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FORUM REQUIREMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian Doughty

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Check Cashing and Deferred Deposit Lending Registration Act to address forum requirements.

Highlighted Provisions:

This bill:

- ▶ prohibits a deferred deposit lender from imposing certain forum requirements; and
- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

Section 1. 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:



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

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

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

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

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

37 (c) conspicuously disclose in the written contract:

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

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

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

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

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

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

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

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

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

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

- 61 (i) the amount of any interest rate or fee;
- 62 (ii) the date on which the full amount of the deferred deposit loan is due;
- 63 (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make
64 a partial payment in increments of at least \$5 on the principal owed on the deferred deposit
65 loan without incurring additional charges above the charges provided in the written contract;

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

- 69 (v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over
70 without the person receiving the deferred deposit loan requesting the rollover of the deferred
71 deposit loan; and

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

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

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

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

- 82 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
83 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

- 84 (iv) Title 70C, Utah Consumer Credit Code.

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

- 88 (a) in a conspicuous manner; and

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

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

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

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

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

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

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

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

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

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

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

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

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

118 (5) Notwithstanding Subsections (4)(a) and (e), a deferred deposit lender that is the
119 holder of a check used to obtain a deferred deposit loan that is dishonored may use the
120 remedies and notice procedures provided in Chapter 15, Dishonored Instruments, except that

121 the issuer, as defined in Section 7-15-1, of the check may not be:

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

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

125 (6) (a) It is a violation of this chapter for a deferred deposit lender to require a person
126 to bring an action or defend against an action related to a dispute arising under a deferred
127 deposit loan in a forum that violates the forum or venue requirements of applicable statute,
128 court rules of procedure, or the Code of Judicial Administration.

129 (b) If a court finds that a deferred deposit lender has a pattern or practice of violating
130 this Subsection (6), the court may order the deferred deposit lender to pay to the party that
131 asserts a violation of this Subsection (6):

132 (i) attorney fees; and

133 (ii) court costs.

Legislative Review Note
as of 2-10-12 3:04 PM

Office of Legislative Research and General Counsel