

HB0292S02 compared with HB0292

~~{deleted text}~~ shows text that was in HB0292 but was deleted in HB0292S02.

inserted text shows text that was not in HB0292 but was inserted into HB0292S02.

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Representative Brad M. Daw proposes the following substitute bill:

DEFERRED DEPOSIT LENDING ~~{AND IDENTITY THEFT~~

~~}~~AMENDMENTS

2016 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~~
{provisions related to ~~{address}~~ deferred deposit ~~{loans}~~ lending and identity theft.

Highlighted Provisions:

This bill:

- ▶ modifies ~~{definition provisions}~~ reporting requirements;
- ▶ addresses ~~{registration}~~ operational requirements;
- ▶ ~~{requires compliance with federal requirements related to loans to military personnel and dependents;~~

→ ~~addresses reporting requirements for deferred deposit lenders;~~

HB0292S02 compared with HB0292

- ~~imposes requirements related to querying the database to determine ineligibility to receive a deferred deposit loan;~~
- ~~imposes requirements related to the commissioner's annual report;~~
- ~~addresses penalties;~~
- ~~establishes what constitutes ineligibility to obtain a deferred deposit loan;~~
- ~~creates the Deferred Deposit Lending Database Program, which includes the creation of the Deferred Deposit Lending Database;~~
- ~~permits the department to contract with a third party to establish and maintain the database;~~
- ~~addresses various requirements related to the operation of the database;~~
- ~~grants rulemaking authority;~~
- ~~provides for the process to make a query to the database, including the payment of a fee;~~ amends extended payment plans; and
 - ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~None~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- ~~7-23-102, as last amended by Laws of Utah 2013, Chapter 73~~
- ~~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~~
- ~~7-23-503~~ 7-23-403, as last amended by Laws of Utah ~~2012~~ 2014, 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~~

131

HB0292S02 compared with HB0292

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

Section 1. Section ~~{7-23-102}~~7-23-201 is amended to read:

~~{~~ ~~7-23-102.~~ **Definitions.**

~~As used in this chapter:~~

~~(1) "Annual percentage rate" [has the same meaning as] means the same as that term is defined 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] means the same as that term is defined in Section 70A-3-104.~~

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

~~(6) "Database" means the Deferred Deposit Lending Database created in Section 7-23-602.~~

~~(7) "Database provider" means:~~

~~(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) (a) "Deferred deposit loan" means a transaction where:~~

~~[(a)] (i) a person:~~

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

~~[(ii)] (B) 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)] (i) the deferred deposit lender:~~

~~[(i)] (A) provides the person described in Subsection [(7)(a)] (9)(a)(i) 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)] (B) agrees not to cash the check or process the debit until a specific date.~~

~~(b) "Deferred deposit loan" includes:~~

~~(i) an agreement that through the automated clearing house the deferred deposit lender~~

HB0292S02 compared with HB0292

~~may debit the account of the person seeking a loan:~~

~~—— (ii) a person presenting a physical check written on the person's account that the deferred deposit lender agrees to cash at a later date; or~~

~~—— (iii) an agreement to garnish the wages of the person seeking a loan.~~

~~—— [(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.~~

~~—— (11) "Ineligible" means that a person is not eligible to obtain a deferred deposit loan under Section 7-23-601.~~

~~—— (12) "Monthly gross income" means the income received by a person seeking a deferred deposit loan in the 30-day period preceding the person's application for the deferred deposit loan under this chapter and exclusive of any income other than regular gross pay received, or as otherwise determined by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~—— [(9)] (13) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under federal licensing requirements for mortgage loan originators.~~

~~—— [(10)] (14) "Rollover" means the extension or renewal of the term of a deferred deposit loan.~~

~~—— Section 2. Section 7-23-201 is amended to read:~~

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

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

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

(ii) maintains a valid registration.

