

Representative Larry B. Wiley proposes the following substitute bill:

DEFERRED DEPOSIT LOAN AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Larry B. Wiley

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Check Cashing and Deferred Deposit Lending Registration Act to address deferred deposit loans.

Highlighted Provisions:

This bill:

- ▶ modifies the definition provision;
- ▶ requires a deferred deposit lender to query the database before extending a deferred deposit loan;
- ▶ makes a violation of certain federal statutes and regulations a violation of Utah's act;
- ▶ provides for reporting requirements;
- ▶ imposes ineligibility conditions;
- ▶ requires the creation of a deferred deposit database;
- ▶ addresses query procedures; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 [7-23-102](#), as last amended by Laws of Utah 2013, Chapter 73

29 [7-23-401](#), as last amended by Laws of Utah 2010, Chapter 102

30 [7-23-503](#), as last amended by Laws of Utah 2012, Chapter 323

31 [7-23-504](#), as last amended by Laws of Utah 2008, Chapter 382 and renumbered and
32 amended by Laws of Utah 2008, Chapter 96

33 ENACTS:

34 [7-23-601](#), Utah Code Annotated 1953

35 [7-23-602](#), Utah Code Annotated 1953

36 [7-23-603](#), Utah Code Annotated 1953



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

39 Section 1. Section [7-23-102](#) is amended to read:

40 **7-23-102. Definitions.**

41 As used in this chapter:

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

44 (2) "Business of cashing checks" means cashing a check for consideration.

45 (3) "Business of deferred deposit lending" means extending a deferred deposit loan.

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

47 (5) "Check casher" means a person that engages in the business of cashing checks.

48 (6) "Deferred deposit database" means the deferred deposit database created in
49 accordance with Section [7-23-602](#).

50 (7) "Deferred deposit database provider" means:

51 (a) the department; or

52 (b) a third party with which the department contracts as provided in Section [7-23-602](#).

53 [~~(6)~~] (8) "Deferred deposit lender" means a person that engages in the business of
54 deferred deposit lending.

55 [~~(7)~~] (9) "Deferred deposit loan" means a transaction [~~where~~] when:

56 (a) a person:

57 (i) presents to a deferred deposit lender a check written on that person's account; or
58 (ii) provides written or electronic authorization to a deferred deposit lender to effect a
59 debit from that person's account using an electronic payment; and

60 (b) the deferred deposit lender:

61 (i) provides the person described in Subsection [~~(7)~~](9)(a) an amount of money that is
62 equal to the face value of the check or the amount of the debit less any fee or interest charged
63 for the transaction; and

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

65 [~~(8)~~](10) (a) "Electronic payment" means an electronic method by which a person:

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

67 (ii) makes a payment to another person.

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

69 (i) an automated clearing house transaction;

70 (ii) an electronic check;

71 (iii) a stored value card; or

72 (iv) an Internet transfer.

73 [~~(9)~~](11) "Nationwide database" means the Nationwide Mortgage Licensing System
74 and Registry, authorized under federal licensing requirements for mortgage loan originators.

75 [~~(10)~~](12) "Rollover" means the extension or renewal of the term of a deferred deposit
76 loan.

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

78 **7-23-401. Operational requirements for deferred deposit loans.**

79 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit
80 lender shall:

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

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

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

87 (iii) a list of states where the deferred deposit lender is registered or authorized to offer

88 deferred deposit loans through the Internet or other electronic means;

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

90 (c) conspicuously disclose in the written contract:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

135 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
136 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

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

138 (g) on and after October 1, 2014, before extending a deferred deposit loan, query the
139 deferred deposit database in accordance with Section 7-23-603 to determine if the person
140 seeking the deferred deposit loan is ineligible to have a deferred deposit loan as provided in
141 Section 7-23-601.

