

Senator Peter C. Knudson proposes to substitute the following bill:

CHECK ABUSE AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: John E. Swallow

AN ACT RELATING TO COLLECTING ON DISHONORED INSTRUMENTS; AMENDING PROVISIONS RELATED TO DISHONORED CHECKS OR OTHER INSTRUMENTS; PROVIDING EXCEPTIONS; MAKING TECHNICAL CORRECTIONS; AND PROVIDING A COORDINATION CLAUSE ADDRESSING FINANCIAL INSTITUTION LIABILITY.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

7-15-1, as last amended by Chapter 245, Laws of Utah 1997

7-15-2, as last amended by Chapter 245, Laws of Utah 1997

7-15-3, as enacted by Chapter 52, Laws of Utah 1988

35A-4-305, as last amended by Chapter 13, Laws of Utah 1998

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

Section 1. Section **7-15-1** is amended to read:

7-15-1. Definitions -- Civil liability of issuer -- Notice of action -- Collection costs.

(1) As used in this chapter:

(a) "Check" means a payment instrument on a depository institution including a:

(i) check;

(ii) draft;

(iii) order; or

(iv) other instrument.

~~[(1) Any]~~ (b) "Issuer" means a person who makes, draws, signs, or issues [any] a check[- draft, order, or other instrument upon any depository institution], whether as corporate agent or

26 otherwise, for the purpose of:

27 (i) obtaining from any person[~~-, firm, partnership, or corporation~~] any money, merchandise,
28 property, or other thing of value; or

29 (ii) paying for any service, wages, salary, or rent.

30 (c) "Mailed" means the day that a notice is properly deposited in the United States mail.

31 (2) (a) An issuer of a check is liable to the holder of the check[~~-, draft, order, or other~~
32 instrument] if:

33 [(a)] (i) the check[~~-, draft, order, or other instrument~~]:

34 [(i)] (A) is not honored upon presentment; and

35 [(ii)] (B) is marked "refer to maker"; [or]

36 [(b)] (ii) the account upon which the check[~~-, draft, order, or other instrument has been~~] is
37 made or drawn:

38 [(i)] (A) does not exist;

39 [(ii)] (B) has been closed; or

40 [(iii)] (C) does not have sufficient funds or sufficient credit for payment in full of the
41 check[~~-, draft, or other instrument.~~]; or

42 (iii) (A) the check is issued in partial or complete fulfillment of a valid and legally binding
43 obligation; and

44 (B) the issuer stops payment on the check with the intent to:

45 (I) fraudulently defeat a possessory lien; or

46 (II) otherwise defraud the holder of the check.

47 (b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:

48 (i) the check amount; and

49 (ii) a service charge of \$20.

50 [(2)] (3) (a) The holder of [the] a check[~~-, draft, order, or other instrument~~] that has been
51 dishonored may:

52 (i) give written or [verbal] oral notice of dishonor to the [person making, drawing, signing,
53 or issuing] issuer of the check[~~-, draft, order, or other instrument~~]; and

54 (ii) [impose a] waive all or part of the service charge [that may not exceed \$20] imposed
55 under Subsection (2)(b).

56 (b) Notwithstanding Subsection (2)[(a)](b), a holder of a check[~~-, draft, order, or other~~

57 instrument] that has been dishonored may not [charge] collect and the issuer is not liable for the
 58 service charge [permitted] imposed under Subsection (2)(a)(b) if:

- 59 (i) the holder redeposits the check[, draft, order, or other instrument]; and
 60 (ii) that check[, draft, order, or other instrument] is honored.

61 (4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15 calendar
 62 days from the day on which the notice required under Subsection (5) is mailed, the issuer is liable
 63 for:

- 64 (a) the amount owed under Subsection (2)(b); and
 65 (b) collection costs not to exceed \$20.

66 [(3)] (5) (a) [Prior to] A holder shall provide written notice to an issuer before:

67 (i) charging collection costs under Subsection (4) in addition to the amount owed under
 68 Subsection (2)(b); or

69 (ii) filing an action based upon this section[, the holder of a dishonored check, draft, order,
 70 or other instrument].

