{deleted text} shows text that was in SB0170 but was deleted in SB0170S01.

inserted text shows text that was not in SB0170 but was inserted into SB0170S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Peter C. Knudson proposes the following substitute bill:

EDUCATION LOAN AMENDMENTS

2014 GENERAL SESSION STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor:

LONG TITLE

General Description:

This bill modifies the Utah Consumer Credit Code to address education loans.

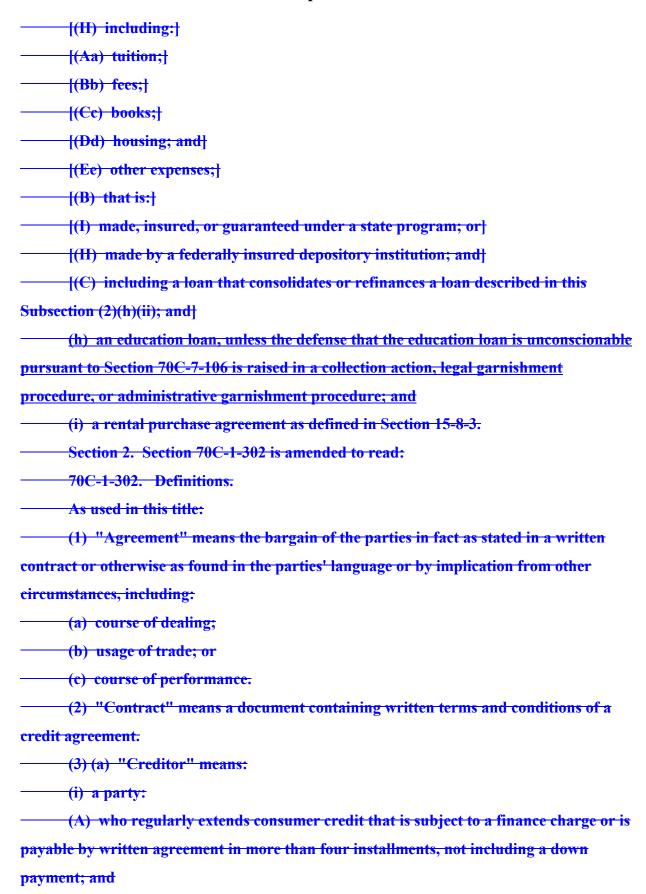
Highlighted Provisions:

This bill:

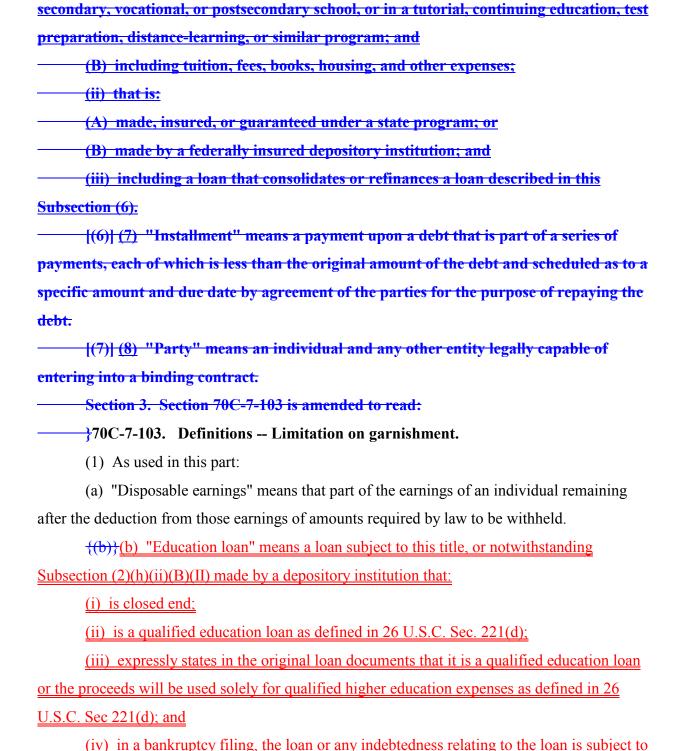
- modifies definition provisions;
- modifies exempt transactions;
- addresses limitation on garnishments;
 - amends provisions related to unconscionability;
 - addresses application to ongoing garnishments;
 - provides for severability;
 - → modifies statute of limitations provisions; and
 - makes technical and conforming amendments.

