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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 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

29 **Other Special Clauses:**

30 This bill provides a coordination clause.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 7-23-201, as last amended by Laws of Utah 2017, Chapter 37

34 7-23-401, as last amended by Laws of Utah 2017, Chapter 37

35 7-23-503, as last amended by Laws of Utah 2012, Chapter 323

36 12-1-11, as enacted by Laws of Utah 2010, Chapter 350

37 78B-6-306, as last amended by Laws of Utah 2014, Chapter 268

38 78B-6-311, as last amended by Laws of Utah 2014, Chapter 268

39 **Utah Code Sections Affected by Coordination Clause:**

40 13-38a-401, Utah Code Annotated 1953



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

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

44 **7-23-201. Registration -- Rulemaking.**

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

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

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

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

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

56 (2) (a) A registration and a renewal of a registration expires on December 31 of each

57 year unless on or before that date the person renews the registration.

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

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

60 (ii) submit a registration statement containing the information described in Subsection
61 (2)(d);

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

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

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

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

70 (ii) submit a renewal statement containing the information described in Subsection
71 (2)(d);

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

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

78 (v) if the person engages in the business of deferred deposit lending, submit an
79 operations statement containing the information described in ~~Subsection~~ Subsections (2)(e)
80 and (f).

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

82 (i) the name of the person;

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

- 85 (iii) the address of the person's principal business office, which may be outside this
- 86 state;
- 87 (iv) the addresses of all offices in this state at which the person conducts the business
- 88 of:
- 89 (A) cashing checks; or
- 90 (B) deferred deposit lending;
- 91 (v) if the person conducts the business of cashing checks or the business of deferred
- 92 deposit lending in this state but does not maintain an office in this state, a brief description of
- 93 the manner in which the business is conducted;
- 94 (vi) the name and address in this state of a designated agent upon whom service of
- 95 process may be made;
- 96 (vii) whether there is a conviction of a crime:
- 97 (A) involving an act of fraud, dishonesty, breach of trust, or money laundering; and
- 98 (B) with respect to that person, an officer, director, manager, operator, or principal of
- 99 that person, or an employee of that person engaged in the business described in this chapter;
- 100 and
- 101 (viii) any other information required by the rules of the department.
- 102 (e) An operations statement required for a deferred deposit lender to renew a
- 103 registration shall state for the immediately preceding calendar year:
- 104 (i) the average principal amount of the deferred deposit loans extended by the deferred
- 105 deposit lender;
- 106 (ii) for deferred deposit loans paid in full, the average number of days a deferred
- 107 deposit loan is outstanding for the duration of time that interest is charged;
- 108 [~~(iii) the minimum and maximum dollar amount of interest and fees charged by the~~
- 109 ~~deferred deposit lender for a deferred deposit loan of \$100 with a loan term of seven days;~~
- 110 [~~(iv)~~] (iii) the total number of deferred deposit loans rescinded by the deferred deposit
- 111 lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);
- 112 [~~(v)~~] (iv) of the persons to whom the deferred deposit lender extended a deferred

- 113 deposit loan, the percentage that entered into an extended payment plan under Section
114 7-23-403;
- 115 [~~(vi)~~] (v) the total dollar amount of deferred deposit loans rescinded by the deferred
116 deposit lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);
- 117 [~~(vii)~~] (vi) the average annual percentage rate charged on deferred deposit loans;
- 118 (vii) the range of annual percentage rates charged on deferred deposit loans;
- 119 (viii) the average dollar amount of extended payment plans entered into under Section
120 7-23-403 by the deferred deposit lender;
- 121 (ix) the number of deferred deposit loans carried to the maximum 10 weeks after the
122 day on which the deferred deposit loan is extended;
- 123 (x) the total dollar amount of deferred deposit loans carried to the maximum 10 weeks
124 after the day on which the deferred deposit loan is extended;
- 125 (xi) the number of deferred deposit loans not paid in full at the end of 10 weeks after
126 the day on which the deferred deposit loan is extended;
- 127 (xii) the total dollar amount of deferred deposit loans not paid in full at the end of 10
128 weeks after the day on which the deferred deposit loan is extended;
- 129 (xiii) the percentage of deferred deposit loans against which the deferred deposit lender
130 initiates civil action to collect on the deferred deposit loan; and
- 131 (xiv) for the civil actions described in Subsection (2)(e)(xiii), the percentage of those
132 civil actions whose deferred deposit loans have the following payment history:
- 133 (A) no payments;
 - 134 (B) one payment;
 - 135 (C) two payments;
 - 136 (D) three payments;
 - 137 (E) four payments;
 - 138 (F) five payments;
 - 139 (G) six payments;
 - 140 (H) seven payments;