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

HB0292S02 compared with HB0292

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

~~{ (c) If a person is registered under this chapter, an individual who is an officer or employee of a person required to be registered under Subsection (1)(a) is not required to be registered.~~

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

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

- (i) pay an original registration fee established under Subsection 7-1-401(8);
- (ii) submit a registration statement containing the information described in Subsection

(2)(d);

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

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

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

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

(2)(d);

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

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

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

(d) A registration or renewal statement shall state:

- (i) the name of the person;

HB0292S02 compared with HB0292

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

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

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

(A) cashing checks; or

(B) deferred deposit lending;

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

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

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

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

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

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

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

~~(iii)~~ (iii) the minimum and maximum dollar amount of interest and fees charged by the deferred deposit lender for a deferred deposit loan of \$100 with a loan term of seven days; ~~(iii)~~

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

~~(v)~~ ~~(iv)~~ of the persons to whom the deferred deposit lender extended a deferred deposit loan, the percentage that entered into an extended payment plan under Section 7-23-403;

~~(vi)~~ ~~(v)~~ the total dollar amount of deferred deposit loans rescinded by the

HB0292S02 compared with HB0292

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

~~{(vii)}~~ ~~{(vi)}~~ the average annual percentage rate charged on deferred deposit loans;

~~{(vii) the range of annual percentage rates charged on deferred deposit loans extended by the deferred deposit lender;~~

~~{~~ (viii) the average dollar amount of extended payment plans entered into under Section 7-23-403 by the deferred deposit lender;

(ix) the number of deferred deposit loans carried to the maximum 10 weeks;

(x) the total dollar amount of deferred deposit loans carried to the maximum 10 weeks;

(xi) the number of deferred deposit loans not paid in full at the end of 10 weeks; ~~[and]~~

(xii) the total dollar amount of deferred deposit loans not paid in full at the end of 10

weeks ~~[; after];~~

~~(xiii) the day on percentage of deferred deposit loans against which the deferred deposit loans are extended;~~

~~(xiii) the total number of lender initiates civil action to collect on the deferred deposit loan; and~~

~~(xiv) for the civil actions described in Subsection (2)(e)(xiii), the percentage of those civil actions whose deferred deposit loans the deferred deposit lender extended;~~

~~(xiv) the total dollar amount of deferred deposit loans extended by the deferred deposit lender; and~~

~~(xv) the total number of individuals to whom the deferred deposit lender extended a deferred deposit loan have the following payment history:~~

~~(A) no payments;~~

~~(B) one payment;~~

~~(C) two payments;~~

~~(D) three payments;~~

~~(E) four payments;~~

~~(F) five payments;~~

~~(G) six payments;~~

~~(H) seven payments;~~

~~(I) eight payments;~~

~~(J) nine payments; and~~

HB0292S02 compared with HB0292

(K) 10 or more payments.

(f) The commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the transition of persons registering with the nationwide database.

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

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

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

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

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

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

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

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

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

(i) \$500 if the person:

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

(I) cashing checks; or

(II) deferred deposit lending; or

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

(I) cashing checks; or

(II) deferred deposit lending; or

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

(A) cashing checks; or

(B) deferred deposit lending.

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

HB0292S02 compared with HB0292

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

- (a) that person is required to renew the registration; or
- (b) the department specifically requests earlier notification.

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

- (a) the form, content, and filing of a registration and renewal statement described in Subsection (2)(d); and
- (b) the form and filing of an operations statement described in Subsection (2)(e).

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

Section ~~3~~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 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

HB0292S02 compared with HB0292

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 the person seeking the deferred deposit loan is eligible to enter into 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 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

HB0292S02 compared with HB0292

loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is executed;

(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) 10 U.S.C. Sec. 987, and its implementing regulations, except that a deferred deposit lender shall determine whether a person seeking a deferred deposit loan is a covered borrower by verifying the person's status on the database maintained by the United States Department of Defense; and~~

~~—— [(iv)] (v); and~~

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

(g) in accordance with Subsection (6), make an inquiry to determine whether a person attempting to receive a deferred deposit loan has the ability to repay the deferred deposit loan in the ordinary course, which may include rollovers or extended payment plans as allowed under this chapter; ~~[and]~~

(h) in accordance with Subsection (7), receive a signed acknowledgment from a person attempting to receive a deferred deposit loan that the person has the ability to repay the deferred deposit loan, which may include rollovers or extended payment plans as allowed by this chapter~~[-]; and~~

(i) ~~{on and after October 1, 2016, before extending}~~ report the original loan amount, payment in full, or default of a deferred deposit loan~~{, query the database to determine if the person seeking the deferred deposit loan is ineligible}~~ to a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a, in accordance with procedures established by the consumer reporting agency.