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

145 (a) in a conspicuous manner; and

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

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

149 (a) make partial payments in increments of at least \$5 on the principal owed on the

150 deferred deposit loan at any time prior to maturity without incurring additional charges above
151 the charges provided in the written contract; and

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

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

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

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

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

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

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

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

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

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

175 (g) extend a deferred deposit loan to a person who is ineligible for the deferred deposit
176 loan under Section 7-23-601; or

177 (h) extend a deferred deposit loan in violation of 10 U.S.C. Sec. 987, and its
178 implementing regulations.

179 (5) Notwithstanding Subsections (4)(a) and (e), a deferred deposit lender that is the
180 holder of a check used to obtain a deferred deposit loan that is dishonored may use the

181 remedies and notice procedures provided in Chapter 15, Dishonored Instruments, except that
182 the issuer, as defined in Section 7-15-1, of the check may not be:

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

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

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

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

190 **7-23-503. Reporting by commissioner.**

191 (1) Subject to Subsection (2), as part of the commissioner's annual report to the
192 governor and Legislature under Section 7-1-211, the commissioner shall report to the governor
193 and Legislature on:

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

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

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

198 (a) shall include in the report for the immediately preceding calendar year aggregate
199 information from the one or more operations statements filed under Subsection 7-23-201(2)(e)
200 by deferred deposit lenders for that calendar year;

201 (b) shall include in the report:

202 (i) the total number of written complaints concerning issues material to deferred
203 deposit loan transactions received by the department in a calendar year from persons who have
204 entered into a deferred deposit loan with a deferred deposit lender;

205 (ii) for deferred deposit lenders who are registered with the department:

206 (A) the number of the complaints described in Subsection (2)(b)(i) that the department
207 considers resolved; and

208 (B) the number of the complaints described in Subsection (2)(b)(i) that the department
209 considers unresolved; and

210 (iii) for deferred deposit lenders who are not registered with the department:

211 (A) the number of the complaints described in Subsection (2)(b)(i) that the department

212 considers resolved; and

213 (B) the number of the complaints described in Subsection (2)(b)(i) that the department
214 considers unresolved; [~~and~~]

215 (c) shall include the information required under Section 7-23-602; and

216 [~~(c)~~] (d) may not include in the report information from an operations statement filed
217 with the department that could identify a specific deferred deposit lender.

218 Section 4. Section 7-23-504 is amended to read:

219 **7-23-504. Penalties.**

220 (1) A person who violates this chapter or who files materially false information with a
221 registration or renewal under Section 7-23-201 is:

222 (a) guilty of a class B misdemeanor, except for a violation of:

223 (i) Subsection 7-23-401(1)(f)(i), (ii), or (iii) or Subsection 7-23-401(4)(h); or

224 (ii) rules made under Subsection 7-23-501(2)(b); and

225 (b) subject to revocation of a person's registration under this chapter.

226 (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the department
227 determines that a person is engaging in the business of cashing checks or the business of
228 deferred deposit lending in violation of this chapter, the department may:

229 (a) revoke that person's registration under this chapter;

230 (b) issue a cease and desist order from committing any further violations;

231 (c) prohibit the person from continuing to engage in the business of:

232 (i) cashing checks; or

233 (ii) deferred deposit lending;

234 (d) impose an administrative fine not to exceed \$1,000 per violation, except that:

235 (i) a fine imposed under Subsection 7-23-201(4) shall comply with Subsection
236 7-23-201(4); and

237 (ii) the aggregate total of fines imposed under this chapter against a person in a
238 calendar year may not exceed \$30,000 for that calendar year; or

239 (e) take any combination of actions listed under this Subsection (2).

240 Section 5. Section 7-23-601 is enacted to read:

241 **Part 6. Deferred Deposit Database Program**

242 **7-23-601. Ineligibility.**

243 (1) A person is ineligible to obtain a deferred deposit loan if the person:
244 (a) has two deferred deposit loans outstanding;
245 (b) borrows in aggregate, including the deferred deposit loan being applied for, more
246 than 25% of the person's net monthly income for all outstanding deferred deposit loans at the
247 same time; or
248 (c) has been indebted under a deferred deposit loan, including rollovers, for 10 weeks
249 or more in the preceding 12 months.

