

**FINANCIAL SERVICES AMENDMENTS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Peter C. Knudson**

AN ACT RELATING TO FINANCIAL INSTITUTIONS; DEFINING TERMS; EXEMPTING DEPOSITORY INSTITUTIONS FROM PROVISIONS FOR DISHONORED CHECK, DRAFT, ORDER, OR OTHER INSTRUMENT; ADDRESSING THE CAP ON DELINQUENCY CHARGES IN CERTAIN CIRCUMSTANCES; AND MAKING TECHNICAL CHANGES.

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

**70C-2-102**, as last amended by Chapter 273, 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. Civil liability of issuer -- Notice of action -- Collection costs.**

(1) Any person who makes, draws, signs, or issues any check, draft, order, or other instrument upon any depository institution, whether as corporate agent or otherwise, for the purpose of obtaining from any person, firm, partnership, or corporation any money, merchandise, property, or other thing of value or paying for any service, wages, salary, or rent is liable to the holder of the check, draft, order, or other instrument if:

(a) the check, draft, order, or other instrument:

(i) is not honored upon presentment; and

(ii) is marked "refer to maker"; or

(b) the account upon which the check, draft, order, or other instrument has been made or

drawn:

(i) does not exist;

(ii) has been closed; or

(iii) does not have sufficient funds or sufficient credit for payment in full of the check, draft, or other instrument.

(2) (a) The holder of the check, draft, order, or other instrument that has been dishonored may:

(i) give written or verbal notice of dishonor to the person making, drawing, signing, or issuing the check, draft, order, or other instrument; and

(ii) impose a service charge that may not exceed \$20.

(b) Notwithstanding Subsection (2)(a), a holder of a check, draft, order, or other instrument that has been dishonored may not charge the service charge permitted under Subsection (2)(a) if:

(i) the holder redeposits the check, draft, order, or other instrument; and

(ii) that check, draft, order, or other instrument is honored.

(3) Prior to filing an action based upon this section, the holder of a dishonored check, draft, order, or other instrument shall give the person making, drawing, signing, or issuing the dishonored check, draft, order, or other instrument written notice of intent to file civil action, allowing the person seven days from the date on which the notice was mailed to tender payment in full, plus the service charge imposed for the dishonored check, draft, order, or other instrument.

(4) In a civil action, the person making, drawing, signing, or issuing the check, draft, order, or other instrument is liable to the holder for:

(a) the amount of the check, draft, order, or other instrument;

(b) interest; and

(c) all costs of collection, including all court costs and reasonable attorneys' fees.

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

(6) (a) Notwithstanding the other provisions of this section, a holder of a check, draft, order, or other instrument is exempt from this section if:

(i) the holder:

(A) is a depository institution; or

(B) a person that receives a payment on behalf of a depository institution;  
(ii) the check, draft, order, or other instrument is a payment on a loan that originated at the depository institution that:

(A) is the holder; or

(B) on behalf of which the holder received the payment; and

(iii) the loan contract states a specific service charge for dishonor.

(b) A holder exempt under Subsection (6)(a) may contract with an issuer for the collection of fees or charges for the dishonor of a check, draft, order, or other instrument.

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 check, draft, order, or other instrument either in person or in writing.

(b) A written notice is conclusively presumed to have been given when properly deposited in the United States mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed to the signer at the signer's address as it appears on the check, draft, order, or other instrument or at the signer's last-known address.

(2) Written notice as applied in Subsection 7-15-1(3) 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 date: \_\_\_\_\_

Instrument number: \_\_\_\_\_

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

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

Reason for dishonor (marked on instrument): \_\_\_\_\_

This instrument, together with a service charge of \$20 must be paid to the undersigned within

seven days from the date of this notice in accordance with Section 7-15-1, Utah Code Annotated, or appropriate civil legal action may be filed against you for the amount due and owing together with interest, court costs, attorneys' fees, and actual costs of collection as provided by law.

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

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

(Signed) \_\_\_\_\_

Name of Holder: \_\_\_\_\_

Address of Holder: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

(3) Notwithstanding the other provisions of this section, a holder exempt under Subsection 7-15-1(6) is exempt from this section.

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

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

If a person is liable to a holder under Section 7-15-1 or under a contract with a depository institution as provided in Subsection 7-15-1(6), and the liability is proximately caused by a financial institution's wrongful dishonor under Section 70A-4-402, any award against the financial institution under Section 70A-4-402 shall include~~[-but not be limited to;]~~ all amounts awarded against the person to the holder under:

(1) Section 7-15-1~~[-];~~ or

(2) the contract with the depository institution as provided in Subsection 7-15-1(6).

Section 4. Section **70C-2-102** is amended to read:

**70C-2-102. Delinquency charges.**

(1) (a) The parties to any consumer credit agreement may contract for a delinquency charge

on any installment not paid in full by its scheduled due date in an amount not exceeding the greater of:

(i) \$30; or

(ii) 5% of the delinquent unpaid amount of the installment.

(b) Notwithstanding Subsection (1)(a), in a contract, renewed, executed, or modified on or after May 3, 1999, a depository institution as defined in Section 7-1-103, may contract for and collect a delinquency charge on an installment not paid in full by its scheduled due date in excess of the limitation imposed under Subsection (1)(a).

(2) This section may not be interpreted to require a creditor to accept a partial payment for an installment.

~~[(2)]~~ (3) (a) A delinquency charge as authorized by this section may be collected only once on each installment ~~[, however]~~ regardless of how long it remains delinquent. ~~[No]~~

(b) A delinquency charge may not be collected if:

(i) the installment has been deferred; and

(ii) a deferral charge under Section 70C-2-103 has been paid or incurred.

(c) A delinquency charge may be collected:

(i) at the time it accrues; or [at]

(ii) any time [thereafter] after it accrues.