

**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; AND MAKING TECHNICAL CORRECTIONS.

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

**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 otherwise, for the purpose of:

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

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

h (c) "MAILED" MEANS THE DAY THAT A NOTICE IS PROPERLY DEPOSITED IN THE UNITED STATES MAIL. h

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

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

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

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

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

35           ~~[(i)]~~ (A) does not exist;

36           ~~[(ii)]~~ (B) has been closed; or

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

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

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

42           (I) fraudulently defeat a possessory lien; or

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

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

45           (i) the check amount; and

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

47           ~~[(2)]~~ (3) (a) The holder of ~~[the]~~ a check~~[- draft, order, or other instrument]~~ that has been  
48 dishonored may:

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

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

53           (b) Notwithstanding Subsection (2)~~[(a)]~~(b), a holder of a check~~[- draft, order, or other~~  
54 ~~instrument]~~ that has been dishonored may not ~~[charge]~~ collect and the issuer is not liable for the  
55 service charge ~~[permitted]~~ imposed under Subsection (2)~~[(a)]~~(b) if:

56           (i) the holder redeposits the check~~[- draft, order, or other instrument]~~; and

57           (ii) that check~~[- draft, order, or other instrument]~~ is honored.

58           (4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15 calendar

59 days from the day on which the notice required under Subsection (5) is mailed, the issuer is liable  
 60 for:

61 (a) the amount owed under Subsection (2)(b); and

62 (b) collection costs not to exceed \$20.

63 ~~[(3)]~~ (5) (a) [Prior to] A holder shall provide written notice to an issuer before:

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

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

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

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

73 (A) the amount owed under Subsection (2)(b); and

74 (B) collection costs under Subsection (4); and

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

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

82 (a) an amount that:

83 (i) is equal to the greater of:

84 (A) ~~h~~ ~~[\$100] \$50 h~~ ; or

85 (B) triple the check amount; and

86 (ii) does not exceed the check amount plus ~~h~~ ~~[\$500] \$250 h~~ ; and

87 (b) if the holder retains an attorney to recover on the dishonored check, reasonable  
 88 attorney's fees not to exceed the amounts set forth in Utah Code of Judicial Administration, Rule  
 89 4-505.01.

90 ~~[(4)]~~ (7) (a) A civil action may not be filed under this section unless the issuer fails to pay  
 91 the amounts owed under Subsection (4) within 30 calendar days from the day on which the notice  
 92 required by Subsection (5) is mailed.

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

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

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

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

98 and

99 (iv) damages:

100 (A) equal to the greater of:

101 (I) \$100; or

102 (II) triple the check amount; and

103 (B) not to exceed the check amount plus  $\hat{h}$  [-\$750] \$500  $\hat{h}$  .

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

106a  $\hat{h}$  (c) IF AN ISSUER IS HELD LIABLE UNDER SUBSECTION (7)(b), NOTWITHSTANDING  
 106b SUBSECTION (7)(b), A COURT MAY WAIVE ALL OR PART OF THE AMOUNTS OWED UNDER  
 106c SUBSECTIONS (7)(b)(ii) THROUGH (iv) UPON A FINDING OF GOOD CAUSE.  $\hat{h}$

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

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

110 **7-15-2. Notice -- Form.**

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

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

114 (i) first class; and

115 (ii) postage prepaid.

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

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

119 (ii) postage prepaid[-, by];

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

- 121 (iv) return receipt requested[;]; and
- 122 (v) addressed to the signer at the signer's;
- 123 (A) address as it appears on the check[~~-, draft, order, or other instrument~~]; or [at the
- 124 signer's]
- 125 (B) last-known address.

126 (2) Written notice [as applied in] under Subsection 7-15-1[(3)] (5) shall take substantially

127 the following form:

128 Date: \_\_\_\_\_

129 To: \_\_\_\_\_

130 You are hereby notified that the check(s) described below issued by you has (have) been

131 returned to us unpaid:

132 [~~Instrument~~] Check date: \_\_\_\_\_

133 [~~Instrument~~] Check number: \_\_\_\_\_

134 Originating institution: \_\_\_\_\_

135 Amount: \_\_\_\_\_

136 Reason for dishonor (marked on [~~instrument~~] check): \_\_\_\_\_

137 [~~This instrument,~~] In accordance with Section 7-15-1, Utah Code Annotated, you are liable

138 for this check together with a service charge of \$20, which must be paid to the undersigned [~~within~~

139 ~~seven days from the date of this notice~~].

