

CHECK ABUSE AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Hogue

This act modifies provisions related to dishonored checks to expand time periods to respond to notices of dishonor and to remove caps on damages.

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

AMENDS:

7-15-1, as last amended by Chapters 100 and 171, Laws of Utah 1999

7-15-2, as last amended by Chapters 100 and 171, Laws of Utah 1999

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;

(ii) draft;

(iii) order; or

(iv) other instrument.

(b) "Issuer" means a person who makes, draws, signs, or issues a check, whether as corporate agent or otherwise, for the purpose of:

(i) obtaining from any person any money, merchandise, property, or other thing of value;

or

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

(c) "Mailed" means the day that a notice is properly deposited in the United States mail.

(2) (a) An issuer of a check is liable to the holder of the check if:



- 28 (i) the check:
- 29 (A) is not honored upon presentment; and
- 30 (B) is marked "refer to maker";
- 31 (ii) the account upon which the check is made or drawn:
- 32 (A) does not exist;
- 33 (B) has been closed; or
- 34 (C) does not have sufficient funds or sufficient credit for payment in full of the check; or
- 35 (iii) (A) the check is issued in partial or complete fulfillment of a valid and legally binding
- 36 obligation; and
- 37 (B) the issuer stops payment on the check with the intent to:
- 38 (I) fraudulently defeat a possessory lien; or
- 39 (II) otherwise defraud the holder of the check.
- 40 (b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:
- 41 (i) the check amount; and
- 42 (ii) a service charge of \$20.
- 43 (3) (a) The holder of a check that has been dishonored [~~may~~]:
- 44 (i) shall give written [~~or oral~~] notice of dishonor to the issuer of the check; and
- 45 (ii) may waive all or part of the service charge imposed under Subsection (2)(b).
- 46 (b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored may
- 47 not collect and the issuer is not liable for the service charge imposed under Subsection (2)(b) if:
- 48 (i) the holder redeposits the check; and
- 49 (ii) that check is honored.
- 50 (4) If the issuer does not pay the amount owed under Subsection (2)(b) within [~~+5~~] 30
- 51 calendar days from the day on which the notice required under Subsection (5) is mailed, the issuer
- 52 is liable for:
- 53 (a) the amount owed under Subsection (2)(b); and
- 54 (b) collection costs not to exceed \$20.
- 55 (5) (a) A holder shall provide written notice to an issuer before:
- 56 (i) charging collection costs under Subsection (4) in addition to the amount owed under
- 57 Subsection (2)(b); or
- 58 (ii) filing an action based upon this section.

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

61 (i) if the amount owed under Subsection (2)(b) is not paid within [~~15~~] 30 calendar days
62 from the day on which the notice is mailed, the issuer is liable for:

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

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

65 (ii) the holder may file civil action if the issuer does not pay to the holder the amount owed
66 under Subsection (4) within 30 calendar days from the day on which the notice is mailed.

67 (6) [~~(a)~~] If the issuer has not paid the holder the amounts owed under Subsection (4) within
68 30 calendar days from the day on which the notice required by Subsection (5) is mailed, the holder
69 may offer to not file civil action under this section if the issuer pays the holder:

70 [~~(i)~~] (a) the amount owed under Subsection (2)(b);

71 [~~(ii)~~] (b) the collection costs under Subsection (4); and

72 [~~(iii) an amount that:~~]

73 [~~(A) is equal to the greater of:~~]

74 [~~(I) \$50; or~~]

75 [~~(II) triple the check amount; and~~]

76 [~~(B) does not exceed the check amount plus \$250; and~~]

77 [~~(iv)~~] (c) if the holder retains an attorney to recover on the dishonored check, reasonable
78 attorney's fees not to exceed \$50.