Money Appropriated in this Bill: None **Other Special Clauses:** This bill provides an immediate effective date. This bill provides revisor instructions. **+**Utah Code Sections Affected: AMENDS: 70C-1-202, as last amended by Laws of Utah 2006, Chapter 161 70C-1-302, as last amended by Laws of Utah 2009, Chapter 72 **70C-7-103**, as enacted by Laws of Utah 1985, Chapter 159 } 70C-7-106, as enacted by Laws of Utah 1985, Chapter 159 70C-7-205, as enacted by Laws of Utah 1985, Chapter 159 **ENACTS:** 70C-7-108, Utah Code Annotated 1953 **Utah Code Sections Affected by Revisor Instructions: 70C-7-108**. Utah Code Annotated 1953 *Be it enacted by the Legislature of the state of Utah:* Section 1. Section {70C-1-202}70C-7-103 is amended to read: **{70C-1-202. Exempted transactions.** (1) Notwithstanding the exceptions in Subsection (2), parties to a credit transaction that is otherwise exempt from this title may explicitly agree in writing that the transaction is subject to this title. The agreement shall specifically reference Title 70C, Utah Consumer Credit Code. (2) This title does not apply to any of the following: (a) [any] an extension of credit: (i) primarily for business, commercial, or agricultural purposes; or (ii) to other than a natural person including a government [agencies or instrumentalities | agency or instrumentality; (b) [any] a closed-end extension of credit secured by a first lien or equivalent security interest on a dwelling or building lot;

(c) [any] a transaction in securities or commodities accounts in which credit is
extended by a broker-dealer registered with the:
(i) Securities and Exchange Commission; or
(ii) Commodity Futures Trading Commission;
(d) [any] except in the case of an education loan that is alleged to be
unconscionable pursuant to Section 70C-7-106, an extension of credit:
(i) not secured by:
(A) real property; or
(B) personal property used or expected to be used as the principal dwelling of the
consumer; and
(ii) (A) in which the amount financed exceeds \$25,000; or
(B) in which there is an express written commitment to extend credit in excess of
\$25,000;
(e) [any] a transaction under public utility or common carrier tariffs if a
subdivision of this state or the United States regulates:
(i) the charges for the services involved;
(ii) the charges for delayed payment; and
(iii) [any] a discount allowed for early payment;
(f) [any] the sale of insurance by an insurer except as otherwise provided in
Chapter 6, Insurance;
(g) [any] a transaction with a party acting as a pawnbroker and licensed by any
governmental authority in this state;
[(h) (i) a loan made, insured, or guaranteed pursuant to a program authorized by
Title IV of the Higher Education Act of 1965, 20 U.S.C. Sections 1070, et seq.; or]
[(ii) a loan:]
[(A) that finances tuition and other expenses:]
[(I) charged in connection with enrollment:]
[(Aa) at a public or proprietary preprimary, secondary, vocational, or
postsecondary school; or]
[(Bb) in any tutorial, continuing education, test preparation, distance-learning, or
similar program; and



(B) to whom the obligation is initially payable, either on the face of the note or
contract, or by agreement when there is no note or contract;
(ii) an issuer of a credit card that extends either open-end credit or credit that:
(A) is not subject to a finance charge; and
(B) is not payable by written agreement in more than four installments; and
(iii) an issuer of a credit card that extends closed-end credit that:
(A) is subject to a finance charge; or
(B) is payable by written agreement in more than four installments.
(b) (i) For purposes of this Subsection (3), a party is considered to extend
consumer credit regularly only if the party extends credit in the preceding calendar year
(A) more than 25 times; or
(B) more than five times for a transaction secured by a dwelling.
(ii) If a person does not meet the numerical standards described in Subsection
(3)(b)(i) in the preceding calendar year, the numerical standards shall be applied to the
current calendar year.
(4) "Dwelling" means a residential structure attached to real property that
contains one to four units including any of the following if used as a residence:
——————————————————————————————————————
(b) a cooperative unit;
(c) a manufactured home; or
——————————————————————————————————————
(5) "Earnings" means compensation paid or payable to an individual or for the
individual's account for personal services rendered or to be rendered by the individual
whether denominated as wages, salary, commission, bonus, or otherwise, and includes
periodic payments pursuant to a pension, retirement, or disability program.
(6) "Education loan" means:
(a) a loan made, insured, or guaranteed pursuant to a program authorized by
Title IV of the Higher Education Act of 1965, 20 U.S.C. Sec. 1070, et seq.; or
(b) a loan:
(i) that finances tuition and other expenses:
(A) charged in connection with enrollment at a public or proprietary preprimar



- the provisions of 11 U.S.C. Sec. 523(a)(8).