- 141 (I) eight payments;
- 142 (J) nine payments; and
- 143 (K) 10 or more payments.

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

- 147 (i) the total number of deferred deposit loans extended by the deferred deposit lender;
- 148 (ii) the total dollar amount of deferred deposit loans extended by the deferred deposit
 149 lender;
- 150 (iii) the total number of individuals to whom the deferred deposit lender extended a
 151 deferred deposit loan; and
- 152 (iv) the percentage of deferred deposit loans not repaid according to the terms of the
 153 loan.

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

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

- 159 ~~[(a)]~~ (i) confidential in accordance with Section 7-1-802; and
- 160 ~~[(b)]~~ (ii) not subject to Title 63G, Chapter 2, Government Records Access and
 161 Management Act.

162 (b) The department shall:

- 163 (i) only use information a deferred deposit lender provides to the department under
 164 Subsection (2)(f) to determine compliance with this chapter; and
- 165 (ii) delete or otherwise destroy information a deferred deposit lender provides to the
 166 department under Subsection (2)(f) within two years after the day on which the deferred
 167 deposit lender provides the information.

168 (4) (a) The commissioner may impose an administrative fine determined under

169 Subsection (4)(b) on a person if:

- 170 (i) the person is required to be registered under this chapter;
- 171 (ii) the person fails to register or renew a registration in accordance with this chapter;
- 172 (iii) the department notifies the person that the person is in violation of this chapter for
173 failure to be registered; and
- 174 (iv) the person fails to register within 30 days after the day on which the person
175 receives the notice described in Subsection (4)(a)(iii).

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

177 (i) \$500 if the person:

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

- 179 (I) cashing checks; or
- 180 (II) deferred deposit lending; or

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

- 182 (I) cashing checks; or
- 183 (II) deferred deposit lending; or

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

- 187 (A) cashing checks; or
- 188 (B) deferred deposit lending.

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

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

- 194 (a) that person is required to renew the registration; or
- 195 (b) the department specifically requests earlier notification.
- 196 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

197 department may make rules consistent with this section providing for:

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

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

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

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

206 (i) known to the person; or

207 (ii) included in:

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

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

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

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

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

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

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

220 **7-23-401. Operational requirements for deferred deposit loans.**

221 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit
222 lender shall:

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

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

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

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

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

232 (c) conspicuously disclose in the written contract:

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

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

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

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

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

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

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

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

251 (ii) written notice that the person seeking the deferred deposit loan is eligible to enter
252 into an extended payment plan described in Section 7-23-403;

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

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

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

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

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

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

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

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

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

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

276 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
277 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

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

279 (g) in accordance with Subsection (6), make an inquiry to determine whether a person
280 attempting to receive a deferred deposit loan has the ability to repay the deferred deposit loan

281 in the ordinary course, which may include rollovers or extended payment plans as allowed
282 under this chapter;

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

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

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

293 (a) in a conspicuous manner; and

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

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

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

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

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

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

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

308 (c) roll over a deferred deposit loan if the rollover requires a person to pay the amount

309 owed by the person under a deferred deposit loan in whole or in part more than 10 weeks from
310 the day on which the deferred deposit loan is first executed;

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

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

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

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

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

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

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

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

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

336 (a) asked by the holder to pay the amount described in Subsection 7-15-1(6)(a)(iii) as a