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

81 [~~(ii) A person who is not the original payee may not retain any amounts charged or~~
82 ~~collected under Subsection (6)(a)(iii).]~~

83 [~~(iii) The original payee of a check may not contract for a person to retain any amounts~~
84 ~~charged or collected under Subsection (6)(a)(iii).]~~

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

88 (b) In a civil action, the issuer of the check is liable to the holder for:

89 (i) the check amount;

- 90 (ii) interest;
- 91 (iii) all costs of collection, including all court costs and reasonable attorneys' fees; and
- 92 (iv) damages[~~:(A)~~] equal to the greater of:
- 93 [~~(F)~~] (A) \$100; or
- 94 [~~(H)~~] (B) triple the check amount[~~;~~and].
- 95 [~~(B)~~ not to exceed the check amount plus \$500.]

96 (c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection (7)(b),
 97 a court may waive all or part of the amounts owed under Subsections (7)(b)(ii) through (iv) upon
 98 a finding of good cause.

99 [~~(d) (i) Notwithstanding Subsection (7)(b), all amounts charged or collected under~~
 100 ~~Subsection (7)(b)(iv) shall be paid to and be the property of the original payee of the check.]~~

101 [~~(ii) A person who is not the original payee may not retain any amounts charged or~~
 102 ~~collected under Subsection (7)(b)(iv).]~~

103 [~~(iii) The original payee of a check may not contract for a person to retain any amounts~~
 104 ~~charged or collected under Subsection (7)(b)(iv).]~~

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

107 (9) (a) Notwithstanding the other provisions of this section, a holder of a check is exempt
 108 from this section if:

- 109 (i) the holder:
 - 110 (A) is a depository institution; or
 - 111 (B) a person that receives a payment on behalf of a depository institution;
- 112 (ii) the check is a payment on a loan that originated at the depository institution that:
 - 113 (A) is the holder; or
 - 114 (B) on behalf of which the holder received the payment; and
- 115 (iii) the loan contract states a specific service charge for dishonor.

116 (b) A holder exempt under Subsection (6)(a) may contract with an issuer for the collection
 117 of fees or charges for the dishonor of a check.

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

119 **7-15-2. Notice -- Form.**

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

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

122 (i) first class; and

123 (ii) postage prepaid.

124 (c) Notwithstanding Subsection (1)(b), written notice is conclusively presumed to have

125 been given when the notice is:

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

127 (ii) postage prepaid;

128 (iii) certified or registered mail;

129 (iv) return receipt requested; and

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

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

132 (B) last-known address.

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

134 Date: _____

135 To: _____

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

137 returned to us unpaid:

138 Check date: _____

139 Check number: _____

140 Originating institution: _____

141 Amount: _____

142 Reason for dishonor (marked on check): _____

143 In accordance with Section 7-15-1, Utah Code Annotated, you are liable for this check

144 together with a service charge of \$20, which must be paid to the undersigned.

145 If you do not pay the check amount and the \$20 service charge within ~~[15]~~ 30 calendar days

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

147 ~~from the day on which this notice is mailed]~~:

148 (1) the check amount;

149 (2) the \$20 service charge; and

150 (3) collection costs not to exceed \$20.

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

152 30 calendar days from the day on which this notice is mailed, in accordance with Section 7-15-1,
153 Utah Code Annotated, an appropriate civil legal action may be filed against you for:

- 154 (1) the check amount;
- 155 (2) interest;
- 156 (3) court costs;
- 157 (4) attorneys' fees;
- 158 (5) actual costs of collection as provided by law; and
- 159 (6) damages in an amount equal to the greater of \$100 or triple the check amount~~[, except~~
160 ~~that damages recovered under this Subsection (6) may not exceed the check amount by more than~~
161 ~~\$500].~~

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

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

169 (Signed) _____

170 Name of Holder: _____

171 Address of Holder: _____

172 Telephone Number: _____

173 (3) Notwithstanding the other provisions of this section, a holder exempt under Subsection
174 7-15-1(9) is exempt from this section.

Legislative Review Note
as of 2-6-01 7:23 AM

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

Office of Legislative Research and General Counsel