 [(b)] (c) "Garnishment" means [any] a legal or equitable procedure through which the
- earnings of an individual are required to be withheld for payment of a debt.
 - (2) The maximum part of the aggregate disposable earnings of an individual for any

pay period [which] that is subjected to garnishment to enforce payment of a judgment arising from a consumer credit agreement may not exceed the lesser of:

- (a) 25% of [his] the individual's disposable earnings for that pay period; [or]
- (b) 10% of the individual's disposable earnings for that pay period on an education loan described in Subsection 70C-1-302(6)(b);
- (c) 0% of the individual's disposable earnings for that pay period on an education loan described in Subsection 70C-1-302(6)(b) found by a court to be unconscionable pursuant to Section 70C-7-106;
- (d) the percentage of the individual's disposable earnings for that pay period allowed by federal law for an education loan described in Subsection 70C-1-302(6)(a); or
- the amount by which [his] the individual's disposable earnings for that pay period exceed 30 hours per week multiplied by the federal minimum hourly wage prescribed by Section 6 (a) (1) of the Fair Labor Standards Act of 1938, 29 U.S.C.[, Section] Sec. 206(a)(1), in effect at the time the earnings are payable[...

<u>}]; or</u>

- (c) 15% of the individual's disposable earnings for that pay period if the judgment relates to an education loan.
- (3) [No] \underline{A} court may <u>not</u> make, execute, or enforce an order or process in violation of this section.

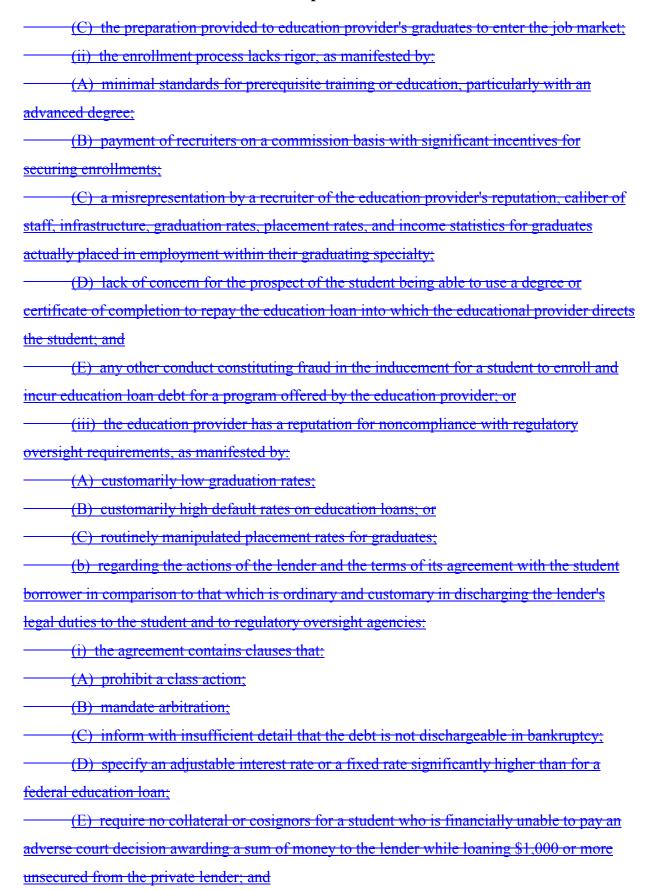
Section {4. Section 70C-7-106 is amended to read:}

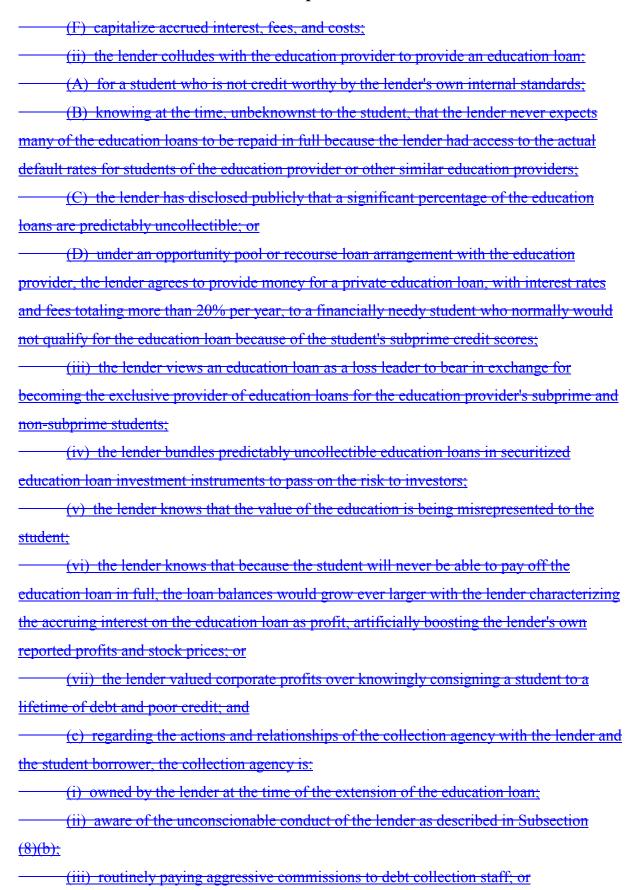
70C-7-106. Unconscionability.

