

Representative Chad E. Bennion proposes the following substitute bill:

TREATMENT OF DISHONORED CHECKS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Chad E. Bennion

This act modifies the chapter related to dishonored instruments to address an issuer's liability in a civil action to collect on a 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

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.



- 26 (2) (a) An issuer of a check is liable to the holder of the check if:
- 27 (i) the check:
- 28 (A) is not honored upon presentment; and
- 29 (B) is marked "refer to maker";
- 30 (ii) the account upon which the check is made or drawn:
- 31 (A) does not exist;
- 32 (B) has been closed; or
- 33 (C) does not have sufficient funds or sufficient credit for payment in full of the check; or
- 34 (iii) (A) the check is issued in partial or complete fulfillment of a valid and legally binding
- 35 obligation; and
- 36 (B) the issuer stops payment on the check with the intent to:
- 37 (I) fraudulently defeat a possessory lien; or
- 38 (II) otherwise defraud the holder of the check.
- 39 (b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:
- 40 (i) the check amount; and
- 41 (ii) a service charge of \$20.
- 42 (3) (a) The holder of a check that has been dishonored may:
- 43 (i) give written or oral notice of dishonor to the issuer of the check; and
- 44 (ii) waive all or part of the service charge imposed under Subsection (2)(b).
- 45 (b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored may
- 46 not collect and the issuer is not liable for the service charge imposed under Subsection (2)(b) if:
- 47 (i) the holder redeposits the check; and
- 48 (ii) that check is honored.
- 49 (4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15 calendar
- 50 days from the day on which the notice required under Subsection (5) is mailed, the issuer is liable
- 51 for:
- 52 (a) the amount owed under Subsection (2)(b); and
- 53 (b) collection costs not to exceed \$20.
- 54 (5) (a) A holder shall provide written notice to an issuer before:
- 55 (i) charging collection costs under Subsection (4) in addition to the amount owed under
- 56 Subsection (2)(b); or

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

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

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

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

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

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

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

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

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

71 (iii) an amount that:

72 (A) is equal to the greater of:

73 (I) \$50; or

74 (II) triple the check amount; and

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

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

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

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

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

84 (7) (a) A civil action may not be filed under this section unless the issuer fails to pay the
85 amounts owed:

86 (i) under Subsection (4); and

87 (ii) within 30 calendar days from the day on which the notice required by Subsection (5)

88 is mailed.

89 (b) ~~[In]~~ Subject to Subsection (7)(c) and (d) in a civil action[;] the issuer of the check is
90 liable to the holder for:

91 (i) the check amount;

92 (ii) interest;

93 (iii) all costs of collection, including all court costs and reasonable attorneys' fees; and

94 (iv) damages:

95 (A) equal to the greater of:

96 (I) \$100; or

97 (II) triple the check amount; and

98 (B) not to exceed the check amount plus \$500.

99 (c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection (7)(b),
100 a court may waive ~~[all or part of the amounts]~~ any amount owed under Subsections (7)(b)(ii)
101 through (iv):

102 (i) upon a finding of good cause[;]; and

103 (ii) only to the extent that the sum of the amounts owed under Subsections (7)(b)(ii)
104 through (iv) exceeds \$40.

105 (d) If a holder of a check violates this section by filing a civil action under this section
106 before 31 calendar days from the day on which the notice required by Subsection (5) is mailed, an
107 issuer may not be held liable for an amount in excess of the check amount.

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

110 (ii) A person who is not the original payee may not retain any amounts charged or
111 collected under Subsection (7)(b)(iv).

112 (iii) The original payee of a check may not contract for a person to retain any amounts
113 charged or collected under Subsection (7)(b)(iv).

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

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

118 (i) the holder:

- 119 (A) is a depository institution; or
- 120 (B) a person that receives a payment on behalf of a depository institution;
- 121 (ii) the check is a payment on a loan that originated at the depository institution that:
 - 122 (A) is the holder; or
 - 123 (B) on behalf of which the holder received the payment; and
 - 124 (iii) the loan contract states a specific service charge for dishonor.
- 125 (b) A holder exempt under Subsection (9)(a) may contract with an issuer for the collection
- 126 of fees or charges for the dishonor of a check.