140 If you do not pay the check amount and the \$20 service charge within 15 calendar days

141 from the day on which this notice was mailed, you are required to pay within 30 calendar days

142 from the day on which this notice is mailed:

- 143 (1) the check amount;
- 144 (2) the \$20 service charge; and
- 145 (3) collection costs not to exceed \$20.

146 If you do not pay the check amount, the \$20 service charge, and the collection costs within

147 30 calendar days from the day on which this notice is mailed, in accordance with Section 7-15-1,

148 Utah Code Annotated, [~~or~~] an appropriate civil legal action may be filed against you for:

- 149 (1) the check amount [~~due and owing together with~~];
- 150 (2) interest[;];
- 151 (3) court costs[;];

- 152           (4) attorneys' fees~~[, and]~~;
- 153           (5) actual costs of collection as provided by law; and
- 154           (6) damages in an amount equal to the greater of \$100 or triple the check amount, except
- 155 that damages recovered under this Subsection (6) may not exceed the check amount by more than
- 156 h [\$750] \$500 h .

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

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

164           (Signed) \_\_\_\_\_  
 165           Name of Holder: \_\_\_\_\_  
 166           Address of Holder: \_\_\_\_\_  
 167           Telephone Number: \_\_\_\_\_

168           Section 3. Section **35A-4-305** is amended to read:

169           **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.**

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

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

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

182           (c) (i) If contributions are unpaid after ten days from the date of the mailing or personal

183 delivery by the division or its authorized representative, of a written demand for payment, there  
184 shall attach to the contribution, to be assessed and collected in the same manner as contributions  
185 due under this section, a penalty equal to 5% of the contribution due.

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

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

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

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

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

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

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

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

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

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

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

211 (c) The determination is considered correct unless:

212 (i) the employer, within ten days after mailing or personal delivery of notice of the  
213 determination, applies to the division for a review of the determination as provided in Section

214 35A-4-508; or

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

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

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

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

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

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

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

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

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

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

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

244 (iv) A civil action may not be maintained by any private collector without specific prior



245 written approval of the division. When division approval is given for civil action against an  
246 employer or claimant, the division may cooperate with the private collector to the extent necessary  
247 to effect the civil action.

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

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

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

257 (4) (a) In the event of any distribution of an employer's assets under an order of any court  
258 under the laws of Utah, including any receivership, assignment for benefits of creditors,  
259 adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due  
260 shall be paid in full prior to all other claims except taxes and claims for wages of not more than  
261 \$400 to each claimant, earned within five months of the commencement of the proceeding.

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

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

275 (b) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the duplicate

276 with the clerk of the district court in the sheriff's county. The clerk shall enter in the judgment  
277 docket, in the column for judgment debtors, the name of the delinquent employer or claimant  
278 mentioned in the warrant, and in appropriate columns the amount of the contribution, penalties,  
279 interest, or benefit overpayment and penalties, and costs, for which the warrant is issued and the  
280 date when the duplicate is filed.

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

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

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

287 (d) After docketing, the sheriff shall:

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

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

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

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

304 (7) (a) If any employer is delinquent in the payment of any contribution, the division may  
305 give notice of the amount of the delinquency by registered mail to all persons having in their  
306 possession or under their control, any credits or other personal property belonging to the employer,

307 or owing any debts to the employer at the time of the receipt by them of the notice.

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

310 (i) the division has consented to a transfer or disposition; or

311 (ii) 20 days after the receipt of the notice.

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

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

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

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

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

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

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

338 of Subsection (10)(b):

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

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

350 (iii) "Person" means:

- 351 (A) an individual;
- 352 (B) a trust;
- 353 (C) an estate;
- 354 (D) a partnership;
- 355 (E) an association;
- 356 (F) a company;
- 357 (G) a limited liability company;
- 358 (H) a limited liability partnership; or
- 359 (I) a corporation.

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

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

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

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

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**Legislative Review Note**  
**as of 1-21-99 12:02 PM**

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

**Office of Legislative Research and General Counsel**