

Representative Fred C. Cox proposes the following substitute bill:

CHECK CASHING AND DEFERRED DEPOSIT LENDING

AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

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:

- ▶ changes restrictions on rollovers;
- ▶ modifies the time frame for an extended payment plan; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

7-23-201, as last amended by Laws of Utah 2014, Chapter 131

7-23-401, as last amended by Laws of Utah 2014, Chapter 131

7-23-403, as last amended by Laws of Utah 2014, Chapter 131



26 [15-1-4](#), as last amended by Laws of Utah 2014, Chapter 281

27

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

29 Section 1. Section **7-23-201** is amended to read:

30 **7-23-201. Registration -- Rulemaking.**

31 (1) (a) It is unlawful for a person to engage in the business of cashing checks or the
32 business of deferred deposit lending in Utah or with a Utah resident unless the person:

33 (i) registers with the department in accordance with this chapter; and

34 (ii) maintains a valid registration.

35 (b) It is unlawful for a person to operate a mobile facility in this state to engage in the
36 business of:

37 (i) cashing checks; or

38 (ii) deferred deposit lending.

39 (2) (a) A registration and a renewal of a registration expires on December 31 of each
40 year unless on or before that date the person renews the registration.

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

42 (i) pay an original registration fee established under Subsection [7-1-401\(8\)](#);

43 (ii) submit a registration statement containing the information described in Subsection
44 (2)(d);

45 (iii) submit evidence satisfactory to the commissioner that the person is authorized to
46 conduct business in this state as a domestic or foreign entity pursuant to filings with the
47 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,
48 Partnership - Unincorporated Business Entities; and

49 (iv) if the person engages in the business of deferred deposit lending, submit evidence
50 satisfactory to the commissioner that the person is registered with the nationwide database.

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

52 (i) pay the annual fee established under Subsection [7-1-401\(5\)](#);

53 (ii) submit a renewal statement containing the information described in Subsection
54 (2)(d);

55 (iii) submit evidence satisfactory to the commissioner that the person is authorized to
56 conduct business in this state as a domestic or foreign entity pursuant to filings with the

57 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,
58 Partnership - Unincorporated Business Entities;

59 (iv) if the person engages in the business of deferred deposit lending, submit evidence
60 satisfactory to the commissioner that the person is registered with the nationwide database; and

61 (v) if the person engages in the business of deferred deposit lending, submit an
62 operations statement containing the information described in Subsection (2)(e).

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

64 (i) the name of the person;

65 (ii) the name in which the business will be transacted if different from that required in
66 Subsection (2)(d)(i);

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

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

71 (A) cashing checks; or

72 (B) deferred deposit lending;

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

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

78 (vii) disclosure of an injunction, judgment, administrative order, or conviction of a
79 crime involving moral turpitude with respect to that person or an officer, director, manager,
80 operator, or principal of that person; and

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

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

84 (i) the average principal amount of the deferred deposit loans extended by the deferred
85 deposit lender;

86 (ii) for deferred deposit loans paid in full, the average number of days a deferred
87 deposit loan is outstanding for the duration of time that interest is charged;

- 88 (iii) the minimum and maximum dollar amount of interest and fees charged by the
89 deferred deposit lender for a deferred deposit loan of \$100 with a loan term of seven days;
- 90 (iv) the total number of deferred deposit loans rescinded by the deferred deposit lender
91 at the request of the customer pursuant to Subsection 7-23-401(3)(b);
- 92 (v) of the persons to whom the deferred deposit lender extended a deferred deposit
93 loan, the percentage that entered into an extended payment plan under Section 7-23-403;
- 94 (vi) the total dollar amount of deferred deposit loans rescinded by the deferred deposit
95 lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);
- 96 (vii) the average annual percentage rate charged on deferred deposit loans;
- 97 (viii) the average dollar amount of extended payment plans entered into under Section
98 7-23-403 by the deferred deposit lender;
- 99 (ix) the number of deferred deposit loans carried to the maximum [~~10~~] nine weeks;
- 100 (x) the total dollar amount of deferred deposit loans carried to the maximum [~~10~~] nine
101 weeks;
- 102 (xi) the number of deferred deposit loans not paid in full at the end of [~~10~~] nine weeks;
103 and
- 104 (xii) the total dollar amount of deferred deposit loans not paid in full at the end of [~~10~~]
105 nine weeks.
- 106 (f) The commissioner may by rule, made in accordance with Title 63G, Chapter 3,
107 Utah Administrative Rulemaking Act, provide for the transition of persons registering with the
108 nationwide database.
- 109 (3) Information provided by a deferred deposit lender under Subsection (2)(e) is:
- 110 (a) confidential in accordance with Section 7-1-802; and
- 111 (b) not subject to Title 63G, Chapter 2, Government Records Access and Management
112 Act.
- 113 (4) (a) The commissioner may impose an administrative fine determined under
114 Subsection (4)(b) on a person if:
- 115 (i) the person is required to be registered under this chapter;
- 116 (ii) the person fails to register or renew a registration in accordance with this chapter;
- 117 (iii) the department notifies the person that the person is in violation of this chapter for
118 failure to be registered; and

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

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

122 (i) \$500 if the person:

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

124 (I) cashing checks; or

125 (II) deferred deposit lending; or

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

127 (I) cashing checks; or

128 (II) deferred deposit lending; or

129 (ii) if the person has two or more offices in this state at which the person conducts the
130 business of cashing checks or the business of deferred deposit lending, \$500 for each office at
131 which the person conducts the business of:

132 (A) cashing checks; or

133 (B) deferred deposit lending.

