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CONSUMER LENDING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends Title 7, Chapter 23, Check Cashing and Deferred Deposit Lending Registration Act, 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 regarding deferred deposit lenders;
- ▶ amends provisions relating to bail bonds;
- ▶ amends provisions related to damages to party aggrieved; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



- 28 7-23-401, as last amended by Laws of Utah 2017, Chapter 37
- 29 7-23-503, as last amended by Laws of Utah 2012, Chapter 323
- 30 78B-6-306, as last amended by Laws of Utah 2014, Chapter 268
- 31 78B-6-311, as last amended by Laws of Utah 2014, Chapter 268

32

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

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

35 **7-23-201. Registration -- Rulemaking.**

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

- 38 (i) registers with the department in accordance with this chapter; and
- 39 (ii) maintains a valid registration.

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

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

44 (c) An officer or employee of a person required to register under Subsection (1)(a) is
45 not required to register if the person for whom the individual is an officer or employee is
46 registered.

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

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

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

52 (2)(d);

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

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

- 59 (c) To renew a registration under this section, a person shall:
- 60 (i) pay the annual fee established under Subsection 7-1-401(5);
- 61 (ii) submit a renewal statement containing the information described in Subsection
- 62 (2)(d);
- 63 (iii) submit evidence satisfactory to the commissioner that the person is authorized to
- 64 conduct business in this state as a domestic or foreign entity pursuant to filings with the
- 65 Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48,
- 66 Unincorporated Business Entity Act;
- 67 (iv) if the person engages in the business of deferred deposit lending, submit evidence
- 68 satisfactory to the commissioner that the person is registered with the nationwide database; and
- 69 (v) if the person engages in the business of deferred deposit lending, submit an
- 70 operations statement containing the information described in [~~Subsection~~] Subsections (2)(e)
- 71 and (f).
- 72 (d) A registration or renewal statement shall state:
- 73 (i) the name of the person;
- 74 (ii) the name in which the business will be transacted if different from that required in
- 75 Subsection (2)(d)(i);
- 76 (iii) the address of the person's principal business office, which may be outside this
- 77 state;
- 78 (iv) the addresses of all offices in this state at which the person conducts the business
- 79 of:
- 80 (A) cashing checks; or
- 81 (B) deferred deposit lending;
- 82 (v) if the person conducts the business of cashing checks or the business of deferred
- 83 deposit lending in this state but does not maintain an office in this state, a brief description of
- 84 the manner in which the business is conducted;
- 85 (vi) the name and address in this state of a designated agent upon whom service of
- 86 process may be made;
- 87 (vii) whether there is a conviction of a crime:
- 88 (A) involving an act of fraud, dishonesty, breach of trust, or money laundering; and
- 89 (B) with respect to that person, an officer, director, manager, operator, or principal of

90 that person, or an employee of that person engaged in the business described in this chapter;
91 and

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

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

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

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

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

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

103 ~~[(v)]~~ (iv) of the persons to whom the deferred deposit lender extended a deferred
104 deposit loan, the percentage that entered into an extended payment plan under Section
105 7-23-403;

106 ~~[(vi)]~~ (v) the total dollar amount of deferred deposit loans rescinded by the deferred
107 deposit lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);

108 ~~[(vii)]~~ (vi) the average annual percentage rate charged on deferred deposit loans;

109 (vii) the range of annual percentage rates charged on deferred deposit loans;

110 (viii) the average dollar amount of extended payment plans entered into under Section
111 7-23-403 by the deferred deposit lender;

112 (ix) the number of deferred deposit loans carried to the maximum 10 weeks after the
113 day on which the deferred deposit loan is extended;

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

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

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

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

121 initiates civil action to collect on the deferred deposit loan; and

122 (xiv) for the civil actions described in Subsection (2)(e)(xiii), the percentage of those
123 civil actions whose deferred deposit loans have the following payment history:

124 (A) no payments;

125 (B) one payment;

126 (C) two payments;

127 (D) three payments;

128 (E) four payments;

129 (F) five payments;

130 (G) six payments;

131 (H) seven payments;

132 (I) eight payments;

133 (J) nine payments; and

134 (K) 10 or more payments.

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

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

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

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

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

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

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

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

151 ~~[(b)]~~ (ii) not subject to Title 63G, Chapter 2, Government Records Access and

152 Management Act.

153 (b) The department shall:

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

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

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

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

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

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

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

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

168 (i) \$500 if the person:

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

170 (I) cashing checks; or

171 (II) deferred deposit lending; or

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

173 (I) cashing checks; or

174 (II) deferred deposit lending; or

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

178 (A) cashing checks; or

179 (B) deferred deposit lending.

