

1                                   **FINANCIAL SERVICES AMENDMENTS**

2                                   1999 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Sponsor: Peter C. Knudson**

5 AN ACT RELATING TO FINANCIAL INSTITUTIONS; DEFINING TERMS; EXEMPTING  
6 DEPOSITORY INSTITUTIONS FROM REGULATION OF SERVICE CHARGES FOR  
7 DISHONORED CHECKS; ELIMINATING THE CAP ON DELINQUENCY CHARGES IN  
8 CERTAIN CIRCUMSTANCES; ALLOWING FOR CERTAIN PREPAYMENT PENALTIES;  
9 AND MAKING TECHNICAL CORRECTIONS.

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 AMENDS:

12           **7-15-1**, as last amended by Chapter 245, Laws of Utah 1997

13           **7-15-2**, as last amended by Chapter 245, Laws of Utah 1997

14           **70C-1-302**, as enacted by Chapter 159, Laws of Utah 1985

15           **70C-2-102**, as last amended by Chapter 273, Laws of Utah 1998

16           **70C-3-101**, as last amended by Chapter 20, Laws of Utah 1995

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

18           Section 1. Section **7-15-1** is amended to read:

19           **7-15-1. Civil liability of issuer -- Notice of action -- Collection costs.**

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

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

26           (i) is not honored upon presentment; and

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

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

- 30 (i) does not exist;
- 31 (ii) has been closed; or
- 32 (iii) does not have sufficient funds or sufficient credit for payment in full of the check,  
33 draft, or other instrument.

34 (2) (a) [~~The~~] Except as provided in Subsection (2)(c), the holder of the check, draft, order,  
35 or other instrument that has been dishonored may:

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

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

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

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

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

43 (c) A holder of a check, draft, order, or other instrument that is dishonored is not subject  
44 to this Subsection (2) if:

45 (i) the holder:

46 (A) is a depository institution; or

47 (B) a person that receives a payment on behalf of a depository institution;

48 (ii) the check, draft, order, or other instrument is a payment on a loan that originated at the  
49 depository institution that:

50 (A) is the holder; or

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

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

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

58 (4) In a civil action, the person making, drawing, signing, or issuing the check, draft, order,

59 or other instrument is liable to the holder for:

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

61 (b) interest; and

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

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

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

67 **7-15-2. Notice -- Form.**

68 (1) (a) "Notice" means notice given to the person making, drawing, or issuing the check,  
69 draft, order, or other instrument either in person or in writing.

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

74 (2) Written notice as applied in Subsection 7-15-1(3) shall take substantially the following  
75 form:

76 Date: \_\_\_\_\_

77 To: \_\_\_\_\_

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

80 Instrument date: \_\_\_\_\_

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

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

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

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

85 This instrument, together with a service charge of \$20 must be paid to the undersigned  
86 within seven days from the date of this notice in accordance with Section 7-15-1, Utah Code  
87 Annotated, or appropriate civil legal action may be filed against you for the amount due and owing  
88 together with interest, court costs, attorneys' fees, and actual costs of collection as provided by law.

89 In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated, that any

90 person who issues or passes a check for the payment of money, for the purpose of obtaining from  
91 any person, firm, partnership, or corporation, any money, property, or other thing of value or  
92 paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and  
93 payment is refused by the drawee, is guilty of issuing a bad check.

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

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

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

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

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

100 (3) Notwithstanding Subsection (2), if a holder is exempted from Subsection 7-15-1(2)(a)  
101 under Subsection 7-15-1(2)(c), the notice shall refer to the service charge imposed under the loan  
102 contract.

103 Section 3. Section **70C-1-302** is amended to read:

104 **70C-1-302. Definitions.**

105 (1) As used in this title:

106 [~~(1)~~] (a) "Agreement" means the bargain of the parties in fact as stated in a written contract  
107 or otherwise as found in the parties' language or by implication from other circumstances,  
108 including~~[, but not limited to,]~~;

109 (i) course of dealing~~[,]~~;

110 (ii) usage of trade~~[,]~~; or

111 (iii) course of performance.

112 [~~(2)~~] (b) "Contract" means a document containing written terms and conditions of a credit  
113 agreement.