(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

HB0292S02 compared with HB0292

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;

(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; or

HB0292S02 compared with HB0292

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

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

(b) [A] Subject to Subsection (6)(c), a deferred deposit lender is in compliance with Subsection (1)(g) if the deferred deposit lender, at the time of the initial period of the deferred deposit loan transaction, obtains one of the following regarding the person seeking the deferred deposit loan:

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

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

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

(c) If a person seeking a deferred deposit loan has not previously received a deferred deposit loan from that deferred deposit lender, to be in compliance with Subsection (1)(g), the deferred deposit lender, at the time of the initial period of the deferred deposit loan transaction, shall obtain a consumer report, as defined in 15 U.S.C. Sec. 681a, from a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a.

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

HB0292S02 compared with HB0292

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

(b) received a disclosure that a 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 first executed;

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

(d) acknowledged the ability to repay the deferred deposit loan in the ordinary course, which may include rollovers, or extended payment plans as allowed under this chapter.

(8) (a) Before initiating a civil action against a person who owes money on a deferred deposit loan, a deferred deposit lender shall provide the person at least 10 days notice of default, describing that:

(i) the person must remedy the default; and [that]

(ii) the deferred deposit lender [intends to] may initiate a civil action against the person if the person fails to cure the default within the 10-day period or through an extended payment plan meeting the requirements of Section 7-23-403.

(b) A deferred deposit lender may provide the notice required under this Subsection (8):

(i) by sending written notice to the address provided by the person to the deferred deposit lender;

(ii) by sending an electronic transmission to a person if electronic contact information is provided to the deferred deposit lender; or

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

~~(9) (a) On and after October 1, 2016, a~~ (c) A notice under this Subsection (8), in addition to complying with Subsection (8)(a), shall:

(i) be in English, if the initial transaction is conducted in English;

(ii) state the date by which the person must act to enter into an extended payment plan;

(iii) explain the procedures the person must follow to enter into an extended payment plan;

(iv) subject to Subsection 7-23-403(7), if the deferred deposit lender ~~may not extend a~~ requires the person to make an initial payment to enter into an extended payment plan;

(A) explain the requirement; and

HB0292S02 compared with HB0292

(B) state the amount of the initial payment and the date the initial payment shall be made;

(v) state that the person has the opportunity to enter into an extended payment plan for a time period meeting the requirements of Subsection 7-23-403(2)(b); and

(vi) include the following amounts:

(A) the remaining balance on the original deferred deposit loan;

(B) the total payments made on the deferred deposit loan;

(C) any charges added to the deferred deposit loan ~~to a person who, on the basis of a query to the database required under Subsection (1)(i), is ineligible;~~

~~(b) A deferred deposit lender shall keep a record of a query made under Subsection (1)(i) in accordance with rules made by the department pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~ amount allowed pursuant to this chapter; and

(D) the total amount due if the person enters into an extended payment plan.

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

7-23-403. Extended payment plan.

(1) (a) If a person who owes money on a deferred deposit loan requests to enter into an extended payment plan, the deferred deposit lender who extended the deferred deposit loan shall allow the person to enter into an extended payment plan that meets the requirements of this section at least once during a 12-month period to pay the money owed.

(b) A deferred deposit lender is not required to enter into an extended payment plan with a person who owes money on a deferred deposit loan more than one time during a 12-month period.