71 (b) The written notice required under Subsection (5)(a) shall [give the person making,
 72 drawing, signing, or issuing] notify the issuer of the dishonored check[, draft, order, or other
 73 instrument written notice of intent to] that:

74 (i) if the amount owed under Subsection (2)(b) is not paid within 15 calendar days from
 75 the day on which the notice is mailed, the issuer is liable for:

- 76 (A) the amount owed under Subsection (2)(b); and
 77 (B) collection costs under Subsection (4); and

78 (ii) the holder may file civil action[, allowing] if the [person seven] issuer does not pay to
 79 the holder the amount owed under Subsection (4) within 30 calendar days from the [date] day on
 80 which the notice [was] is mailed [to tender payment in full, plus the service charge imposed for
 81 the dishonored check, draft, order, or other instrument].

82 (6) If the issuer has not paid the holder the amounts owed under Subsection (4) within 30
 83 calendar days from the day on which the notice required by Subsection (5) is mailed, the holder
 84 may offer to not file civil action under this section if the issuer pays the holder:

85 (a) an amount that:

86 (i) is equal to the greater of:

87 (A) \$50; or

88 (B) triple the check amount; and
89 (ii) does not exceed the check amount plus \$250; and
90 (b) if the holder retains an attorney to recover on the dishonored check, reasonable
91 attorney's fees not to exceed the amounts set forth in Utah Code of Judicial Administration, Rule
92 4-505.01.

93 ~~[(4)]~~ (7) (a) A civil action may not be filed under this section unless the issuer fails to pay
94 the amounts owed under Subsection (4) within 30 calendar days from the day on which the notice
95 required by Subsection (5) is mailed.

96 (b) In a civil action, the [person making, drawing, signing, or issuing] issuer of the check[;
97 draft, order, or other instrument] is liable to the holder for:

98 ~~[(a)]~~ (i) the check amount [of the check, draft, order, or other instrument];

99 ~~[(b)]~~ (ii) interest; [and]

100 ~~[(c)]~~ (iii) all costs of collection, including all court costs and reasonable attorneys' fees;
101 and

102 (iv) damages:

103 (A) equal to the greater of:

104 (I) \$100; or

105 (II) triple the check amount; and

106 (B) not to exceed the check amount plus \$500.

107 ~~[(5) As used in this section, "costs of collection" includes reasonable compensation, as~~
108 ~~approved by the court, for time expended if the collection is pursued personally by the holder and~~
109 ~~not through an agent.]~~

110 (c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection (7)(b),
111 a court may waive all or part of the amounts owed under Subsections (7)(b)(ii) through (iv) upon
112 a finding of good cause.

113 (8) This section may not be construed to prohibit the holder of the check from seeking
114 relief under any other applicable statute or cause of action.

115 (9) (a) Notwithstanding the other provisions of this section, a holder of a check is exempt
116 from this section if:

117 (i) the holder:

118 (A) is a depository institution; or

- 119 (B) a person that receives a payment on behalf of a depository institution;
- 120 (ii) the check is a payment on a loan that originated at the depository institution that:
- 121 (A) is the holder; or
- 122 (B) on behalf of which the holder received the payment; and
- 123 (iii) the loan contract states a specific service charge for dishonor.
- 124 (b) A holder exempt under Subsection (9)(a) may contract with an issuer for the collection
- 125 of fees or charges for the dishonor of a check.

Section 2. Section 7-15-2 is amended to read:

7-15-2. Notice -- Form.

(1) (a) "Notice" means notice given to the ~~[person making, drawing, or issuing the]~~ issuer of a check[, draft, order, or other instrument] either ~~[in person]~~ orally or in writing.

(b) ~~[A]~~ Written notice may be given by United States mail that is:

(i) first class; and

(ii) postage prepaid.

(c) Notwithstanding Subsection (1)(b), written notice is conclusively presumed to have been given when the notice is:

(i) properly deposited in the United States ~~[mails,]~~ mail;

(ii) postage prepaid~~[, by];~~

(iii) certified or registered mail~~[-];~~

(iv) return receipt requested~~[-];~~ and

(v) addressed to the signer at the signer's:

(A) address as it appears on the check~~[-, draft, order, or other instrument];~~ or [at the
141 signer's]

(B) last-known address.