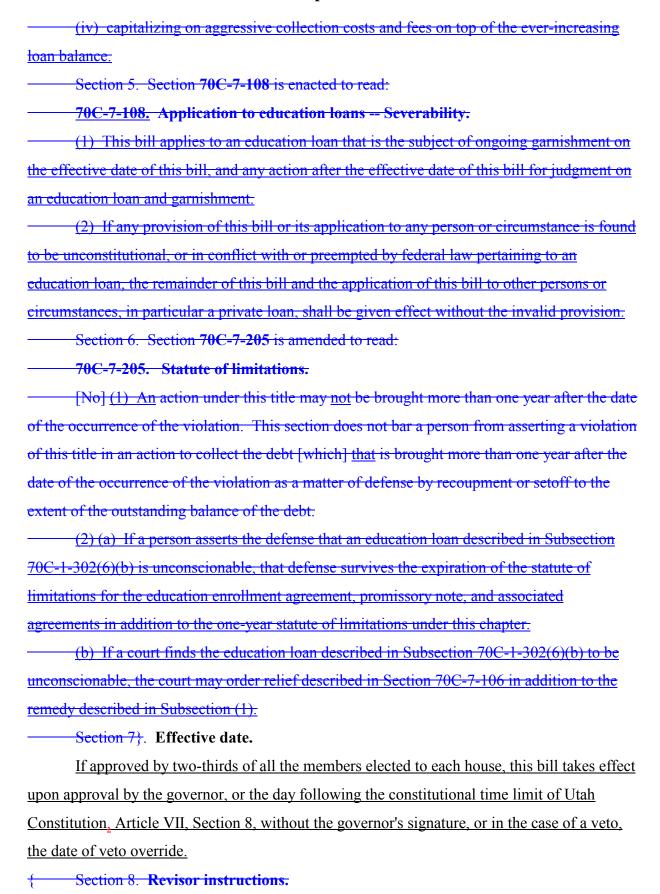
- (1) (a) With respect to a consumer credit agreement, if the court finds the consumer credit agreement or any part of the consumer credit agreement to have been unconscionable at the time it was made, the court may refuse to enforce the consumer credit agreement, or it may enforce the remainder of the consumer credit agreement without the unconscionable clause if that will avoid any unconscionable result.
- (b) A court may take an action described in Subsection (1)(a), if the court finds an unconscionable action of an education provider, a lender, or a debt collector in relation to the inducement to enroll with the education provider or pay for the educational services with an education loan.
 - (\{2\{\}\}) If it is claimed or appears to a court that a consumer credit agreement or any part

of it may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination. (3) For the purposes of this section, a charge or practice expressly permitted by this title is not in itself unconscionable. (4) If the court as a matter of law finds a consumer credit agreement or any part of the consumer credit agreement to have been unconscionable, then in addition to the relief provided for in Subsection (1), the party in violation of this section is liable and the debtor may recover from it a penalty in an amount determined by the court of: (a) not less than \$100 nor more than \$5,000; and (b) the cost of the action together with [a] reasonable [attorney's fee] attorney fees. (5) The penalties provided for in Subsection (4) may not be imposed upon an assignee of the creditor's rights in a consumer credit contract found as a matter of law to be unconscionable in whole or in part unless the debtor establishes by a preponderance of the evidence that the assignee knew the agreement was a consumer credit contract at the time the assignment occurred and also knew of the facts or circumstances on which the court based its finding of unconscionability. (6) [No] A class action may not be brought under this section except for injunctive or declaratory relief. (7) Nothing contained in Subsection (6) prevents the recovery of penalties by a debtor as provided in Subsection (4). (8) The court may rely, among other indicators, on the following indicators that may singly, if particularly egregious, or cumulatively, support a finding that an education loan is unconscionable: (a) regarding the actions of the education provider in comparison to that which is ordinary and customary in discharging an education provider's legal duties to the student and to certification oversight agencies: (i) the tuition and fees are exorbitant considering: (A) the reputation of the education provider based on such things as infrastructure, caliber of staff, or peer review; (B) the value accorded by employers to the education provider's degrees or certificates

of completion; and







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The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication:

(1) replace the language in Section 70C-7-108, from "this bill" with the bill's designated chapter number in the Laws of Utah; and

(2) replace the language in Section 70C-7-108, from "the effective date of this bill" with the bill's effective date.

Legislative Review Note

as of 1-29-14 1:14 PM

Office of Legislative Research and General Counsel}