(c) Notwithstanding the other provisions of this Subsection (1), if a person is charged 10 continuous weeks of interest or fees on a deferred deposit loan, including rollovers, at the end of the 10-week period:

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

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

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

(a) A deferred deposit lender shall require a person who receives a deferred deposit

HB0292S02 compared with HB0292

loan and wants to enter an extended payment plan to enter into a written agreement:

(i) with the deferred deposit lender;

(ii) that is executed:

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

(B) except as provided in Subsection (2)(a)(ii)(C), no later than the ~~end of the deferred deposit lender's~~ business day before the day on which the deferred deposit loan is due; and

(C) for an extended payment plan offered after a default on a deferred deposit loan, 10 days after receiving the notice described in Subsection 7-23-401(8), unless a later date is allowed by the deferred deposit lender;

(iii) that is signed by the deferred deposit lender or its agent and the person;

(iv) a copy of which is given to the person; and

~~(iii)~~ (v) that states:

(A) a payment schedule; and

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

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

(i) in at least four equal payments; and

(ii) over a time period that is at least ~~60 days.~~ the greater of:

(A) 90 days after the date of default; or

(B) 60 days after entering into an extended payment plan.

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

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

~~(b)~~ regardless of the name given to the interest or fees including:

(i) an origination fee;

(ii) a set-up fee;

(iii) a collection fee;

(iv) a transaction fee;

HB0292S02 compared with HB0292

(v) a negotiation fee;

(vi) a handling fee;

(vii) a processing fee;

(viii) a late fee; or

(ix) a default fee.

(b) Except as provided in Subsection (7), a deferred deposit lender may not accept any additional security or collateral from the person who receives the deferred deposit loan to enter into the extended payment plan.

(c) A deferred deposit lender may not sell to the person who receives the deferred deposit loan any insurance or require the person to purchase insurance or any other goods or services to enter into the extended payment plan.

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

~~[(c)]~~ (e) If a person who receives a deferred deposit loan defaults during the extended payment plan period, the deferred deposit lender may:

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

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

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

(b) A deferred deposit lender may not attempt to collect an amount that is greater than the amount owed under the terms of an extended payment plan.

(6) A deferred deposit lender may not collect additional interest or fees on a deferred

HB0292S02 compared with HB0292

deposit loan, except for the fee imposed under Subsection (3)~~(c)~~(e)(ii), from a person who has been charged 10 weeks interest and defaults under the extended payment plan described in Subsection (1)(c).

~~{Section 4. 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)(c) 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}~~ (7) Under an extended payment plan:

(a) a deferred deposit lender may require the person who receives a deferred deposit loan to make an initial payment of not more than 20% of the total amount due under the terms of the extended payment plan if the person has defaulted on the deferred deposit loan;

~~(~~iii~~)b (i) ~~{for}~~a deferred deposit ~~{lenders who are 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~~

~~———— (iii) ~~for}~~lender may require a person who receives a deferred deposit loan to provide the 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~~

HB0292S02 compared with HB0292

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

~~_____ (c) for the information reported under Subsection (2)(a), shall determine the information to be reported in accordance with Subsection (3);~~

~~_____ (d) shall include the information required under Section 7-23-602; and~~

~~_____ [(c)] (e) may not include in the report information from an operations statement filed with the department or information from the database that could identify a specific } lender, as security, one or more checks or written authorizations for an electronic transfer of money that equal the total amount due under the terms of the extended payment plan;~~

~~_____ (ii) if the person who receives a deferred deposit loan makes a payment in the amount of a check or written authorization taken as security for that payment, the deferred deposit lender};~~

~~_____ (3) (a) By rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall develop a method by which the department reports the information collected under Subsection 7-23-201(2)(c) in a manner that the department determines most accurately reports the information on a statewide basis after taking into consideration the different volume of deferred deposit loans extended by the different} shall;~~

~~_____ (A) return to the person the check or written authorization stamped "void"; or~~

~~_____ (B) destroy the check or written authorization; and~~

~~_____ (iii) the deferred deposit {lenders that provide the information collected under Subsection 7-23-201(2)(c):~~

~~_____ (b) To comply with Subsection (3)(a), the department may create two or more categories of} lender may not charge a fee to the person who receives the deferred deposit loan for a check that is provided as security during the extended payment plan and that is not paid upon presentment if the deferred deposit {lenders providing the information collected} lender has previously charged a fee under Subsection {7-23-201} 7-23-401({2)(c)}5) {by:~~