134 (c) The commissioner may reduce or waive a fine imposed under this Subsection (4) if
135 the person shows good cause.

136 (5) If the information in a registration, renewal, or operations statement required under
137 Subsection (2) becomes inaccurate after filing, a person is not required to notify the department
138 until:

139 (a) that person is required to renew the registration; or

140 (b) the department specifically requests earlier notification.

141 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
142 department may make rules consistent with this section providing for:

143 (a) the form, content, and filing of a registration and renewal statement described in
144 Subsection (2)(d); and

145 (b) the form and filing of an operations statement described in Subsection (2)(e).

146 (7) A deferred deposit loan that is made by a person who is required to be registered
147 under this chapter but who is not registered is void, and the person may not collect, receive, or
148 retain any principal or other interest or fees in connection with the deferred deposit loan.

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

150 **7-23-401. Operational requirements for deferred deposit loans.**

151 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit
152 lender shall:

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

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

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

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

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

162 (c) conspicuously disclose in the written contract:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

196 (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
197 rollover requires the person to pay the amount owed by the person under the deferred deposit
198 loan in whole or in part more than [~~10~~] nine weeks after the day on which the deferred deposit
199 loan is executed;

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

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

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

206 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
207 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

208 (iv) Title 70C, Utah Consumer Credit Code;

209 (g) in accordance with Subsection (6), make an inquiry to determine whether a person
210 attempting to receive a deferred deposit loan has the ability to repay the deferred deposit loan
211 in the ordinary course, which may include rollovers or extended payment plans as allowed

212 under this chapter; and

213 (h) in accordance with Subsection (7), receive a signed acknowledgment from a person
214 attempting to receive a deferred deposit loan that the person has the ability to repay the
215 deferred deposit loan, which may include rollovers or extended payment plans as allowed by
216 this chapter.

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

220 (a) in a conspicuous manner; and

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

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

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

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

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

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

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

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

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

240 (i) is made at least [~~10~~] nine weeks after the day on which that deferred deposit loan is
241 extended; and

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

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

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

250 (g) modify by contract the venue provisions in Title 78B, Chapter 3, Actions and
251 Venue.

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

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

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

259 (6) (a) The inquiry required by Subsection (1)(g) applies solely to the initial period of a
260 deferred deposit loan transaction with a person and does not apply to any rollover or extended
261 payment plan of a deferred deposit loan.

262 (b) A deferred deposit lender is in compliance with Subsection (1)(g) if the deferred
263 deposit lender, at the time of the initial period of the deferred deposit loan transaction, obtains
264 one of the following regarding the person seeking the deferred deposit loan:

265 (i) a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting
266 agency, as defined in 15 U.S.C. Sec. 1681a;

267 (ii) written proof or verification of income from the person seeking the deferred deposit
268 loan; or

269 (iii) prior repayment history with the deferred deposit loan from the records of the
270 deferred deposit lender.

271 (7) A deferred deposit lender is in compliance with Subsection (1)(h) if the deferred
272 deposit lender obtains from the person seeking the deferred deposit loan a signed
273 acknowledgment that is in 14-point bold font, that the person seeking the deferred deposit loan

274 has:

275 (a) reviewed the payment terms of the deferred deposit loan agreement;

276 (b) received a disclosure that a deferred deposit loan may not be rolled over if the

277 rollover requires the person to pay the amount owed by the person under the deferred deposit

278 loan in whole or in part more than [~~10~~] nine weeks after the day on which the deferred deposit

279 loan is first executed;

280 (c) received a disclosure explaining the extended payment plan options; and

281 (d) acknowledged the ability to repay the deferred deposit loan in the ordinary course,

282 which may include rollovers, or extended payment plans as allowed under this chapter.

283 (8) (a) Before initiating a civil action against a person who owes money on a deferred

284 deposit loan, a deferred deposit lender shall provide the person at least 10 days notice of

285 default, describing that the person must remedy the default and that the deferred deposit lender

286 intends to initiate a civil action against the person if the person fails to cure the default within

287 the 10-day period.

288 (b) A deferred deposit lender may provide the notice required under this Subsection

289 (8):

290 (i) by sending written notice to the address provided by the person to the deferred

291 deposit lender;

292 (ii) by sending an electronic transmission to a person if electronic contact information

293 is provided to the deferred deposit lender; or

294 (iii) pursuant to the Utah Rules of Civil Procedure.

295 Section 3. Section **7-23-403** is amended to read:

296 **7-23-403. Extended payment plan.**

297 (1) (a) If a person who owes money on a deferred deposit loan requests to enter into an

298 extended payment plan, the deferred deposit lender who extended the deferred deposit loan

299 shall allow the person to enter into an extended payment plan that meets the requirements of

300 this section at least once during a 12-month period to pay the money owed.