114 [~~(3)~~] (c) "Creditor" means:

115 [~~(a)~~] (i) a party [~~(i)~~];

116 (A) who regularly extends consumer credit that is subject to a finance charge or is payable  
117 by written agreement in more than four installments, not including a down payment~~[,]~~; and [~~(ii)~~]

118 (B) to whom the obligation is initially payable, either on the face of the note or contract,  
119 or by agreement when there is no note or contract~~[. For purposes of this definition, a party is~~

120 ~~deemed to extend consumer credit regularly only if it extended credit more than 25 times, or more~~

121 than five times for transactions secured by a dwelling, in the preceding calendar year. If a person  
122 did not meet these numerical standards in the preceding calendar year, the numerical standards  
123 shall be applied to the current calendar year];

124 ~~[(b)]~~ (ii) any issuer of credit cards that extends either:

125 (A) open-end credit; or

126 (B) credit that is:

127 (I) not subject to a finance charge; and [is not]

128 (II) payable by written agreement in more than four installments; and

129 ~~[(c)]~~ (iii) any credit card issuer that extends closed-end credit that is:

130 (A) subject to a finance charge; or [is]

131 (B) payable by written agreement in more than four installments.

132 (d) "Depository institution" has the same meaning as in Section 7-1-103.

133 ~~[(4)]~~ (e) "Earnings" means compensation paid or payable to an individual or for [his] the  
134 individual's account for personal services rendered or to be rendered by [him] the individual  
135 whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic  
136 payments pursuant to a pension, retirement, or disability program.

137 ~~[(5)]~~ (f) "Installment" means a payment upon a debt that is part of a series of payments,  
138 each of which is:

139 (i) less than the original amount of the debt [and];

140 (ii) scheduled as to a specific amount and due date by agreement of the parties; and

141 (iii) for the purpose of repaying the debt.

142 ~~[(6)]~~ (g) "Party" means any individual person and any other entity legally capable of  
143 entering into a binding contract.

144 (h) "Prepayment" or "prepay" means a payment:

145 (i) of the total amount of indebtedness or a substantial portion of that indebtedness owed  
146 under a contract, except late payment penalties if incurred or charged; and

147 (ii) on a date before the sooner of the date:

148 (A) specified in the contract on which the indebtedness paid is due under the contract; or

149 (B) on which all payments, if timely made, shall have been made.

150 (2) (a) For purposes of Subsection (1)(c)(i), a party is considered to extend consumer credit  
151 regularly only if during the preceding calendar year that party extends credit:

152 (i) more than 25 times; or

153 (ii) more than five times for transactions secured by a dwelling.

154 (b) If a person did not meet the numerical standards under Subsection (2)(a) in the  
 155 preceding calendar year, the numerical standards shall be applied to the current calendar year.

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

157 **70C-2-102. Delinquency charges.**

158 (1) (a) The parties to any consumer credit agreement may contract for a delinquency charge  
 159 on any installment not paid in full by its scheduled due date in an amount not exceeding the greater  
 160 of:

161 (i) \$30; or

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

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

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

169 [~~(2)~~] (3)(a) A delinquency charge as authorized by this section may be collected only once  
 170 on each installment[~~;~~ however] regardless of how long it remains delinquent. [~~No~~]

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

172 (i) the installment has been deferred; and

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

174 (c) A delinquency charge may be collected:

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

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

177 Section 5. Section **70C-3-101** is amended to read:

178 **70C-3-101. Prepayment of debt.**

179 (1) Subject to the other provisions of this section, a debtor may prepay the unpaid balance  
 180 of a closed-end consumer credit debt at any time without penalty.

181 (2) For purposes of this section:

182 (a) [~~The~~] the unpaid balance of a closed-end consumer credit debt at any point in time shall

183 consist only of:

184 (i) any unpaid earned finance charge~~[-]~~;

185 (ii) the unpaid principal of the debt~~[-and]~~;

186 (iii) any delinquency or deferral charge that may be assessed:

187 (A) prior to prepayment; or

188 (B) at the time of prepayment; and

189 (iv) other allowable charges that may have been assessed prior to prepayment~~[-]~~;

190 (b) (i) ~~[Except]~~ except as provided in Subsection (2)(c), the earned finance charge and  
191 unpaid principal shall be calculated only by the actuarial or United States Rule method from the  
192 date the credit is first extended to the debtor~~[-but]~~;

193 (ii) the creditor may accrue finance charges during any delay period pertaining to a right  
194 of rescission~~[-]~~;

195 (c) (i) ~~[Any]~~ any prepaid finance charge not exceeding 5% of the original principal amount  
196 of the debt which the parties expressly agree is nonrefundable in the event of prepayment shall be  
197 fully earned on the date the credit is extended~~[-Any additional]~~;