~~_____ (i) volume of} at least once in connection with that deferred deposit {loans extended by the different} loan.~~

~~_____ (8) When a person who receives a deferred deposit loan makes a payment pursuant to an extended payment plan, the deferred deposit {lenders;~~

~~_____ (ii) dollar amount of} lender shall give to the person a receipt with the following~~

HB0292S02 compared with HB0292

information:

(a) the name and address of the deferred deposit lender;

(b) the identification number assigned to the deferred deposit ~~loans extended; or~~

~~(iii) other category;~~

~~Section 5. 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 (iv); 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 loan agreement or other information that identifies the deferred deposit loan;~~

(c) the date of the payment;

(d) the amount paid;

(e) the balance due on the deferred deposit loan or, when the person makes the final payment, a statement that the deferred deposit loan is paid in full; and

(f) if more than one deferred deposit loan made by the 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) lender to the person is outstanding at the time the payment is made, a statement indicating to which 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~~

~~(ii) the aggregate total of fines imposed under this chapter against a person in a~~

HB0292S02 compared with HB0292

~~calendar year may not exceed \$30,000 for that calendar year; or~~

~~_____ (c) take any combination of actions listed under this Subsection (2).~~

~~_____ Section 6. Section 7-23-601 is enacted to read:~~

~~**Part 6. Deferred Deposit Lending Database Program**~~

~~_____ 7-23-601. Ineligibility to obtain a deferred deposit loan:~~

~~_____ (1) On and after October 1, 2016, a person is ineligible to obtain a deferred deposit loan if the person:~~

~~_____ (a) after the extension of the deferred deposit loan, owes more in the aggregate than 25% of the person's monthly gross income in principal for one or more deferred deposit loans subject to this chapter as determined by the database provider after reasonable effort has been made to determine the person's monthly gross income;~~

~~_____ (b) has two deferred deposit loans subject to this chapter that are not closed at the time the person applies for a new deferred deposit loan; or~~

~~_____ (c) is listed on the database as having a fraud alert.~~

~~_____ (2) To establish a fraud alert, the department shall create a process by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for a person to contact the deferred deposit database provider to prevent the extension of a deferred deposit loan subject to this chapter under that person's name:~~

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

~~_____ 7-23-602. Deferred Deposit Lending Database Program:~~

~~_____ (1) (a) There is created the Deferred Deposit Lending Database Program to establish a Deferred Deposit Lending Database to verify whether under Section 7-23-601 a person is ineligible to obtain a deferred deposit loan:~~

~~_____ (b) The program shall be administered by the department to implement by October 1, 2016, a common database with real-time access by deferred deposit lenders through an Internet connection or other electronic means:~~

~~_____ (c) The database shall be accessible to the department and a deferred deposit lender to verify:~~

~~_____ (i) the aggregate amount owed on deferred deposit loans outstanding for a particular person as compared to the person's gross monthly income;~~

~~_____ (ii) the number of deferred deposit loans outstanding for a particular person; and~~

HB0292S02 compared with HB0292

~~_____ (iii) whether there exists a fraud alert for the person seeking the deferred deposit loan.~~

~~_____ (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 database for the purpose of determining whether under Section 7-23-601 a person is ineligible to obtain a deferred deposit loan.~~

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

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

~~_____ (B) consider cost of service and ability to meet the requirements of this part; and~~

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

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

~~_____ (iv) A third party database provider under contract under this section is the department's designated agent, and shall develop and maintain the database from the information provided by deferred deposit lenders.~~

~~_____ (e) A designated agent shall use the data collected under this part only as prescribed in this part and the contract with the department and for no other purpose.~~

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

~~_____ (2) The department shall establish guidelines to be followed by the database provider so that:~~

~~_____ (a) a deferred deposit lender can efficiently:~~

~~_____ (i) report information to the database under Subsection (3); and~~

~~_____ (ii) access the database under Section 7-23-603;~~

~~_____ (b) the database provider complies with any applicable federal and state laws to prevent identity theft; and~~

