

**TREATMENT OF DISHONORED CHECKS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Chad E. Bennion**

**This act modifies the chapter related to dishonored instruments to provide procedures if the issuer of a dishonored check makes a written commitment to pay monies owed to the holder of the dishonored check. This act makes technical changes.**

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

AMENDS:

**7-15-1**, as last amended by Chapter 9, Laws of Utah 2001

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

**7-15-3**, as last amended by Chapter 9, Laws of Utah 2001

*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.



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

29 (d) "Written commitment" means a commitment:

30 (i) made in writing by the issuer of a dishonored check;

31 (ii) to pay within seven business days from the day the written commitment is mailed the

32 amount owed under Subsection (4); and

33 (iii) that takes substantially the form described in Subsection 7-15-2(3).

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

35 (i) the check:

36 (A) is not honored upon presentment; and

37 (B) is marked "refer to maker";

38 (ii) the account upon which the check is made or drawn:

39 (A) does not exist;

40 (B) has been closed; or

41 (C) does not have sufficient funds or sufficient credit for payment in full of the check; or

42 (iii) (A) the check is issued in partial or complete fulfillment of a valid and legally binding

43 obligation; and

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

45 (I) fraudulently defeat a possessory lien; or

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

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

48 (i) the check amount; and

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

50 (3) (a) The holder of a check that has been dishonored may:

51 (i) give written or oral notice of dishonor to the issuer of the check; and

52 (ii) waive all or part of the service charge imposed under Subsection (2)(b).

53 (b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored may

54 not collect and the issuer is not liable for the service charge imposed under Subsection (2)(b) if:

55 (i) the holder redeposits the check; and

56 (ii) that check is honored.

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

58 days from the day on which the notice required under Subsection (5) is mailed, the issuer is liable

59 for:

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

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

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

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

65 (ii) filing an action based upon this section.

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

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

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

71 (B) collection costs under Subsection (4); [~~and~~]

72 (ii) the holder may file civil action if the issuer does not pay to the holder the amount owed  
73 under Subsection (4) [~~within~~] before the later of:

74 (A) 30 calendar days from the day on which the notice is mailed[-]; or

75 (B) if the issuer mails a written commitment, seven business days from the day on which  
76 the written commitment is mailed.

77 (6) (a) If the issuer of the dishonored check mails a written commitment within 23 calendar  
78 days from the day on which the notice required under Subsection (5)(a) is mailed, the holder of the  
79 dishonored check may not:

80 (i) file a civil action during the time period described in Subsection (5)(b)(ii); or

81 (ii) if the amount owed under Subsection (4) is paid within seven business days from the  
82 day on which the written commitment is mailed, collect any additional amount for that dishonored  
83 check in excess of the amount owed under Subsection (4).

84 (b) For a written commitment to be valid, the issuer of a dishonored check shall commit  
85 to pay the amount owed under Subsection (4).

86 (c) At the time the holder provides notice under Subsection (5), a holder of a dishonored  
87 check shall provide the issuer of the dishonored check a form of a written commitment in  
88 substantially the form provided in Subsection 7-15-2(3).

89 (d) The holder of a dishonored check may not charge or collect any amount in addition to

90 the amounts provided under Subsection (8) for failure to pay the amount owed under Subsection  
91 (4) after the holder mails a written commitment.

92 ~~[(6)] (7)~~ (a) If the issuer has not paid the holder the amounts owed under Subsection (4)  
93 within ~~[30 calendar days from the day on which the notice required by Subsection (5) is mailed]~~  
94 the time period described in Subsection (5)(b)(ii), the holder may offer to not file civil action under  
95 this section if the issuer pays the holder:

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

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

98 (iii) an amount that:

99 (A) is equal to the greater of:

100 (I) \$50; or

101 (II) triple the check amount; and

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

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

105 (b) (i) Notwithstanding Subsection ~~[(6)] (7)~~(a), all amounts charged or collected under  
106 Subsection ~~[(6)] (7)~~(a)(iii) shall be paid to and be the property of the original payee of the check.

107 (ii) A person who is not the original payee may not retain any amounts charged or  
108 collected under Subsection ~~[(6)] (7)~~(a)(iii).

109 (iii) The original payee of a check may not contract for a person to retain any amounts  
110 charged or collected under Subsection ~~[(6)] (7)~~(a)(iii).

111 ~~[(7)] (8)~~ (a) A civil action may not be filed under this section unless the issuer fails to pay  
112 the amounts owed:

113 (i) under Subsection (4); and

114 (ii) (A) [within] before 30 calendar days from the day on which the notice required by  
115 Subsection (5) is mailed[-]; or

116 (B) if the holder has mailed a written commitment as provided in Subsection (6), before  
117 the later of:

118 (I) seven business days from the day on which the written commitment is mailed; or

119 (II) 30 calendar days from the day on which the notice required by Subsection (5) is  
120 mailed.

