

DISHONORED INSTRUMENTS AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies provisions related to dishonored instruments.

Highlighted Provisions:

This bill:

- ▶ clarifies the action that initiates a civil action against an issuer of a dishonored check.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

7-15-1, as last amended by Laws of Utah 2008, Chapter 96

7-15-2, as last amended by Laws of Utah 2010, Chapter 324

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 -- Exemptions.

(1) As used in this chapter:

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

(i) check;

- 30 (ii) draft;
- 31 (iii) order; or
- 32 (iv) other instrument.
- 33 (b) "Issuer" means a person who makes, draws, signs, or issues a check, whether as
- 34 corporate agent or otherwise, for the purpose of:
 - 35 (i) obtaining from any person any money, merchandise, property, or other thing of
 - 36 value; or
 - 37 (ii) paying for any service, wages, salary, or rent.
- 38 (c) "Mailed" means the day that a notice is properly deposited in the United States
- 39 mail.
- 40 (2) (a) An issuer of a check is liable to the holder of the check if:
 - 41 (i) the check:
 - 42 (A) is not honored upon presentment; and
 - 43 (B) is marked "refer to maker";
 - 44 (ii) the account upon which the check is made or drawn:
 - 45 (A) does not exist;
 - 46 (B) has been closed; or
 - 47 (C) does not have sufficient funds or sufficient credit for payment in full of the check;
- 48 or
- 49 (iii) (A) the check is issued in partial or complete fulfillment of a valid and legally
- 50 binding obligation; and
 - 51 (B) the issuer stops payment on the check with the intent to:
 - 52 (I) fraudulently defeat a possessory lien; or
 - 53 (II) otherwise defraud the holder of the check.
- 54 (b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:
 - 55 (i) the check amount; and
 - 56 (ii) a service charge of \$20.
- 57 (3) (a) The holder of a check that has been dishonored may:

58 (i) give written or oral notice of dishonor to the issuer of the check; and
59 (ii) waive all or part of the service charge imposed under Subsection (2)(b).

60 (b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored
61 may not collect and the issuer is not liable for the service charge imposed under Subsection
62 (2)(b) if:

63 (i) the holder redeposits the check; and
64 (ii) that check is honored.

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

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

70 (5) (a) A holder shall provide written notice to an issuer before:

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

73 (ii) [~~file~~] commencing an action based upon this section.

74 (b) The written notice required under Subsection (5)(a) shall notify the issuer of the
75 dishonored check that:

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

78 (A) the amount owed under Subsection (2)(b); and
79 (B) collection costs under Subsection (4); and

80 (ii) the holder may [~~file~~] commence a civil action if the issuer does not pay to the
81 holder the amount owed under Subsection (4) within 30 calendar days from the day on which
82 the notice is mailed.

83 (6) (a) Except as provided in Section 7-23-401, if the issuer has not paid the holder the
84 amounts owed under Subsection (4) within 30 calendar days from the day on which the notice
85 required by Subsection (5) is mailed, the holder may offer to not [~~file~~] commence a civil action

86 under this section if the issuer pays the holder:

87 (i) the amount owed under Subsection (2)(b);

88 (ii) the collection costs under Subsection (4);

89 (iii) an amount that:

90 (A) is equal to the greater of:

91 (I) \$50; or

92 (II) triple the check amount; and

93 (B) does not exceed the check amount plus \$250; and

94 (iv) if the holder retains an attorney to recover on the dishonored check, reasonable
95 attorney's fees not to exceed \$50.

96 (b) (i) Notwithstanding Subsection (6)(a), all amounts charged or collected under
97 Subsection (6)(a)(iii) shall be paid to and be the property of the original payee of the check.

98 (ii) A person who is not the original payee may not retain any amounts charged or
99 collected under Subsection (6)(a)(iii).

100 (iii) The original payee of a check may not contract for a person to retain any amounts
101 charged or collected under Subsection (6)(a)(iii).

102 (7) (a) A [~~civil action may not be filed~~] holder may not commence a civil action under
103 this section unless the issuer fails to pay the amounts owed:

104 (i) under Subsection (4); and

105 (ii) within 30 calendar days from the day on which the notice required by Subsection
106 (5) is mailed.

107 (b) Subject to Subsections (7)(c) and (d) and except as provided in Section [7-23-401](#),
108 in a civil action the issuer of the check is liable to the holder for:

109 (i) the amount owed under Subsection (2)(b);

110 (ii) the collection costs under Subsection (4);

111 (iii) interest;

112 (iv) court costs;

113 (v) reasonable attorney fees; and

114 (vi) damages:
115 (A) equal to the greater of:
116 (I) \$100; or
117 (II) triple the check amount; and
118 (B) not to exceed the check amount plus \$500.
119 (c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection
120 (7)(b), a court may waive any amount owed under Subsections (7)(b)(iii) through (vi) upon a
121 finding of good cause.
122 (d) If a holder of a check violates this section by [~~filing~~] commencing a civil action
123 under this section before 31 calendar days from the day on which the notice required by
124 Subsection (5) is mailed, an issuer may not be held liable for an amount in excess of the check
125 amount.
126 (e) (i) Notwithstanding Subsection (7)(b), all amounts charged or collected under
127 Subsection (7)(b)(vi) shall be paid to and be the property of the original payee of the check.
128 (ii) A person who is not the original payee may not retain any amounts charged or
129 collected under Subsection (7)(b)(vi).
130 (iii) The original payee of a check may not contract for a person to retain any amounts
131 charged or collected under Subsection (7)(b)(vi).
132 (8) This section may not be construed to prohibit the holder of the check from seeking
133 relief under any other applicable statute or cause of action.
134 (9) (a) Notwithstanding the other provisions of this section, a holder of a check is
135 exempt from this section if the holder is:
136 (i) a depository institution; or
137 (ii) a person that receives a payment on behalf of a depository institution.
138 (b) A holder exempt under Subsection (9)(a) may contract with an issuer for the
139 collection of fees or charges for the dishonor of a check.
140 Section 2. Section **7-15-2** is amended to read:
141 **7-15-2. Notice -- Form.**

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

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

144 (i) first class; and

145 (ii) postage prepaid.

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

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

149 (ii) postage prepaid;

150 (iii) certified or registered mail;

151 (iv) return receipt requested; and

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

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

154 (B) last-known address.

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

157 "Date: ____

158 To: ____

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

161 Check date: ____

162 Check number: ____

163 Originating institution: ____

164 Amount: ____

165 Reason for dishonor (marked on check): ____

166 In accordance with Section 7-15-1, Utah Code Annotated, you are liable for this check
167 together with a service charge of \$20, which must be paid to the undersigned.

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

170 from the day on which this notice is mailed:

- 171 (1) the check amount;
- 172 (2) the \$20 service charge; and
- 173 (3) collection costs not to exceed \$20.

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

- 178 (1) the check amount;
- 179 (2) interest;
- 180 (3) court costs;
- 181 (4) attorneys' fees;
- 182 (5) actual costs of collection as provided by law; and
- 183 (6) damages in an amount equal to the greater of \$100 or triple the check amount,

184 except:

- 185 (a) that damages recovered under this Subsection (6) may not exceed the check amount
- 186 by more than \$500; and
- 187 (b) you are not liable for these damages for a check used to obtain a deferred deposit
- 188 loan.

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

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

196 (Signed) _____
 197 Name of Holder: _____

198 Address of Holder: _____

199 Telephone Number: _____"

200 (3) Notwithstanding the other provisions of this section, a holder exempt under

201 Subsection 7-15-1(9) is exempt from this section.