

Representative James A. Dunnigan proposes the following substitute bill:

AMENDMENTS TO DEFERRED DEPOSIT LENDING

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Check Cashing and Deferred Deposit Lending Registration Act to address reporting requirements and the requirement to register.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies what a deferred deposit lender is required to report as part of its operations statement;
- ▶ makes void a deferred deposit loan issued by a person required to be registered but who is not registered under the chapter;
- ▶ requires the department to report certain information regarding complaints; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 7-23-102, as last amended by Laws of Utah 2008, Chapter 96
 27 7-23-201, as last amended by Laws of Utah 2010, Chapter 102
 28 7-23-503, as enacted by Laws of Utah 2008, Chapter 96



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

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

32 **7-23-102. Definitions.**

33 As used in this chapter:

34 (1) "Annual percentage rate" has the same meaning as in 15 U.S.C. Sec. 1606, as
 35 implemented by regulations issued under that section.

36 [~~(1)~~] (2) "Business of cashing checks" means cashing a check for consideration.

37 [~~(2)~~] (3) "Business of deferred deposit lending" means extending a deferred deposit
 38 loan.

39 [~~(3)~~] (4) "Check" is as defined in Section 70A-3-104.

40 [~~(4)~~] (5) "Check casher" means a person that engages in the business of cashing checks.

41 [~~(5)~~] (6) "Deferred deposit lender" means a person that engages in the business of
 42 deferred deposit lending.

43 [~~(6)~~] (7) "Deferred deposit loan" means a transaction where:

44 (a) a person:

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

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

48 (b) the deferred deposit lender:

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

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

53 [~~(7)~~] (8) (a) "Electronic payment" means an electronic method by which a person:

54 (i) accepts a payment from another person; or

55 (ii) makes a payment to another person.

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

- 57 (i) an automated clearing house transaction;
- 58 (ii) an electronic check;
- 59 (iii) a stored value card; or
- 60 (iv) an Internet transfer.
- 61 [~~8~~] (9) "Rollover" means the extension or renewal of the term of a deferred deposit
- 62 loan.

63 Section 2. Section **7-23-201** is amended to read:

64 **7-23-201. Registration -- Rulemaking.**

65 (1) (a) It is unlawful for a person to engage in the business of cashing checks or the

66 business of deferred deposit lending in Utah or with a Utah resident unless the person:

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

69 (b) It is unlawful for a person to operate a mobile facility in this state to engage in the

70 business of:

- 71 (i) cashing checks; or
- 72 (ii) deferred deposit lending.

73 (2) (a) A registration and a renewal of a registration expires on April 30 of each year

74 unless on or before that date the person renews the registration.

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

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

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

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

83 (iii) if the person engages in the business of deferred deposit lending, submit an

84 operations statement containing the information described in Subsection (2)(e).

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

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

88 Subsection (2)(d)(i);

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

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

93 (A) cashing checks; or

94 (B) deferred deposit lending;

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

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

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

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

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

106 (i) the average principal amount of the deferred deposit [~~loan amount that the deferred~~
107 ~~deposit lender extended~~] loans extended by the deferred deposit lender;

108 (ii) for deferred deposit loans paid in full, the average number of days a deferred
109 deposit loan is [~~extended by the deferred deposit lender before the deferred deposit loan is paid~~
110 ~~in full~~] outstanding for the duration of time that interest is charged;

111 [~~(iii) of the deferred deposit loans that are paid in full 10 weeks or sooner after the day~~
112 ~~on which the deferred deposit loan is executed, the average number of days a deferred deposit~~
113 ~~loan is extended by the deferred deposit lender before the deferred deposit loan is paid in full;~~]

114 [~~(iv)~~] (iii) the minimum and maximum dollar amount of interest [~~or~~] and fees charged
115 by the deferred deposit lender for a deferred deposit loan[~~:~~] of \$100 with a loan term of seven
116 days;

117 [~~(A) of \$100; and~~]