(2) Written notice ~~[as applied in]~~ under Subsection 7-15-1~~[(3)]~~ (5) shall take substantially the following form:

Date: _____

To: _____

You are hereby notified that the check(s) described below issued by you has (have) been returned to us unpaid:

[Instrument] Check date: _____

150 [Instrument] Check number: _____

151 Originating institution: _____

152 Amount: _____

153 Reason for dishonor (marked on [instrument] check): _____

154 [~~This instrument,~~] In accordance with Section 7-15-1, Utah Code Annotated, you are liable
155 for this check together with a service charge of \$20, which must be paid to the undersigned [~~within~~
156 ~~seven days from the date of this notice~~].

157 If you do not pay the check amount and the \$20 service charge within 15 calendar days
158 from the day on which this notice was mailed, you are required to pay within 30 calendar days
159 from the day on which this notice is mailed:

160 (1) the check amount;

161 (2) the \$20 service charge; and

162 (3) collection costs not to exceed \$20.

163 If you do not pay the check amount, the \$20 service charge, and the collection costs within
164 30 calendar days from the day on which this notice is mailed, in accordance with Section 7-15-1,
165 Utah Code Annotated, [or] an appropriate civil legal action may be filed against you for:

166 (1) the check amount [~~due and owing together with~~];

167 (2) interest[;];

168 (3) court costs[;];

169 (4) attorneys' fees[~~,~~ and];

170 (5) actual costs of collection as provided by law; and

171 (6) damages in an amount equal to the greater of \$100 or triple the check amount, except
172 that damages recovered under this Subsection (6) may not exceed the check amount by more than
173 \$500.

174 In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated, that any
175 person who issues or passes a check for the payment of money, for the purpose of obtaining from
176 any person, firm, partnership, or corporation, any money, property, or other thing of value or
177 paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and
178 payment is refused by the drawee, is guilty of issuing a bad check.

179 The civil action referred to in this notice does not preclude the right to prosecute under the
180 criminal code of the state of Utah.

181 (Signed) _____

182 Name of Holder: _____

183 Address of Holder: _____

184 Telephone Number: _____

185 (3) Notwithstanding the other provisions of this section, a holder exempt under Subsection
186 7-15-1(9) is exempt from this section.

187 Section 3. Section **7-15-3** is amended to read:

188 **7-15-3. Liability of financial institution upon wrongful dishonor.**

189 If a person is liable to a holder under Section 7-15-1 or under a contract with a depository
190 institution as provided in Subsection 7-15-1(9), and the liability is proximately caused by a
191 financial institution's wrongful dishonor under Section 70A-4-402, any award against the financial
192 institution under Section 70A-4-402 shall include~~[, but not be limited to,]~~ all amounts awarded
193 against the person to the holder under;

194 (1) Section 7-15-1[.]; or

195 (2) the contract with the depository institution as provided in Subsection 7-15-1(9).

196 Section 4. Section **35A-4-305** is amended to read:

197 **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.**

198 (1) (a) Contributions unpaid on the date on which they are due and payable, as prescribed
199 by the division, shall bear interest at the rate of 1% per month from and after that date until
200 payment plus accrued interest is received by the division.

201 (b) (i) Contribution reports not made and filed by the date on which they are due as
202 prescribed by the division shall be subject to a penalty to be assessed and collected in the same
203 manner as contributions due under this section equal to 5% of the contribution due if the failure
204 to file on time was not more than 15 days, with an additional 5% for each additional 15 days or
205 fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and not
206 less than \$25 with respect to each reporting period.

207 (ii) If a report is filed after such time and it is shown to the satisfaction of the division or
208 its authorized representative that the failure to file was due to a reasonable cause and not to willful
209 neglect, no addition shall be made to the contribution.