337 condition of the holder not filing a civil action; or

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

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

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

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

346 (A) 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; or

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

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

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

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

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

362 (b) received a disclosure that a deferred deposit loan may not be rolled over if the
363 rollover requires the person to pay the amount owed by the person under the deferred deposit
364 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is

365 first executed;

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

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

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

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

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

376 (b) A deferred deposit lender may provide the notice required under this Subsection
377 (8):

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

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

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

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

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

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

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

389 (iv) subject to Subsection [7-23-403\(7\)](#), if the deferred deposit lender requires the
390 person to make an initial payment to enter into an extended payment plan:

391 (A) explain the requirement; and

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

393 made;

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

396 (vi) include the following amounts:

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

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

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

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

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

403 **7-23-503. Reporting by commissioner.**

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

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

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

412 (b) shall include in the report:

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

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

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

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

- 421 (iii) for deferred deposit lenders who are not registered with the department:
- 422 (A) the number of the complaints described in Subsection (2)(b)(i) that the department
- 423 considers resolved; and
- 424 (B) the number of the complaints described in Subsection (2)(b)(i) that the department
- 425 considers unresolved; ~~and~~
- 426 (c) may not include in the report information from an operations statement filed with
- 427 the department that could identify a specific deferred deposit lender[-]; and
- 428 (d) may not include in the report information from an operations statement filed under
- 429 Subsection 7-23-201(2)(f).

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

431 **12-1-11. Collection fee -- Convenience fees.**

432 (1) As used in this section:

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

434 (b) "Debt" means an obligation or alleged obligation to pay money arising out of a

435 transaction for money, property, insurance, or services.

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

437 (d) "Financial transaction card" means the same as that term is defined in Section

438 13-38a-102.

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

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

441 (ii) a person who would be a debt collector under 15 U.S.C. Sec. 1692a, except that the

442 person does not use an instrumentality of interstate commerce or the mail.

443 (2) (a) A creditor may require a debtor to pay a collection fee in addition to any other

444 amount owed to the creditor for a debt if:

445 ~~(a)~~ (i) imposing a collection fee on the debtor or in relation to the debt is not

446 prohibited or otherwise restricted by another federal or state law;

447 ~~(b)~~ (ii) the creditor contracts with a third party debt collection agency or licensed

448 attorney to collect the debt;

449 ~~[(e)]~~ (iii) the third party debt collection agency with which the creditor contracts is
450 registered under this title;

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

452 ~~[(i)]~~ (A) creates the debt; and

453 ~~[(i)]~~ (B) provides for the imposition of the collection fee in accordance with this
454 section; and

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

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

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

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

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

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

469 (i) the phone;

470 (ii) text or similar short message service; or

471 (iii) the Internet.

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

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

477 (ii) disclose to the debtor the amount of the convenience fee; and
478 (iii) give the debtor an alternative payment method option for which a convenience fee
479 does not apply.

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

481 **78B-6-306. Bail bond -- Form.**

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

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

487 Section 6. Section **78B-6-311** is amended to read:

488 **78B-6-311. Damages to party aggrieved.**

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

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

494 (b) may order that any bail posted by the person proceeded against be used to satisfy all
495 or part of the money ordered to be paid to the aggrieved party.

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

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

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

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

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

504 ~~[(3) Upon receipt of a request by a judgment creditor, the court shall require the~~

505 judgment debtor to provide either proof of payment or good cause why the court should not
506 order the forfeiture of bail to then be paid to the judgment creditor. The court shall find that
507 good cause exists if the judgment debtor provides admissible evidence that the bail was paid by
508 a third party.]

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

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

515 Section 7. **Coordinating H.B. 319 with H.B. 113 -- Substantive amendment.**

516 If this H.B. 319 and H.B. 113, Consumer Sales Practices Amendments, both pass and
517 become law, it is the intent of the Legislature that the Office of Legislative Research and
518 General Counsel, in preparing the Utah Code database for publication, not enact Section
519 13-38a-401 in H.B. 113.