250 (2) The department shall by rule, made in accordance with Title 63G, Chapter 3, Utah
251 Administrative Rulemaking Act, establish the method to determine 25% of a person's net
252 monthly income.

253 Section 6. Section 7-23-602 is enacted to read:

254 **7-23-602. Deferred Deposit Database Program established.**

255 (1) (a) There is established the Deferred Deposit Database Program to create a deferred
256 deposit database to verify whether a person seeking a deferred deposit loan is ineligible to have
257 a deferred deposit loan under Section [7-23-601](#).

258 (b) The program shall be administered by the department and require the department to
259 implement by October 1, 2014, a common database with real-time access by deferred deposit
260 lenders through an Internet connection or other electronic means.

261 (c) The deferred deposit database shall be accessible to the department and a deferred
262 deposit lender to verify whether a person seeking a deferred deposit loan is ineligible for the
263 deferred deposit loan under Section [7-23-601](#).

264 (d) (i) The department may contract in accordance with Title 63G, Chapter 6a, Utah
265 Procurement Code, with a third party to establish and maintain the deferred deposit database
266 for the purpose of determining whether a person seeking a deferred deposit loan is ineligible
267 for the deferred deposit loan under Section [7-23-601](#).

268 (ii) If the department contracts with a third party, the commissioner shall:

269 (A) ensure that the third party selected as the deferred deposit database provider
270 operates the deferred deposit database pursuant to this part;

271 (B) consider the third party's cost of service and ability to meet the requirements of this
272 part; and

273 (C) ensure that the third party can provide accurate and secure receipt, transmission,

274 and storage of data.

275 (iii) A contract may not obligate the department to pay a third party deferred deposit
276 database provider more money than is paid in fees collected under Subsection 7-23-603(2).

277 (iv) A third party deferred deposit database provider shall use the data collected under
278 this part only as prescribed in this part and in the contract with the department and for no other
279 purpose.

280 (e) The department shall investigate violations of and enforce this part. The
281 department may not delegate its responsibilities under this Subsection (1)(e).

282 (2) The department shall establish guidelines to be followed by the deferred deposit
283 database provider so that a deferred deposit lender can efficiently:

284 (a) report information to the deferred deposit database under Subsection (3); and

285 (b) access the deferred deposit database under Section 7-23-603.

286 (3) The department shall by rule made in accordance with Title 63G, Chapter 3, Utah
287 Administrative Rulemaking Act, provide:

288 (a) for the reporting by a deferred deposit lender to the deferred deposit database the
289 information required to determine whether a person seeking a deferred deposit loan is ineligible
290 for the deferred deposit loan under Section 7-23-601, including the amount of any outstanding
291 deferred deposit loan and the amount of the deferred deposit loan for which a person is
292 applying;

293 (b) that when the deferred deposit database provider receives notification that a
294 deferred deposit loan is closed, the deferred deposit database provider shall designate the
295 transaction as closed in the deferred deposit database immediately, but in no event after 11:59
296 p.m. on the day the deferred deposit database provider receives the notification;

297 (c) for the archiving and retention of information on the deferred deposit database; and

298 (d) for the deferred deposit database provider to establish and maintain a process for
299 responding to queries that due to technical difficulties the deferred deposit lender cannot access
300 through the Internet or other electronic means.

301 (4) If the department contracts with a third party provider, the department:

302 (a) may maintain access to data in the deferred deposit database, including transactions
303 archived under Subsection (3)(c) for examination, investigation, or legislative or policy review;

304 and

305 (b) may not obtain or access a Social Security number, driver license number, or other
306 state-issued identification number in the deferred deposit database except as provided in this
307 Subsection (4).