210 (c) (i) If contributions are unpaid after ten days from the date of the mailing or personal
211 delivery by the division or its authorized representative, of a written demand for payment, there

212 shall attach to the contribution, to be assessed and collected in the same manner as contributions
213 due under this section, a penalty equal to 5% of the contribution due.

214 (ii) A penalty may not attach if within ten days after the mailing or personal delivery,
215 arrangements for payment have been made with the division, or its authorized representative, and
216 payment is made in accordance with those arrangements.

217 (d) The division shall assess as a penalty a service charge, in addition to any other penalties
218 that may apply, in an amount not to exceed the [maximum] service charge [allowed] imposed by
219 [Subsection] Section 7-15-1[(2)] for dishonored instruments if:

220 (i) any amount due the division for contributions, interest, other penalties or benefit
221 overpayments is paid by check, draft, order, or other instrument; and

222 (ii) the instrument is dishonored or not paid by the institution against which it is drawn.

223 (e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit overpayments,
224 contributions, interest, penalties, and assessed costs, uncollected three years after they become due,
225 may be charged as uncollectable and removed from the records of the division if:

226 (i) no assets belonging to the liable person and subject to attachment can be found; and

227 (ii) in the opinion of the division there is no likelihood of collection at a future date.

228 (f) Interest and penalties collected in accordance with this section shall be paid into the
229 Special Administrative Expense Fund.

230 (g) Action required for the collection of sums due under this chapter is subject to the
231 applicable limitations of actions under Title 78, Chapter 12, Limitation of Actions.

232 (2) (a) If an employer fails to file a report when prescribed by the division for the purpose
233 of determining the amount of the employer's contribution due under this chapter, or if the report
234 when filed is incorrect or insufficient or is not satisfactory to the division, the division may
235 determine the amount of wages paid for employment during the period or periods with respect to
236 which the reports were or should have been made and the amount of contribution due from the
237 employer on the basis of such information as it may be able to obtain.

238 (b) The division shall give written notice of the determination to the employer.

239 (c) The determination is considered correct unless:

240 (i) the employer, within ten days after mailing or personal delivery of notice of the
241 determination, applies to the division for a review of the determination as provided in Section
242 35A-4-508; or

243 (ii) unless the division or its authorized representative of its own motion reviews the
244 determination.

245 (d) The amount of contribution so determined shall be subject to penalties and interest as
246 provided in Subsection (1).

247 (3) (a) If, after due notice, any employer defaults in any payment of contributions, interest,
248 or penalties on the contributions, or any claimant defaults in any repayment of benefit
249 overpayments and penalties on the overpayments, the amount due shall be collectible by civil
250 action in the name of the division, and the employer adjudged in default shall pay the costs of the
251 action.

252 (b) Civil actions brought under this section to collect contributions, interest or penalties
253 from an employer, or benefit overpayments and penalties from a claimant shall be:

254 (i) heard by the court at the earliest possible date; and

255 (ii) entitled to preference upon the calendar of the court over all other civil actions except:

256 (A) petitions for judicial review under this chapter; and

257 (B) cases arising under the workers' compensation law of this state.

258 (c) (i) To collect contributions, interest or penalties, or benefit overpayments and penalties
259 due from employers or claimants located outside Utah the division may employ private collectors
260 providing debt collection services outside Utah. Accounts may be placed with private collectors
261 only after the employer or claimant has been given a final notice that the division intends to place
262 the account with a private collector for further collection action. The notice shall advise the
263 employer or claimant of the employer's or claimant's rights under this chapter and the rules
264 applicable of the department.

265 (ii) A private collector may receive as compensation up to, but no more than, 25% of the
266 lesser of the amount collected or the amount due, plus the costs and fees of any civil action or
267 post-judgment remedy instituted by the private collector with the approval of the division. The
268 employer or claimant shall be liable to pay the compensation of the collector, costs, and fees in
269 addition to the original amount due.

270 (iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15
271 U.S.C. Sec. 1692 et seq.

272 (iv) A civil action may not be maintained by any private collector without specific prior
273 written approval of the division. When division approval is given for civil action against an

274 employer or claimant, the division may cooperate with the private collector to the extent necessary
275 to effect the civil action.

