

DEFERRED DEPOSIT LENDING AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley M. Daw

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Check Cashing and Deferred Deposit Lending Registration Act to address the establishment of a database to determine eligibility for deferred deposit loans and to address reporting and registration related to deferred deposit loans.

Highlighted Provisions:

This bill:

- ▶ modifies definition provisions;
- ▶ addresses reporting requirements for deferred deposit lenders;
- ▶ makes void a deferred deposit loan issued by a person required to be registered but who is not registered under the chapter;
- ▶ 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;
- ▶ establishes what constitutes ineligibility to obtain a deferred deposit loan and addresses the amount of a 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;



- 28 ▶ grants rulemaking authority;
- 29 ▶ addresses civil and criminal remedies for violation of part;
- 30 ▶ provides for the process to make a query to the database, including the payment of a
- 31 fee; and
- 32 ▶ makes technical and conforming amendments.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

- 39 **7-23-102**, as last amended by Laws of Utah 2008, Chapter 96
- 40 **7-23-201**, as last amended by Laws of Utah 2010, Chapter 102
- 41 **7-23-401**, as last amended by Laws of Utah 2010, Chapter 102
- 42 **7-23-503**, as enacted by Laws of Utah 2008, Chapter 96

43 ENACTS:

- 44 **7-23-601**, Utah Code Annotated 1953
- 45 **7-23-602**, Utah Code Annotated 1953
- 46 **7-23-603**, Utah Code Annotated 1953



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

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

50 **7-23-102. Definitions.**

51 As used in this chapter:

52 (1) "Annual percentage rate" has the same meaning as in 15 U.S.C. Sec. 1606, as

53 implemented by regulations issued under that section.

54 ~~(1)~~ (2) "Business of cashing checks" means cashing a check for consideration.

55 ~~(2)~~ (3) "Business of deferred deposit lending" means extending a deferred deposit

56 loan.

57 ~~(3)~~ (4) "Check" is as defined in Section 70A-3-104.

58 ~~(4)~~ (5) "Check cashier" means a person that engages in the business of cashing checks.

59 (6) "Database" means the Deferred Deposit Lender Database created in Section
60 7-23-602.

61 (7) "Database provider" means:

62 (a) the department; or

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

64 ~~(5)~~ (8) "Deferred deposit lender" means a person that engages in the business of
65 deferred deposit lending.

66 ~~(6)~~ (9) (a) "Deferred deposit loan" means a transaction where:

67 ~~(a)~~ (i) a person:

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

69 or

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

72 ~~(b)~~ (ii) the deferred deposit lender:

73 ~~(i)~~ (A) provides the person described in Subsection ~~(6)~~ (9)(a)(i) an amount of
74 money that is equal to the face value of the check or the amount of the debit less any fee or
75 interest charged for the transaction; and

76 ~~(i)~~ (B) agrees not to cash the check or process the debit until a specific date.

77 (b) "Deferred deposit loan" includes:

78 (i) an agreement that through the automated clearing house the deferred deposit lender
79 may debit the account of the person seeking a loan;

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

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

83 ~~(7)~~ (10) (a) "Electronic payment" means an electronic method by which a person:

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

85 (ii) makes a payment to another person.

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

87 (i) an automated clearing house transaction;

88 (ii) an electronic check;

89 (iii) a stored value card; or

90 (iv) an Internet transfer.

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

93 [~~8~~] (12) "Rollover" means the extension or renewal of the term of a deferred deposit
94 loan.

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

96 **7-23-201. Registration -- Rulemaking.**

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

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

100 (ii) maintains a valid registration.

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

103 (i) cashing checks; or

104 (ii) deferred deposit lending.

105 (2) (a) A registration and a renewal of a registration expires on April 30 of each year
106 unless on or before that date the person renews the registration.

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

108 (i) pay an original registration fee established under Subsection 7-1-401(8); and

109 (ii) submit a registration statement containing the information described in Subsection

110 (2)(d).

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

112 (i) pay the annual fee established under Subsection 7-1-401(5);

113 (ii) submit a renewal statement containing the information described in Subsection

114 (2)(d); and

115 (iii) if the person engages in the business of deferred deposit lending, submit an

116 operations statement containing the information described in Subsection (2)(e).