~~_____ (c) a person seeking a deferred deposit loan who is found ineligible may have a means to determine whether there is an error made by the database provider, and if an error exists, to correct the error.~~

~~_____ (3) The department shall by rule made in accordance with Title 63G, Chapter 3, Utah~~

HB0292S02 compared with HB0292

Administrative Rulemaking Act, provide:

~~—— (a) for the reporting by a deferred deposit lender to the database the information required to determine ineligibility under Section 7-23-601;~~

~~—— (b) an outline of the information provided by the database to the deferred deposit lender who makes a query of the database;~~

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

~~—— (d) that data on a deferred deposit loan in the database be archived one year after the deferred deposit loan is closed unless needed for a pending enforcement or legal action;~~

~~—— (e) that any identifying information for a person who had a deferred deposit loan be deleted from the database when data is archived;~~

~~—— (f) that data about a deferred deposit loan in the database be deleted from the archive of the database the later of:~~

~~—— (i) three years after the deferred deposit loan is closed; or~~

~~—— (ii) if an administrative, legal, or law enforcement action is pending, three years after the administrative, legal, or law enforcement action is completed; and~~

~~—— (g) for the database provider to establish and maintain a process for 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 database, including transactions archived under Subsection (3) 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 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) Information regarding a person's transactional history provided to, maintained in, or~~

HB0292S02 compared with HB0292

~~accessed from the database is not subject to public disclosure under Title 63G, Chapter 2, Government Records Access and Management Act, and is confidential in accordance with Section 7-1-802.~~

~~—— (7) A person is guilty of a class A misdemeanor if that person knowingly releases or discloses information from the 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 designated agent's violation of this part may maintain a civil cause of action against the designated agent and may recover actual damages plus reasonable attorney fees and court costs.~~

~~—— (9) The state is not liable to any person for the gathering, managing, or use of the information in the 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 ineligible after a query by a deferred deposit lender.~~

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

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

~~—— (c) A deferred deposit lender that no longer extends deferred deposit loans shall provide to the commissioner a reasonably acceptable plan that outlines how the deferred deposit lender will continue to update the database after it stops offering deferred deposit loans. The commissioner shall promptly approve or disapprove the plan and immediately notify the deferred deposit lender of the decision. If the plan is disapproved, the deferred deposit lender may submit a new plan or may submit a modified plan for the deferred deposit lender to follow.~~

~~—— (d) If at any time the commissioner reasonably determines that a deferred deposit lender that has stopped offering deferred deposit loans is not updating the database in accordance with its approved plan, the commissioner shall instruct the database provider to~~

HB0292S02 compared with HB0292

~~immediately close all remaining open transactions of that deferred deposit lender:~~

~~—— (c) A transaction closed under this Subsection (11) is closed only for purposes of the database and the closure does not impair the deferred deposit lender from continuing to collect on the deferred deposit loan:~~

~~—— Section 8. Section 7-23-603 is enacted to read:~~

~~—— **7-23-603. Query to database:**~~

~~—— (1) On and after October 1, 2016, before extending a deferred deposit loan, a deferred deposit lender shall query the database to determine if the person seeking the deferred deposit loan is ineligible:~~

~~—— (2) The 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 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 database shall state whether a person is ineligible:~~

~~—— (4) (a) If in response to a query by a deferred deposit lender the database states that a person is ineligible, the deferred deposit lender shall:~~

~~—— (i) inform the person that the person is ineligible; and~~

~~—— (ii) explain that the person may ask the database provider or department, at the department's discretion, regarding the specific details of why the person is ineligible:~~

~~—— (b) Only a person found ineligible to obtain a deferred deposit loan may make a direct inquiry to request a more detailed explanation of a particular transaction that was the basis for the ineligibility determination:~~

~~—— (5) If a deferred deposit lender accurately and promptly submits data to the database as required under Section 7-23-602, a deferred deposit lender may rely on the database, and may not be held liable if the information in the database is inaccurate:~~

Legislative Review Note

Office of Legislative Research and General Counsel loan the payment is applied.

HB0292S02 compared with HB0292

Section 4. Effective date.

This bill takes effect on July 1, 2016.