301 (b) A deferred deposit lender is not required to enter into an extended payment plan

302 with a person who owes money on a deferred deposit loan more than one time during a

303 12-month period.

304 (c) Notwithstanding the other provisions of this Subsection (1), if a person is charged

305 [~~10~~] nine continuous weeks of interest or fees on a deferred deposit loan, including rollovers, at
306 the end of the [~~10-week~~] nine-week period:

307 (i) the person may request to repay the deferred deposit loan and rollovers under an
308 extended payment plan that meets the requirements of this section; and

309 (ii) the deferred deposit lender shall execute the extended payment plan in accordance
310 with this section.

311 (2) An extended payment plan shall include the following:

312 (a) A deferred deposit lender shall require a person who receives a deferred deposit
313 loan and wants to enter an extended payment plan to enter into a written agreement:

314 (i) with the deferred deposit lender;

315 (ii) that is executed:

316 (A) no sooner than the day before the last day of the initial term of the deferred deposit
317 loan; and

318 (B) no later than the end of the deferred deposit lender's business day before the day on
319 which the deferred deposit loan is due; and

320 (iii) that states:

321 (A) a payment schedule; and

322 (B) the money owed under the extended payment plan.

323 (b) A payment schedule for an extended payment plan shall provide that the money
324 owed may be paid:

325 (i) in at least four equal payments; and

326 (ii) over a time period that is at least [~~60~~] 90 days.

327 (c) The money owed under an extended payment plan shall equal the money owed
328 under the deferred deposit loan, including interest and fees, that would be due if the deferred
329 deposit loan is paid in full on the last day of the most current term of the deferred deposit loan.

330 (3) (a) A deferred deposit lender may not charge interest or fees as part of an extended
331 payment plan.

332 (b) A deferred deposit loan may not be considered in default during the extended
333 payment plan period if the person who receives the deferred deposit loan complies with the
334 terms of the extended payment plan.

335 (c) If a person who receives a deferred deposit loan defaults during the extended

336 payment plan period, the deferred deposit lender may:

- 337 (i) accelerate the requirement to pay the money owed under the extended payment plan;
- 338 (ii) charge a fee not to exceed \$20;
- 339 (iii) terminate the extended payment plan; and
- 340 (iv) subject to the other requirements of this chapter, reinstate the original deferred
- 341 deposit loan terms.

342 (4) A deferred deposit loan may not penalize a person who enters into an extended
343 payment plan for paying to the deferred deposit lender money owed under the extended
344 payment plan before the money is due.

345 (5) A deferred deposit lender may not initiate collection activities for a deferred deposit
346 loan that is subject to an extended payment plan during the period that the person owing money
347 under the extended payment plan is in compliance with the extended payment plan.

348 (6) A deferred deposit lender may not collect additional interest or fees on a deferred
349 deposit loan, except for the fee imposed under Subsection (3)(c)(ii), from a person who has
350 been charged [~~10~~] nine weeks interest and defaults under the extended payment plan described
351 in Subsection (1)(c).

352 Section 4. Section **15-1-4** is amended to read:

353 **15-1-4. Interest on judgments.**

354 (1) As used in this section:

355 (a) "Federal postjudgment interest rate" means the interest rate established for the
356 federal court system under 28 U.S.C. Sec. 1961, as amended.

357 (b) "Final judgment" means the judgment rendered when all avenues of appeal have
358 been exhausted.

359 (2) (a) Except as provided in Subsection (2)(b), a judgment rendered on a lawful
360 contract shall conform to the contract and shall bear the interest agreed upon by the parties,
361 which shall be specified in the judgment.

362 (b) A judgment rendered on a deferred deposit loan subject to Title 7, Chapter 23,
363 Check Cashing and Deferred Deposit Lending Registration Act, shall bear interest at the rate
364 imposed under Subsection (3) on an amount not exceeding the sum of:

- 365 (i) the total of the principal balance of the deferred deposit loan;
- 366 (ii) interest at the rate imposed by the deferred deposit loan agreement for a period not

367 exceeding [10] nine weeks as provided in Subsection 7-23-401(4);

368 (iii) costs;

369 (iv) attorney fees; and

370 (v) other amounts allowed by law and ordered by the court.

371 (3) (a) Except as otherwise provided by law, all other final civil and criminal
372 judgments of the district court and justice court shall bear interest at the federal postjudgment
373 interest rate as of January 1 of each year, plus 2%.

374 (b) Except as otherwise provided by law or contract, all final judgments under \$10,000
375 in actions regarding the purchase of goods and services shall bear interest at the federal post
376 judgment interest rate as of January 1 of each year, plus 10%.

377 (c) The postjudgment interest rate in effect at the time of the judgment shall remain the
378 interest rate for the duration of the judgment.

379 (d) The interest on criminal judgments shall be calculated on the total amount of the
380 judgment.

381 (e) Interest paid on state revenue shall be deposited in accordance with Section
382 63A-3-505.

383 (f) Interest paid on revenue to a county or municipality shall be paid to the general fund
384 of the county or municipality.