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

118 (i) the name of the person;

119 (ii) the name in which the business will be transacted if different from that required in

120 Subsection (2)(d)(i);

- 121 (iii) the address of the person's principal business office, which may be outside this
122 state;
- 123 (iv) the addresses of all offices in this state at which the person conducts the business
124 of:
- 125 (A) cashing checks; or
126 (B) deferred deposit lending;
- 127 (v) if the person conducts the business of cashing checks or the business of deferred
128 deposit lending in this state but does not maintain an office in this state, a brief description of
129 the manner in which the business is conducted;
- 130 (vi) the name and address in this state of a designated agent upon whom service of
131 process may be made;
- 132 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any
133 crime involving moral turpitude with respect to that person or any officer, director, manager,
134 operator, or principal of that person; and
- 135 (viii) any other information required by the rules of the department.
- 136 (e) An operations statement required for a deferred deposit lender to renew a
137 registration shall state for the immediately preceding calendar year:
- 138 (i) the average deferred deposit loan amount that the deferred deposit lender extended;
139 (ii) the average number of days a deferred deposit loan is extended by the deferred
140 deposit lender before the deferred deposit loan is paid in full;
- 141 (iii) of the deferred deposit loans that are paid in full 10 weeks or sooner after the day
142 on which the deferred deposit loan is executed, the average number of days a deferred deposit
143 loan is extended by the deferred deposit lender before the deferred deposit loan is paid in full;
- 144 [~~(iv) the minimum and maximum amount of interest or fees charged by the deferred
145 deposit lender for a deferred deposit loan;~~
- 146 [~~(A) of \$100; and~~
147 [~~(B) extended for one week;~~
- 148 [~~(v)~~] (iv) the total number of deferred deposit loans rescinded by the deferred deposit
149 lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);
- 150 [~~(vi)~~] (v) the percentage of deferred deposit loans extended by the deferred deposit
151 lender that are not paid in full by 10 weeks after the day on which the deferred deposit loan is

152 executed; ~~and~~

153 (vi) the total dollar amount of deferred deposit loans that are not paid in full by 10
154 weeks after the day on which the deferred deposit loans are executed;

155 (vii) of the persons to whom the deferred deposit lender extended a deferred deposit
156 loan, the percentage that entered into an extended payment plan under Section 7-23-403[-];

157 (viii) the total number of deferred deposit loans the deferred deposit lender extended;

158 (ix) the total dollar amount of deferred deposit loans extended by the deferred deposit
159 lender;

160 (x) the total number of individuals to whom the deferred deposit lender extended a
161 deferred deposit loan;

162 (xi) the range of annual percentage rates charged on deferred deposit loans extended by
163 the deferred deposit lender; and

164 (xii) the average annual percentage rate charged on a deferred deposit loan extended by
165 the deferred deposit lender.

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

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

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

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

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

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

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

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

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

179 (i) \$500 if the person:

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

181 (I) cashing checks; or

182 (II) deferred deposit lending; or

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

184 (I) cashing checks; or

185 (II) deferred deposit lending; or

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

189 (A) cashing checks; or

190 (B) deferred deposit lending.

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

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

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

197 (b) the department specifically requests earlier notification.

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

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

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

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

206 Section 3. Section **7-23-401** is amended to read:

207 **7-23-401. Operational requirements for deferred deposit loans.**

208 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit
209 lender shall:

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

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

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

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

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

219 (c) conspicuously disclose in the written contract:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

264 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
265 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

266 (iv) Title 70C, Utah Consumer Credit Code[-]; and

267 (g) on and after October 1, 2012, before extending a deferred deposit loan, query the
268 database to determine if the person seeking the deferred deposit loan is ineligible under Section
269 7-23-601.

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

273 (a) in a conspicuous manner; and

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

275 (3) A deferred deposit lender that engages in a deferred deposit loan shall permit a

276 person receiving a deferred deposit loan to:

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

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

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

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

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

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

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

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

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

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

298 (f) in connection with the collection of money owed on a deferred deposit loan,
299 communicate with a person who owes money on a deferred deposit loan at the person's place of
300 employment if the person or the person's employer communicates, orally or in writing, to the
301 deferred deposit lender that the person's employer prohibits the person from receiving these
302 communications.

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

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

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

310 (6) (a) On and after October 1, 2012, a deferred deposit lender may not extend a
311 deferred deposit loan to a person who, on the basis of a query to the database required by
312 Subsection (1)(g), is ineligible.

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

316 Section 4. Section **7-23-503** is amended to read:

317 **7-23-503. Reporting by commissioner.**

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

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

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

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

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

328 (b) for the information reported under Subsection (2)(a), determine the information to
329 be reported in accordance with Subsection (3);

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

331 ~~(b)~~ (d) may not include in the report information from an operations statement filed
332 with the department or the database that could identify a specific deferred deposit lender.

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

338 deposit lenders providing the information collected under Subsection 7-23-201(2)(e).

339 (b) To comply with Subsection (3)(a), the department may create two or more
340 categories of deferred deposit lenders providing the information collected under Subsection
341 7-23-201(2)(e) by:

- 342 (i) volume of deferred deposit loans extended by the different deferred deposit lenders;
- 343 (ii) dollar amount of deferred deposit loans extended; or
- 344 (iii) other category.

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

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

347 **7-23-601. Ineligibility to obtain a deferred deposit loan.**

348 (1) On and after October 1, 2012, a person is ineligible to obtain a deferred deposit
349 loan if the person owes \$500 or more in the aggregate in principal for one or more deferred
350 deposit loans subject to this chapter that are not closed at the time the person applies for a new
351 deferred deposit loan.