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

182 (5) If the information in a registration, renewal, or operations statement required under

183 Subsection (2) becomes inaccurate after filing, a person is not required to notify the department
184 until:

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

186 (b) the department specifically requests earlier notification.

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

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

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

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

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

197 (i) known to the person; or

198 (ii) included in:

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

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

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

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

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

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

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

211 **7-23-401. Operational requirements for deferred deposit loans.**

212 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit
213 lender shall:

- 214 (a) post in a conspicuous location on its premises that can be viewed by a person
- 215 seeking a deferred deposit loan:
 - 216 (i) a complete schedule of any interest or fees charged for a deferred deposit loan that
 - 217 states the interest and fees using dollar amounts;
 - 218 (ii) a number the person can call to make a complaint to the department regarding the
 - 219 deferred deposit loan; and
 - 220 (iii) a list of states where the deferred deposit lender is registered or authorized to offer
 - 221 deferred deposit loans through the Internet or other electronic means;
- 222 (b) enter into a written contract for the deferred deposit loan;
- 223 (c) conspicuously disclose in the written contract:
 - 224 (i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a
 - 225 partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan
 - 226 without incurring additional charges above the charges provided in the written contract;
 - 227 (ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind
 - 228 the deferred deposit loan on or before 5 p.m. of the next business day without incurring any
 - 229 charges;
 - 230 (iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over
 - 231 without the person receiving the deferred deposit loan requesting the rollover of the deferred
 - 232 deposit loan;
 - 233 (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
 - 234 rollover requires the person to pay the amount owed by the person under the deferred deposit
 - 235 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
 - 236 executed; and
- 237 (v) (A) the name and address of a designated agent required to be provided the
- 238 department under Subsection 7-23-201(2)(d)(vi); and
- 239 (B) a statement that service of process may be made to the designated agent;
- 240 (d) provide the person seeking the deferred deposit loan:
 - 241 (i) a copy of the written contract described in Subsection (1)(c); and
 - 242 (ii) written notice that the person seeking the deferred deposit loan is eligible to enter
 - 243 into an extended payment plan described in Section 7-23-403;
- 244 (e) orally review with the person seeking the deferred deposit loan the terms of the

245 deferred deposit loan including:

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

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

248 (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make

249 a partial payment in increments of at least \$5 on the principal owed on the deferred deposit

250 loan without incurring additional charges above the charges provided in the written contract;

251 (iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may

252 rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring

253 any charges;

254 (v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over

255 without the person receiving the deferred deposit loan requesting the rollover of the deferred

256 deposit loan; and

257 (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the

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

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

260 executed;

261 (f) comply with the following as in effect on the date the deferred deposit loan is

262 extended:

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

264 regulations;

265 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal

266 regulations;

267 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and

268 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

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

270 (g) in accordance with Subsection (6), make an inquiry to determine whether a person

271 attempting to receive a deferred deposit loan has the ability to repay the deferred deposit loan

272 in the ordinary course, which may include rollovers or extended payment plans as allowed

273 under this chapter;

274 (h) in accordance with Subsection (7), receive a signed acknowledgment from a person

275 attempting to receive a deferred deposit loan that the person has the ability to repay the

276 deferred deposit loan, which may include rollovers or extended payment plans as allowed by
277 this chapter; and

278 (i) report the original loan amount, payment in full, or default of a deferred deposit
279 loan to a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a, in accordance with
280 procedures established by the consumer reporting agency.

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

284 (a) in a conspicuous manner; and

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

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

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

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

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

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

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

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

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

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

306 (ii) the combined terms of the original deferred deposit loan and the new deferred

307 deposit loan total more than 10 weeks of consecutive interest;

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

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

313 (g) in connection with the collection of money owed on a deferred deposit loan,
314 communicate with a person who owes money on a deferred deposit loan at the person's place of
315 employment if the person or the person's employer communicates, orally or in writing, to the
316 deferred deposit lender that the person's employer prohibits the person from receiving these
317 communications; [~~or~~]

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

320 (i) avoid the requirements of Subsection 7-23-403(1)(c) by extending an
321 interest-bearing loan within seven calendar days before the day on which the 10-week period
322 ends.

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

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

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

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

333 (b) Subject to Subsection (6)(c), a deferred deposit lender is in compliance with
334 Subsection (1)(g) if the deferred deposit lender, at the time of the initial period of the deferred
335 deposit loan transaction:

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

337 (A) a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting

338 agency, as defined in 15 U.S.C. Sec. 1681a; or

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

341 (ii) relies on the prior repayment history with the deferred deposit lender from the
342 records of the deferred deposit lender.

