

**DEFERRED DEPOSIT LENDING AND FORUM
REQUIREMENTS**

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Benjamin M. McAdams

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ prohibits a deferred deposit lender from imposing certain forum requirements; and
- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

7-23-401, as last amended by Laws of Utah 2010, Chapter 102

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

Section 1. 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



28 lender shall:

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

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

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

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

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

38 (c) conspicuously disclose in the written contract:

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

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

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

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

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

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

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

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

57 (ii) written notice that if the person seeking the deferred deposit loan is eligible to enter
58 into an extended payment plan, the deferred deposit lender provides an extended payment plan

59 described in Section 7-23-403;

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

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

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

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

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

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

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

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

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

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

83 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
84 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

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

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

89 (a) in a conspicuous manner; and

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

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

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

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

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

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

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

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

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

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

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

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

114 (f) in connection with the collection of money owed on a deferred deposit loan,
115 communicate with a person who owes money on a deferred deposit loan at the person's place of
116 employment if the person or the person's employer communicates, orally or in writing, to the
117 deferred deposit lender that the person's employer prohibits the person from receiving these
118 communications~~[-]; or~~

119 (g) subject to Subsection (6), require a person to bring an action or defend against an
120 action related to a dispute arising under a deferred deposit loan in a forum that is outside:

121 (i) the county in which is located the primary residence of the person seeking the
122 deferred deposit loan if the deferred deposit lender has a physical presence for making a
123 deferred deposit loan in that county; or

124 (ii) the county in which is located the physical location at which the person obtains the
125 deferred deposit loan if the deferred deposit lender does not have a physical presence for
126 making a deferred deposit loan in the county in which is located the primary residence of the
127 person seeking the deferred deposit loan.

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

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

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

135 (6) If a person obtains a deferred deposit loan through the Internet or other electronic
136 means, the forum described in Subsection (4)(g) may not be outside the county in which is
137 located the primary residence of the person seeking the deferred deposit loan.

Legislative Review Note
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Office of Legislative Research and General Counsel