with an outstanding principal
155 balance 10 weeks after the day on which the deferred deposit loan is executed;

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

158 (c) roll over a deferred deposit loan if the rollover requires a person to pay the amount
159 owed by the person under a deferred deposit loan in whole or in part more than 10 weeks from
160 the day on which the deferred deposit loan is first executed;

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

163 (i) is made at least 10 weeks after the day on which that deferred deposit loan is
164 extended; and

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

166 (e) threaten to use or use the criminal process in any state to collect on the deferred
167 deposit loan; or

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

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

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

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

180 (6) (a) On and after October 1, 2011, a deferred deposit lender may not extend a
181 deferred deposit loan to a person who, on the basis of a query to the database required by
182 Subsection (1)(g), is ineligible.

183 (b) A deferred deposit lender shall keep a record of a query made under Subsection
184 (1)(g) in accordance with rules made by the department pursuant to Title 63G, Chapter 3, Utah
185 Administrative Rulemaking Act.

186 Section 3. Section **7-23-503** is amended to read:

187 **7-23-503. Reporting by commissioner.**

188 (1) Subject to Subsection (2), as part of the commissioner's annual report to the
189 governor and Legislature under Section 7-1-211, the commissioner shall report to the governor
190 and Legislature;

191 (a) on the operations on an aggregate basis of deferred deposit lenders operating in the
192 state[-]; and

193 (b) on the information required to be reported under Section 7-23-602.

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

195 (a) shall include in the report for the immediately preceding calendar year aggregate
196 information from the one or more operations statements filed under Subsection 7-23-201(2)(e)
197 by deferred deposit lenders for that calendar year; [~~and~~]

198 (b) shall include the information required under Section 7-23-602; and

199 [~~(b)~~] (c) may not include in the report information from an operations statement filed
200 with the department or the database that could identify a specific deferred deposit lender.

201 Section 4. Section **7-23-601** is enacted to read:

202 **Part 6. Deferred Deposit Lending Database**

203 **7-23-601. Ineligibility to obtain a deferred deposit loan.**

204 A person is ineligible to obtain a deferred deposit loan if the person:

205 (1) requests to be listed on the database as a person who is ineligible to receive a
206 deferred deposit loan;

207 (2) is in default on a deferred deposit loan with a deferred deposit lender required to be
208 registered under this chapter;

209 (3) applies for a new deferred deposit loan within five days after the day on which the
210 person paid a deferred deposit loan that was:

211 (a) extended by a deferred deposit lender required to be registered under this chapter;
212 and

213 (b) not paid in full until the last day the deferred deposit loan was due after being

214 extended 10 weeks; or

215 (4) is obligated for an extended payment plan under which the person has not paid in
216 full what is owed on a deferred deposit loan extended by a deferred deposit lender required to
217 be registered under this chapter.

218 Section 5. Section **7-23-602** is enacted to read:

219 **7-23-602. Deferred Deposit Lending Database.**

220 (1) The department shall develop, implement, and maintain a real-time, electronically
221 accessible database known as the "Deferred Deposit Lending Database."

222 (2) (a) The database created under this section shall contain information that:

223 (i) identifies a person who is ineligible; and

224 (ii) provides, at the discretion of the person who requests to be ineligible under
225 Subsection 7-23-601(1), a name and mailing address of a contact person to be contacted in
226 accordance with this chapter.

227 (b) The department shall develop, implement, and maintain the database in accordance
228 with guidelines established by the department so that:

229 (i) a person who is requesting to be ineligible under Subsection 7-23-601(1), may
230 securely request that the information described in Subsection (2) be placed on or removed from
231 the database; and

232 (ii) a deferred deposit lender can efficiently:

233 (A) report information to the database under Subsection (5); and

234 (B) access the database under Section 7-23-603.

235 (3) The department may, by rule made in accordance with Title 63G, Chapter 3, Utah
236 Administrative Rulemaking Act, provide a process for a person who requested to be ineligible
237 under Subsection 7-23-601(1) to request that information placed on the database under
238 Subsection 7-23-601(1) be removed from the database or corrected.

239 (4) If a person who requested to be ineligible under Subsection 7-23-601(1) requests to
240 be removed from the database, the department shall send a notice to the person's contact
241 person, if one is listed in the database, to inform the contact person that the person has
242 requested to be removed from the database. The notice may be sent electronically.

