

## HB0319S03 compared with HB0319S02

~~text~~ shows text that was in HB0319S02 but was deleted in HB0319S03.

text shows text that was not in HB0319S02 but was inserted into HB0319S03.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Curtis S. Bramble proposes the following substitute bill:

### CONSUMER LENDING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad M. Daw**

Senate Sponsor: Curtis S. Bramble

Cosponsor:

Melissa G. Ballard

---

---

#### LONG TITLE

##### General Description:

This bill amends Title 7, Chapter 23, Check Cashing and Deferred Deposit Lending Registration Act, Title 12, Collection Agencies, and Title 78B, Chapter 6, Part 3, Contempt.

##### Highlighted Provisions:

This bill:

- ▶ amends registration requirements for deferred deposit lenders;
- ▶ amends reporting requirements for deferred deposit lenders;
- ▶ amends operational requirements for deferred deposit lenders;
- ▶ amends reporting requirements for the Commissioner of Financial Institutions

## HB0319S03 compared with HB0319S02

regarding deferred deposit lenders;

- ▶ amends provisions relating to bail bonds;
- ▶ amends provisions related to damages to party aggrieved;
- ▶ permits a third party debt collection agency that accepts a financial transaction card for the transaction of business to charge a convenience fee under certain conditions;
- and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a coordination clause.

### Utah Code Sections Affected:

AMENDS:

**7-23-201**, as last amended by Laws of Utah 2017, Chapter 37

**7-23-401**, as last amended by Laws of Utah 2017, Chapter 37

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

**12-1-11**, as enacted by Laws of Utah 2010, Chapter 350

**78B-6-306**, as last amended by Laws of Utah 2014, Chapter 268

**78B-6-311**, as last amended by Laws of Utah 2014, Chapter 268

### Utah Code Sections Affected by Coordination Clause:

**13-38a-401**, Utah Code Annotated 1953

---

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

Section 1. 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:

## HB0319S03 compared with HB0319S02

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

(c) An officer or employee of a person required to register under Subsection (1)(a) is not required to register if the person for whom the individual is an officer or employee is 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, 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, 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]~~ Subsections (2)(e) and (f).

(d) A registration or renewal statement shall state:

## HB0319S03 compared with HB0319S02

- (i) the name of the person;
- (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) whether there is a conviction of a crime:
  - (A) involving an act of fraud, dishonesty, breach of trust, or money laundering; and
  - (B) with respect to that person, an officer, director, manager, operator, or principal of that person, or an employee of that person engaged in the business described in this chapter; 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) 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;]~~
  - ~~[(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

## HB0319S03 compared with HB0319S02

deposit loan, the percentage that entered into an extended payment plan under Section 7-23-403;

~~[(v)]~~ (v) the total dollar amount of deferred deposit loans rescinded by the 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;

(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 after the day on which the deferred deposit loan is extended;

(x) the total dollar amount of deferred deposit loans carried to the maximum 10 weeks after the day on which the deferred deposit loan is extended;

(xi) the number of deferred deposit loans not paid in full at the end of 10 weeks after the day on which the deferred deposit loan is extended;

(xii) the total dollar amount of deferred deposit loans not paid in full at the end of 10 weeks after the day on which the deferred deposit loan is extended;

(xiii) the percentage of deferred deposit loans against which the deferred deposit 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 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

(K) 10 or more payments.

## HB0319S03 compared with HB0319S02

(f) In addition to the information in Subsection (2)(e), an operations statement required for a deferred deposit lender to renew a registration shall state for the immediately preceding calendar year:

(i) the total number of deferred deposit loans extended by the deferred deposit lender;

(ii) the total dollar amount of deferred deposit loans extended by the deferred deposit lender;

(iii) the total number of individuals to whom the deferred deposit lender extended a deferred deposit loan; and

(iv) the percentage of deferred deposit loans not repaid according to the terms of the loan.

~~(f)~~ (g) 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) (a) Information provided by a deferred deposit lender under ~~[Subsection]~~ Subsections (2)(e) and (f) is:

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

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

(b) The department shall:

(i) only use information a deferred deposit lender provides to the department under Subsection (2)(f) to determine compliance with this chapter; and

(ii) delete or otherwise destroy information a deferred deposit lender provides to the department under Subsection (2)(f) within two years after the day on which the deferred deposit lender provides the information.

(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

## HB0319S03 compared with HB0319S02

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.

(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.

(8) (a) At the time a person registers under this section, the person shall disclose a conviction of a crime described in Subsection (2)(d)(vii) that is:

## HB0319S03 compared with HB0319S02

(i) known to the person; or

(ii) included in:

(A) a Utah Bureau of Criminal Identification report; or

(B) a background check acceptable to the department that provides information similar to a Utah Bureau of Criminal Identification report.