- 121 (b) In a civil action, the issuer of the check is liable to the holder for:
- 122 (i) the check amount;
- 123 (ii) interest;
- 124 (iii) all costs of collection, including all court costs and reasonable attorneys' fees; and
- 125 (iv) damages:
- 126 (A) equal to the greater of:
- 127 (I) \$100; or
- 128 (II) triple the check amount; and
- 129 (B) not to exceed the check amount plus \$500.
- 130 (c) If an issuer is held liable under Subsection [~~(7)~~] (8)(b), notwithstanding Subsection
- 131 [~~(7)~~] (8)(b), a court may waive all or part of the amounts owed under Subsections [~~(7)~~] (8)(b)(ii)
- 132 through (iv) upon a finding of good cause.
- 133 (d) (i) Notwithstanding Subsection [~~(7)~~] (8)(b), all amounts charged or collected under
- 134 Subsection [~~(7)~~] (8)(b)(iv) shall be paid to and be the property of the original payee of the check.
- 135 (ii) A person who is not the original payee may not retain any amounts charged or
- 136 collected under Subsection [~~(7)~~] (8)(b)(iv).
- 137 (iii) The original payee of a check may not contract for a person to retain any amounts
- 138 charged or collected under Subsection [~~(7)~~] (8)(b)(iv).
- 139 [~~(8)~~] (9) This section may not be construed to prohibit the holder of the check from
- 140 seeking relief under any other applicable statute or cause of action.
- 141 [~~(9)~~] (10) (a) Notwithstanding the other provisions of this section, a holder of a check is
- 142 exempt from this section if:
- 143 (i) the holder:
- 144 (A) is a depository institution; or
- 145 (B) a person that receives a payment on behalf of a depository institution;
- 146 (ii) the check is a payment on a loan that originated at the depository institution that:
- 147 (A) is the holder; or
- 148 (B) on behalf of which the holder received the payment; and
- 149 (iii) the loan contract states a specific service charge for dishonor.
- 150 (b) A holder exempt under Subsection [~~(9)~~] (10)(a) may contract with an issuer for the
- 151 collection of fees or charges for the dishonor of a check.

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

153 **7-15-2. Notice -- Form.**

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

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

156 (i) first class; and

157 (ii) postage prepaid.

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

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

161 (ii) postage prepaid;

162 (iii) certified or registered mail;

163 (iv) return receipt requested; and

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

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

166 (B) last-known address.

167 (d) A written commitment is conclusively presumed to have been mailed when the written  
168 commitment is:

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

170 (ii) postage prepaid;

171 (iii) certified or registered mail;

172 (iv) return receipt requested; and

173 (v) addressed to the person who provides notice to the holder of the dishonored check  
174 under Subsection 7-15-1(5) at the address as it appears on the notice.

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

176 Date: \_\_\_\_\_

177 To: \_\_\_\_\_

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

180 Check date: \_\_\_\_\_

181 Check number: \_\_\_\_\_

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

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

184 Reason for dishonor (marked on check): \_\_\_\_\_

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

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

- 190 (1) the check amount;
- 191 (2) the \$20 service charge; and
- 192 (3) collection costs not to exceed \$20.

193 If you do not pay the check amount, the \$20 service charge, and the collection costs that  
194 do not exceed \$20 within 30 calendar days from the day on which this notice is mailed, in  
195 accordance with Section 7-15-1, Utah Code Annotated, an appropriate civil legal action may be  
196 filed against you for:

- 197 (1) the check amount;
- 198 (2) interest;
- 199 (3) court costs;
- 200 (4) attorneys' fees;
- 201 (5) actual costs of collection as provided by law; and
- 202 (6) damages in an amount equal to the greater of \$100 or triple the check amount, except  
203 that damages recovered under this Subsection (6) may not exceed the check amount by more than  
204 \$500.

205 A civil legal action may not be filed against you if you:

206 (1) mail a written commitment within 23 days from the date this notice to the address of  
207 the holder listed below that states that within seven business days you will pay the amount equal  
208 to the sum of:

- 209 (a) the check amount;
- 210 (b) the \$20 service charge; and
- 211 (c) the collection costs that do not exceed \$20; and
- 212 (2) you pay that amount within the seven business days.

213 If you pay the amount under your written commitment, no further amounts may be collected for

214 this check. Enclosed is a copy of a written commitment that you may use.

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

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

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

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

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

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

226 (3) A written commitment under this chapter shall take substantially the following form:

227 Date: \_\_\_\_\_

228 To: \_\_\_\_\_

229 Check date: \_\_\_\_\_

230 Check number: \_\_\_\_\_

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

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

233 Reason for dishonor (marked on check): \_\_\_\_\_

234 Within seven calendar days from the day this commitment is mailed, I will pay an amount  
235 equal to:

236 (1) the check amount;

237 (2) the \$20 service charge;

238 (3) collection fees; and

239 (4) [any amount the issuer voluntarily offers to pay].

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

241 Name of Issuer: \_\_\_\_\_

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

243 Telephone Number of Holder: \_\_\_\_\_

244 [~~3~~] (4) Notwithstanding the other provisions of this section, a holder exempt under

245 Subsection 7-15-1[(9)] (10) is exempt from this section.

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

247 **7-15-3. Liability of financial institution upon wrongful dishonor.**

248 If a person is liable to a holder under Section 7-15-1 or under a contract with a depository  
249 institution as provided in Subsection 7-15-1[(9)] (10), and the liability is proximately caused by  
250 a financial institution's wrongful dishonor under Section 70A-4-402, any award against the  
251 financial institution under Section 70A-4-402 shall include all amounts awarded against the person  
252 to the holder under:

253 (1) Section 7-15-1; or

254 (2) the contract with the depository institution as provided in Subsection 7-15-1[(9)] (10).

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**Legislative Review Note**  
**as of 2-6-02 9:28 AM**

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

**Office of Legislative Research and General Counsel**