276 (d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution,
277 interest, penalties or benefit overpayments and penalties, costs due, the name of the employer or
278 claimant, and the employer's or claimant's address and telephone number when any collection
279 matter is referred to a private collector under Subsection (3)(c).

280 (ii) A private collector is subject to the confidentiality requirements and penalty provisions
281 provided in Section 35A-4-312 and Subsection 35A-4-104(4), except to the extent disclosure is
282 necessary in any civil action to enforce collection of the amounts due.

283 (e) An action taken by the division under this section may not be construed to be an
284 election to forego other collection procedures by the division.

285 (4) (a) In the event of any distribution of an employer's assets under an order of any court
286 under the laws of Utah, including any receivership, assignment for benefits of creditors,
287 adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due
288 shall be paid in full prior to all other claims except taxes and claims for wages of not more than
289 \$400 to each claimant, earned within five months of the commencement of the proceeding.

290 (b) If an employer commences a proceeding in the Federal Bankruptcy Court under any
291 chapter of the Bankruptcy Reform Act of 1978, 11 U.S.C. 101 et seq., as amended, contributions,
292 interest, and penalties then or thereafter due shall be entitled to the priority provided for taxes,
293 interest, and penalties in the Bankruptcy Reform Act of 1978.

294 (5) (a) In addition and as an alternative to any other remedy provided by this chapter and
295 provided that no appeal or other proceeding for review provided by this chapter is then pending
296 and the time for taking it has expired, the division may issue a warrant in duplicate, under its
297 official seal, directed to the sheriff of any county of the state, commanding the sheriff to levy upon
298 and sell the real and personal property of a delinquent employer or claimant found within the
299 sheriff's county for the payment of the contributions due thereon, with the added penalties, interest,
300 or benefit overpayment and penalties, and costs, and to return the warrant to the division and pay
301 into the fund the money collected by virtue of the warrant by a time to be therein specified, not
302 more than 60 days from the date of the warrant.

303 (b) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the duplicate
304 with the clerk of the district court in the sheriff's county. The clerk shall enter in the judgment

305 docket, in the column for judgment debtors, the name of the delinquent employer or claimant
306 mentioned in the warrant, and in appropriate columns the amount of the contribution, penalties,
307 interest, or benefit overpayment and penalties, and costs, for which the warrant is issued and the
308 date when the duplicate is filed.

309 (c) The amount of the warrant so docketed shall:

310 (i) have the force and effect of an execution against all personal property of the delinquent
311 employer; and

312 (ii) become a lien upon the real property of the delinquent employer or claimant in the
313 same manner and to the same extent as a judgment duly rendered by any district court and
314 docketed in the office of the clerk.

315 (d) After docketing, the sheriff shall:

316 (i) proceed in the same manner as is prescribed by law with respect to execution issued
317 against property upon judgments of a court of record; and

318 (ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be
319 collected in the same manner.

320 (6) (a) Contributions imposed by this chapter are a lien upon the property of any employer
321 liable for the contribution required to be collected under this section who shall sell out the
322 employer's business or stock of goods or shall quit business, if the employer fails to make a final
323 report and payment on the date subsequent to the date of selling or quitting business on which they
324 are due and payable as prescribed by rule.

325 (b) An employer's successor, successors, or assigns, if any, shall be required to withhold
326 sufficient of the purchase money to cover the amount of the contributions and interest or penalties
327 due and payable until such time as the former owner shall produce a receipt from the division
328 showing that they have been paid or a certificate stating that no amount is due. If the purchaser
329 of a business or stock of goods fails to withhold sufficient purchase money, the purchaser shall be
330 personally liable for the payment of the amount of the contributions required to be paid by the
331 former owner, interest and penalties accrued and unpaid by the former owner, owners, or assignors.

332 (7) (a) If any employer is delinquent in the payment of any contribution, the division may
333 give notice of the amount of the delinquency by registered mail to all persons having in their
334 possession or under their control, any credits or other personal property belonging to the employer,
335 or owing any debts to the employer at the time of the receipt by them of the notice.