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

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

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

353 (b) received a disclosure that a deferred deposit loan may not be rolled over if the
354 rollover requires the person to pay the amount owed by the person under the deferred deposit
355 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
356 first executed;

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

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

360 (8) (a) Before initiating a civil action against a person who owes money on a deferred
361 deposit loan, a deferred deposit lender shall provide the person at least [~~10~~] 30 days notice of
362 default, describing that:

363 (i) the person must remedy the default; and

364 (ii) the deferred deposit lender may initiate a civil action against the person if the
365 person fails to cure the default within the [~~10~~] 30-day period or through an extended payment
366 plan meeting the requirements of Section [7-23-403](#).

367 (b) A deferred deposit lender may provide the notice required under this Subsection
368 (8):

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

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

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

374 (c) A notice under this Subsection (8), in addition to complying with Subsection (8)(a),
375 shall:

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

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

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

380 (iv) subject to Subsection 7-23-403(7), if the deferred deposit lender requires the
381 person to make an initial payment to enter into an extended payment plan:

382 (A) explain the requirement; and

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

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

387 (vi) include the following amounts:

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

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

390 (C) any charges added to the deferred deposit loan amount allowed pursuant to this
391 chapter; and

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

393 Section 3. Section 7-23-503 is amended to read:

394 **7-23-503. Reporting by commissioner.**

395 (1) Subject to Subsection (2), as part of the commissioner's annual report to the
396 governor and Legislature under Section 7-1-211, the commissioner shall report to the governor
397 and Legislature on the operations on an aggregate basis of deferred deposit lenders operating in
398 the state.

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

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

403 (b) shall include in the report:

404 (i) the total number of written complaints concerning issues material to deferred
405 deposit loan transactions received by the department in a calendar year from persons who have
406 entered into a deferred deposit loan with a deferred deposit lender;

407 (ii) for deferred deposit lenders who are registered with the department:

408 (A) the number of the complaints described in Subsection (2)(b)(i) that the department
409 considers resolved; and

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

412 (iii) for deferred deposit lenders who are not registered with the department:

413 (A) the number of the complaints described in Subsection (2)(b)(i) that the department
414 considers resolved; and

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

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

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

421 Section 4. Section 78B-6-306 is amended to read:

422 **78B-6-306. Bail bond -- Form.**

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

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

428 Section 5. Section 78B-6-311 is amended to read:

429 **78B-6-311. Damages to party aggrieved.**

430 (1) If an actual loss or injury to a party in an action or special proceeding is caused by

431 the contempt, the court, in lieu of or in addition to the fine or imprisonment imposed for the
432 contempt, may order the person proceeded against to pay the party aggrieved a sum of money
433 sufficient to indemnify and satisfy the aggrieved party's costs and expenses. ~~[The court may~~
434 ~~order that any bail posted by the person proceeded against be used to satisfy all or part of the~~
435 ~~money ordered to be paid to the aggrieved party.]~~

436 ~~(2) The order and the acceptance of money under it is a bar to an action by the~~
437 ~~aggrieved party for the loss and injury.~~

438 ~~[(2) A judgment creditor may request that the court pay bail posted by a judgment~~
439 ~~debtor to the judgment creditor if:]~~

440 ~~[(a) the judgment debtor owes the judgment creditor funds pursuant to a court-ordered~~
441 ~~judgment;]~~

442 ~~[(b) the judgment creditor provides the court with a copy of the valid judgment; and]~~

443 ~~[(c) bail was posted in cash, or by credit or debit card.]~~

444 ~~[(3) Upon receipt of a request by a judgment creditor, the court shall require the~~
445 ~~judgment debtor to provide either proof of payment or good cause why the court should not~~
446 ~~order the forfeiture of bail to then be paid to the judgment creditor. The court shall find that~~
447 ~~good cause exists if the judgment debtor provides admissible evidence that the bail was paid by~~
448 ~~a third party.]~~

449 ~~[(4) The court may, in its discretion, order all or a portion of the funds deposited with~~
450 ~~the court as bail to be paid to the judgment creditor towards the amount of the judgment. If the~~
451 ~~amount paid to the court exceeds the amount of the judgment, the court shall refund the excess~~
452 ~~to the judgment debtor.]~~

453 ~~[(5) Within seven days of the receipt of funds, the judgment creditor shall provide to~~
454 ~~the judgment debtor an accounting of amounts received and the balance still due, if any.]~~