(b) To comply with Subsection (8)(a), a person registered under this chapter shall, for each individual described in Subsection (2)(d)(vii):

(i) obtain a Utah Bureau of Criminal Identification report; or

(ii) conduct a background check acceptable to the commissioner that provides information similar to a Utah Bureau of Criminal Identification report.

(c) A person registered under this section shall keep a record of the information described in Subsection (8)(b) for the time period required by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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 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



## HB0319S03 compared with HB0319S02

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

## HB0319S03 compared with HB0319S02

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) 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;

(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) report the original loan amount, payment in full, or default of a deferred deposit loan 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 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

## HB0319S03 compared with HB0319S02

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:

(i) the payment results in the principal of that deferred deposit loan being paid in full; and

(ii) the combined terms of the original deferred deposit loan and the new deferred deposit loan total more than 10 weeks of consecutive interest;

(e) avoid the limitations of Subsections (4)(a) and (4)(c) by extending a new deferred deposit loan whose proceeds are used to satisfy or refinance any portion of an existing deferred deposit loan;

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

(g) 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]

(h) modify by contract the venue provisions in Title 78B, Chapter 3, Actions and Venue[-]; or

(i) avoid the requirements of Subsection 7-23-403(1)(c) by extending an

## HB0319S03 compared with HB0319S02

interest-bearing loan within seven calendar days before the day on which the 10-week period ends.

(5) Notwithstanding Subsections (4)(a) and (f), 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) 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:

(i) obtains one of the following regarding the person seeking the deferred deposit loan:

(A) 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; or

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

(ii) relies on the prior repayment history with the deferred deposit lender 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. 1681a, 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:

## HB0319S03 compared with HB0319S02

(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~~] 30 days notice of default, describing that:

(i) the person must remedy the default; and

(ii) the deferred deposit lender may initiate a civil action against the person if the person fails to cure the default within the [~~10~~] 30-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.

(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 requires the person to make an initial payment to enter into an extended payment plan:

(A) explain the requirement; and

## HB0319S03 compared with HB0319S02

(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 amount allowed pursuant to this chapter; and

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

Section 3. Section **7-23-503** 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 the operations on an aggregate basis of deferred deposit lenders operating in the state.

(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:

(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

## HB0319S03 compared with HB0319S02

considers resolved; and

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

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

(d) may not include in the report information from an operations statement filed under Subsection 7-23-201(2)(f).

Section 4. Section **12-1-11** is amended to read:

### **12-1-11. Collection fee -- Convenience fees.**

(1) As used in this section:

(a) "Creditor" is as defined in 15 U.S.C. Sec. 1692a.

(b) "Debt" means an obligation or alleged obligation to pay money arising out of a transaction for money, property, insurance, or services.

(c) "Debtor" means a person obligated or allegedly obligated to pay a debt.

(d) "Financial transaction card" means the same as that term is defined in Section 13-38a-102.

~~(d)~~ (e) "Third party debt collection agency" means:

(i) a debt collector as defined in 15 U.S.C. Sec. 1692a; or

(ii) a person who would be a debt collector under 15 U.S.C. Sec. 1692a, except that the person does not use an instrumentality of interstate commerce or the mail.

(2) (a) A creditor may require a debtor to pay a collection fee in addition to any other amount owed to the creditor for a debt if:

~~(a)~~ (i) imposing a collection fee on the debtor or in relation to the debt is not prohibited or otherwise restricted by another federal or state law;

~~(b)~~ (ii) the creditor contracts with a third party debt collection agency or licensed attorney to collect the debt;

~~(c)~~ (iii) the third party debt collection agency with which the creditor contracts is registered under this title;

~~(d)~~ (iv) there is a written agreement between the creditor and the debtor that:

~~(i)~~ (A) creates the debt; and

~~(ii)~~ (B) provides for the imposition of the collection fee in accordance with this

## HB0319S03 compared with HB0319S02

section; and

~~[(c)]~~ (v) the obligation to pay the collection fee is imposed at the time of assignment of the debt to a third party debt collection agency or licensed attorney in accordance with an agreement described in Subsection (2)~~[(d)]~~ (a)(iv).

~~[(3)]~~ (b) The creditor shall establish the amount of the collection fee imposed under this ~~[section]~~ Subsection (2), except that the amount may not exceed the lesser of:

~~[(a)]~~ (i) the actual amount a creditor is required to pay a third party debt collection agency or licensed attorney, regardless of whether that amount is a specific dollar amount or a percentage of the principal amount owed to the creditor for a debt; or

~~[(b)]~~ (ii) 40% of the principal amount owed to the creditor for a debt.