118 [~~(B) extended for one week;~~]

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

121 ~~[(vi) the percentage of deferred deposit loans extended by the deferred deposit lender
 122 that are not paid in full by 10 weeks after the day on which the deferred deposit loan is
 123 executed; and]~~

124 ~~H→~~ [f] ~~[(vii)]~~ (v) of the persons to whom the deferred deposit lender extended a
 124a deferred deposit

125 loan, the percentage that entered into an extended payment plan under Section 7-23-403. [f]

126 ~~[(v)]~~ (vi) ~~←H~~ the total dollar amount of deferred deposit loans rescinded by the deferred
 126a deposit

127 lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);

128 ~~H→~~ ~~[(vi)]~~ (vii) ~~←H~~ the average annual percentage rate charged on deferred deposit loans; and

129 ~~H→~~ ~~[(viii)]~~ (viii) ~~←H~~ the ~~H→~~ [total number] average dollar amount ~~←H~~ of extended
 129a1 payment plans entered into under

129a Section 7-23-403

130 by the deferred deposit lender.

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

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

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

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

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

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

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

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

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

144 (i) \$500 if the person:

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

146 (I) cashing checks; or

147 (II) deferred deposit lending; or

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

149 (I) cashing checks; or

150 (II) deferred deposit lending; or
151 (ii) if the person has two or more offices in this state at which the person conducts the
152 business of cashing checks or the business of deferred deposit lending, \$500 for each office at
153 which the person conducts the business of:
154 (A) cashing checks; or
155 (B) deferred deposit lending.
156 (c) The commissioner may reduce or waive a fine imposed under this Subsection (4) if
157 the person shows good cause.
158 (5) If the information in a registration, renewal, or operations statement required under
159 Subsection (2) becomes inaccurate after filing, a person is not required to notify the department
160 until:
161 (a) that person is required to renew the registration; or
162 (b) the department specifically requests earlier notification.
163 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
164 department may make rules consistent with this section providing for:
165 (a) the form, content, and filing of a registration and renewal statement described in
166 Subsection (2)(d); and
167 (b) the form and filing of an operations statement described in Subsection (2)(e).
168 (7) A deferred deposit loan that is made by a person who is required to be registered
169 under this chapter but who is not registered is void, and the person may not collect, receive, or
170 retain any principal or other interest or fees in connection with the deferred deposit loan.
171 Section 3. Section **7-23-503** is amended to read:
172 **7-23-503. Reporting by commissioner.**
173 (1) Subject to Subsection (2), as part of the commissioner's annual report to the
174 governor and Legislature under Section 7-1-211, the commissioner shall report to the governor
175 and Legislature on the operations on an aggregate basis of deferred deposit lenders operating in
176 the state.
177 (2) In preparing the report required by Subsection (1), the commissioner:
178 (a) shall include in the report for the immediately preceding calendar year aggregate
179 information from the one or more operations statements filed under Subsection 7-23-201(2)(e)
180 by deferred deposit lenders for that calendar year; [~~and~~]

181 (b) shall include in the report:
182 (i) the total number of written complaints concerning issues material to deferred
183 deposit loan transactions received by the department in a calendar year from persons who have
184 entered into a deferred deposit loan with a deferred deposit lender;
185 (ii) for deferred deposit lenders who are registered with the department:
186 (A) the number of the complaints described in Subsection (2)(b)(i) that the department
187 considers resolved; and
188 (B) the number of the complaints described in Subsection (2)(b)(i) that the department
189 considers unresolved; and
190 (iii) for deferred deposit lenders who are not registered with the department:
191 (A) the number of the complaints described in Subsection (2)(b)(i) that the department
192 considers resolved; and
193 (B) the number of the complaints described in Subsection (2)(b)(i) that the department
194 considers unresolved; and
195 [~~b~~] (c) may not include in the report information from an operations statement filed
196 with the department that could identify a specific deferred deposit lender.