

1 **DISHONORED CHECKS - MOTOR VEHICLE**

2 **REPAIR FACILITIES**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: D. Chris Buttars**

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the provisions related to dishonored checks related to motor vehicle
10 repair facilities.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ authorizes a motor vehicle repair facility to take possession of a motor vehicle under
- 14 certain circumstances;
- 15 ▶ provides for notice;
- 16 ▶ imposes conditions on the treatment of the motor vehicle after possession is taken;
- 17 ▶ addresses lien provisions;
- 18 ▶ provides for disposal of the motor vehicle;
- 19 ▶ addresses the distribution of proceeds if a motor vehicle is sold; and
- 20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **7-15-2**, as last amended by Chapters 100 and 171, Laws of Utah 1999



28 ENACTS:

29 7-15-4, Utah Code Annotated 1953



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

32 Section 1. Section 7-15-2 is amended to read:

33 **7-15-2. Notice -- Form.**

34 (1) (a) "Notice" means notice given to the issuer of a check either orally or in writing.

35 (b) Written notice may be given by United States mail that is:

36 (i) first class; and

37 (ii) postage prepaid.

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

40 (i) properly deposited in the United States mail;

41 (ii) postage prepaid;

42 (iii) certified or registered mail;

43 (iv) return receipt requested; and

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

45 (A) address as it appears on the check; or

46 (B) last-known address.

47 (2) Written notice under Subsection 7-15-1(5) shall take substantially the following
48 form:

49 Date: _____

50 To: _____

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

53 Check date: _____

54 Check number: _____

55 Originating institution: _____

56 Amount: _____

57 Reason for dishonor (marked on check): _____

58 In accordance with Section 7-15-1, Utah Code Annotated, you are liable for this check

59 together with a service charge of \$20, which must be paid to the undersigned.

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

- 63 (1) the check amount;
- 64 (2) the \$20 service charge; and
- 65 (3) collection costs not to exceed \$20.

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

- 70 (1) the check amount;
- 71 (2) interest;
- 72 (3) court costs;
- 73 (4) attorneys' fees;
- 74 (5) actual costs of collection as provided by law; and
- 75 (6) damages in an amount equal to the greater of \$100 or triple the check amount,
76 except that damages recovered under this Subsection (6) may not exceed the check amount by
77 more than \$500.

78 If the check was paid to a motor vehicle repair facility for repair of a motor vehicle and
79 the check amount equals or exceeds \$250, the motor vehicle repair facility may take possession
80 of your motor vehicle and dispose of it to pay amounts owed under the civil legal action.

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

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

88 (Signed) _____

89 Name of Holder: _____

90 Address of Holder: _____

91 Telephone Number: _____

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

94 Section 2. Section **7-15-4** is enacted to read:

95 **7-15-4. Dishonored check as payment for repair of a motor vehicle.**

96 (1) As used in this section:

97 (a) "Motor vehicle" means a self-propelled vehicle intended primarily for use and
98 operation on the highways.

99 (b) "Motor vehicle repair facility" means any motor vehicle dealer, garage, body shop,
100 or other commercial entity that repairs or replaces parts of a motor vehicle by substituting or
101 correcting the exterior or inoperative parts of the motor vehicle.

102 (2) A holder of a check that has been dishonored may take possession of a motor
103 vehicle to recover the amounts owed under Subsection 7-15-1(7) if:

104 (a) the check amount equals or exceeds \$250;

105 (b) the holder is a motor vehicle repair facility;

106 (c) the motor vehicle repair facility has a valid business licence issued by the
107 applicable county or municipality;

108 (d) the check that is dishonored is paid to the motor vehicle repair facility for repair of
109 the motor vehicle;

110 (e) the holder prevails in a civil action brought under Subsection 7-15-1(7);

111 (f) the holder provides the issuer written notice of the intent to take possession of the
112 motor vehicle at least 15 days before the day on which the holder takes possession of the motor
113 vehicle; and

114 (g) the issuer has not paid the amount owed under Subsection 7-15-1(7) before the day
115 on which the holder takes possession of the motor vehicle.