198 (ii) any prepaid finance charges in addition to the prepaid finance charge described in  
199 Subsection (2)(c)(i):

200 (A) ~~are [deemed]~~ considered to be earned proportionally over the entire term of the  
201 agreement~~[-]~~; and

202 (B) in that event of prepayment, any unearned portion of ~~[such]~~ the finance charge[-] shall  
203 be:

204 (I) calculated on a pro rata basis according to the remaining term of the agreement[-shall  
205 be]; and

206 (II) rebated[-]; and

207 (d) ~~[Any]~~ any costs, charges, or fees paid to third parties in connection with setting up the  
208 credit are not subject to rebate unless the creditor becomes entitled to a rebate of any part of the  
209 cost, charge, or fee as a result of the prepayment.

210 (3) (a) If the maturity of a closed-end consumer credit debt is accelerated for any reason  
211 and judgment is obtained, the debtor is entitled to have the unpaid balance of the debt calculated,  
212 ~~[less any legal offset,]~~ as if payment in full had been made on the date judgment was entered less  
213 any legal offset.

214 (b) Interest on the judgment shall be the rate agreed on by the parties with respect to the  
215 debt.

216 (4) The provisions of this section for calculating the unpaid balance of a debt apply to all  
217 prepayments of closed-end consumer credit debts after September 1, 1985, unless a different  
218 method for calculating the unpaid balance on prepayment is expressly provided for in a consumer  
219 credit contract which was:

220 (a) entered into prior to July 1, 1985[-]; and [was]

221 (b) lawful when made.

222 (5) (a) In a contract executed, renewed, or modified on or after May 3, 1999, and subject  
223 to Subsections (5)(b), (c), and (d), the creditor and debtor of a closed-end consumer credit debt  
224 may contract for a prepayment penalty if:

225 (i) the prepayment penalty only applies if the debtor prepays:

226 (A) within three years after the date of the contract; and

227 (B) more than 50% of the total amount owed under the contract at the time of the  
228 prepayment;

229 (ii) the initial term of the contract is not less than seven years;

230 (iii) the contract is for an initial principal amount of not less than \$5,000;

231 (iv) the creditor discloses to the debtor the option to obtain credit without a prepayment  
232 penalty at a higher annual percentage rate before the credit is extended; and

233 (v) the creditor offers to extend credit without a prepayment penalty:

234 (A) in the same principal amount as the extension of credit with the prepayment penalty;

235 (B) at an annual percentage rate finance charge that is greater than the annual percentage  
236 rate finance charge offered on the extension of credit with the prepayment penalty; and

237 (C) except for the annual percentage rate finance charge, upon the same terms and  
238 conditions as the extension of credit with the prepayment penalty.

239 (b) (i) The amount of a prepayment penalty allowed under Subsection (5)(a) may not  
240 exceed an amount equal to six months interest calculated:

241 (A) based on the average balance for the six months before the date of prepayment; and

242 (B) at the rate of interest designated in the contract.

243 (ii) Notwithstanding Subsection (5)(b)(i), if the prepayment occurs before the expiration  
244 of six months from the date the contract was executed, the prepayment charge may be calculated



245 based on the average balance from the date the contract was executed.  
246 (c) Any provision in a contract related to a prepayment penalty shall be printed in the credit  
247 contract in:  
248 (i) bold type; and  
249 (ii) no smaller than 10 point font.  
250 (d) (i) A creditor may not collect a prepayment penalty if the debtor refinances a closed  
251 end credit debt with:  
252 (A) the creditor that first extends the credit;  
253 (B) the owner of the debt receivable at the time the debt is refinanced; or  
254 (C) an affiliate of an entity described in Subsection (5)(d)(i)(A) or (B).  
255 (ii) For purposes of this Subsection (5)(d), "affiliate" means any entity:  
256 (A) owned or controlled by the same party;  
257 (B) that owns or controls;  
258 (I) the creditor that first extends the credit; or  
259 (II) the owner of the debt receivable at the time the debt is refinanced; or  
260 (C) that is owned or controlled by:  
261 (I) the creditor that first extends the credit; or  
262 (II) the owner of the debt receivable at the time the debt is refinanced.

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**Legislative Review Note**  
**as of 1-22-99 9:07 AM**

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

**Office of Legislative Research and General Counsel**