352 (2) If the person seeking a deferred deposit loan is not ineligible under Subsection (1),
353 a deferred deposit lender may extend a deferred deposit loan to that person in any amount to
354 which both parties agree.

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

356 **7-23-602. Deferred Deposit Lending Database Program.**

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

360 (b) The program shall be administered by the department to implement by October 1,
361 2012, a common database with real-time access by deferred deposit lenders through an Internet
362 connection or other electronic means.

363 (c) The database shall be accessible to the department and a deferred deposit lender to
364 verify the aggregate amount owed on deferred deposit loans outstanding for a particular person.

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

- 369 (ii) If the department contracts with a third party, the commissioner shall:
370 (A) ensure that the third party provider selected as the database provider operates the
371 database pursuant to this part;
372 (B) consider cost of service and ability to meet the requirements of this part; and
373 (C) ensure that the third party provider can provide accurate and secure receipt,
374 transmission, and storage of data.
375 (iii) The contract may not obligate the department to pay a third party database
376 provider more money than is paid in fees collected under Subsection 7-23-603(2).
377 (iv) A third party database provider under contract under this section is the
378 department's designated agent, and shall develop and maintain the database from the
379 information provided by deferred deposit lenders.
380 (e) A designated agent shall use the data collected under this part only as prescribed in
381 this part and the contract with the department and for no other purpose.
382 (f) The department shall investigate violations of and enforce this part. The
383 department may not delegate its responsibilities under this Subsection (1)(f).
384 (2) The department shall establish guidelines to be followed by the designated agent so
385 that:
386 (a) a deferred deposit lender can efficiently:
387 (i) report information to the database under Subsection (3); and
388 (ii) access the database under Section 7-23-603; and
389 (b) the designated agent complies with any applicable federal and state laws to prevent
390 identity theft.
391 (3) The department shall by rule made in accordance with Title 63G, Chapter 3, Utah
392 Administrative Rulemaking Act, provide:
393 (a) for the reporting by a deferred deposit lender to the database the information
394 required to determine ineligibility under Section 7-23-601;
395 (b) that when the database provider receives notification that a deferred deposit loan is
396 closed, the database provider shall designate the transaction as closed in the database
397 immediately, but in no event after 11:59 p.m. on the day the database provider receives the
398 notification;
399 (c) that data on a deferred deposit loan in the database be archived one year after the

400 deferred deposit loan is closed unless needed for a pending enforcement or legal action;

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

403 (e) that data about a deferred deposit loan in the database be deleted from the archive
404 of the database the later of:

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

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

408 (f) for the database provider to establish and maintain a process for responding to
409 queries that due to technical difficulties the deferred deposit lender cannot access through the
410 Internet or other electronic means.

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

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

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

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

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

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

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

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

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

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

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

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

431 (a) places false information on the database; or
432 (b) releases or discloses information from the database for a purpose other than those
433 authorized in this part or to a person who is not entitled to the information.

434 (8) A person injured by a designated agent's violation of this part may maintain a civil
435 cause of action against the designated agent and may recover actual damages plus reasonable
436 attorney fees and court costs.

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

439 (10) The department shall include in the report required under Section 7-23-503
440 aggregate information regarding the number of times in a calendar year a person is found
441 ineligible after a query by a deferred deposit lender.

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

444 (b) If a deferred deposit lender stops providing deferred deposit loans, the database
445 provider shall designate all open transactions with that deferred deposit lender closed in the
446 database 60 days after the date the deferred deposit lender stops offering deferred deposit loans,
447 unless the deferred deposit lender reports to the database provider before the expiration of the
448 60-day period which of its transactions remain open and the specific reason each transaction
449 remains open.

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

456 (d) If at any time the commissioner reasonably determines that a deferred deposit
457 lender that has stopped offering deferred deposit loans is not updating the database in
458 accordance with its approved plan, the commissioner shall instruct the database provider to
459 immediately close all remaining open transactions of that deferred deposit lender.

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

461 **7-23-603. Query to database.**

462 (1) On and after October 1, 2012, before extending a deferred deposit loan, a deferred
463 deposit lender shall query the database to determine if the person seeking the deferred deposit
464 loan is ineligible.

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

468 (3) In response to a query by a deferred deposit lender under Subsection (1), the
469 database shall state whether a person is ineligible.

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

472 (i) inform the person that the person is ineligible; and

473 (ii) explain that the person may ask the database provider regarding the specific details
474 of why the person is ineligible.

475 (b) Only a person found ineligible to obtain a deferred deposit loan may make a direct
476 inquiry to the database provider to request a more detailed explanation of a particular
477 transaction that was the basis for the ineligibility determination.

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

Legislative Review Note
as of 1-12-12 9:42 AM

Office of Legislative Research and General Counsel