~~[(4)]~~ (c) An obligation to pay a collection fee imposed under this ~~[section]~~ Subsection (2) is in addition to any obligation to pay attorney fees that may otherwise exist.

(3) (a) Subject to Subsection (3)(b), a third party debt collection agency that accepts a financial transaction card for the transaction of business may charge a convenience fee for a transaction processed over:

(i) the phone;

(ii) text or similar short message service; or

(iii) the Internet.

(b) Before a third party debt collection agency charges a convenience fee as described in Subsection (3)(a), the third party debt collection agency shall:

(i) clearly disclose to the debtor that the third party debt collection agency will charge the debtor a convenience fee, in a time and manner that allows the debtor to accept or reject the convenience fee;

(ii) disclose to the debtor the amount of the convenience fee; and

(iii) give the debtor an alternative payment method option for which a convenience fee does not apply.

Section 5. Section 78B-6-306 is amended to read:

**78B-6-306. Bail bond -- Form.**

~~[(1)]~~ When a direction to allow the person arrested to post bail is contained in the warrant of attachment, the person shall be released if bond is posted and the person executes a written promise to appear on the return of the warrant, and abide by the order of the court or



## HB0319S03 compared with HB0319S02

judge.

~~[(2) Any bail posted is subject to the provisions of Section 78B-6-311.]~~

Section ~~{5}~~6. Section **78B-6-311** is amended to read:

### **78B-6-311. Damages to party aggrieved.**

(1) If an actual loss or injury to a party in an action or special proceeding is caused by the contempt, the court~~[-];~~:

~~(a)~~ (a) in lieu of or in addition to the fine or imprisonment imposed for the contempt, may order the person proceeded against to pay the party aggrieved a sum of money sufficient to indemnify and satisfy the aggrieved party's costs and expenses~~[- The court:];~~ and

~~(b) { except as provided in Subsection (4); }~~ (b) may order that any bail posted by the person proceeded against be used to satisfy all or part of the money ordered to be paid to the aggrieved party.

~~(2) The order described in Subsection (1)(b), and the acceptance of money under [it] the order,~~ is a bar to an action by the aggrieved party for the loss and injury.

~~{ (2) A } (3) Except as provided in Subsection (4):~~

~~{ }~~ ~~{ (a) 2 } { a } A~~ judgment creditor may request that the court pay bail posted by a judgment debtor to the judgment creditor if:

~~(a) { (i) } the judgment debtor owes the judgment creditor funds pursuant to a court-ordered judgment;~~

~~(b) { (ii) } the judgment creditor provides the court with a copy of the valid judgment; and~~

~~(c) { (iii) } bail was posted in cash, or by credit or debit card { } { };~~

~~(3) Upon { (b) upon } receipt of a request by a judgment creditor, the court shall { }~~

~~{ (i) } require the judgment debtor to provide either proof of payment or good cause why the court should not order the forfeiture of bail to then be paid to the judgment creditor { }.~~

The court shall ~~{ }; and~~

~~{ (ii) } find that good cause exists if the judgment debtor provides admissible evidence that the bail was paid by a third party { } { }.~~

~~(4) The { (c) the } court { :~~

~~{ (i) } may, in { } its { the court's } discretion, order all or a portion of the funds deposited with the court as bail to be paid to the judgment creditor towards the amount of the~~

## HB0319S03 compared with HB0319S02

judgment~~{}~~. If~~{}~~; and

~~—— (ii) shall, if~~ the amount paid to the court exceeds the amount of the judgment, ~~{}~~ the court shall ~~{}~~ refund the excess to the judgment debtor ~~{}~~.] ~~{}~~; and

~~[(5) ~~{}~~ (d) ~~{}~~ Within seven days of the receipt of funds ~~{}~~ within seven days after the day on which the judgment creditor receives the funds described in Subsection (3)(c)(i), the judgment creditor shall provide to the judgment debtor an accounting of amounts received and the balance still due, if any. {~~

~~—— (4) The following, as an aggrieved party in a cause of action or through another aggrieved party in a cause of action, may not seek or receive money under this section:~~

~~—— (a) a financial institution as defined in Section 7-1-103; or~~

~~—— (b) a creditor as defined in Section 70C-1-301.}]~~

Section ~~{6}~~7. **Coordinating H.B. 319 with H.B. 113 -- Substantive amendment.**

If this H.B. 319 and H.B. 113, Consumer Sales Practices Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, not enact Section 13-38a-401 in H.B. 113.