243 (5) The department shall by rule made in accordance with Title 63G, Chapter 3, Utah
244 Administrative Rulemaking Act, provide for:

245 (a) the reporting by a deferred deposit lender to the database the information required
246 to determine ineligibility under Subsections 7-23-601(2) through (4); and

247 (b) how information required to determine ineligibility is reported when a deferred
248 deposit lender no longer extends deferred deposit loans in this state.

249 (6) A deferred deposit lender violates this chapter if the deferred deposit lender
250 knowingly or with reckless disregard:

251 (a) fails to report information required to be reported under Subsection (5); or

252 (b) reports inaccurate information required to be reported under Subsection (5).

253 (7) Information in the database is:

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

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

257 (8) A person who knowingly engages in the following is guilty of a third degree felony:

258 (a) places false information on the database; or

259 (b) releases or discloses information from the database for a purpose other than those
260 authorized in this part or to a person who is not entitled to the information.

261 (9) The state is not liable to any person for gathering, managing, or using the
262 information in the database.

263 (10) The department shall include in the report required under 7-23-503 aggregate
264 information regarding:

265 (a) the number of persons who request to be placed on the database in a calendar year;

266 (b) the number of persons who request to be removed from the database in a calendar
267 year; and

268 (c) the number of times in a calendar year a person is found ineligible after a query by a
269 deferred deposit lender.

270 Section 6. Section **7-23-603** is enacted to read:

271 **7-23-603. Query to database.**

272 (1) On and after October 1, 2011, before extending a deferred deposit loan, a deferred
273 deposit lender shall query the database to determine if the person seeking the deferred deposit
274 loan is ineligible.

275 (2) (a) A deferred deposit lender shall pay a fee to the department established in

276 accordance with Section 63J-1-504 for each query to the database.

277 (b) Money collected under this section is a dedicated credit for the purpose of
278 implementing this part.

279 (3) In response to a query by a deferred deposit lender under Subsection (1), the
280 database will state:

281 (a) whether a person is ineligible; and

282 (b) if ineligible, which ground described in Section 7-23-601 is the basis of
283 ineligibility.

284 (4) If in response to a query by a deferred deposit lender the database states that a
285 person is ineligible, the deferred deposit lender shall:

286 (a) inform the person that the person is ineligible;

287 (b) explain that the person may ask the department regarding the specific details of why
288 the person is ineligible; and

289 (c) if the grounds for ineligibility is Subsection 7-23-601(1), mail a notice to the
290 contact person, if one is listed in the database, to inform the contact person that the ineligible
291 person attempted to obtain a deferred deposit loan.

292 (5) A deferred deposit lender may rely on the database, and may not be held liable if
293 the information in the database is inaccurate.

294 (6) The department, by rule made in accordance with Title 63G, Chapter 3, Utah
295 Administrative Rulemaking Act, may provide a process that a deferred deposit lender may use
296 when the database is unavailable due to a technical problem beyond the control of the deferred
297 deposit lender.

Legislative Review Note
as of 2-2-11 3:10 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 113

SHORT TITLE: **Deferred Deposit Lending Amendments**

SPONSOR: **Daw, B.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will cost the Department of Financial Institutions \$91,000 one-time in FY 2011 and FY 2012 from the General Fund Restricted--Financial Institutions account. Ongoing costs for database maintenance would be \$52,000 per fiscal year as provided through fees charged to Deferred Deposit Lenders in accessing the database for each new loan. Additionally, expanded examination costs, estimated at 2,000 hours of exam time for all Deferred Deposit Lenders, would be \$99,000 per fiscal year for 1.0 FTE. These costs would be covered partially through additional fees charged to Deferred Deposit Lenders due to increased exam times, as well current charges already in place for these lenders.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
General Fund Restricted	\$0	\$55,000	\$55,000
Dedicated Credits	\$0	\$52,000	\$52,000
Total Revenue	\$0	\$107,000	\$107,000
Expenditure:			
General Fund Restricted	\$91,000	\$143,000	\$99,000
Dedicated Credits	\$0	\$26,000	\$52,000
Total Expenditure	\$91,000	\$169,000	\$151,000
Net Impact, All Funds (Rev.-Exp.)	(\$91,000)	(\$62,000)	(\$44,000)
Net Impact, General/Education Funds	\$0	\$0	\$0

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

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

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill will result in increased fees to deferred deposit lenders through fees charged for each query to the Deferred Deposit Lending Database. With approximately 1,285,000 loans extended in FY 2010, fees would need to be set at a rate of at least \$0.0405 per loan in the database.