

HB0047S01 compared with HB0047

~~deleted text~~ shows text that was in HB0047 but was deleted in HB0047S01.

inserted text shows text that was not in HB0047 but was inserted into HB0047S01.

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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;

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- ▶ addresses query procedures; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

7-23-102, as last amended by Laws of Utah 2013, Chapter 73

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

7-23-503, as last amended by Laws of Utah 2012, Chapter 323

7-23-504, as last amended by Laws of Utah 2008, Chapter 382 and renumbered and amended by Laws of Utah 2008, Chapter 96

ENACTS:

7-23-601, Utah Code Annotated 1953

7-23-602, Utah Code Annotated 1953

7-23-603, Utah Code Annotated 1953

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

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

7-23-102. Definitions.

As used in this chapter:

- (1) "Annual percentage rate" has the same meaning as in 15 U.S.C. Sec. 1606, as implemented by regulations issued under that section.
- (2) "Business of cashing checks" means cashing a check for consideration.
- (3) "Business of deferred deposit lending" means extending a deferred deposit loan.
- (4) "Check" is as defined in Section 70A-3-104.
- (5) "Check casher" means a person that engages in the business of cashing checks.
- (6) "Deferred deposit database" means the deferred deposit database created in accordance with Section 7-23-602.
- (7) "Deferred deposit database provider" means:

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(a) the department; or

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

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

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

(a) a person:

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

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

(b) the deferred deposit lender:

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

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

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

(i) accepts a payment from another person; or

(ii) makes a payment to another person.

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

(i) an automated clearing house transaction;

(ii) an electronic check;

(iii) a stored value card; or

(iv) an Internet transfer.

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

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

Section 2. 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 lender shall:

(a) post in a conspicuous location on its premises that can be viewed by a person

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seeking a deferred deposit loan:

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

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

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

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

(c) conspicuously disclose in the written contract:

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

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

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

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

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

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

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

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

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

(e) orally review with the person seeking the deferred deposit loan the terms of the

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deferred deposit loan including:

- (i) the amount of any interest rate or fee;
- (ii) the date on which the full amount of the deferred deposit loan is due;
- (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan without incurring additional charges above the charges provided in the written contract;
- (iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring any charges;
- (v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan; and
- (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is executed; ~~and~~
- (f) comply with the following as in effect on the date the deferred deposit loan is extended:
 - (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing ~~federal~~ regulations;
 - (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing ~~federal~~ regulations;
 - (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and
 - (iv) ~~Title 70C, Utah Consumer Credit Code~~ ~~{}~~ ~~;~~ ~~{}~~ ~~and~~ ~~}~~
 - (g) on and after October 1, 2014, before extending a deferred deposit loan, query the deferred deposit database in accordance with Section 7-23-603 to determine if the person seeking the deferred deposit loan is ineligible to have a deferred deposit loan as provided in Section 7-23-601.

(2) If a deferred deposit lender extends a deferred deposit loan through the Internet or other electronic means, the deferred deposit lender shall provide the information described in

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Subsection (1)(a) to the person receiving the deferred deposit loan:

- (a) in a conspicuous manner; and
- (b) prior to the person entering into the deferred deposit loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7-23-503. Reporting by commissioner.

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

(a) the operations on an aggregate basis of deferred deposit lenders operating in the state; and

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

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

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

(b) shall include in the report:

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

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

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

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

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

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

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

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

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

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

7-23-504. Penalties.

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

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

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

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

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

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

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

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

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

(i) cashing checks; or

(ii) deferred deposit lending;

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

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

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

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

Section ~~4~~5. Section 7-23-601 is enacted to read:

Part 6. Deferred Deposit Database Program

7-23-601. Ineligibility.

(1) A person is ineligible to obtain a deferred deposit loan if the person:

(a) has two deferred deposit loans outstanding;

(b) borrows in aggregate, including the deferred deposit loan being applied for, more than 25% of the person's net monthly income for all outstanding deferred deposit loans at the same time; or

(c) has ~~obtained 10~~been indebted under a deferred deposit ~~loans~~loan, including rollovers, for 10 weeks or more in the preceding 12 months.

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

Section ~~5~~6. Section 7-23-602 is enacted to read:

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

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

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

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

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

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

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

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

(C) ensure that the third party can provide accurate and secure receipt, transmission, and storage of data.

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

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

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

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

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

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

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

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

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

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

(d) for the deferred deposit database provider to establish and maintain a process for

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responding to queries that due to technical difficulties the deferred deposit lender cannot access through the Internet or other electronic means.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) If a deferred deposit lender accurately and promptly submits data to the deferred deposit database as required under Section 7-23-602, a deferred deposit lender may rely on the deferred deposit database, and may not be held liable if the information in the deferred deposit

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database is inaccurate.

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

(a) not extend the deferred deposit loan;

(b) inform the person that the person is ineligible; and

(c) explain that the person may contact the deferred deposit database provider regarding the specific details of why the person is ineligible.

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Legislative Review Note

~~as of 1-7-14 11:05 AM~~

~~Office of Legislative Research and General Counsel}~~