308 (5) A deferred deposit lender violates this chapter if the deferred deposit lender
309 knowingly or with reckless disregard:

310 (a) fails to report information required to be reported under Subsection (3); or

311 (b) reports inaccurate information required to be reported under Subsection (3).

312 (6) (a) Information regarding a person's transactional history provided to, maintained
313 in, or accessed from the deferred deposit database is confidential and, except as provided in
314 Subsection (6)(b):

315 (i) is not subject to discovery, subpoena, or similar compulsory process in any civil,
316 judicial, administrative, or legislative proceeding;

317 (ii) a person with lawful access to the information may not be compelled to testify with
318 regard to the information; and

319 (iii) is not subject to Title 63G, Chapter 2, Government Records Access and
320 Management Act.

321 (b) Subsections (6)(a)(i) and (ii) do not apply to a civil, judicial, or administrative
322 action brought to enforce this chapter.

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

324 (a) places false information on the deferred deposit database; or

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

327 (8) A person injured by a third party deferred deposit database provider's violation of
328 this part may maintain a civil cause of action against the third party deferred deposit database
329 provider and may recover actual damages plus reasonable attorney fees and court costs.

330 (9) The state is not liable to any person for gathering, managing, or using the
331 information in the deferred deposit database.

332 (10) The department shall include in the report required under Section [7-23-503](#)
333 aggregate information regarding the number of times in a calendar year a person is found to be
334 ineligible under Section [7-23-601](#) to have extended a deferred deposit loan and the grounds for
335 the ineligibility.

336 (11) (a) A deferred deposit lender shall notify the deferred deposit database provider if
337 the deferred deposit lender stops extending deferred deposit loans.

338 (b) If a deferred deposit lender stops extending deferred deposit loans, the deferred
339 deposit database provider shall designate all open transactions with that deferred deposit lender
340 closed in the deferred deposit database 60 days after the date the deferred deposit lender stops
341 extending deferred deposit loans, unless the deferred deposit lender reports to the deferred
342 deposit database provider before the expiration of the 60-day period which of its transactions
343 remain open and the specific reason each transaction remains open.

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

345 **7-23-603. Query of deferred deposit database.**

346 (1) On and after October 1, 2014, before extending a deferred deposit loan, a deferred
347 deposit lender shall query the deferred deposit database to determine if the person seeking the
348 deferred deposit loan is ineligible for a deferred deposit loan under Section [7-23-601](#).

349 (2) The deferred deposit database provider may collect a fee from a deferred deposit
350 lender that is established by the department and that does not exceed \$1 for a query to the
351 deferred deposit database that results in the making of a deferred deposit loan.

352 (3) In response to a query by a deferred deposit lender under Subsection (1), the
353 deferred deposit database shall state:

354 (a) whether the person seeking the deferred deposit loan is ineligible to have a deferred
355 deposit loan under Subsection [7-23-601](#)(1)(a) or (c); and

356 (b) the amount borrowed in aggregate for all outstanding deferred deposit loans at the
357 time of the query.

358 (4) If a deferred deposit lender accurately and promptly submits data to the deferred
359 deposit database as required under Section [7-23-602](#), a deferred deposit lender may rely on the
360 deferred deposit database, and may not be held liable if the information in the deferred deposit
361 database is inaccurate.

362 (5) If, in response to a query by a deferred deposit lender, the deferred deposit database
363 states that the person is ineligible or if by extending a deferred deposit loan the aggregate
364 amount of the deferred deposit loans, including the deferred deposit loan being applied for,
365 would be more than 25% of the person's net monthly income for all outstanding deferred
366 deposit loans at the same time, the deferred deposit lender shall:

- 367 (a) not extend the deferred deposit loan;
368 (b) inform the person that the person is ineligible; and
369 (c) explain that the person may contact the deferred deposit database provider
370 regarding the specific details of why the person is ineligible.