116 (3) (a) Subject to the other requirements of this section, a motor vehicle repair facility
117 may take possession of a motor vehicle under Subsection (2):

118 (i) pursuant to judicial process; or

119 (ii) without judicial process, if the motor vehicle repair facility proceeds without
120 breach of the peace.

121 (b) If a motor vehicle repair facility causes a motor vehicle to be moved by a tow truck
122 motor carrier, the tow truck motor carrier shall meet the standards outlined in Subsection
123 41-6-102.5(2) except that the tow truck motor carrier:

124 (i) is not required to send the notice required by Subsection 72-9-603(1)(b); and

125 (ii) may not request a transfer of title to an abandoned vehicle under Subsection
126 72-9-603(5).

127 (c) (i) Except as provided in Subsection (3)(c)(ii), a person may not operate or allow to
128 be operated a motor vehicle that the motor vehicle repair facility takes possession of under this
129 section without prior written permission of the registered owner of the motor vehicle.

130 (ii) A person may engage in the incidental and necessary operation of a motor vehicle
131 to move the motor vehicle from one parking space to another within the facility at which the
132 motor vehicle is stored if it is necessary for the normal management of the facility.

133 (iii) The motor vehicle repair facility shall record the milage shown on the motor
134 vehicle's odometer at the time the motor vehicle repair facility takes possession of the motor
135 vehicle under this section:

136 (A) if the motor vehicle is equipped with an odometer; and

137 (B) the odometer reading is accessible to the motor vehicle repair facility.

138 (d) If the motor vehicle repair facility stores a motor vehicle that the motor vehicle
139 repair facility took possession of under this section in a location other than the location of the
140 motor vehicle repair facility, the location shall comply with the standards for an impound yard
141 determined in accordance with Section 41-1a-1101.

142 (4) If a motor vehicle repair facility takes possession of a motor vehicle, the motor
143 vehicle repair facility:

144 (a) has a possessory lien under Section 38-2-3 against the motor vehicle for:

145 (i) the amount owed under Subsection 7-15-1(7);

146 (ii) any towing fees; and

147 (iii) any storage fees;

148 (b) may apply to the Division of Motor Vehicle for a transfer of title to the motor
149 vehicle 30 days from the day on which the motor vehicle repair facility sends notice of the sale
150 of the motor vehicle under Section 38-2-4; and

151 (c) after obtaining title under Subsection (4)(b), may dispose of the motor vehicle as

152 provided in Section 38-2-4.

153 (5) A motor vehicle shall be released to the registered owner, lien holder, or the
154 owner's agent, if the registered owner, lien holder, or the owner's agent:

155 (a) makes a claim for release of the motor vehicle;

156 (b) presents identification sufficient to prove ownership of the motor vehicle; and

157 (c) pays the amount owed under Subsection (4)(a).

158 (6) If a motor vehicle is disposed of under Subsection (4)(c), the proceeds from the sale
159 shall be distributed in the following order:

160 (a) amounts owed a tow truck motor carrier or impound yard shall be paid;

161 (b) amounts owed to any lien holder of the motor vehicle other than the motor vehicle
162 repair facility shall be paid in the order that the lien holders have priority;

163 (c) the amounts owed a motor vehicle repair facility under this section shall be paid to
164 the motor vehicle repair facility; and

165 (d) the amount remaining after the amounts described in Subsections (6)(a) through (c)
166 are paid shall be paid to the registered owner of the motor vehicle prior to the title being
167 transferred to the motor vehicle repair facility under Subsection (4)(b).

Legislative Review Note
as of 1-14-04 9:32 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0106

Dishonored Checks - Motor Vehicle Repair Facilities

22-Jan-04

11:11 AM

State Impact

No fiscal impact.

Individual and Business Impact

Individual and business impacts will vary according to individual circumstances.

Office of the Legislative Fiscal Analyst