336 (b) Any persons notified under Subsection (7)(a) shall neither transfer nor make any other
337 disposition of the credits, other personal property, or debts until:

- 338 (i) the division has consented to a transfer or disposition; or
- 339 (ii) 20 days after the receipt of the notice.

340 (c) All persons notified under Subsection (7)(a) shall within five days after receipt of the
341 notice, advise the division of credits, other personal property, or other debts in their possession,
342 under their control or owing by them, as the case may be.

343 (8) (a) Each employer shall furnish the division necessary information for the proper
344 administration of this chapter and shall include wage information for each employee, for each
345 calendar quarter beginning October 1, 1984. The information shall be furnished at a time, in the
346 form, and to those individuals as the department may by rule require.

347 (b) Each employer shall furnish each individual worker who is separated that information
348 as the department may by rule require, and shall furnish within 48 hours of the receipt of a request
349 from the division a report of the earnings of any individual during the individual's base-period.
350 The report shall be on a form prescribed by the division and contain all information prescribed by
351 the division.

352 (c) For each failure by an employer to conform to this Subsection (8) the division shall,
353 unless good cause is shown to the satisfaction of the division for the failure, assess a \$50 penalty
354 to be collected in the same manner as contributions due under this chapter.

355 (9) If any person liable to pay any contribution or benefit overpayment imposed by this
356 chapter neglects or refuses to pay the same after demand, the amount, including any interest,
357 additional amount, addition to contributions, or assessable penalty, together with any additional
358 accruable costs, shall be a lien in favor of the division upon all property and rights to property,
359 whether real or personal belonging to the person.

360 (10) (a) The lien imposed by Subsection (9) arises at the time the assessment, as defined
361 in the department rules, is made and continues until the liability for the amount so assessed, or a
362 judgment against the taxpayer arising out of the liability, is satisfied.

363 (b) The lien imposed by Subsection (9) is not valid as against any purchaser, holder of a
364 security interest, mechanics lien holder, or judgment lien creditor until a warrant which meets the
365 requirements of Subsection (5) has been filed with the clerk of the district court. For the purposes
366 of Subsection (10)(b):

367 (i) "Judgment lien creditor" means a person who obtains a valid judgment of a court of
368 record for recovery of specific property or a sum certain of money, and who in the case of a
369 recovery of money, has a perfected lien under the judgment on the property involved. A judgment
370 lien does not include inchoate liens such as attachment or garnishment liens until they ripen into
371 a judgment. A judgment lien does not include the determination or assessment of a quasi-judicial
372 authority, such as a state or federal taxing authority.

373 (ii) "Mechanics lien holder" means any person who has a lien on real property, or on the
374 proceeds of a contract relating to real property, for services, labor, or materials furnished in
375 connection with the construction or improvement of the property. A person has a lien on the
376 earliest date the lien becomes valid against subsequent purchasers without actual notice, but not
377 before the person begins to furnish the services, labor, or materials.

378 (iii) "Person" means:

379 (A) an individual;

380 (B) a trust;

381 (C) an estate;

382 (D) a partnership;

383 (E) an association;

384 (F) a company;

385 (G) a limited liability company;

386 (H) a limited liability partnership; or

387 (I) a corporation.

388 (iv) "Purchaser" means a person who, for adequate and full consideration in money or
389 money's worth, acquires an interest, other than a lien or security interest, in property which is valid
390 under state law against subsequent purchasers without actual notice.

391 (v) "Security interest" means any interest in property acquired by contract for the purpose
392 of securing payment or performance of an obligation or indemnifying against loss or liability. A
393 security interest exists at any time:

394 (A) the property is in existence and the interest has become protected under the law against
395 a subsequent judgment lien arising out of an unsecured obligation; and

396 (B) to the extent that, at that time, the holder has parted with money or money's worth.

397 Section 5. **Coordination clause.**

398 If this bill and S.B. 113, Financial Services Amendments, both pass, it is the intent of the
399 Legislature that the amendments to Sections 7-15-1 and 7-15-2 in this bill supersede the
400 amendments to these sections in S.B. 113 including the amendments referred to in the coordination
401 clause.